BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1006

[Docket No. CFPB–2019–0022]

RIN 3170–AA41

Debt Collection Practices (Regulation F)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule to revise Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA) and currently contains the procedures for State application for exemption from the provisions of the FDCPA. The Bureau is finalizing Federal rules governing the activities of debt collectors, as that term is defined in the FDCPA. The Bureau's final rule addresses, among other things, communications in connection with debt collection and prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection.

DATES: This rule is effective November 30, 2021.

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

SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

The Bureau is finalizing amendments to Regulation F, 12 CFR part 1006, which implements the FDCPA.[1] The amendments prescribe Federal rules governing the activities of debt collectors, as that term is defined in the FDCPA (debt collectors or FDCPA debt collectors). The final rule focuses on debt collection communications and related practices by debt collectors.

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

The FDCPA established specific consumer protections, enabling consumers to establish controls on when and how debt collectors contact them, establishing privacy protections surrounding the collection of debts, and protecting consumers from certain collection practices. The FDCPA also established broad consumer protections, prohibiting harassment or abuse, false or misleading representations, and unfair practices. As the first Federal agency with authority under the FDCPA to prescribe substantive rules with respect to the collection of debts by debt collectors, the Bureau is adopting this final rule to implement and interpret those consumer protections, including by clarifying how they apply to newer communication technologies. The Bureau intends to issue a disclosure-focused final rule in December 2020 (disclosure-focused final rule) to implement and interpret the FDCPA's requirements regarding consumer disclosures and certain related consumer protections.

A. Coverage and Organization of the Final Rule

The final rule is based primarily on the Bureau's authority to issue rules to implement the FDCPA and, consequently, covers debt collectors, as that term is defined in the FDCPA.[5] The final rule restates nearly all of the FDCPA's substantive provisions largely in the order that they appear in the statute, sometimes without further interpretation. Restating the statutory text in this way should facilitate understanding and compliance by making it possible for stakeholders to, in general, consult only the regulation to view relevant definitions and substantive provisions. Except where specifically stated, by restating the statutory text, the Bureau does not intend to codify existing case law or judicial interpretations of the statute.

The final rule has four subparts. Subpart A contains generally applicable provisions, such as definitions that apply throughout the regulation. Subpart B contains rules for FDCPA debt collectors. Subpart C is reserved for any future debt collection rulemakings. Subpart D contains certain miscellaneous provisions.

B. Scope of the Final Rule

Communications Provisions

Debt collection efforts often begin with attempts by a debt collector to reach a consumer. Communicating with a debt collector may benefit a consumer by helping the consumer either to resolve a debt the consumer owes or to identify and inform the debt collector if the debt is one that the consumer does not owe. However, debt collection communications also may constitute unfair practices, may contain false or misleading representations, or may be harassing or abusive either because of their content (for example, when debt collectors employ profanity) or because of the manner in which they are made (for example, when debt collectors place telephone calls with the intent to harass or abuse).

To address such concerns about debt collection communications and to clarify the application of the FDCPA to newer communication technologies that have developed since the FDCPA's passage in 1977, the final rule, in general:

- Clarifies restrictions on the times and places at which a debt collector may communicate with a consumer, including by clarifying that a consumer need not use specific words to assert that a time or place is inconvenient for debt collection communications.
- Clarifies that a consumer may restrict the media through which a debt collector communicates by designating a particular medium, such as email, as one that cannot be used for debt collection communications.
- Clarifies that a debt collector is presumed to violate the FDCPA's prohibition on repeated or continuous telephone calls if the debt collector places a telephone call to a person more than seven times within a seven-day period or within seven days after engaging in a telephone conversation with the person. It also clarifies that a debt collector is presumed to comply with that prohibition if the debt collector places a telephone call not in excess of either of those telephone call frequencies. The final rule also provides non-exhaustive lists of factors that may

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

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

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

[4] *Id.*

[5] The record retention requirement in § 1006.100 is based on the Bureau's rulemaking authority under title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 stat. 1376 (2010), but applies only to FDCPA debt collectors. *See* the section-by-section analysis of § 1006.100.

be used to rebut the presumption of compliance or of a violation.

• Clarifies that newer communication technologies, such as emails and text messages, may be used in debt collection, with certain limitations to protect consumer privacy and to protect consumers from harassment or abuse, false or misleading representations, or unfair practices. For example, the final rule requires that each of a debt collector's emails and text messages must include instructions for a reasonable and simple method by which a consumer can opt out of receiving further emails or text messages. The final rule also provides that a debt collector may obtain a safe harbor from civil liability for an unintentional third-party disclosure if the debt collector follows the procedures identified in the rule when communicating with a consumer by email or text message.[6]

• Defines a new term related to debt collection communications: Limited-content message. This definition identifies what information a debt collector must and may include in a voicemail message for consumers (with the inclusion of no other information permitted) for the message to be deemed not to be a communication under the FDCPA. This definition permits a debt collector to leave a voicemail message for a consumer that is not a communication under the FDCPA or the final rule and therefore is not subject to certain requirements or restrictions.

Consumer Disclosure Provisions

The FDCPA requires that a debt collector provide certain disclosures to the consumer. The final rule clarifies the standards a debt collector must meet when sending the required disclosures in writing or electronically.

Additional Provisions

The final rule addresses certain other consumer protection concerns in the debt collection market. For example, the final rule includes provisions clarifying debt collectors' obligation to retain records evidencing compliance or noncompliance with the FDCPA and Regulation F; prohibiting the sale, transfer for consideration, or placement for collection of certain debts; and clarifying debt collectors' obligations when responding to duplicative disputes. The final rule also clarifies that the personal representative of a deceased consumer's estate is a consumer for purposes of § 1006.6, which addresses communications in connection with debt collection. This clarification generally allows a debt collector to discuss a debt with the personal representative of a deceased consumer's estate. The final rule also clarifies how a debt collector may locate the personal representative of a deceased consumer's estate.

Disclosure-Focused Final Rule

The Bureau is reserving certain sections of Regulation F for a disclosure-focused final rule that, as noted above, the Bureau intends to publish in December 2020 to clarify the information that a debt collector must provide to a consumer at the outset of debt collection and to provide a model notice containing the information required by FDCPA section 809(a). The Bureau also plans to address in the disclosure-focused final rule consumer protection concerns related to requirements prior to furnishing consumer reporting information and the collection of debt that is beyond the statute of limitations (*i.e.,* time-barred debt).

II. Background

A. Debt Collection Market Background

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

For a variety of reasons, consumers sometimes are unable or unwilling to make payments when they are due. Collection efforts may directly recover some or all of the overdue amounts owed to debt owners and thereby may indirectly help to keep consumer credit available and more affordable to consumers.[7] Collection activities also can lead to repayment plans or debt restructuring that may provide consumers with additional time to make payments or resolve their debts on more manageable terms.[8]

The debt collection industry includes creditors, third-party debt collectors (including debt collection law firms), debt buyers, and a wide variety of related service providers. Debt collection is estimated to be a $12.7 billion-dollar industry employing nearly 123,000 people across approximately 7,800 collection agencies in the United States.[9]

Creditors

When an account becomes delinquent, initial collection efforts often are undertaken by the original creditor or its servicer. The FDCPA typically does not cover such recovery efforts and, if they result in resolution of the debt, whether through payment in full or another arrangement, the consumer typically will not interact with a third-party debt collector.

Third-Party Debt Collectors

If a consumer's payment obligations remain unmet, a creditor may send the account to a third-party debt collector to recover on the debt in the third-party debt collector's name. A creditor may choose to send an account to a third-party debt collector for several reasons, including because the third-party debt collector possesses capabilities and expertise that the creditor lacks. Third-party debt collectors usually are paid on a contingency basis, typically a percentage of recoveries; debt collectors contracting with creditors on a contingency basis generated a large majority of the industry's 2019 revenue.[10] Contingency debt collectors compete with one another to secure business from creditors based on, among other factors, the debt collectors' effectiveness in obtaining recoveries.[11]

[6] These procedures appear in § 1006.6(d)(3) through (5). Throughout this Notice, the Bureau uses the phrase ''may obtain a safe harbor from civil liability'' to mean that a debt collector who follows the procedures in § 1006.6(d)(3) through (5) may have a bona fide error defense to civil liability under FDCPA section 813(c), 15 U.S.C. 1692k(c), for an unintentional third-party disclosure. The Bureau uses the term ''may'' because, to have a bona fide error defense to civil liability (*i.e.,* to obtain what this Notice refers to, for ease of reference, as a safe harbor from civil liability), a debt collector must affirmatively prove compliance with both § 1006.6(d)(3)(i) and (ii). In addition, for ease of reference, the Bureau sometimes refers to the procedures in § 1006.6(d)(3) through (5) as ''safe harbor procedures.'' The Bureau's use of the term ''safe harbor'' in the context of § 1006.6(d)(3) through (5) is different from its use of the term elsewhere in this Notice, where the term refers to actions that, when taken, permit debt collectors to comply with the FDCPA and Regulation F.

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

[8] *See id.*

[9] *See* Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2020,* at 7 (Mar. 2020), *https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2020.pdf* (2020 FDCPA Annual Report).

[10] *Id.* at 8.

[11] While third-party collection agencies have been increasing in size in recent years, third-party debt collection continues to include a significant number of smaller entities. *See* Robert M. Hunt, *Understanding the Model: The Life Cycle of a Debt,* at 15, Fed. Reserve Bank of Phila. (June 6, 2013),

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B. Debt Buyers

If contingency collections prove unsuccessful—or if a particular creditor prefers not to use such third-party debt collectors—a creditor may sell unpaid accounts to a debt buyer. In 2009, the Federal Trade Commission (FTC) called the advent and growth of debt buying ''the most significant change in the debt collection business'' in recent years.[12] Debt buyers purchase defaulted debt from creditors or other debt owners and thereby take title to the debt. Credit card debt comprises a large majority of the debt that debt buyers purchase.[13] Debt buyers generated about one-third of debt collection revenue, or about $3.5 billion, in 2017.[14] Creditors who sell their uncollected debt to debt buyers receive a certain up-front return, but these debts typically are sold at prices that are less than their face value. Debt buyers typically price their offers for portfolios based upon their projections of the amount they will be able to collect. The debt buyer incurs the risk of recovering less than the sum of the amount it paid to acquire the debt and its expenses to collect the debt.

Typically, a debt buyer engages in debt collection, attempting to collect debts itself. However, a debt buyer also may use a third-party debt collector or a series of such debt collectors. If the debt buyer is unable to collect some of the debts it purchased, the debt buyer may sell the debt again to another debt buyer. Any single debt thus may be owned by multiple entities over its lifetime. The price paid for a debt generally will decline as the debt ages and passes from debt buyer to debt buyer, because the probability of payment decreases.[15]

Debt Collection Law Firms

A debt owner may try to recover on a debt through litigation, either after unsuccessful debt collection attempts or as a primary collection activity. Most debt collection litigation is filed in State courts. Debt owners often retain law firms and attorneys that specialize in debt collection and that are familiar with State and local rules. If a debt owner obtains a judgment in its favor, post-litigation efforts may include garnishment of wages or seizure of assets.

B. Debt Collection Methods

The debt collection experience is a common one—approximately one in three consumers with a credit record reported having been contacted about a debt in collection in 2014.[16] Of those, 27 percent reported having been contacted about a single debt over the prior year, 57 percent reported having been contacted about two to four debts, and 16 percent reported having been contacted about more than four debts.[17]

A creditor typically stops communicating with a consumer once responsibility for an account has moved to a third-party debt collector. Active debt collection efforts typically begin with the debt collector attempting to locate the consumer, usually by identifying a valid telephone number or mailing address, so that the debt collector can establish contact with the consumer. To obtain current contact information, a debt collector may look to information that transferred with the account file, public records, data sellers, or proprietary databases of contact information. A debt collector may also attempt to obtain location information for a consumer from third parties, such as family members who share a residence with the consumer or colleagues at the consumer's workplace.

Once a debt collector has obtained contact information for a consumer, the debt collector typically will seek to communicate with the consumer to obtain payment on some or all of the debt. The debt collector may tailor the collection strategy depending on a variety of factors, including the size and age of the debt and the debt collector's assessment of the likelihood of obtaining money from the consumer. Other types of debt are subject to statutory or regulatory requirements that may affect how a debt collector tries to recover on them. For example, privacy protections may affect how a debt collector seeks to recover on a medical debt, and the availability of administrative wage garnishment and tax refund intercepts may affect how a debt collector seeks to recover on a Federal student loan.

Changes in a consumer's situation may warrant a change in a debt collector's recovery strategy, such as when information purchased from consumer reporting agencies or other third parties indicates that the consumer has started a new job. A debt owner also may ''warehouse'' a debt and cease collection efforts for a significant period. A new debt collector may later be tasked with resuming collection efforts because, for example, the debt owner has sold the account, detected a possible change in the consumer's financial situation, or, as part of their portfolio management strategy, makes periodic attempts at some recovery. Each time a new debt collector obtains responsibility for collecting the debt, the consumer likely will be subject to communications or communication attempts from the new debt collector. For the consumer, this may mean contact from a series of different debt collectors over a number of years for a single debt. During this time, the consumer may make payments to multiple debt collectors or may receive communication attempts from multiple debt collectors that may stop and restart at irregular intervals, until the debt is paid or settled in full or collection activity ceases for other reasons.

C. Consumer Protection Concerns

Each year, consumers submit tens of thousands of complaints about debt collection to Federal regulators;[18] many

https://www.ftc.gov/sites/default/files/documents/public_events/life-debt-data-integrity-debt-collection/understandingthemodel.pdf.

[12] Fed. Trade Comm'n, *The Structure and Practices of the Debt Buying Industry,* at i (Jan. 2013), *https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf* (FTC Debt Buying Report).

[13] *Id.* at 7 (citing *Credit Card Debt Sales in 2008,* 921 Nilson Rep. 10 (Mar. 2009)).

[14] Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2018,* at 10 (Mar. 2018), *https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2018.pdf* (2018 FDCPA Annual Report) (citing Edward Rivera, *Debt Collection Agencies in the US,* IBIS World (Dec. 2017)). Although debt buyers represent about one-third of industry revenue, this overstates debt buyers' share of dollars collected, since debt buyer revenue includes all amounts recovered, whereas the revenue of contingency debt collectors includes only the share of recoveries retained by the debt collector. *Id.*

[15] FTC Debt Buying Report, *supra* note 12, at 23–24.

[16] Bureau of Consumer Fin. Prot., *Consumer Experience with Debt Collection: Findings from CFPB's Survey of Consumer Views on Debt,* at 5 (2017), *http://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf* (CFPB Debt Collection Consumer Survey). This figure includes consumers contacted only by creditors as well as those contacted by one or more debt collection firms. *Id.* at 13.

[17] *Id.*

[18] *See, e.g.,* 2020 FDCPA Annual Report, *supra* note 9, at 13; Fed. Trade Comm'n, *2019 Consumer Sentinel Network Databook,* at 7 (Jan. 2020), *https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2019/consumer_sentinel_network_data_book_2019.pdf;* Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2020,* at 15–16 (Mar. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2019.pdf* (2019 FDCPA Annual Report); Fed. Trade Comm'n, *2018 Consumer Sentinel Network Databook,* at 4, 7 (Feb. 2019), *https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf;* 2018 FDCPA Annual Report, *supra* note 14, at 14–15; Fed. Trade Comm'n, *2017 Consumer Sentinel Network Databook,* at 3, 6 (Mar. 2018), *https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2017/consumer_sentinel_data_book_2017.pdf;* Bureau of Consumer Fin. Prot., *2017 Fair Debt Collection Practices Act: CFPB*

of those complaints relate to practices addressed in the final rule. Consumers also file thousands of private actions each year against debt collectors who allegedly have violated the FDCPA. Since the Bureau began operations in 2011, it has brought numerous debt collection cases against third-party debt collectors, alleging both FDCPA violations and unfair, deceptive, or abusive debt collection acts or practices in violation of the Dodd-Frank Act.[19] In many of these cases, the Bureau has obtained civil penalties, monetary compensation for consumers, and other relief. In its supervisory work, the Bureau similarly has identified many FDCPA violations during examinations of debt collectors. Over the past decade, the FTC and State regulators also have brought numerous additional actions against debt collectors for violating Federal and State debt collection and consumer protection laws.

D. FDCPA and Dodd-Frank Act Protections for Consumers

Federal and State governments historically have sought to protect consumers from harmful debt collection practices. From 1938 to 1977, the Federal government primarily protected consumers through FTC enforcement actions against debt collectors who engaged in unfair or deceptive acts or practices in violation of section 5 of the FTC Act.[20] When Congress enacted the FDCPA in 1977, it found that ''[e]xisting laws and procedures for redressing . . . injuries [were] inadequate to protect consumers.'' [21] Congress found that ''[t]here [was] abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors'' and that these practices ''contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.'' [22]

The FDCPA was enacted, in part, ''to eliminate abusive debt collection practices by debt collectors, [and] to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.'' [23] Among other things, the FDCPA: (1) Prohibits debt collectors from engaging in harassment or abuse, making false or misleading representations, and engaging in unfair practices in debt collection; (2) restricts debt collectors' communications with consumers and others; and (3) requires debt collectors to provide consumers with disclosures concerning the debts they owe or allegedly owe.

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

Until the creation of the Bureau, no Federal agency was authorized to issue regulations to implement the substantive provisions of the FDCPA. Courts have issued opinions providing differing interpretations of various FDCPA provisions, and there is considerable uncertainty with respect to how the FDCPA applies to communication technologies that have developed since 1977. The Dodd-Frank Act amended the FDCPA to provide the Bureau with authority to ''prescribe rules with respect to the collection of debts by debt collectors.'' [24]

III. The Rulemaking Process

A. The 2019 Proposal and 2020 Supplemental Proposal

On May 21, 2019, the Bureau published a proposed rule (the proposal) in the **Federal Register** to amend Regulation F, which implements the FDCPA.[25] The proposal provided a 90-day comment period that would have closed on August 19, 2019. To allow interested persons more time to consider and submit their comments, the Bureau issued an extension of the comment period until September 18, 2019.[26] In response to the proposal, the Bureau received more than 14,000 comments from consumers, consumer groups, members of Congress, other government agencies, creditors, debt collectors, industry trade associations, and others. As discussed below, the Bureau has considered these comments in adopting this final rule.[27]

In the proposal, the Bureau proposed to address concerns about debt collection communications and to clarify the application of the FDCPA to newer communication technologies, to clarify the steps a debt collector must take to provide required disclosures in writing and electronically, to clarify the information that a debt collector must provide to a consumer at the outset of debt collection, and to address other consumer protection concerns in the debt collection market. The proposal, among other things, proposed to set a bright-line rule for telephone call frequency and proposed a model form for providing the information required by FDCPA section 809(a). These interventions, along with the many others included in the proposal, generated a robust response. While some consumers and consumer advocate commenters supported various aspects of the proposal, in general they questioned whether the proposal provided adequate protection for consumers. Similarly, while some industry commenters supported various aspects of the proposal, in general they questioned whether the proposal provided sufficient clarity to allow for compliance or was properly tailored to the consumer protection problems and evidence at hand.

Annual Report 2017, at 15–16 (Mar. 2017), *https://files.consumerfinance.gov/f/documents/201703_cfpb_Fair-Debt-Collection-Practices-Act-Annual-Report.pdf* (2017 FDCPA Annual Report); Fed. Trade Comm'n, *Consumer Sentinel Network Data Book for January–December 2016,* at 3, 6 (Mar. 2017), *https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2016/csn_cy-2016_data_book.pdf.*

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

[20] 15 U.S.C. 45.

[21] 15 U.S.C. 1692(b).

[22] 15 U.S.C. 1692(a).

[23] 15 U.S.C. 1692(e).

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

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

[26] 84 FR 37806 (Aug. 2, 2019).

[27] The Bureau received feedback asking the Bureau to include in the final rule certain interventions that the Bureau did not propose; many such comments addressed debt collectors' obligation to substantiate debts. The Bureau concludes that it is not advisable to finalize such interventions without the benefit of public notice and comment and therefore does not address such comments further in this Notice.

On February 21, 2020, the Bureau released a supplemental notice of proposed rulemaking to amend Regulation F to require debt collectors to make certain disclosures when collecting time-barred debts (the February 2020 proposal).[28] Time-barred debts are debts for which the applicable statute of limitations has expired. The February 2020 proposal provided a 60-day comment period that would have closed on May 4, 2020. To allow interested persons more time to consider and submit their comments, the Bureau issued two extensions of the comment period, the first until June 5, 2020 and the second until August 4, 2020.[29] As noted above, the Bureau intends to issue a disclosure-focused final rule regarding the February 2020 proposal and certain provisions of the May 2019 proposal related to consumer disclosures and to the collection of time-barred debt.

B. Other Outreach [30]

In November 2013, the Bureau began the rulemaking process with the publication of an Advance Notice of Proposed Rulemaking (ANPRM) regarding debt collection.[31] As discussed in the proposal, the ANPRM sought information about a wide variety of both first- and third-party debt collection practices. The Bureau received more than 23,000 comments in response to the ANPRM, which the Bureau considered when developing the proposal.

The Bureau also conducted a variety of consumer testing and surveys, beginning in 2014 when the Bureau contracted with a third-party vendor, Fors Marsh Group (FMG), to develop and conduct qualitative consumer testing of two potential consumer-facing debt collection model disclosure forms: the validation notice and the statement of consumer rights. The Bureau also conducted a nationwide survey of consumers' experiences with debt collection and published a report of the findings in January 2017 (CFPB Debt Collection Consumer Survey or Consumer Survey).[32] In 2017, the Bureau contracted with ICF International, Inc. (ICF) to conduct a web survey of approximately 8,000 individuals possessing a broad range of demographic characteristics to obtain additional information about consumer comprehension and decision-making in response to sample debt collection disclosures relating to time-barred debt. A report summarizing the findings of this testing was published in connection with the February 2020 proposal.[33]

To better understand the operational costs of debt collection firms, including law firms, the Bureau also surveyed debt collection firms and vendors and published a report based on that study in July 2016 (CFPB Debt Collection Operations Study or Operations Study).[34] The Operations Study focused on understanding how debt collection firms obtain information about delinquent consumer accounts and attempt to collect on those accounts.

In August 2016, the Bureau convened a Small Business Review Panel (Small Business Review Panel or Panel) with the Chief Counsel for Advocacy of the Small Business Administration (SBA) and the Administrator of the Office of Information and Regulatory Affairs with the Office of Management and Budget (OMB).[35] As part of this process, the Bureau prepared an outline of proposals under consideration and the alternatives considered (Small Business Review Panel Outline or Outline),[36] which the Bureau posted on its website for review by the small entity representatives participating in the Panel process and by the general public. The Panel gathered information from the small entity representatives and made findings and recommendations regarding the potential compliance costs and other impacts on those entities of the proposals under consideration. Those findings and recommendations are set forth in the Small Business Review Panel Report, which is part of the administrative record in this rulemaking and is available to the public.[37] The Bureau considered these findings and recommendations in preparing the proposals and this final rule.

The Bureau has also met on many occasions with various stakeholders, including consumer advocacy groups, debt collection trade associations, industry participants, academics with expertise in debt collection, Federal prudential regulators, and other Federal and State consumer protection regulators. The Bureau also received a number of comments specific to the debt collection rulemaking in response to its Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities [38] and its Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities; [39] the Bureau considered these comments in developing the proposals and this final rule. In addition, the Bureau has engaged in general outreach, speaking at consumer advocacy group and industry events and visiting consumer organizations and industry stakeholders. The Bureau has provided other regulators with information about the proposals and this final rule, has sought their input, and has received feedback that has helped the Bureau to prepare this final rule.

Under the Dodd-Frank Act, the Bureau is required to conduct an assessment of significant rules within five years of the rule's effective date. The Bureau anticipates that this final rule may be significant and therefore may require an assessment within five years of the rule's effective date. The Bureau is preparing now for this possible assessment. Specifically, the Bureau is considering how best to obtain information now to serve as a baseline for evaluation of the costs, benefits, and other effects of the final

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

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

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

[31] 78 FR 67848 (Nov. 12, 2013).

[32] CFPB Debt Collection Consumer Survey, *supra* note 16. The survey was approved under OMB control number 3170–0047, Debt Collection Survey from the Consumer Credit Panel.

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

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

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

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

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

[38] 83 FR 12286 (Mar. 21, 2018).

[39] 83 FR 12881 (Mar. 26, 2018).

rule. The Bureau expects to collect data and other information from consumers, debt collectors, and other stakeholders to understand whether the rule is achieving its goals under the FDCPA and the Dodd-Frank Act, and to help the Bureau measure the costs and benefits of the rule. Topics of data collection could include: Whether consumers find themselves less harassed by calls from debt collectors; whether debt collectors are better able to understand how to communicate with consumers using modern technology in a way that complies with the FDCPA; whether greater clarity about FDCPA requirements helps reduce litigation; and costs of the rule, both anticipated and unexpected, for consumers or for industry. The Bureau expects to conduct outreach in 2021 to explore how best to obtain such data, including potentially through surveying consumers or firms or by collecting operational data.

IV. Legal Authority

The Bureau is issuing this final rule primarily pursuant to its authority under the FDCPA and the Dodd-Frank Act. As amended by the Dodd-Frank Act, FDCPA section 814(d) provides that the Bureau ''may prescribe rules with respect to the collection of debts by debt collectors,'' as defined in the FDCPA.[40] Section 1022(a) of the Dodd-Frank Act provides that ''[t]he Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.''[41] Section 1022(b)(1) of the Dodd-Frank Act provides that the Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.[42] ''Federal consumer financial law'' includes title X of the Dodd-Frank Act and the FDCPA.[43] No provisions in this final rule are based on section 1031 of the Dodd-Frank Act.

These and other authorities are discussed in greater detail in parts IV.A through E below. Part IV.A discusses the Bureau's authority under sections 806 through 808 of the FDCPA. Parts IV.B through E discuss the Bureau's relevant authorities under the Dodd-Frank Act and the Electronic Signatures in Global and National Commerce Act (E–SIGN Act).[44]

A. FDCPA Sections 806 Through 808

As discussed in part V, the Bureau is finalizing several provisions, in whole or in part, pursuant to its authority to interpret FDCPA sections 806, 807, and 808, which set forth general prohibitions on, and requirements relating to, debt collectors' conduct and are accompanied by non-exhaustive lists of examples of unlawful conduct. This section provides an overview of how the Bureau interprets FDCPA sections 806 through 808.

FDCPA section 806 generally prohibits a debt collector from ''engag[ing] in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.''[45] Then, ''[w]ithout limiting the general application of the foregoing,'' it lists six examples of conduct that violate that section.[46] Similarly, FDCPA section 807 generally prohibits a debt collector from ''us[ing] any false, deceptive, or misleading representation or means in connection with the collection of any debt.''[47] Then, ''[w]ithout limiting the general application of the foregoing,'' section 807 lists 16 examples of conduct that violate that section.[48] Finally, FDCPA section 808 prohibits a debt collector from ''us[ing] unfair or unconscionable means to collect or attempt to collect any debt.''[49] Then, ''[w]ithout limiting the general application of the foregoing,'' FDCPA section 808 lists eight examples of conduct that violate that section.[50] The Bureau interprets FDCPA sections 806 through 808 in light of: (1) The FDCPA's language and purpose; (2) the general types of conduct prohibited by those sections and, where relevant, the specific examples enumerated in those sections; and (3) judicial decisions.[51]

Interpreting General Provisions in Light of Specific Prohibitions or Requirements

By their plain terms, FDCPA sections 806 through 808 make clear that their examples of prohibited conduct do not ''limit[ ] the general application'' of those sections' general prohibitions. The FDCPA's legislative history is consistent with this understanding,[52] as are opinions by courts that have addressed this issue.[53] Accordingly, the Bureau may interpret the general provisions of FDCPA sections 806 to 808 to prohibit conduct that the specific examples in FDCPA sections 806 through 808 do not address if the conduct violates the general prohibitions.

The Bureau uses the specific examples in FDCPA sections 806 through 808 to inform its interpretation of those sections' general prohibitions. Accordingly, the final rule interprets the general provisions of FDCPA sections 806 through 808 to prohibit or require certain conduct that is similar to the types of conduct prohibited or required by the specific examples. For example, the final rule interprets the general provisions in FDCPA sections 806 through 808 as protecting consumer privacy in debt collection in ways similar to the specific restrictions in: (1) FDCPA section 806(3), which prohibits, with certain exceptions, the publication of a list of consumers who allegedly refuse to pay debts;[54] (2) FDCPA section 808(7), which prohibits communicating with a consumer regarding a debt by postcard; and (3) FDCPA section 808(8), which prohibits the use of certain language and symbols on envelopes.[55] The interpretative approach of looking to specific provisions to inform general provisions is consistent with judicial decisions indicating that the general prohibitions in the FDCPA should be interpreted ''in light of [their] associates.''[56] For example, courts have held that violating a consumer's privacy interest through public exposure of a debt violates the FDCPA, noting that

[40] 15 U.S.C. 1692*l*(d). As noted, the Bureau is the first Federal agency with authority to prescribe substantive debt collection rules under the FDCPA. Prior to the Dodd-Frank Act's grant of authority to the Bureau, the FTC published various materials providing guidance on the FDCPA. The FTC's materials have informed the Bureau's rulemaking and, if relevant to particular provisions, are discussed in part V.

[41] 12 U.S.C. 5512(a).

[42] 12 U.S.C. 5512(b)(1).

[43] 12 U.S.C. 5481(12)(H), (14).

[44] 15 U.S.C. 7001 *et seq.*

[45] 15 U.S.C. 1692d.

[46] 15 U.S.C. 1692d(1)–(6).

[47] 15 U.S.C. 1692e.

[48] 15 U.S.C. 1692e(1)–(16).

[49] 15 U.S.C. 1692f.

[50] 15 U.S.C. 1692f(1)–(8).

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

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

[53] *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.'').

[54] 15 U.S.C. 1692d(3).

[55] 15 U.S.C. 1692f(7)–(8).

[56] *Currier* v. *First Resolution Inv. Corp.,* 762 F.3d 529, 534 (6th Cir. 2014) (citing *Limited, Inc.* v. *Comm'r,* 286 F.3d 324, 332 (6th Cir. 2002)).

violating a consumer's privacy is a type of conduct prohibited by several specific examples.[57] In this way, the Bureau uses the specific examples in FDCPA sections 806 through 808 to inform its understanding of the general provisions, consistent with the statute's use of the phrase ''[w]ithout limiting the general application of the foregoing'' to introduce the specific examples.[58]

Judicial Decisions

The Bureau interprets the general prohibitions in FDCPA sections 806 through 808 in light of the significant body of existing court decisions interpreting those provisions, 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 806 through 808.[59] For example, courts have held that a debt collector could violate FDCPA section 808 by using coercive tactics such as citing speculative legal consequences to pressure the consumer to engage with the debt collector.[60] Additionally, courts have held that a debt collector could violate FDCPA sections 806 through 808 by taking certain actions to collect a debt that a consumer does not actually owe or that is not actually delinquent.[61] Similarly, a debt collector could violate FDCPA section 807 by, for example, giving ''a false impression of the character of the debt,'' [62] such as by failing to disclose that an amount collected includes fees.[63]

Several courts have applied an objective standard of an ''unsophisticated'' or ''least sophisticated'' consumer to FDCPA sections 807 [64] and 808 [65] and an objective, vulnerable consumer standard to FDCPA section 806.[66] In determining whether particular acts violate FDCPA sections 806 through 808, the Bureau interprets those sections to incorporate ''an objective standard'' that is designed to protect consumers who are ''of below-average sophistication or intelligence'' or who are ''especially vulnerable to fraudulent schemes.'' [67]

Courts have reasoned, and the Bureau agrees, that ''[w]hether a consumer is more or less likely to be harassed, oppressed, or abused by certain debt collection practices does not relate solely to the consumer's relative sophistication'' and may be affected by other circumstances, such as the consumer's financial and legal resources.[68] Courts have further reasoned that section 807's prohibition on false, deceptive, or misleading representations incorporates an objective, ''unsophisticated'' consumer standard.[69] This standard ''protects the consumer who is uninformed, naive, or trusting, yet it admits an objective element of reasonableness.'' [70] The Bureau agrees with the reasoning of courts that have applied this standard or a ''least sophisticated consumer'' standard.[71] The Bureau uses the term unsophisticated consumer to describe the standard it applies when assessing the effect of conduct on consumers.

FDCPA's Purposes

FDCPA section 802 establishes that the purpose of the statute 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.[72] In particular, FDCPA section 802 delineates certain specific harms that the general and specific prohibitions in sections 806

[57] *See id.* at 535.

[58] 15 U.S.C. 1692d–1692f.

[59] This interpretive approach is consistent with courts' reasoning that these general prohibitions should be interpreted in light of conduct that courts have already found violate them. *See, e.g., Todd* v. *Collecto, Inc.,* 731 F.3d 734, 739 (7th Cir. 2013). While judicial decisions inform the Bureau's interpretation of the general prohibitions in FDCPA sections 806 through 808, the Bureau does not adopt specific judicial interpretations through its restatement of the general prohibitions except where noted.

[60] *See, e.g., Hosseinzadeh* v. *M.R.S. Assocs., Inc.,* 387 F. Supp. 2d 1104, 1117 (C.D. Cal. 2005) (denying debt collector's motion for summary judgment on section 808 claim where debt collector used false name and implied that consumer ''would have legal problems'' if consumer did not return debt collector's telephone call).

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

[62] *Fields* v. *Wilber Law Firm, P.C.,* 383 F.3d 562, 565–66 (7th Cir. 2004) (reversing dismissal of plaintiff's claims brought under sections 807 and 808 because dunning letter that failed to communicate that total amount due included attorneys' fees ''could conceivably mislead an unsophisticated consumer'').

[63] *Id.*

[64] *Jensen* v. *Pressler & Pressler,* 791 F.3d 413, 419 (3d Cir. 2015) (''The standard is an objective one, meaning that the specific plaintiff need not prove that *she* was actually confused or misled, only that the objective least sophisticated debtor would be.''); *Hartman* v. *Great Seneca Fin. Corp.,* 569 F.3d 606, 613 (6th Cir. 2009) (applying least sophisticated consumer standard to section 807 claim); *Bentley* v. *Great Lakes Collection Bureau,* 6 F.3d 60, 62 (2d Cir. 1993) (same); *Swanson* v. *S. Or. Credit Serv., Inc.,* 869 F.2d 1222, 1227 (9th Cir. 1988) (per curiam) (same).

[65] *See, e.g., Crawford* v. *LVNV Funding, LLC,* 758 F.3d 1254, 1258 (11th Cir. 2014) (''[W]e have adopted a 'least-sophisticated consumer standard to evaluate whether a debt collector's conduct is 'deceptive,' 'misleading,' 'unconscionable,' or 'unfair' under the statute.''); *LeBlanc* v. *Unifund CCR Partners,* 601 F.3d 1185, 1200–01 (11th Cir. 2010) (per curiam) (applying least sophisticated consumer standard to section 808 claim); *Turner* v. *J.V.D.B. & Assocs., Inc.,* 330 F.3d 991, 997 (7th Cir. 2003) (applying unsophisticated consumer standard to section 808 claim). Circuit courts have also held, for example, that the least sophisticated consumer standard applies to a consumer's understanding of a validation notice required under FDCPA section 809 and threats to take legal action under FDCPA section 807(5). *See Swanson,* 869 F.2d at 1225–27; *Wilson* v. *Quadramed Corp.,* 225 F.3d 350, 353 (3d Cir. 2000).

[66] For example, in *Jeter* v. *Credit Bureau, Inc.,* 760 F.2d 1168, 1179 (11th Cir. 1985), the court applied a standard analogous to the ''least sophisticated consumer'' to an FDCPA section 806 claim, holding that claims under section 806 ''should be viewed from the perspective of a consumer whose circumstances makes him relatively more susceptible to harassment, oppression, or abuse.''

[67] *See, e.g.,* Brief for the Consumer Financial Protection Bureau in Support of Appellee and Affirmance at 13, *DeGroot* v. *Client Servs., Inc.,* 2020 WL 5951360 (7th Cir. 2020) (No. 20–1089), *https://www.consumerfinance.gov/documents/8865/cfpb_amicus-brief_degroot-v-client-services.pdf* (explaining that whether a debt collection notice is deceptive is '' 'an objective test' '' based on a ''hypothetical unsophisticated consumer'') (citation omitted); Brief for the United States as Amicus Curiae Supporting Respondents, *Sheriff* v. *Gillie,* 136 S. Ct. 1594 (2016) (No. 15–338), 2016 WL 836755, at *29 (quoting *Gammon* v. *GC Servs. Ltd. P'ship,* 27 F.3d 1254, 1257 (7th Cir. 1994) (quoting *Clomon* v. *Jackson,* 988 F.2d 1314, 1319 (2d Cir. 1993))).

[68] *Jeter,* 760 F.2d at 1179 (''[R]ather, such susceptibility might be affected by other circumstances of the consumer or by the relationship between the consumer and the debt collection agency. For example, a very intelligent and sophisticated consumer might well be susceptible to harassment, oppression, or abuse because he is poor (*i.e.,* has limited access to the legal system), is on probation, or is otherwise at the mercy of a power relationship.'').

[69] *See* Brief for the United States as Amicus Curiae Supporting Respondents, *supra* note 67, at *10, 27–30.

[70] *Gammon,* 27 F.3d at 1257.

[71] *See, e.g., Rosenau* v. *Unifund Corp.,* 539 F.3d 218, 221 (3d Cir. 2008) (''We use the 'least sophisticated debtor' standard in order to effectuate the basic purpose of the FDCPA: To protect all consumers, the gullible as well as the shrewd.'') (citations and some internal quotation marks omitted); *Clomon,* 988 F.2d at 1319 (''To serve the purposes of the consumer-protection laws, courts have attempted to articulate a standard for evaluating deceptiveness that does not rely on assumptions about the 'average' or 'normal' consumer. This effort is grounded, quite sensibly, in the assumption that consumers of below-average sophistication or intelligence are especially vulnerable to fraudulent schemes. The least-sophisticated-consumer standard protects these consumers in a variety of ways.'').

[72] 15 U.S.C. 1692(e).

through 808 were designed to alleviate. Section 802 states: ''[T]he use of abusive, deceptive, and unfair debt collection practices by many debt collectors . . . contribute[s] to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.'' [73]

B. Dodd-Frank Act Section 1031

The Bureau proposed to rely on its Dodd-Frank Act section 1031 authority (relating to unfair, deceptive, or abusive acts or practices in connection with consumer financial products or services) to support two interventions in the proposal. As discussed in more detail in the section-by-section analysis of §§ 1006.14 and 1006.30, the Bureau is not finalizing any provisions of the rule pursuant to its authority under Dodd-Frank Act section 1031.

C. Dodd-Frank Act Section 1032

Dodd-Frank Act section 1032(a) provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, ''both initially and over the term of the product or service,'' are ''fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.'' [74] Under Dodd-Frank Act section 1032(a), the Bureau is empowered to prescribe rules regarding the disclosure of the ''features'' of consumer financial products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features. Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to Dodd-Frank Act section 1032, the Bureau ''shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.'' [75] The Bureau is finalizing §§ 1006.6(e) and 1006.38 based in part on its authority under Dodd-Frank Act section 1032.

D. Other Authorities Under the Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act provides that the Bureau's Director ''may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' [76] ''Federal consumer financial laws'' include the FDCPA and title X of the Dodd-Frank Act.[77] Section 1022(b)(2) of the Dodd-Frank Act prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under Dodd-Frank Act section 1022(b)(1).[78] See part VII for a discussion of the Bureau's standards for rulemaking under Dodd-Frank Act section 1022(b)(2).

Dodd-Frank Act section 1024(b)(7)(A) authorizes the Bureau to prescribe rules to facilitate supervision of persons identified as larger participants of a market for a consumer financial product or service as defined by rule in accordance with section 1024(a)(1)(B) of the Dodd-Frank Act. Dodd-Frank Act section 1024(b)(7)(B) authorizes the Bureau to require a person described in Dodd-Frank Act section 1024(a)(1) to retain records for the purpose of facilitating supervision of such persons and assessing and detecting risks to consumers. As discussed in the section-by-section analysis, the Bureau is finalizing § 1006.100 pursuant to the Bureau's authorities under Dodd-Frank Act sections 1022 and 1024.

E. The E–SIGN Act

The E–SIGN Act provides standards for determining if delivery of a disclosure by electronic record satisfies a requirement in a statute, regulation, or other rule of law that the disclosure be provided or made available in writing to a consumer. E–SIGN Act section 104(b)(1) permits the Bureau to interpret the E–SIGN Act through the issuance of regulations. As discussed in part V, the Bureau is finalizing comments 6(c)(1)–1 and –2 (providing an interpretation of the E–SIGN Act as applied to a debt collector responding to a consumer's notification that the consumer refuses to pay the debt or wants the debt collector to cease communication) and comments 38–1 and –2 (providing an interpretation of the E–SIGN Act as applied to a debt collector responding to a consumer dispute or request for original-creditor information) pursuant to E–SIGN Act section 104(b)(1).

V. Section-by-Section Analysis

Subpart A—In General

Section 1006.1 Authority, Purpose, and Coverage

1(a) Authority

Existing § 1006.1(a) states that the purpose of part 1006, known as Regulation F, is to establish procedures and criteria for any State to request that the Bureau exempt debt collection practices within that State from the requirements of the FDCPA as provided in FDCPA section 817. Consistent with the Bureau's proposal to revise part 1006 to regulate the debt collection activities of FDCPA debt collectors, the Bureau proposed to revise existing § 1006.1(a) to set forth the Bureau's authority to issue such rules.[79] Specifically, proposed § 1006.1(a) stated that part 1006 is known as Regulation F and is issued by the Bureau pursuant to sections 814(d) and 817 of the FDCPA,[80] title X of the Dodd-Frank Act,[81] and section 104(b)(1) and (d)(1) of the E–SIGN Act.[82] The Bureau proposed to move the remainder of existing § 1006.1(a), regarding State law exemptions from the FDCPA, to paragraph I(a) of appendix A of the regulation.

The Bureau did not receive comments on proposed § 1006.1(a). Pursuant to its authority under FDCPA section 814(d), the Bureau is finalizing § 1006.1(a) largely as proposed. However, the Bureau is removing section 104(d)(1) of the E–SIGN Act from the list of authorizing statutory provisions because, as discussed in the section-by-section analysis of § 1006.42, the Bureau is not relying on that provision as authority for the final rule.

1(b) Purpose

Existing § 1006.1(b) defines terms relevant to the procedures and criteria for States to apply to the Bureau for an exemption as provided in FDCPA section 817. Consistent with the Bureau's proposal to revise part 1006 to regulate the debt collection activities of FDCPA debt collectors, the Bureau proposed to revise § 1006.1(b) to identify the purposes of part 1006 and proposed to move the definitions in existing § 1006.1(b) to paragraph 1(b) of appendix A of the regulation.[83] The Bureau did not receive comment on proposed § 1006.1(b) and is finalizing it

[73] 15 U.S.C. 1692(a).

[74] 12 U.S.C. 5532(a).

[75] 12 U.S.C. 5532(c).

[76] 12 U.S.C. 5512(b)(1).

[77] 12 U.S.C. 5481(14).

[78] 12 U.S.C. 5512(b)(2).

[79] 84 FR 23274, 23286 (May 21, 2019).

[80] 15 U.S.C. 1692*l*(d), 1692o.

[81] 12 U.S.C. 5481 *et seq.*

[82] 15 U.S.C. 7004(b)(1), (d)(1).

[83] 84 FR 23274, 23286 (May 21, 2019).

as proposed pursuant to its authority under FDCPA section 814(d).

1(c) Coverage

Section 814(d) of the FDCPA gives the Bureau authority to prescribe rules with respect to the collection of debts by debt collectors, but it prohibits the Bureau from applying those rules to motor vehicle dealers as described in section 1029(a) of the Dodd-Frank Act. Consistent with that authority, the Bureau proposed to add § 1006.1(c) to describe the applicability of proposed part 1006.[84] Proposed § 1006.1(c)(1) stated that, with the exception of proposed § 1006.108 and appendix A, proposed part 1006 would apply to debt collectors as defined in proposed § 1006.2(i), *i.e.,* FDCPA debt collectors, but not to motor vehicle dealers as described in section 1029(a) of the Dodd-Frank Act.[85] Proposed § 1006.1(c)(2) stated that certain provisions that were proposed only under sections 1031 or 1032 of the Dodd-Frank Act,[86] specifically proposed §§ 1006.14(b)(1)(ii), 1006.34(c)(2)(iv) and (3)(iv), and 1006.30(b)(1)(ii), applied to FDCPA debt collectors only to the extent that such debt collectors were collecting a debt related to an extension of consumer credit or another consumer financial product or service, as defined in the Dodd-Frank Act.[87] Proposed § 1006.1(c)(2) did not propose to expand coverage to any party not covered by the FDCPA.

The Bureau received a number of comments on the coverage of the proposal. Some commenters requested that the Bureau exempt certain entities (*e.g.,* servicers and attorneys) from coverage. Such comments are discussed in the section-by-section analysis of § 1006.2(i), which is the provision that implements FDCPA section 803(6), *i.e.,* the definition of debt collector.

A number of comments discussed coverage of non-FDCPA debt collectors, *i.e.,* parties who collect debts but who do not meet the FDCPA's definition of debt collector—a group that typically includes creditors. For ease of reference throughout this section-by-section analysis, the Bureau refers to such parties as first-party debt collectors.

A handful of consumer advocates and a group of State Attorneys General advocated that the Bureau expand the rule to apply to first-party debt collectors.

Nearly all of the comments regarding first-party debt collector coverage were from industry stakeholders such as credit unions, banks, and installment lenders, and their trade associations. These commenters generally expressed concern that the rule would be applied to first-party debt collectors, with some such commenters expressing particular concern that the Bureau's reliance on its authority under Dodd-Frank Act section 1031 for certain proposed provisions would be used by the Bureau or others to expand the rule to apply to such parties. Dodd-Frank Act section 1031 grants the Bureau authority to write regulations applicable to covered persons and service providers to identify and prevent unfair, deceptive, or abusive acts or practices in connection with a transaction with a consumer for, or the offering of, a consumer financial product or service.[88] Because first-party debt collectors are likely covered persons or service providers under Dodd-Frank Act section 1031, the commenters expressed concern that the Bureau's reliance on that provision effectively would expand the scope of the rule to cover them, even if they were not FDCPA debt collectors. The SBA also commented that the Bureau's use of its section 1031 Dodd-Frank Act authority would create uncertainty and legal risk for first-party debt collectors that were not in the SBREFA process or any subsequent process. The commenters asked the Bureau to clarify the rule's coverage, either by issuing a final rule without relying on Dodd-Frank Act section 1031 or by clearly stating that the final rule, including any provisions that rely on Dodd-Frank Act section 1031, does not apply to first-party debt collectors.

The Bureau declines to expand the rule to apply to first-party debt collectors who are not FDCPA debt collectors, as requested by some commenters. The proposal was intended to implement provisions of the FDCPA, and the Bureau did not solicit feedback on whether or how such provisions should apply to first-party debt collectors. This rule also is not intended to address whether activities performed by entities that are not subject to the FDCPA may violate other laws, including the prohibitions against unfair, deceptive, or abusive practices in Dodd-Frank Act section 1031.

For the same reasons, the Bureau also declines to clarify whether any particular actions taken by a first-party debt collector who is not an FDCPA debt collector would constitute an unfair, deceptive, or abusive practice under Dodd-Frank Act section 1031. Indeed, for the reasons discussed in the section-by-section analysis of §§ 1006.14 and 1006.30, the Bureau is not finalizing any provisions of the rule pursuant to its authority under Dodd-Frank Act section 1031.

For these reasons, and because the Bureau plans to finalize proposed § 1006.34(c)(2)(iv) and (3)(iv) as part of the Bureau's disclosure-focused final rule,[89] the Bureau is adopting § 1006.1(c)(1) as proposed and is reserving § 1006.1(c)(2). The Bureau is adopting § 1006.1(c) pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors.

Section 1006.2 Definitions

Existing § 1006.2 describes how a State may apply for an exemption from the FDCPA as provided in FDCPA section 817.[90] Consistent with the Bureau's proposal to revise part 1006 to regulate the debt collection activities of FDCPA debt collectors, the Bureau proposed to repurpose existing § 1006.2 to implement and interpret FDCPA section 803,[91] which defines terms used throughout the statute, and to define additional terms that would be used in the regulation.[92] The Bureau proposed to move existing § 1006.2 to paragraph II of appendix A of the regulation.

The Bureau received no substantive comments on proposed § 1006.2(a) (defining the term Act or FDCPA) or on proposed § 1006.2(c), (g), or (*l*) (implementing the FDCPA section 803 definitions of Bureau, creditor, and State, respectively). The Bureau therefore is adopting those provisions as proposed and is not discussing them further in the section-by-section analysis below. The Bureau received a number of comments on the other definitions in proposed § 1006.2 and is finalizing them as discussed in the section-by-section analysis of § 1006.2(b), (d) through (f), and (h) through (k) below. As proposed, the Bureau is finalizing § 1006.2 to implement and interpret FDCPA section 803, pursuant to its authority under FDCPA section 814(d).

[84] *Id.* at 23286–87.

[85] This proposed exclusion would apply only to Regulation F. Any motor vehicle dealers who are FDCPA debt collectors would still need to comply with the FDCPA.

[86] 12 U.S.C. 5531(b), 5532.

[87] Proposed §§ 1006.14(b)(1)(ii) and 1006.30(b)(1)(ii) would have relied on the Bureau's authority under Dodd-Frank Act section 1031. Proposed § 1006.34(c)(2)(iv) and (3)(iv) would have relied on the Bureau's authority under Dodd-Frank Act section 1032.

[88] 12 U.S.C. 5531(b).

[89] *See* the section-by-section analysis of § 1006.34.

[90] 15 U.S.C. 1692o.

[91] 15 U.S.C. 1692a.

[92] *See* 84 FR 23274, 23287–93 (May 21, 2019).

2(b) Attempt To Communicate

The Bureau proposed in § 1006.2(b) to define an attempt to communicate as any act to initiate a communication or other contact with any person through any medium, including by soliciting a response from such person.[93] Proposed § 1006.2(b) further stated that an attempt to communicate includes providing a limited-content message, as defined in § 1006.2(j). For the reasons discussed below, the Bureau is finalizing § 1006.2(b) with a narrower definition of attempt to communicate and is adopting new commentary to clarify the definition's scope.

The Bureau received a number of comments on proposed § 1006.2(b)'s definition of attempt to communicate. Industry commenters generally requested additional clarity on, or exclusions for, certain messages or activity. Specifically, these commenters asked about the following: (1) Telephone calls that do not result in a voicemail message or conversation with a consumer for various reasons (such as a full voicemail inbox, a voicemail message system that records only a partial message from the debt collector, a telephone number that has been disconnected, or a consumer who disconnects the call after answering); (2) activity directed to groups of consumers or the general public, such as marketing or advertising; (3) personal communications, such as ordering lunch; (4) legally required communications; (5) visits by a consumer to a debt collector's website or online portal; and (6) administrative communications, such as any communications with financial institutions necessary to facilitate a consumer's payment arrangement. These commenters believed that, without additional clarity or exclusions for such situations, the definition of attempt to communicate would be overbroad.

As an initial matter, the Bureau notes that the definition of attempt to communicate, by itself, imposes no direct obligations on debt collectors. Other sections of the final rule, including §§ 1006.6(b) and (c) and 1006.14(h), however, restrict or prohibit attempts to communicate in certain circumstances. While commenters generally did not express concern about the proposed definition of attempt to communicate as it relates to those provisions, the Bureau interprets commenters' feedback in light of the conduct those provisions were designed to address.

The Bureau finds that certain messages or activity discussed by commenters, such as telephone calls that do not result in a voicemail message or conversation with a consumer, should be considered attempts to communicate. These messages or activity may raise consumer protection concerns that provisions of the final rule regulating attempts to communicate are designed to address. For example, a debt collector might call a consumer to discuss the consumer's debt at a time that the consumer has designated as inconvenient but fail to reach the consumer because the consumer declines to answer the telephone. Final § 1006.6(b)(1) prohibits a debt collector from communicating or attempting to communicate with a consumer in connection with the collection of any debt at a time or place that the debt collector knows or should know is inconvenient to the consumer. In this example, the debt collector likely would have ''act[ed] to initiate a communication''—and thus attempted to communicate—with the consumer at an inconvenient time in violation of § 1006.6(b)(1)(i).[94] As discussed in the section-by-section analysis of final § 1006.6(b), a consumer who hears a telephone ringing at an inconvenient time or place but who does not answer it may experience the natural consequence of harassment from the telephone ringing in much the same way as a consumer who answers and speaks to the debt collector on the telephone. Therefore, such activity remains covered under final § 1006.2(b) so that final §§ 1006.6(b) and (c) and 1006.14(h) have their intended effect.

At the same time, the Bureau finds that other messages or activity discussed by commenters, such as general marketing and advertising directed to groups of consumers or the general public, or personal communications, should not be considered attempts to communicate. These messages or activity may not raise the same consumer protection concerns that motivated other provisions of the final rule regulating attempts to communicate. For example, a debt collector might place a general advertisement on a website, and a consumer might then view that advertisement at a time that the consumer has designated as inconvenient. As noted above, final § 1006.6(b)(1) prohibits a debt collector from communicating or attempting to communicate with a consumer in connection with the collection of any debt at a time or place that the debt collector knows or should know is inconvenient to the consumer. In this example, the debt collector likely would have ''act[ed] to initiate a . . . contact''—and thus attempted to communicate under proposed § 1006.2(b)—with the consumer at an inconvenient time in violation of § 1006.6(b)(1)(i). But consumers likely consider a general online advertisement about a debt collector's business, which contains no reference to the consumer's specific debt, to be less intrusive, and therefore less inconvenient than, for example, a telephone call placed to them by a debt collector. Consumers also are more likely to be able to ignore a general advertisement. Moreover, a debt collector likely cannot control when a consumer visits a website displaying the debt collector's advertisement or reconcile all the communications preferences of all the consumers who might see the advertisement. To tailor the covered activity, the Bureau is finalizing the definition of attempt to communicate in § 1006.2(b) with the phrase or other contact ''about a debt.''[95]

The Bureau determines that the other categories of messages or activity raised by industry commenters are sufficiently addressed by other provisions of this final rule and therefore do not require a revision to the definition of attempt to communicate. As to consumers' visits to a debt collector's website or online portal, comment 6(b)(1)–2.iii illustrates that, notwithstanding an inconvenient time designation by a consumer, a debt collector may provide information to a consumer who visits or navigates the debt collector's website or online portal. As to legally required communications, § 1006.14(h)(2)(iii) provides that, if otherwise required by applicable law, a debt collector may communicate or attempt to communicate with a person in connection with the collection of any debt through a medium of communication that the person has requested the debt collector not use to communicate with the person. And finally, as to administrative communications, § 1006.6(d)(2)(ii) allows debt collectors to communicate with third parties with the prior consent of the consumer given directly to the debt collector, which should permit communications necessary to facilitate a consumer's payment plan. The relevant

[93] *See id.* at 23287.

[94] Similar reasoning would apply to telephone calls that do not result in a voicemail message or conversation with a consumer for various reasons, described above.

[95] Similarly, a debt collector's personal communications would not be an act to initiate a contact about a debt and therefore not an attempt to communicate.

section-by-section analyses provide more information about the operation of these provisions.[96]

Finally, a group of consumer advocates noted that, although they generally opposed the limited-content message in proposed § 1006.2(j), they supported the fact that the proposal would impose some limitations on attempts to communicate. However, these commenters stated that certain protections did not apply to attempts to communicate, such as the prohibition on third-party disclosures in proposed § 1006.6(d)(1) and the prohibition on communicating by postcard in proposed § 1006.22(f)(1). The Bureau has evaluated the scope of this final rule and determines that each substantive provision addresses a range of conduct appropriate to achieve the goals of that section. The section-by-section analysis throughout part V provides additional explanation for the final rule's substantive provisions.

For the reasons discussed above, the Bureau is finalizing § 1006.2(b) to provide that an attempt to communicate means any act to initiate a communication or other contact about a debt with any person through any medium, including by soliciting a response from such person.

Comment 2(b)–1 clarifies that an act to initiate a communication or other contact about a debt with a person is an attempt to communicate regardless of whether the attempt, if successful, would be a communication that conveys information regarding a debt directly or indirectly to any person, and includes two illustrative examples.

2(d) Communicate or Communication

FDCPA section 803(2) defines the term communication to mean the conveying of information regarding a debt directly or indirectly to any person through any medium.[97] The Bureau proposed § 1006.2(d) to restate the statutory definition of communication, with only minor changes for clarity.[98] Proposed § 1006.2(d) further stated that a debt collector does not convey information regarding a debt directly or indirectly to any person—and therefore does not communicate with any person—if the debt collector provides only a limited-content message, as defined in § 1006.2(j). For the reasons discussed below, the Bureau is finalizing § 1006.2(d) largely as proposed, with minor revisions for clarity.

The Bureau received several comments on proposed § 1006.2(d)'s definition of communicate or communication. As with comments on the proposed definition of attempt to communicate discussed above, industry commenters generally requested the Bureau provide clarity on, or exclusions for, certain types of activity. These commenters asked about the following: (1) Marketing, advertising, or other promotional materials; (2) automated replies acknowledging a consumer's message; (3) visits by a consumer to a debt collector's website or online portal; (4) legally required communications; and (5) caller ID information that discloses the debt collector's business name.

The Bureau agrees that it would be useful to clarify that certain types of advertising and marketing are not communications under § 1006.2(d). For example, a debt collector might develop general advertising or marketing materials to build the debt collector's brand, promote the debt collector's services, or establish the debt collector's legitimacy. If such activity includes no information about a specific debt, it likely would not meet the definition of a communication.

The Bureau determines that other provisions in this final rule sufficiently address the other categories of messages or activity raised by industry commenters. Therefore, these messages or activity do not require clarification in the definition of communication. First, as to automated replies, comment 6(b)(1)–2.iv illustrates that a debt collector may send an automated reply generated in response to a message sent by a consumer at a time that the consumer previously had designated as inconvenient. Second, comment 6(b)(1)–2.iii illustrates that, notwithstanding an inconvenient time designation by a consumer, a debt collector may provide information to a consumer who visits or navigates the debt collector's website or online portal. Third, § 1006.14(h)(2)(iii) provides that, if otherwise required by applicable law, a debt collector may communicate with a person in connection with the collection of any debt through a medium of communication that the person has requested the debt collector not use to communicate with the person. And, finally, § 1006.2(j) defines a type of message—the limited-content message—that includes a debt collector's business name but is not a communication. Although the final rule does not explicitly address caller ID, a debt collector's business name that does not indicate that the debt collector is in the debt collection business is part of the required content of a limited-content message under the final rule, so caller ID information that discloses that content alone would not transform what is otherwise an attempt to communicate into a communication. The relevant section-by-section analyses provide more information about the operation of these provisions.[99]

Finally, consumer advocates objected to the proposed clarification that a limited-content message is not a communication. The Bureau finds that the limited-content message is appropriately considered an attempt to communicate rather than a communication, as discussed below in the section-by-section analysis of final § 1006.2(j).

For the reasons discussed above, the Bureau is finalizing § 1006.2(d) and comment 2(d)–1 largely as proposed.[100] The Bureau is also adopting new comment 2(d)–2 to clarify the status of limited-content messages, as defined in § 1006.2(j), and marketing or advertising messages that do not contain information about a specific debt.

2(e) Consumer

FDCPA section 803(3) defines a consumer as any natural person obligated or allegedly obligated to pay any debt.[101] The Bureau proposed § 1006.2(e) to implement this definition and to interpret it to include a deceased natural person who is obligated or allegedly obligated to pay a debt.[102] Proposed § 1006.2(e) also provided that, for purposes of §§ 1006.6 and 1006.14(h), the term consumer included the persons described in the special definition of consumer in § 1006.6(a).

The Bureau received a number of comments regarding its proposal to interpret the term consumer to include deceased natural persons. The Bureau proposed that interpretation, in large part, to facilitate the delivery of validation notices under proposed § 1006.34 when the consumer obligated, or allegedly obligated, on the debt has died. The Bureau plans to address comments received regarding that interpretation, and to determine whether to finalize that interpretation,

[96] *See* the section-by-section analyses of §§ 1006.6(b)(1) and (d)(2)(ii) and 1006.14(h)(2)(iii).

[97] 15 U.S.C. 1692a(2).

[98] *See* 84 FR 23274, 23287–88 (May 21, 2019).

[99] *See* the section-by-section analyses of §§ 1006.2(j), 1006.6(b)(1), and 1006.14(h)(2)(iii).

[100] Comment 2(d)–1 explains that a communication can occur through ''any medium'' and explains that ''any medium'' includes any oral, written, electronic, or other medium. The Bureau did not receive any relevant feedback regarding this comment and, therefore, is finalizing it as proposed.

[101] 15 U.S.C. 1692a(3).

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

as part of the Bureau's disclosure-focused final rule.[103]

The Bureau's proposed § 1006.2(e) cross-referenced proposed § 1006.14(h). The Bureau proposed that the prohibition on communication media under § 1006.14(h) apply to ''a consumer'' as defined under § 1006.6(a) but, as finalized, § 1006.14(h) applies to ''a person.'' [104] It therefore is not necessary for § 1006.2(e) to include the proposed cross-reference § 1006.14(h).

For the reasons discussed above, the Bureau is finalizing § 1006.2(e) to provide that the term consumer means any natural person obligated or allegedly obligated to pay any debt. Final § 1006.2(e) further provides that, for purposes of § 1006.6, the term consumer includes the persons described in § 1006.6(a). It also provides that the Bureau may further define the term by regulation to clarify its application when the consumer is deceased.

2(f) Consumer Financial Product or Service Debt

The Bureau proposed § 1006.2(f) to define consumer financial product or service debt to mean any debt related to any consumer financial product or service, as consumer financial product or service is defined in section 1002(5) of the Dodd-Frank Act.[105]

The Bureau is not finalizing § 1006.2(f) as proposed. As discussed in the section-by-section analysis of § 1006.1(c), the Bureau proposed certain provisions pursuant to its authority under Dodd-Frank Act sections 1031 and 1032, and those provisions would have applied to a debt collector only if the debt collector was collecting a debt related to a consumer financial product or service, as that term is defined in section 1002(5) of the Dodd-Frank Act.[106] However, as discussed in more detail in the section-by-section analyses of §§ 1006.14, 1006.30 and 1006.34, the Bureau is not finalizing those provisions in this rulemaking. As a result, there is no need to define consumer financial product or service debt in this rulemaking.

2(h) Debt

FDCPA section 803(5) defines the term debt for purposes of the FDCPA.[107] Proposed § 1006.2(h) would have implemented FDCPA section 803(5) and generally restated the statute by defining 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 that are the subject of the transaction are primarily for personal, family, or household purposes, whether or not the obligation has been reduced to judgment. Proposed § 1006.2(h) also would have clarified that, for purposes of § 1006.2(f), the term debt means debt as that term is used in the Dodd-Frank Act.[108]

Several consumer advocates and an industry trade group stated that the proposal to define debt for purposes of § 1006.2(f) as that term is used in the Dodd-Frank Act was confusing and should be removed or revised. In addition, one industry trade group commenter recommended that the Bureau clarify that debt subject to the FDCPA is limited to debt incurred only by a natural person.

The Bureau is finalizing § 1006.2(h) generally as proposed. However, the Bureau is not finalizing proposed § 1006.2(h)'s cross-reference to § 1006.2(f) because, as discussed in the section-by-section analysis of § 1006.2(f), the Bureau is not finalizing § 1006.2(f). This change should address commenters' concerns about the regulation including different definitions of the term debt.

The final rule also adds new comment 2(h)–1 to clarify, as requested, that debt subject to the FDCPA is limited to debt incurred by a natural person. The comment explains that § 1006.2(h) defines debt to mean, in part, an obligation of a consumer, and that § 1006.2(e), in turn, defines a consumer as a natural person obligated or allegedly obligated to pay any debt. Thus, only natural persons can incur the debts defined in § 1006.2(h).

2(i) Debt Collector

FDCPA section 803(6) defines the term debt collector for purposes of the FDCPA.[109] The introductory language of FDCPA section 803(6) generally provides that a debt collector is any person: (1) Who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts (*i.e.,* the ''principal purpose'' prong), or (2) who regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another (*i.e.,* the ''regularly collects'' prong). FDCPA section 803(6) also sets forth several exclusions from the general definition.

Proposed § 1006.2(i) generally restated FDCPA section 803(6)'s definition of debt collector, with only minor wording and organizational changes for clarity [110] and to specify that the term excludes private entities that operate certain bad check enforcement programs that comply with FDCPA section 818.[111] The preamble to the proposal discussed the Supreme Court's holding in *Henson* v. *Santander Consumer USA Inc.*[112] and, consistent with that decision, noted that a debt buyer collecting debts that it purchased and owned could be considered a debt collector for purposes of the rule if the debt buyer either met the ''principal purpose'' prong of the definition or regularly collected or attempted to collect debts owned by others, in addition to collecting debts that it purchased and owned.[113]

The Bureau received a number of comments on the proposed definition of debt collector. The Bureau received comments from both consumer advocate and industry commenters discussing the extent to which debt buyers would be considered debt collectors under Regulation F and asking the Bureau to provide additional explanation or include the proposed preamble

[103] *See* the section-by-section analysis of § 1006.34.

[104] *See* the section-by-section analysis of § 1006.14(h)(1).

[105] 84 FR 23274, 23288–89 (May 21, 2019).

[106] 12 U.S.C. 5531(b).

[107] 12 U.S.C. 1692a(5).

[108] *See* 84 FR 23274, 23289 (May 21, 2019).

[109] 15 U.S.C. 1692a(6).

[110] For example, to avoid obsolete language, proposed § 1006.2(i) uses the term ''mail'' instead of ''the mails.''

[111] 15 U.S.C. 1692p.

[112] 137 S. Ct. 1718 (2017). In *Henson,* the Court held that a company may collect defaulted debts that it has purchased from another without being an FDCPA debt collector. Furthermore, the Court decided only whether, by using its own name to collect debts that it had purchased, Santander met the ''regularly collects'' prong of the introductory language in FDCPA section 803(6). *Id.* at 1721 (quoting 15 U.S.C. 1296a(6)). The Court held that Santander was not a debt collector within the meaning of the ''regularly collects'' prong because Santander was collecting debts that it purchased and owned, not collecting debts owed to another. *Id.* at 1721–22. The Court expressly declined to address two other ways that a debt buyer like Santander might qualify as a debt collector under FDCPA section 803(6): (1) By meeting the ''regularly collects'' prong by regularly collecting or attempting to collect debts owned by others, in addition to collecting debts that it purchased and owned; or (2) by meeting the ''principal purpose'' prong of the definition. *Id.* at 1721 (quoting 15 U.S.C. 1296a(6)). The Court had not identified these questions as being presented when it granted certiorari. *Id.*

[113] 84 FR 23274, 23289 (May 21, 2019). In addition to *Henson,* the Supreme Court also recently interpreted FDCPA section 803(6) to hold that a business engaged in no more than nonjudicial foreclosure proceedings is not an FDCPA debt collector, except for the limited purpose of FDCPA section 808(6). *See Obduskey* v. *McCarthy & Holthus LLP,* 139 S. Ct. 1029 (2019). And the Third Circuit provided in *Barbato* v. *Greystone Alliance, LLC,* 916 F.3d 260 (3d Cir.), cert. denied, 140 S. Ct. 245 (2019), that a debt buyer whose principal purpose was debt collection was an FDCPA debt collector even though the debt buyer outsourced its collection activities to third parties.

discussion of the *Henson* decision in commentary to the final rule. Several industry commenters also requested carve outs for certain entities, including mortgage servicers and, citing Dodd-Frank Act section 1027(e)(1),[114] licensed attorneys engaged in litigation activities or the practice of law.

The Bureau is finalizing § 1006.2(i) as proposed, except the final rule corrects an inaccurate cross-reference that had been included in the proposal and includes new comment 2(i)–1 to respond to requests to clarify the scope of the term debt collector as interpreted by the Supreme Court in *Henson.* Specifically, new comment 2(i)–1 provides that a person who collects or attempts to collect defaulted debts that the person has purchased, but who does not collect or attempt to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, to another, and who does not have a business the principal purpose of which is the collection of debts, is not a debt collector as defined in § 1006.2(i).

The Bureau declines to exclude licensed attorneys or mortgage servicers from the definition of debt collector. The FDCPA's definition of debt collector does not exempt licensed attorneys or mortgage servicers who otherwise meet the definition of debt collector. Interpreting the definition to exclude these or other entities would constitute a significant interpretation of the FDCPA on which the public did not have the opportunity to comment. These suggestions thus are outside the scope of the proposal. In addition, the FDCPA applies to attorneys who regularly engage in debt collection activity, even when that activity consists of litigation,[115] and the Bureau disagrees that it does not have authority to engage in rulemaking or other activities covering attorneys engaged in litigation or the practice of law. Dodd-Frank Act section 1027(e)(1) does not restrict the Bureau's rulemaking authority, and the Bureau considered and rejected arguments that Dodd-Frank Act section 1027(e)(1) constrains the Bureau's supervisory or enforcement authority over larger participant debt collectors in its 2012 final rule defining larger participants of the consumer debt collection market.[116]

2(j) Limited-Content Message

FDCPA section 803(2) defines the term communication to mean the conveying of information regarding a debt directly or indirectly to any person through any medium.[117] Proposed § 1006.2(d) would have implemented and interpreted that definition, including by specifying that a debt collector does not engage in an FDCPA communication if the debt collector provides only a limited-content message.[118] The Bureau proposed in § 1006.2(j) to further interpret FDCPA section 803(2) by defining a type of message, the ''limited-content message,'' that would not convey information about a debt directly or indirectly to any person. Therefore, as proposed, a debt collector could provide such a message for a consumer without communicating with any person for the purposes of the FDCPA or Regulation F. Proposed § 1006.2(j)(1) would have required that limited-content messages include certain content, and proposed § 1006.2(j)(2) would have permitted certain additional content.[119]

Proposed comment 2(j)–1 explained that any message that included content other than the required or optional content specified in § 1006.2(j)(1) and (2) would not be a limited-content message. The proposed comment further explained that, if a message included any other content and such other content directly or indirectly conveyed any information about a debt, the message would be a communication, as defined in proposed § 1006.2(d). Proposed comment 2(j)–2 provided examples of limited-content messages, proposed comment 2(j)–3 illustrated ways in which a debt collector could transmit a limited-content message to a consumer (*e.g.,* by voicemail, text message, or with a third party, but not by email), and proposed comment 2(j)–4 provided that a debt collector who placed a telephone call and left only a limited-content message would not have, with respect to that telephone call, violated FDCPA section 806(6)'s prohibition on the placement of telephone calls without meaningful disclosure of the caller's identity.

The Bureau received a large number of comments from industry and trade association commenters, consumer advocates, government commenters, and others on the proposal to define a limited-content message. After considering that feedback, the Bureau is finalizing the proposed definition with several modifications as discussed below.

Limited-Content Message Concept

Many commenters addressed the overall concept of a limited-content message and general aspects of the proposed definition.[120] Federal government agency staff noted the uncertainty surrounding voicemail messages and supported efforts to clarify debt collectors' obligations. Industry commenters also supported the limited-content message in principle and explained that such a provision would have several benefits. Many of these commenters argued that a limited-content message would facilitate communication between consumers and debt collectors, which would benefit consumers by reducing the frequency of debt collection calls, lowering the interest and fees accrued by outstanding debts, reducing the number of lawsuits filed against consumers, and giving consumers more control over when they listen to debt collection messages and respond to debt collectors. Several of these commenters stated that consumers believe that calls from unknown telephone numbers are scams, especially if such callers fail to leave voicemail messages. One industry commenter observed that consumers expected callers to leave voicemail messages, while another commenter reported that, without voicemail messages, consumers may think debt collectors are unresponsive to consumers' efforts to communicate.

[114] 12 U.S.C. 5515(e)(1) (establishing an exclusion for the practice of law, subject to certain exceptions, as to the Bureau's exercise of supervisory or enforcement authority).

[115] *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 decision, 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.

[116] *See* 77 FR 65775, 65784 (Oct. 31, 2012) (citing Dodd-Frank Act section 1027(e)(3), 12 U.S.C. 5515(e)(3), which states that Dodd-Frank Act section 1027(e)(1) ''shall not be construed so as to limit the authority of the Bureau with respect to any attorney, to the extent that such attorney is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H'').

[117] 15 U.S.C. 1692a(2).

[118] *See* 84 FR 23274, 23290–93 (May 21, 2019).

[119] Proposed § 1006.2(j)(1) would have required limited-content messages to include: The consumer's name, a request that the consumer reply to the message, the name or names of one or more natural persons whom the consumer can contact to reply to the debt collector, a telephone number that the consumer can use to reply to the debt collector, and, if delivered electronically, a disclosure explaining how the consumer can stop receiving messages through that medium. Proposed § 1006.2(j)(2) would have permitted limited-content messages to include the following additional items: A salutation, the date and time of the message, a generic statement that the message relates to an account, and suggested dates and times for the consumer to reply to the message. *See* the section-by-section analysis of § 1006.2(j)(1) and (2).

[120] To the extent that comments addressed elements of the proposed required or optional content, the Bureau discusses them in the section-by-section analysis of final § 1006.2(j)(1) and (2), respectively.

Other industry commenters argued that a limited-content message would reduce unjustified lawsuits against debt collectors. One trade group commenter stated that legal uncertainty and fear of liability cause many debt collectors to avoid leaving messages entirely. Another trade group commenter asserted that debt collectors have tried leaving various messages but are still threatened by lawsuits. Finally, a trade group commenter reported that most of its members leave a message found not to be a communication by one Federal district court in *Zortman* v. *J.C. Christensen & Assocs., Inc.*[121]

Many individual consumers and consumer advocates opposed any limited-content message. Most of these commenters asserted that such a message was an impermissible exemption from the FDCPA sections defining and regulating communications. Other commenters argued that the proposal would violate consumer privacy by permitting third parties to hear or see limited-content messages. And other commenters appeared to assert, incorrectly, that none of the proposal's provisions regulating attempts to communicate or communications would apply to limited-content messages.

As explained in the proposal, uncertainty about what constitutes a communication under FDCPA section 803(2) has led to questions about how debt collectors can leave voicemails or other messages for consumers while complying with certain FDCPA provisions.[122] If a voicemail or other message is a communication with a consumer, FDCPA section 807(11) requires that the debt collector identify itself as a debt collector or inform the consumer that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.[123] A debt collector who leaves a message with such disclosures, however, risks violating FDCPA section 805(b)'s prohibition against revealing debts to third parties if the disclosures are seen or heard by a third party.[124] Thus, certain messages may put a debt collector who wants to avoid FDCPA liability in the position of having to disclose the debt collector's identity and purpose, while avoiding disclosure of the debt to third parties.

As explained in the proposal, many debt collectors state that they err on the side of caution and make repeated telephone calls instead of leaving messages for a consumer or sending text messages.[125] Such repeated telephone calls may frustrate many consumers. Indeed, consumers often complain to the Bureau about the number of collection calls they receive and, to a lesser degree, about debt collectors' reluctance to leave voicemails.[126] And, as noted in the proposal, the FTC and the U.S. Government Accountability Office also have previously noted the need to clarify the law regarding debt collectors' ability to leave voicemails for consumers.[127]

The Bureau determines that defining the content of a message that debt collectors may leave without engaging in an FDCPA communication will decrease uncertainty and benefit both debt collectors and consumers by reducing the need for debt collectors to rely on repeated telephone calls without leaving messages to establish contact with consumers. This, in turn, may benefit consumers by increasing their ability to learn whether they are being asked to pay the right debt, in the right amount. And debt collectors will benefit from the ability to leave certain messages without risking exposure to liability for violating the FDCPA while consumers will benefit from receiving messages that do not disclose information about a debt. Therefore, the Bureau is finalizing a definition of the limited-content message. At the same time, having considered commenters' concerns, the Bureau is finalizing certain changes to the definition, as discussed below.

Permissible Communication Media

Proposed § 1006.2(j) would have enabled a debt collector to transmit a limited-content message by voicemail, by text message, or orally.[128] However, the proposal would not have allowed a debt collector to transmit a limited-content message by email because emails typically require additional information (*e.g.,* a sender's email address) that may in some circumstances convey information about a debt, and consumers may be unlikely to read or respond to an email containing solely the information included in a limited-content message (*e.g.,* consumers may disregard such an email as spam or a security risk).

The Bureau received many comments on the communication media through which debt collectors could send limited-content messages. The majority of these comments concerned email. Most industry commenters recommended allowing limited-content messages by email.[129] These commenters made various arguments in support of their recommendation. Some commenters asserted that email was more private than other communication media because email accounts are password-protected, unique to a consumer, and generally not reassigned to other consumers. One commenter believed that the sender's email address revealed no more information than would be disclosed by caller ID, while other commenters stated that debt collectors could configure their email services to omit information from the sender's email address and signature line that might result in a prohibited third-party disclosure. Other commenters claimed that limited-content email messages would benefit consumers because consumers might prefer communicating by email, could research the debt collector before responding, and could decide when and how to respond. One commenter stated that limited-content email messages could help compensate for what the commenter viewed as barriers to electronic communication under proposed § 1006.6(d)(3). Another commenter argued that, although the proposed limited-content message would closely resemble a spam or scam message if delivered by email, future technology might enable consumers to verify the legitimacy of email messages, and for this reason, the Bureau should allow limited-content email messages.

Relatedly, a State government commenter asserted that email and text messages were the only appropriate communication media for leaving limited-content messages because of the relatively low risk of third-party disclosure, but only after a consumer had opted in to receiving electronic communications from a debt collector.

A few consumer advocates stated that limited-content messages should not be permitted to be sent by email, with one suggesting that the Bureau incorporate this restriction into regulation text or commentary. Another stated that limited-content email messages may be

[121] 870 F. Supp. 2d 694, 696 (D. Minn. 2012) (holding that debt collector did not violate FDCPA section 805(b) by leaving a voicemail message that stated, ''We have an important message from J.C. Christensen & Associates. This is a call from a debt collector. Please call 866–319–8619.'').

[122] *See* 84 FR 23274, 23290 (May 21, 2019).

[123] 15 U.S.C. 1692e(11). *See also* the section-by-section analysis of § 1006.18(e).

[124] 15 U.S.C. 1692c(b). *See also* the section-by-section analysis of § 1006.6(d).

[125] *See* 84 FR 23274, 23290 (May 21, 2019).

[126] *See id.*

[127] *See id.*

[128] Proposed § 1006.2(j) did not directly address social media; however, proposed § 1006.22(f) would have prohibited a debt collector from sending any message to a consumer, including a limited-content message, by publicly viewable social media.

[129] Several industry commenters misunderstood proposed § 1006.2(j) and claimed that they would use email to send limited-content messages.

inappropriate because they include other content that might convey information about a debt, but argued that the same was true of telephone numbers, which a third party could look up using online search engines.

Several commenters also addressed limited-content text messages. Industry commenters generally supported allowing limited-content text messages. Some of these commenters stated that many consumers prefer to use written communication media, such as text messages, that give them time to compose their thoughts, and these commenters explained that the opt-out notice under proposed § 1006.6(e) would effectively prevent debt collectors from sending too many limited-content text messages. One industry commenter recommended also allowing limited-content messages by mobile communication applications because they are similar to text messages.

One consumer commenter stated that, of all the permissible limited-content message communication media, text messages have the greatest chance of being viewed only by the consumer. But most individual consumers and consumer advocates who addressed limited-content text messages opposed them. One consumer advocate argued that allowing limited-content text messages would subject consumers to unsolicited text message scams that could install malware on a consumer's mobile telephone or lead to identity theft. Another consumer advocate stated that limited-content text messages may be more likely to lead to prohibited third-party disclosures than limited-content voicemail messages because of the text message preview that often appears automatically on a smart phone screen. And one consumer advocate and one government commenter noted that, because the proposed frequency limits for telephone calls would not apply to text messages, debt collectors could send numerous limited-content text messages to consumers that, the commenters explained, would increase the chances of a prohibited third-party disclosure.

A few commenters addressed limited-content social media messages. One industry commenter recommended allowing limited-content social media messages in general, while another industry commenter suggested allowing only direct messages sent privately to the consumer. A consumer advocate and a group of State Attorneys General, however, opposed all limited-content social media messages. The consumer advocate stated that any limited-content social media messages would be overly invasive and that debt collectors have demonstrated a willingness to abuse social media platforms to harass consumers. The group of State Attorneys General asserted that limited-content social media messages would contain information about the sender similar to limited-content email messages. This commenter also suggested that advertising algorithms could identify limited-content social media messages as debt collection messages, and then target the consumer for debt collection advertisements on social media or across the internet.

Two industry commenters asked the Bureau to clarify that debt collectors may send ''ringless voicemail'' limited-content messages, or voicemail messages sent directly to a consumer's voicemail service provider without interacting with the consumer's mobile telephone.

Finally, one industry commenter recommended allowing limited-content mail messages because they would be less costly than validation notices. In contrast, consumer advocates believed the proposal would allow limited-content postcard messages, which, the commenter asserted, would violate FDCPA section 808(7)'s prohibition on communicating with a consumer regarding a debt by postcard.

After considering the comments received, the Bureau is finalizing only limited-content voicemail messages. As explained in the proposal, uncertainty regarding debt collector's obligations and consumer's rights under FDCPA sections 805(b) and 807(11) arose in the context of voicemail messages.[130] With this medium of communication, debt collectors face the dilemma of either repeatedly calling a consumer and hanging up, or leaving a voicemail message that might convey too much information in violation of FDCPA section 805(b) or too little information in violation of FDCPA section 807(11). And the Bureau understands that voicemail messages have been the subject of most litigation surrounding the intersection of these provisions. Accordingly, the need to define a specific message that is not a communication may be less pressing for other communication media, such as text messages, emails, or social media messages.

Apart from the absence of uncertainty and litigation comparable to voicemail messages, other communication media differ from voicemail messages in ways that are relevant to the limited-content message. Consumers may behave differently in response to voicemail messages than messages sent through other communication media. For example, because of cybersecurity concerns, consumers may be more likely to delete or ignore a generic text or email message from an unfamiliar sender than a similar voicemail message. As several commenters noted, email and text messages can contain links or other content that could install malware on a consumer's mobile telephone or computer. Indeed, several Federal agencies advise consumers to delete suspicious emails and text messages.[131] Finally, messages sent through other communication media might include information beyond that permitted by final § 1006.2(j). For example, a social media platform may limit debt collectors' ability to send messages to people outside a user's network, but a debt collector joining a consumer's network may create a prohibited third-party disclosure.[132]

For these reasons, final § 1006.2(j) limits the definition of limited-content messages to voicemail messages for a consumer.[133]

Final § 1006.2(j) identifies a voicemail message that debt collectors may leave for consumers without conveying information about a debt—and therefore communicating—under the final rule. Final § 1006.2(j) neither defines the exclusive means by which debt collectors can avoid conveying information about a debt nor reflects a determination that messages sent using other communication media are always communications under the FDCPA and the final rule. In addition, as noted above, final § 1006.6(d)(3) through (5) provides procedures that debt collectors

[130] *See* 84 FR 23274, 23290 (May 21, 2019). *See also Foti* v. *NCO Fin. Sys., Inc.,* 424 F. Supp. 2d 643, 655–56 (S.D.N.Y. 2006); *Hosseinzadeh,* 387 F. Supp. 2d at 1104.

[131] Fed. Trade Comm'n, *How to Recognize and Avoid Phishing Scams* (May 2019), *https://www.consumer.ftc.gov/articles/how-recognize-and-avoid-phishing-scams;* Fed. Deposit Ins. Corp., *Learning Bank—Frauds & Scams* (Jan. 30, 2018), *https://www.fdic.gov/about/learn/learning/scams.html;* Fed. Commc'ns Comm'n, *Avoid the Temptation of Smishing Scams* (Nov. 9, 2018), *https://www.fcc.gov/avoid-temptation-smishing-scams.*

[132] LinkedIn Messaging—Overview (July 4, 2018), *https://www.linkedin.com/help/linkedin/answer/61106/linkedin-messaging-overview?lang=en* (''On LinkedIn, you can only message your 1st-degree connections (and, within group pages, fellow group members) for free.''); Colin Hector, *Debt collectors: You may* ''*like*'' *social media and texts, but are you complying with the law?,* Fed. Trade Comm'n Bus. Blog (Mar. 28, 2016), *https://www.ftc.gov/news-events/blogs/business-blog/2016/03/debt-collectors-you-may-social-media-texts-are-you-complying.*

[133] The Bureau finds that voicemail messages include ringless voicemail messages. The Bureau concludes that, from a consumer's perspective, ringless voicemail messages present no greater risk of third-party disclosure than traditional voicemail messages.

may follow to obtain a safe harbor from civil liability for unintentional third-party disclosures when communicating with consumers by email or text message.

Messages Left With Third Parties

Proposed § 1006.2(j) would have allowed a debt collector to leave a limited-content message orally with a third party. For example, a debt collector could have left a limited-content message in a live conversation with a third party who answered the consumer's home, mobile, or work telephone number. The Bureau received many comments on this aspect of the proposal.

Several industry commenters supported it. One trade group commenter explained that debt collectors often do not know whether a telephone number they are dialing belongs to the consumer, while another industry commenter argued that, without the ability to leave a limited-content message with anyone who answers a consumer's telephone, debt collectors would have to continue calling until they reach the consumer. Another trade group commenter requested that the Bureau allow debt collectors to ask third parties to convey the message to the consumer. One industry commenter asked whether debt collectors could combine limited-content messages with location calls, asserting that this would reduce the number of attempts to speak to a third party.

Many commenters, including consumer advocates, government commenters, numerous individual consumer commenters, and an academic commenter, opposed allowing debt collectors to leave limited-content messages with third parties. These commenters raised several issues with the proposal. First, most of these commenters believed that, after receiving a limited-content message in a live conversation, a third party would ask questions that, if answered, would reveal that the consumer owes or is alleged to owe a debt. These commenters further asserted that, even if the debt collector avoided answering a third party's questions, such evasiveness would also disclose that the call related to debt collection. Along with the risks created by the interactive nature of live conversations with third parties, Federal government agency staff encouraged the Bureau to consider the effect of debt collectors leaving limited-content messages in multiple live conversations with the same third party.

Second, some of these commenters expressed concern with limited-content messages left with particular third parties. For example, commenters, including many consumer advocates, expressed concern that a limited-content message left with an employer could threaten a consumer's continued employment. And one consumer advocate stated that domestic abusers could learn details of a consumer's financial situation or manipulate the debt collector into revealing other private information.

Third, some commenters asserted that the proposal could encourage debt collectors to intentionally contact third parties for the purpose of leaving limited-content messages. These commenters believed that a debt collector could indirectly harass a consumer by leaving limited-content messages with the consumer's friends, employers, coworkers, family, or other associates.

Fourth, consumer advocates expressed concern about the proposal's impact on third parties. Third parties, this commenter argued, may also find limited-content messages harassing or annoying and, as this commenter observed, the proposal would not have granted them the same rights as consumers to cease communications, designate inconvenient times and places, or restrict communication media.

Finally, consumer advocates asserted that allowing third-party limited-content messages would upset the statutory balance Congress struck between consumers' and debt collectors' interests. Under this commenter's interpretation, the FDCPA created a narrow exception to the prohibition on third-party communications only for location communications, which the proposal would violate by also permitting limited-content messages.

After further consideration, the Bureau is declining to finalize a definition of limited-content message that allows for third-party limited-content messages. As discussed above, final § 1006.2(j) is limited to voicemail messages. Thus, a limited-content message left in a live conversation with third parties would not meet the definition in § 1006.2(j). Regarding voicemail messages left with third parties, the section-by-section analysis of final § 1006.2(j)(1) requires debt collectors to include a business name for the debt collector that does not indicate that the debt collector is in the debt collection business but not the name of the consumer. Prohibiting debt collectors from including the consumer's name greatly reduces the probability of any message left for a third party eventually reaching the consumer. Without a clear connection to the consumer, the Bureau finds that third-party voicemail messages would benefit neither consumers nor debt collectors. Therefore, final § 1006.2(j)'s definition of limited-content message does not permit third-party messages, either in live conversations or as voicemail messages.

The Bureau recognizes, however, that debt collectors are often unsure whether a person with whom they are attempting to communicate is the consumer. Indeed, the restricted content of the limited-content message contemplates the possibility of a third party hearing the information. Prohibiting all third-party limited-content messages, no matter how inadvertent, would unreasonably limit final § 1006.2(j). Therefore, messages left without knowledge that the voicemail belongs to a third party, or if a debt collector is unsure to whom the voicemail belongs, are limited-content messages. Accordingly, the Bureau is finalizing comment 2(j)–2 to clarify that a message knowingly left for a third party is not a limited-content message.

Importantly, nothing in final § 1006.2(j) places additional restrictions on debt collectors' abilities to communicate or attempt to communicate with third parties. Final § 1006.2(j) identifies a voicemail message that debt collectors may leave for consumers without conveying information about a debt—and therefore communicating—under the final rule. Final § 1006.2(j) does not attempt to define the exclusive means by which debt collectors can avoid conveying information about a debt. By finalizing a definition of limited-content message that excludes third-party messages, therefore, the Bureau has not determined that messages other than limited-content messages sent to third parties are always communications under the FDCPA and the final rule. The Bureau also notes that the final rule authorizes certain communications with third parties. For example, debt collectors may communicate with third parties to seek location information under § 1006.10 or with the prior consent of the consumer given directly to the debt collector as provided for under § 1006.6(d)(2)(ii).

Meaningful Disclosure of Identity

Proposed comment 2(j)–4 provided that a debt collector who placed a telephone call and left only a limited-content message for a consumer would not have, with respect to that telephone call, violated FDCPA section 806(6)'s prohibition on the placement of telephone calls without meaningful disclosure of the caller's identity. The Bureau based this interpretation on the fact that proposed § 1006.2(j)(1) would have required a limited-content message to include the name of a natural person whom the consumer could contact as well as a telephone number that the consumer could use to reply to the debt collector and that a limited-content message could not have contained any content that was not described in proposed § 1006.2(j)(1) or (2). The interpretation in proposed comment 2(j)–4 would have applied only when a debt collector placed a telephone call and left only a limited-content message for a consumer.

Two industry commenters believed that the proposed limited-content message satisfied the meaningful disclosure requirement because it required debt collectors to include the name of a natural person to whom the consumer could reply. But two groups of consumer advocates commented that the proposed limited-content message failed to meaningfully disclose the caller's identity because the natural person would likely be unknown to the consumer, might use an assumed name, and might not be the same person who leaves the voicemail message. Meaningful disclosure, these commenters asserted, would require disclosing the identity of the debt collector employing the natural person.

The Bureau determines that consumers benefit from the inclusion in the limited-content message of the name of a natural person, and a telephone number, to which a consumer may reply, as well as from the prohibition on false or misleading statements about the caller's identity or the purpose of the call. But the Bureau agrees with commenters' concerns regarding meaningful disclosure of the caller's identity. Consumers are unlikely to recognize the name of a natural person working for the debt collector, and who might be using an alias. And, as proposed, if the natural person to whom the consumer could reply was different from the natural person leaving the limited-content message, the only information concerning the caller's identity would have been the telephone number included under proposed § 1006.2(j)(1)(iv). For this reason, and as discussed in the section-by-section analysis of § 1006.2(j)(1)(i), the final rule requires limited-content messages to include a business name for the debt collector that does not indicate that the debt collector is in the debt collection business. Not only is the debt collector's business name more useful to consumers, but it also better ensures that debt collectors who leave limited-content messages do not violate FDCPA section 806(6) requiring meaningful disclosure of a debt collector's identity in telephone calls. Because § 1006.2(j)(1)(i) requires that the business name included in a limited-content message not reveal that a debt collector is in the debt collection business, debt collectors may be uncertain whether business names with abbreviations designed to satisfy § 1006.2(j)(1)(i) satisfy the meaningful disclosure requirement. The Bureau is adopting proposed comment 2(j)–4, renumbered as comment 2(j)–3, to clarify that a debt collector who leaves a limited-content message does not violate the requirement to meaningfully disclose the caller's identity with respect to that message.

Implementation Issues

A few industry commenters raised implementation issues related to the proposed limited-content message. These commenters cited issues that may prevent debt collectors from leaving limited-content messages, such as disconnected telephone numbers, voicemail message system limitations, and telephone network errors. They requested that the Bureau clarify that debt collectors who leave incomplete limited-content messages because of technological issues have still left a limited-content message.

Final § 1006.2(j) reflects a carefully tailored message designed to meaningfully disclose the caller's identity and include enough information to permit a consumer to decide how to respond while avoiding conveying information regarding a debt. A partial limited-content message would be less likely to achieve these purposes. Accordingly, the Bureau declines to define partial limited-content messages as limited-content messages. The Bureau notes, however, that nothing in the final rule automatically transforms a partial limited-content message into a communication. If such a message is inconsistent with the final rule despite being caused by inadvertent technological issues, *e.g.,* because the call is dropped before the debt collector can leave its business name, and thereby does not disclose its identity, the Bureau notes that such issues can arise in the context of any telephone call (not just a limited-content message). Depending on the circumstances the bona fide error defense to civil liability in FDCPA section 813(c) may also apply.

Limited-Content Messages and State Laws

A few commenters raised issues related to State laws. A local government commenter asserted that the proposed limited-content message would confuse debt collectors who must also comply with State laws that lack similar provisions. More specifically, a trade group commenter claimed that debt collectors would be unable to leave limited-content messages in States requiring disclosure of the debt collector's business name in every communication. One trade group commenter asked the Bureau to add optional language to proposed § 1006.2(j)(2) to accommodate additional State law disclosures, while another trade group commenter asked the Bureau to preempt such State laws. These commenters did not specifically mention items of information other than the debt collector's name that would be inconsistent with the proposed limited-content message.

As noted above, final § 1006.2(j) identifies a voicemail message that debt collectors can leave for consumers without conveying information about a debt—and therefore communicating—under the final rule. Accordingly, § 1006.2(j) is a definition and by itself neither requires nor prohibits any action. Circumstances might exist, such as when State law requires additional or different information to be included in a voicemail message, under which debt collectors are unable to take advantage of the ability to leave limited-content messages. To the extent commenters' concerns about inconsistent State law concern the name of the debt collector, final § 1006.2(j)(1)(i) requires limited-content messages to include a business name for the debt collector that does not indicate that the debt collector is in the debt collection business.[134]

Fraudulent Messages

A few consumer advocates and local government commenters stated that the proposed limited-content message would enable fraud. These commenters argued that the limited-content message was so generic that it could be adopted by scammers and used for fraudulent purposes. Some of these commenters believed that, by proposing to define the limited-content message, the Bureau was contradicting the advice that Federal agencies have given consumers about how to recognize and respond to fraudulent messages. These commenters stated that Federal agencies recommend that consumers ignore messages

[134] *See* the section-by-section analysis of § 1006.2(j)(1)(i).

containing limited information or coming from unfamiliar senders. But these commenters claimed that the Bureau would encourage consumers to respond to such messages if they took the form of the proposed limited-content message. One consumer advocate cited the heightened cybersecurity risks of limited-content text or email messages, which might contain links or other content that could install malware on a consumer's mobile telephone or computer.

The Bureau has considered these risks and determines that final § 1006.2(j) does not heighten the risk of exploitation by scammers. First, the Bureau is aware of no evidence that voicemail messages currently left by debt collectors, some of which closely resemble final § 1006.2(j)'s limited-content message, have increased bad actors' abilities to harm consumers. Second, the final rule limits the definition of limited-content message to voicemail messages, which should lessen commenters' concerns about limited-content email and text messages. Third, final § 1006.2(j)(1)(i) requires limited-content messages to include a business name for the debt collector that does not indicate that the debt collector is in the debt collection business. Improved information about the identity of the caller decreases any similarity between the limited-content message adopted under this final rule and the types of fraudulent messages about which Federal agencies have warned consumers.

Familiarity With Limited-Content Messages

Several consumer advocates and government commenters argued that the public would eventually become familiar with the limited-content message and associate it with debt collection, suggesting the limited-content message itself would create a prohibited third-party disclosure even if its content alone did not convey information regarding a debt.

As an initial matter, the Bureau notes that limited-content messages may vary slightly in their content because debt collectors may choose to include different items of optional information described in final § 1006.2(j)(2). The Bureau understands that, despite the legal uncertainty in the voicemail context, some debt collectors have been leaving messages that some courts have held are not communications. The Bureau is not aware of any evidence that these messages, some of which closely resemble final § 1006.2(j)'s limited-content message, are so familiar to consumers that the message itself automatically creates a prohibited third-party disclosure. And the Bureau does not believe that any level of familiarity would allow a third party to exclude alternative plausible explanations for a limited-content message, such as a debt collector dialing the wrong telephone number or a debt collector calling for non-collection purposes.

Interaction With Other Provisions of Regulation F

Consumer advocates expressed concern that certain provisions of the proposal governing communications would not apply to the proposed limited-content message, including proposed § 1006.6(d)(1)'s prohibitions regarding communications with third parties, proposed § 1006.10's provisions regarding location communications, proposed § 1006.18(e)'s disclosures, proposed § 1006.22(f)(1)'s prohibition on communicating with consumers by postcard, and proposed § 1006.34's requirements regarding sending validation notices to consumers. The Bureau has evaluated the scope of the final rule and determines that each substantive provision addresses a range of conduct appropriate to achieve the goals of that section. The section-by-section analysis throughout part V provides additional explanation for each of the final rule's substantive provisions.

Interaction With Other Federal Law

One trade group commenter stated that the proposed limited-content message was potentially inconsistent with the Federal Communications Commission's (FCC) rules implementing the Telephone Consumer Protection Act of 1991 (TCPA) [135] and the Cellular Telecommunications Industry Association (CTIA)'s industry standards. Specifically, this commenter argued that limited-content text messages sent without a consumer's prior consent may violate the TCPA or industry standards. As explained above, final § 1006.2(j) is limited to voicemail messages. The Bureau declines to address limited-content text messages.

For the reasons discussed above and pursuant to its authority to interpret FDCPA section 803(2), the Bureau is finalizing the proposed definition of limited-content message with revisions. Specifically, final § 1006.2(j) provides that a limited-content message is a voicemail message for a consumer that includes all of the content described in § 1006.2(j)(1), that may include any of the content described in § 1006.2(j)(2), and that includes no other content.

[135] Public Law 102–243, 105 Stat. 2394 (1991).

The Bureau is finalizing comment 2(j)–1 largely as proposed but with revisions to the reflect the decision to limit the definition of limited-content message to messages left for a consumer by voicemail and to provide an example of a message that is not a limited-content message. New comment 2(j)–2 clarifies that, for the reasons discussed above, a message knowingly left for a third party is not a limited-content message because it is not for a consumer and provides an example. Finally, the Bureau is finalizing proposed comment 2(j)–4 regarding meaningful disclosure of a caller's identity as comment 2(j)–3.

2(j)(1) Required Content

Proposed § 1006.2(j)(1) would have required limited-content messages to include the following content to ensure that they facilitate contact between debt collectors and consumers: The consumer's name (proposed § 1006.2(j)(1)(i)); a request that the consumer reply to the message (proposed § 1006.2(j)(1)(ii)); the name or names of one or more natural persons whom the consumer can contact to reply to the debt collector (proposed § 1006.2(j)(1)(iii)); a telephone number that the consumer can use to reply to the debt collector (proposed § 1006.2(j)(1)(iv)); and, if delivered electronically, a disclosure explaining how the consumer can stop receiving messages through that medium (proposed § 1006.2(j)(1)(iv)). Proposed comment 2(j)(1)(iv)–1 explained that a voicemail or a text message that spells out, rather than enumerates numerically, a vanity telephone number is not a limited-content message. Spelling out a vanity telephone number could, in some circumstances, convey information about a debt or otherwise disclose that the message is from a debt collector.

For the reasons described below, the Bureau is finalizing § 1006.2(j)(1) largely as proposed but with modifications to reflect the revised scope of the definition, as discussed in the section-by-section analysis of § 1006.2(j), and to require a business name for the debt collector that does not indicate that the debt collector is in the debt collection business, in lieu of the consumer's name in § 1006.2(j)(1)(i).

Many industry commenters requested that the Bureau require or permit additional information in the limited-content message. Without additional content, these commenters asserted, consumers would view the limited-content message as uninformative, confusing, or suspicious. Most of these commenters asked the Bureau to allow debt collectors to disclose their business name, especially if the name did not reveal that the debt collector was in the debt collection business. A few commenters pointed to FDCPA section 808(8), which allows debt collectors to include their business name on an envelope if the name does not indicate that the debt collector is in the debt collection business. Three commenters cited the Bureau's Debt Collection Consumer Survey, which found that almost 90 percent of consumers reported that they preferred voicemail messages to include the creditor or debt collector's name. Along with the debt collector's name, industry commenters asked the Bureau to include various items of information, including: the creditor's name; the debt collector's website address; the type of account, such as a student loan or branded credit card; the debt collector's email address or other electronic contact information; an invitation to enroll in a debt collector's text messaging service; and four consecutive digits from an account number.

After considering the comments, the Bureau is finalizing § 1006.2(j)(1) to require a business name for the debt collector that does not indicate that the debt collector is in the debt collection business, in lieu of the consumer's name in § 1006.2(j)(1)(i). As commenters who referred to the Bureau's Debt Collection Consumer Survey noted, most consumers prefer that voicemail messages disclose the caller's institutional identity.[136] Including the debt collector's business name will enable consumers to verify the debt collector's legitimacy and make a better-informed decision about what action, if any, to take in response to the limited-content voicemail message. Consistent with the advice of several Federal agencies, consumers who are suspicious of a limited-content message can use the debt collector's business name to research the company and reply using contact information the consumer finds rather than relying on the telephone number included in the message.[137] Consumers may also be more likely to reply to a limited-content message if they believe the message is legitimate. Finally, requiring limited-content messages to include the debt collector's business name ensures meaningful disclosure of the caller's identity consistent with FDCPA section 806(6), as discussed in the section-by-section analysis of § 1006.2(j), above.

The Bureau is not finalizing the consumer's name as a required or optional element of the limited-content message as proposed. The Bureau finds that a message containing a business name for the debt collector that does not indicate that the debt collector is in the debt collection business, but not the consumer's name avoids conveying information regarding a debt under FDCPA section 803(2). A third party overhearing such a message would be unable, based on the message's content alone, to rule out several alternative explanations for the message other than that the consumer owes a debt. For example, the third party may believe that a business other than a debt collector has left the message, because final § 1006.2(j)(1) permits only business names that do not indicate that a debt collector is in the debt collection business. Even if a third party believes that a debt collector has left the message, the debt collector might have dialed the wrong telephone number; the debt collector might have dialed the intended telephone number but have inaccurate information about to whom the telephone number is assigned; the debt collector might be calling to seek location information from the consumer; [138] or the debt collector might be calling for a non-debt-collection purpose.[139] Including the consumer's name would narrow the range of alternative explanations and increase the risk of third-party disclosure.[140] Accordingly, final § 1006.2(j)(1) does not include the consumer's name in the limited-content message.

Based on the range of industry commenters who supported including a business name for the debt collector that does not indicate that the debt collector is in the debt collection business, the Bureau expects that many debt collectors will be able to disclose a business name (*e.g.,* a doing business as (d/b/a) name) without revealing that they are in the debt collection business. Moreover, industry has long been subject to FDCPA section 808(8), which allows debt collectors to include their business name on an envelope only if the name does not indicate that the debt collector is in the debt collection business. But circumstances might exist that would prevent debt collectors from taking advantage of the limited-content message definition. For example, a debt collector's business name might reveal that the debt collector is in the debt collection business. In such circumstances, a message that includes the debt collector's business name would not be a limited-content message, as defined in final § 1006.2(j). But, as explained above, final § 1006.2(j) identifies a voicemail message that debt collectors may leave for consumers without conveying information about a debt—and therefore communicating—under the final rule. Final § 1006.2(j) neither defines the exclusive means by which debt collectors can avoid conveying information about a debt nor

[136] CFPB Debt Collection Consumer Survey, *supra* note 16, at 38.

[137] *See, e.g.,* Bureau of Consumer Fin. Prot., *How to tell the difference between a legitimate debt collector and scammers* (Nov. 20, 2019), *https://www.consumerfinance.gov/about-us/blog/how-tell-difference-between-legitimate-debt-collector-and-scammers/* (''If you're uncomfortable providing any information, you can request the caller's name, company name, street address, and a callback number. You can use this information to verify that they are not a scammer before providing any personal information.''); Fed. Trade Comm'n, *How to Recognize and Avoid Phishing Scams* (May 2019), *https://www.consumer.ftc.gov/articles/how-recognize-and-avoid-phishing-scams#suspect* (''[C]ontact the company using a phone number or website you know is real. Not the information in the email.''); Fed. Commc'ns Comm'n, *Avoid the Temptation of Smishing Scams* (Nov. 9, 2018), *https://www.fcc.gov/avoid-temptation-smishing-scams* (''If you get a text purportedly from a company or government agency, check your bill for contact information or search the company or agency's official website. Call or email them separately to confirm whether you received a legitimate text. A simple web search can thwart a scammer.'').

[138] Like FDCPA section 804, final § 1006.10(b)(1) permits a debt collector seeking location information to identify the debt collector's employer ''only if expressly requested,'' but even a third party who overhears the limited-content message and is generally aware that debt collectors make location communications may be unaware of the precise form and content provisions governing those communications.

[139] For example, in a case where the plaintiff worked for a debt collector, a court noted that ''[i]t would not be unreasonable that a call from a debt collector related to her employment.'' *Zortman,* 870 F. Supp. 2d at 705.

[140] Although courts disagree about when a message conveys information about a debt, the Bureau's analysis is consistent with several cases considering messages similar to final § 1006.2(j). *See Zortman,* 870 F. Supp. 2d at 701 (finding that the following message was not a communication: ''We have an important message from J.C. Christensen & Associates. This is a call from a debt collector. Please call 866–319–8619.''); *Miller* v. *MediCredit, Inc.,* No. 3:18–CV–00603 (DJN), 2019 WL 6709388, at *7–8 (E.D. Va. Dec. 9, 2019) (finding that a message similar to the *Zortman* voicemail was not a communication); *Jackson* v. *Eltman, Eltman & Cooper, P.C.,* 128 F. Supp. 3d 980, 985 (E.D. Mich. 2015) (finding a fax message was a communication because it ''identifies [the consumer] by name and states its purpose as ''COLLECTION''); *Gearman* v. *Heldenbrand,* No. 15–cv–2039 (DSD/FLN), 2015 WL 5255335, at *1 (D. Minn. Sept. 9, 2015) (''[M]erely identifying oneself as a debt collector does not convey information regarding a debt.''); *Zweigenhaft* v. *Receivables Performance Mgmt., LLC,* No. 14 CV 01074 RJD JMA, 2014 WL 6085912, at *1 (E.D.N.Y. Nov. 13, 2014) (finding that a message similar to the *Zortman* voicemail was not a communication); *Hanson* v. *Green Tree Servicing, LLC,* No. 12–cv–2933 (DSD/SER), 2013 WL 4504290, at *2 (D. Minn. Aug. 23, 2013) (similar). Indeed, § 1006.2(j) is more protective of consumer privacy than the messages at issue in the *Zortman* line of cases because it includes the condition that the debt collector's business name not reveal that the debt collector is in the debt collection business.

reflects a determination that messages that include a business name that reveals that a debt collector is in the debt collection business are always communications under the FDCPA and the final rule.

The Bureau declines to require other information in the content of the limited-content message as requested by commenters. Some information commenters requested be included, such as invitations to enroll in a debt collector's text messaging service, is less relevant given that final § 1006.2(j) is limited to voicemail messages. In addition, the Bureau finds that debt collectors can better convey information regarding electronic communication options to consumers by emailing or texting them consistent with the safe harbor procedures for electronic communications in final § 1006.6(d)(3) through (5). Other requested information, such as descriptions of, or digits from, an account, or the fact that the account was held with a particular creditor, would convey information regarding a debt, as discussed in the section-by-section analysis of § 1006.2(j)(2), below.

A trade group commenter asked whether caller ID information that discloses the debt collector's business name would prevent a debt collector from leaving a limited-content message. As explained immediately above, the final rule requires limited-content messages to include a business name for the debt collector that does not indicate that the debt collector is in the debt collection business. Accordingly, caller ID information that discloses no more than the business name or other content required or permitted by § 1006.2(j) is consistent with the definition of a limited-content message. The Bureau acknowledges that caller ID information may disclose more information than permitted by § 1006.2(j). In these circumstances, such voicemail messages would not meet the definition of limited-content message. The Bureau does not determine, however, that messages with different content, such as a business name displayed by caller ID that reveals that a debt collector is in the debt collection business, are always communications under the FDCPA and the final rule.

The Bureau is not finalizing proposed § 1006.2(j)(1)(v), which would have required the limited-content message to include, if delivered electronically, a disclosure explaining how the consumer can stop receiving messages through that medium. Because final § 1006.2(j) is limited to voicemail messages, this element is no longer applicable.

Similarly, the Bureau is not finalizing proposed comment 2(j)(1)(iv)–1, which would have explained that a voicemail or a text message that spells out, rather than enumerates numerically, a vanity telephone number is not a limited-content message. This comment was intended to address concerns that spelling out a vanity telephone number might convey information about a debt or otherwise disclose the name of the debt collector. Because § 1006.2(j)(1)(i) requires disclosing a business name for the debt collector that does not indicate that the debt collector is in the debt collection business, this comment is less relevant to the limited-content message as finalized. The Bureau notes, however, that a vanity telephone number that reveals that the debt collector is in the debt collection business would not comply with final § 1006.2(j)(1)(i). As explained above, the Bureau finds that a message containing the debt collector's business name but not the consumer's name avoids conveying information regarding a debt under FDCPA section 803(2) and under § 1006.2(d).

For the reasons discussed above, § 1006.2(j)(1) requires that limited-content messages include the following content: A business name for the debt collector that does not indicate that the debt collector is in the debt collection business, a request that the consumer reply to the message, the name or names of one or more natural persons whom the consumer can contact to reply to the debt collector, and a telephone number or numbers that the consumer can use to reply to the debt collector. Comment 2(j)(1)–1 provides an example of a limited-content message containing only required content.

2(j)(2) Optional Content

Proposed § 1006.2(j)(2) would have permitted a debt collector to include in a limited-content message the following optional information: A salutation (proposed § 1006.2(j)(2)(i)), the date and time of the message (proposed § 1006.2(j)(2)(ii)), a generic statement that the message relates to an account (proposed § 1006.2(j)(2)(iii)), and suggested dates and times for the consumer to reply to the message (proposed § 1006.2(j)(2)(iv)). As discussed in the proposal, the Bureau believed that this content might prompt a consumer to reply but, unlike the content described in proposed § 1006.2(j)(1), might not be necessary to enable the consumer to reply to the message or to prevent harassment through an overly generic or uninformative message. For the reasons described below, the Bureau is finalizing § 1006.2(j)(2) largely as proposed, but with revisions to prohibit inclusion of a generic statement that the message relates to an account, and to permit a statement that a consumer who replies to the message can speak to any of the debt collector's representatives or associates.

Numerous commenters addressed proposed § 1006.2(j)(2)(iii)'s optional generic statement that the message relates to an account. Only a few commenters supported this provision. A trade group commenter stated that it had considered alternative language but found it potentially confusing, while an individual believed the word ''account'' was too general to result in any prohibited third-party disclosures.

In contrast, most of the commenters who addressed the issue opposed the optional reference to an account. Industry commenters generally believed that the word account was too vague to be useful to consumers. These commenters argued that such a reference would be unlikely to prompt consumers to reply. One trade group commenter asserted that fraudulent voicemail messages often contain references to a generic account. Another industry commenter believed that the word ''account'' might reveal more information than the name of the creditor or debt collector.

Several consumer advocates and government commenters also opposed allowing debt collectors to refer to an account. These commenters argued that the word account would itself reveal the existence of a debt or otherwise invade a consumer's privacy. Some of these commenters argued that the word account inherently discloses the existence of a debt. An academic commenter asserted that most non-debt collection messages include more information about the nature of the consumer's account. One group of consumer advocates cited cases holding that certain messages were not communications under the FDCPA and argued that the absence of a reference to an account was important to the holding in those cases.

The Bureau does not believe that the word account necessarily discloses the existence of a debt because consumers may receive messages about their accounts with companies other than debt collectors. In the context of the final rule's limited-content message, however, referring to an account would increase the risk of a prohibited third-party disclosure. As discussed above in the section-by-section analysis finalizing § 1006.2(j)(1)(i)'s requirement to include the debt collector's business name, a third party overhearing a limited-content message on a consumer's voicemail system would be unable to determine whether a debt collector or another business left the message, or assuming a debt collector left the message, whether the debt collector left it because the consumer owes a debt or for another reason. But including the word account narrows the range of possible alternative explanations for the message. For example, a message to a consumer referring to ''your account'' is unlikely to be a message seeking location information from the recipient. This raises the probability of a third party inferring that the message relates to a consumer's debt.[141]

Additionally, the proposal may have overestimated the benefits of an optional generic statement that the message relates to an account. As commenters noted, debt collectors could not include information about the account, such as the type of account or the company with whom the account is held. The presence of such information would risk conveying information about a debt, but its absence leaves the consumer without important context that may prompt consumers to reply, if they so choose. As explained in the section-by-section analysis of § 1006.2(j)(1)(i), the business name of the debt collector is more beneficial to consumers. In light of the limited utility of a reference to an account, the Bureau finds that such content would create an unjustified risk of prohibited third-party disclosure. Accordingly, final § 1006.2(j) no longer provides that a limited-content message may include a generic reference to an account.

Several industry commenters asked the Bureau to modify proposed § 1006.2(j)(1)(iii)'s requirement that a limited-content message include the name or names of one or more natural persons whom the consumer can contact to reply to the debt collector. These commenters stated that large debt collectors would be unable to predict which natural person might be available to answer a consumer's reply. These commenters offered several solutions, including permitting limited-content messages to refer generally to ''agents,'' ''associates,'' ''representatives,'' or particular groups or organizations within the debt collector. Such an approach, some commenters asserted, would allow debt collectors to maintain consistency with other Federal rules that provide more flexibility in identifying the individuals with whom a consumer might communicate.

The Bureau finds that the name of a natural person to whom a consumer may reply is an important element of the limited-content message.[142] Such information helps efficiently direct the consumer's reply call to a person who is able to discuss the consumer's debt. But the Bureau agrees with commenters that some flexibility regarding this information would benefit consumers and debt collectors. If someone other than the natural person identified in the limited-content message answered their reply call, consumers likely would not be confused or frustrated, and large debt collectors could more easily employ the limited-content message. Certain references to a debt collector's groups or offices, such as the ''credit card receivables group,'' however, might heighten the risk of a prohibited third-party disclosure. A general reference to other ''representatives or associates,'' on the other hand, would minimize such risk while achieving the purposes identified by commenters. Accordingly, final § 1006.2(j)(2)(iv) defines the limited-content message to include an optional statement that, if the consumer replies, the consumer may speak to any of the company's representatives or associates.

For the reasons discussed above, final § 1006.2(j)(2) permits a limited-content message to include the following content: A salutation, the date and time of the message, suggested dates and times for the consumer to reply to the message, and a statement that, if the consumer replies, the consumer may speak to any of the company's representatives or associates. Comment 2(j)(2)–1 clarifies that a message that includes a more detailed description of a company's representative or associate group is not a limited-content message and provides an illustrative example. Comment 2(j)(2)–2 provides an example of a limited-content message that includes all of the information required under § 1006.2(j)(1) and all of the content permitted under § 1006.2(j)(2).

2(k) Person

The FDCPA frequently uses, but does not define, the term person. The Bureau proposed § 1006.2(k) to define person, consistent with the definition of that term in 1 U.S.C. 1, to include ''corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.''[143]

Three industry associations stated that the proposed definition was overly expansive and would impermissibly expand standing to bring an FDCPA claim to artificial entities even though the purpose of the FDCPA is to protect consumers. The commenters requested that the proposed definition either be deleted or limited to natural persons.

The Bureau is finalizing the definition of person as proposed. Including this definition will clarify who is subject to provisions of the regulation that use the term person. The Bureau declines to delete the definition of person or to narrow it to include only natural persons because the plain language of the FDCPA illustrates that Congress did not intend to limit the term person, as used in the FDCPA, to natural persons. For example, the definition of debt collector in the FDCPA uses the phrase ''any person'' repeatedly, and there is no doubt that Congress intended to include non-natural persons in the definition of debt collector. Where the statute was intended to be limited to natural persons, Congress achieved that intent by using the term consumer. For example, FDCPA section 803(5) defines the term debt to include obligations of a consumer, and FDCPA section 803(3) limits the term consumer to a natural person. As a result, the Bureau concludes that the proposed definition of person would not expand the scope of the FDCPA beyond the scope that Congress intended. However, the Bureau is clarifying in the definition of debt at § 1006.2(h) that debt subject to the FDCPA is limited to debt incurred by a natural person. See the section-by-section analysis of § 1006.2(h) for additional discussion.

Subpart B—Rules for FDCPA Debt Collectors[144]

Section 1006.6 Communications in Connection With Debt Collection

FDCPA section 805 generally limits how debt collectors may communicate with consumers and third parties when collecting debts.[145] The Bureau proposed § 1006.6 to implement and interpret FDCPA section 805, and to

[141] Two commenters stated that the Bureau had not conducted consumer testing regarding what information does or does not reveal the existence of a debt. Although the Bureau recognizes the value of consumer testing, there are other legitimate grounds on which to base a provision of a final rule. Here, the Bureau is relying on its interpretation of FDCPA section 803(2)'s definition of communication, after considering comments received and existing case law.

[142] *See* 84 FR 23274, 23292 (May 21, 2019).

[143] *See* 84 FR 23274, 23293 (May 21, 2019). 1 U.S.C. 1 states that ''in determining the meaning of any Act of Congress, unless the context indicates otherwise,'' the term person includes ''corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.''

[144] As proposed, the final rule moves existing §§ 1006.3 through 1006.8 regarding applications for State exemptions from the FDCPA to appendix A of the regulation. *See* the section-by-section analysis of § 1006.108 and appendix A.

[145] 15 U.S.C. 1692c.

interpret FDCPA sections 806 and 808 to provide certain additional protections regarding debt collection communications. As discussed in more detail below, § 1006.6, among other things, specifies and clarifies a debt collector's obligation to abide by a consumer's preferences when communicating in connection with the collection of any debt. Section 1006.6 also interprets FDCPA sections 805, 806, and 808 with respect to newer communication technologies. And to protect consumer privacy, § 1006.6 identifies procedures reasonably adapted to avoid a violation of FDCPA section 805(b)'s prohibition on third-party disclosures when communicating by email or text message. Pursuant to its authority under FDCPA section 814(d) to write rules with respect to the collection of debts by debt collectors, the Bureau is finalizing § 1006.6 with certain changes to address feedback and other consumer protection concerns.

Electronic Communications in Debt Collection

As proposed, § 1006.6 would have clarified how various provisions in FDCPA section 805, such as the prohibitions against communications at inconvenient times and places and the prohibition against communicating about a debt with a third party, would have applied to electronic communications such as emails and text messages. The proposal would not have prohibited any particular methods of electronic communication or established an opt-in framework for such communications. The Bureau received a large number of comments in response to the particular proposed interventions, and the Bureau addresses those comments in the section-by-section analysis below.

In addition, the Bureau received many comments addressing the risks and benefits of electronic communications in debt collection. In general, industry commenters supported the use of electronic communications, noting that, compared to non-electronic communications such as mail and telephone calls, electronic communications are faster and more cost effective; enable debt collectors to reach consumers who do not answer the telephone or who change addresses frequently; provide consumers with more privacy and greater control over the time and place of engagement; and create a digital record of a consumer's interactions with a debt collector. Many industry commenters asserted that, because of these benefits, consumers wish to communicate electronically, and several industry commenters reported receiving such requests from consumers. But industry commenters also generally stated that they refrain from communicating electronically because they fear liability under FDCPA section 805(b) for an unintentional third-party disclosure, such as if they send an email or a text message to an email address or telephone number that does not belong to the consumer.

A few individual consumers expressed a general interest in communicating with debt collectors electronically. But most individual consumer and consumer advocate commenters, as well as consumer attorney, academic, and government commenters, raised concerns about the Bureau's proposals and either opposed electronic communications in debt collection, or supported them only if the consumer had first explicitly consented, or opted in, to receiving them. These commenters argued that an opt-in approach would enable consumers, before agreeing to electronic communications, to: (1) Weigh any risks due to irregular internet or cellphone access; (2) confirm the addresses and telephone numbers to which electronic communications may be directed, ensuring that, particularly for consumers who regularly change telephone numbers or email addresses, communications are sent to the consumer rather than to a third party; (3) weigh the financial cost, if any, of electronic communications; (4) familiarize themselves with the sender and weigh any security risks, helping to ensure that consumers actually open emails and minimizing the chance that such emails are blocked by spam filters and other screening devices;[146] and (5) weigh any privacy-related risks, including the risk that emails and text messages could be viewed by a consumer's telephone or email provider, could appear on a publicly visible computer or telephone screen, or could be coming from a phony, rather than legitimate, debt collector.[147]

The Bureau determines that electronic communications can offer benefits to consumers and debt collectors. Technologies such as email and text messaging allow consumers to exert greater control over the timing, frequency, and duration of communications with debt collectors, including by choosing when, where, and how much time to spend responding to a debt collector's email or text message. For debt collectors, these technologies are a more effective and efficient means of communicating with some consumers. The Bureau declines to categorically prohibit the use of these potentially beneficial communication media where Congress has not amended the FDCPA to prohibit their use.

As to commenters' specific concerns regarding privacy and the risks of third-party disclosure, § 1006.6(d)(3) through (5) sets forth procedures that a debt collector may follow to obtain a safe harbor from civil liability for a third-party disclosure when sending an email or a text message to a consumer. The Bureau expects that most debt collectors will use the procedures, which are designed to protect consumers against the risk of third-party disclosure, when communicating by email and text message. As to commenters' other concerns, the Bureau notes that, as discussed in the section-by-section analyses of §§ 1006.6(b) and (e) and 1006.14(h), the Bureau is finalizing provisions that will require debt collectors to provide consumers with a reasonable and simple method of opting out of electronic communications and that will permit consumers to control the time, place, and media through which debt collectors may communicate. In addition, as discussed in the section-by-section analysis of § 1006.42, the Bureau is finalizing a general standard for electronic delivery of required disclosures. The Bureau determines that the final rule's overall approach to electronic communications addresses commenters' concerns.

Consumer and consumer advocate commenters, some members of Congress, a group of State Attorneys General, and other State and local government commenters also expressed specific concern about the costs of text messaging.[148] For consumers who lack unlimited text messaging plans, sending and receiving text messages may not be free. Some consumers with limited text messaging plans may pay for each text message; others may pay for each text message above a cap. Consumer advocate commenters noted that many of their clients maintain limited text messaging plans. The prevalence of such plans among the general public, or among consumers with debts in collection, is not clear, although some information suggests that most

[146] As the Bureau noted in the proposal, several Federal agencies advise consumers not to open emails from senders they do not recognize. *See* 84 FR 23274, 23363 n.578 (May 21, 2019).

[147] Many commenters raised specific concerns about the frequency with which consumers might receive emails and text messages from debt collectors. Those comments are addressed in the section-by-section analysis of § 1006.14(a).

[148] Although a few commenters noted that, for consumers with limited data plans, sending and receiving emails may not be free either, most commenters focused on the costs of text messaging.

consumers in general have unlimited text messaging plans.[149]

Consumer and consumer advocate commenters, some members of Congress, a group of State Attorneys General, and other State and local government commenters urged the Bureau to address the costs associated with text messaging by requiring debt collectors to obtain affirmative consent before sending text messages. These commenters argued that an opt-in system would enable consumers to weigh the costs of text messages before agreeing to receive them from a debt collector. As discussed in detail below, § 1006.6(d)(5) specifies procedures that, when followed, provide a debt collector with a safe harbor from civil liability for an unintentional third-party disclosure when sending a text message to a telephone number. These procedures effectively create an opt-in system for the use of text messages, and, as noted, the Bureau expects that most debt collectors will use them.

Several consumer advocate commenters, some members of Congress, a State Attorney General, and other government commenters suggested that the Bureau address the costs associated with text messaging by requiring debt collectors to use free-to-end-user (FTEU) text messaging or otherwise require debt collectors to pay for text messages. The Bureau believes that the limitations in final § 1006.6(d)(5)—which, as noted, effectively create an opt-in system for text messages—offer a more practical solution than requiring debt collectors to use FTEU text messaging. Consumers who do not wish to incur the cost of text messages are unlikely to opt into a debt collector's use of text messages, and, as discussed in the section-by-section analysis of § 1006.6(e), a consumer who no longer wishes to receive text messages from a debt collector must be provided with a reasonable and simple way to opt out of such communications. Further, as the Bureau noted in the proposal, because FTEU text messaging may only be supported by certain wireless platforms, requiring debt collectors to use FTEU text messaging may not offer a solution for all consumers—a concern that commenters generally did not address.[150] For these reasons, and in light of the other provisions in the final rule addressing debt collectors' use of text messages, the Bureau declines to finalize a requirement that debt collectors use FTEU technology.

6(a) Definition

FDCPA section 805(d) provides that, for purposes of section 805, the term consumer includes certain individuals other than the person obligated or allegedly obligated to pay the debt. These individuals include the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.[151] Accordingly, the protections in FDCPA section 805 apply both to these individuals and to the person obligated or allegedly obligated to pay the debt. Also, debt collectors may communicate with these individuals in connection with the collection of any debt without violating the FDCPA's prohibition on third-party disclosures.[152]

The Bureau proposed § 1006.6(a) to implement and interpret FDCPA section 805(d) and to define consumer for purposes of § 1006.6. Proposed § 1006.6(a) generally mirrored FDCPA section 805(d), except that proposed § 1006.6(a)(5) would have interpreted the term to include a confirmed successor in interest, and proposed comments 6(a)(1)–1, 6(a)(2)–1, and 6(a)(4)–1 would have clarified how the term applied when the consumer obligated or allegedly obligated on the debt had died. For the reasons discussed below, the Bureau is finalizing § 1006.6(a) largely as proposed, but is making minor changes for clarity.[153]

6(a)(1) and (2)

FDCPA section 805(d) defines the term consumer for purposes of section 805 to include the consumer's spouse and (if the consumer is a minor) parent.[154] Proposed § 1006.6(a)(1) and (2) would have implemented these aspects of the definition.[155] In addition, the Bureau proposed comments 6(a)(1)–1 and 6(a)(2)–1 to clarify that deceased consumers' surviving spouses and deceased minor consumers' parents, respectively, are consumers for purposes of § 1006.6. This interpretation was consistent with the Bureau's proposal to interpret the general definition of consumer in § 1006.2(e) to include deceased persons.[156]

A group of consumer advocates objected to proposed comments 6(a)(1)–1 and 6(a)(2)–1. These commenters argued that the language of the FDCPA forecloses the proposed interpretation because it includes present-tense language in describing the consumer's parent and avoids the term surviving spouse, which Congress used elsewhere in the U.S. Code. These commenters further argued that no legitimate reason existed for a debt collector to communicate with consumers' surviving spouses or parents of deceased minor consumers because the FDCPA permits (as would a final rule) location communications and communications with executors or administrators of a deceased consumer's estate. Finally, the commenters urged the Bureau to expressly prohibit debt collectors from communicating with anyone in the decedent debt context unless the debt collector had determined that the person owed a debt or was the executor or administrator of a deceased consumer's estate.

On several issues related to decedent debt, the Bureau is finalizing an approach consistent with the FTC's Policy Statement on Decedent Debt.[157] The FTC stated that it would decline to take enforcement actions against debt collectors who communicated with ''the decedent's spouse [or] parent (if the decedent was a minor at the time of death).'' [158] The FTC rejected the same legal arguments that the commenter raised against proposed comments 6(a)(1)–1 and 6(a)(2)–1 for reasons that

[149] In 2015, a company that develops text message surveys estimated that between 83 and 92 percent of U.S. mobile telephones had unlimited text messaging plans. *See* Josh Zagorsky, *Almost 90% of Americans Have Unlimited Texting,* Instant Census (Dec. 8, 2015), *https://instantcensus.com/blog/almost-90-of-americans-have-unlimited-texting.*

[150] According to one industry website, FTEU is supported by six carriers (AT&T, Boost, Sprint, T-Mobile, Verizon Wireless, and Virgin Mobile). iVision Mobile, *Free to End User (FTEU), http://www.ivisionmobile.com/text-messaging-software/free-to-end-user-fteu.asp* (last visited Sept. 23, 2020); Mobile Mktg. Ass'n, *U.S. Consumer Best Practices for Messaging: Version 7.0,* at 43 (Oct. 16, 2012), *https://www.mmaglobal.com/files/bestpractices.pdf* (describing FTEU ''Cross Carrier Guidelines'' as providing that ''[c]ontent providers must obtain opt-in approval from subscribers before sending them any SMS or MMS messages or other content from a short code'').

[151] 15 U.S.C. 1692c(d).

[152] *See* 15 U.S.C. 1692b, 1692c(b). A debt collector may communicate with third parties to seek location information about consumers, but the debt collector may not state that the consumer owes any debt. For additional discussion of these provisions, see the section-by-section analyses of §§ 1006.6(d) and 1006.10(c).

[153] The Bureau received no comments regarding proposed § 1006.6(a)(3), which would have implemented FDCPA section 805(d)'s definition regarding a consumer's guardian. The Bureau is finalizing § 1006.6(a)(3) as proposed and does not address it further in the section-by-section analysis below.

[154] 15 U.S.C. 1692c(d).

[155] *See* 84 FR 23274, 23293 (May 21, 2019).

[156] *See* the section-by-section analysis of § 1006.2(e).

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

[158] FTC Policy Statement on Decedent Debt, *supra* note 157, at 44918.

the Bureau finds persuasive here.[159] In addition, the Bureau finds that legitimate reasons exist for communications between debt collectors and a deceased consumer's surviving spouse or the parents of a deceased minor consumer, especially if they had previously communicated with a debt collector while the consumer was alive. For example, such individuals may wish to obtain information from, or continue conversations with, the debt collector about the consumer's financial condition. Accordingly, the Bureau is finalizing comments 6(a)(1)–1 and 6(a)(2)–1, as proposed, to clarify that surviving spouses and parents of deceased minor consumers, respectively, are consumers for purposes of § 1006.6.

6(a)(4)

FDCPA section 805(d) defines the term consumer for purposes of section 805 to include executors and administrators.[160] Proposed § 1006.6(a)(4) would have implemented this aspect of the definition and, in commentary, interpreted it to include the personal representative of the deceased consumer's estate, *i.e.,* any person ''authorized to act on behalf of the estate.'' [161]

Several commenters supported the description of personal representative. One trade group commenter stated that the proposal's accommodation of informal estate resolution processes would help prevent consumers from experiencing frustration when trying to contact debt collectors to resolve a deceased consumer's estate. Federal government agency staff commented that the proposal largely mirrored the FTC's Policy Statement on Decedent Debt and expressed support for the goals of the proposal.

A few commenters suggested modifications to proposed comment 6(a)(4)–1. Three trade group commenters stated that the interpretation regarding personal representative was so important that the Bureau should add it to the regulation text rather than describing it in commentary. One trade group commenter suggested that the Bureau expand the description of personal representative to encompass anyone that a debt collector ''has reason to believe'' is authorized to act on behalf of the deceased consumer's estate. Another trade group commenter recommended incorporating a reference to State law in proposed § 1006.6(a)(4) because the commenter believed that the term personal representative would not accommodate States that use different language to describe such individuals. Similarly, an industry commenter suggested that the Bureau should expand proposed § 1006.6(a)(4) by adding several terms that might refer to individuals handling a deceased consumer's estate.

A group of consumer advocates stated that the description of the term personal representative would be overly broad unless the Bureau limited it to individuals ''authorized under State probate or estate law'' to act on behalf of the deceased consumer's estate. For example, these commenters explained that many people might dispose of a deceased consumer's assets extrajudicially by selling or donating personal possessions and that such people should not be considered personal representatives.

As described in the proposal and in the FTC's Policy Statement on Decedent Debt, the ability to resolve the debts of estates outside of the formal probate process through informal processes benefits consumers and debt collectors.[162] If a debt collector does not communicate with an estate because no executor or administrator exists, the debt collector might force the estate into probate, which could substantially burden the resources of the estate and the deceased consumer's heirs or beneficiaries. These burdens may be particularly acute for small estates and for individuals of limited means. Probate also adds costs and delays for debt collectors. Accordingly, the Bureau is finalizing § 1006.6(a)(4) and its commentary largely as proposed.

The Bureau finds that certain changes requested by commenters are unnecessary. First, it is unnecessary to incorporate comment 6(a)(4)–1, which describes other persons authorized to act on behalf of the deceased consumer's estate, into the regulation text. The commentary to Regulation F is issued under the same authority as the corresponding provisions of the regulation and has been adopted in accordance with the notice-and-comment procedures of the Administrative Procedure Act (APA).[163] Second, the Bureau declines to expand the description of personal representative to encompass anyone that a debt collector ''has reason to believe'' is authorized to act on behalf of the deceased consumer's estate. This revision is unnecessary because, as the FTC explained, debt collectors have a variety of tools available to locate persons authorized to act on behalf of the deceased consumer's estate, including public record searches and location communications, which are discussed in the section-by-section analysis of final § 1006.10.[164] Furthermore, such a standard would be inconsistent with the FDCPA's treatment of the other persons included under section 805(d)'s definition of consumer. Finally, commenters are mistaken in asserting that proposed § 1006.6(a)(4) and comment 6(a)(4)–1 failed to accommodate State laws that use terms other than personal representative. As comment 6(a)(4)–1 explained, the proposal would have included anyone who performs the functions of an executor, administrator, or personal representative, and does not require that such persons be identified by a specific term in State law, such as personal representative. Thus, an explicit reference to State law is not necessary.

In response to consumer advocates' concern that the proposed definition of personal representative was too broad, the Bureau revises comment 6(a)(4)–1 to clarify the description of persons who dispose of the deceased consumer's assets extrajudicially. The Bureau understands that, although many individuals might sell or dispose of a deceased consumer's property extrajudicially, these individuals would not necessarily ''be authorized to act on behalf of the deceased consumer's estate,'' as the commentary requires. The Bureau is also unaware of any attempts by debt collectors to interpret the FTC's Policy Statement on Decedent Debt in such a manner. Nevertheless, to increase clarity, final comment 6(a)(4)–1 refers to ''financial assets or other assets of monetary value'' in describing such individuals.

For the reasons discussed above, the Bureau is finalizing § 1006.6(a)(4), which defines the term consumer for purposes of § 1006.6 to include executors and administrators. Final comment 6(a)(4)–1 clarifies that the

[159] *Id.* at 44918 n.29 (explaining that Congress created an omnibus definition for ''spouse'' to apply in determining the meaning of any Act of Congress, and ''[t]he only court to address whether a surviving spouse is a 'spouse' within the omnibus definition held that a surviving spouse remains a 'spouse' in determining the meaning of any Act of Congress'').

[160] 15 U.S.C. 1692c(d).

[161] *See* 84 FR 23274, 23293–94 (May 21, 2019). The Bureau adapted this phrasing from Regulation Z and explained that it encompassed the same individuals as those recognized by the FTC's Policy Statement on Decedent Debt (*i.e.,* persons with the ''authority to pay the decedent's debts from the assets of the decedent's estate''). *See* 12 CFR 1026.11(c), comment 11(c)–1; FTC Policy Statement on Decedent Debt, *supra* note 157, at 44918.

[162] *See* 84 FR 23274, 23294 (May 21, 2019).

[163] 5 U.S.C. 551 *et seq.,* 701 *et seq.*

[164] *See* FTC Policy Statement on Decedent Debt, *supra* note 157, at 44919–20.

terms executor or administrator include the personal representative of the consumer's estate. A personal representative is any person who is authorized to act on behalf of the deceased consumer's estate. Persons with such authority may include personal representatives under the informal probate and summary administration procedures of many States, persons appointed as universal successors, persons who sign declarations or affidavits to effectuate the transfer of estate assets, and persons who dispose of the deceased consumer's financial assets or other assets of monetary value extrajudicially.

6(a)(5)

The Bureau proposed to interpret FDCPA section 805(d)'s definition of the term consumer to include confirmed successors in interest, as defined in Regulation X, 12 CFR 1024.31, and Regulation Z, 12 CFR 1026.2(a)(27)(ii).[165] As the Bureau has previously explained, while many mortgage servicers are not subject to the FDCPA, mortgage servicers that acquired a mortgage loan at the time that it was in default may be subject to the FDCPA with respect to that mortgage loan.[166] As discussed in the proposal,[167] a successor in interest under those regulations is, in general, a person to whom an ownership interest either in a property securing a mortgage loan subject to subpart C of Regulation X, or in a dwelling securing a closed-end consumer credit transaction under Regulation Z is transferred under specified circumstances including, for example, after a consumer's death or as part of a divorce.[168] A confirmed successor in interest, in turn, means a successor in interest once a mortgage servicer has confirmed the successor in interest's identity and ownership interest in the property that secures the mortgage loan [169] or in the dwelling.[170] The Bureau proposed to include such persons in the definition of consumer under § 1006.6 because, given their relationship to the individual who owes or allegedly owes the debt, confirmed successors in interest are—like the narrow categories of persons enumerated in FDCPA section 805(d)—the type of individuals with whom a debt collector needs to communicate about the debt.[171]

One industry commenter stated that the Bureau cannot include a confirmed successor in interest in implementing FDCPA section 805(d)'s definition of consumer because the Bureau lacks authority to include persons not contemplated by Congress. The commenter also questioned how the Bureau expects a debt collector to become aware of the confirmed successor in interest. One trade group commenter identified both benefits and risks to the proposal, including the risk presented by failing to have adequate policies and procedures in place to confirm the successor in interest.

Another industry commenter stated that it identified no risk to permitting communications between a debt collector and a confirmed successor in interest, and that it supported the Bureau's proposal to include a confirmed successor in interest in § 1006.6(a)'s definition of consumer on the basis that an individual with an ownership interest in a particular asset will desire open communication regarding the debt. A group of consumer advocates also supported proposed § 1006.6(a)(5) as ensuring consistent communications with surviving relatives regarding a mortgage on a home under Regulations X and Z. The commenter requested that, to avoid expanding communications unnecessarily to include the collection of other unrelated debt that the successor in interest may not have authority to manage, the Bureau clarify that an individual who qualifies as a confirmed successor in interest for one debt (*e.g.,* a home mortgage) is not a confirmed successor in interest for other types of debt (*e.g.,* a credit card debt) and that communications with such an individual must be limited to the mortgage loan that qualified the individual to be confirmed as a successor in interest.

The Bureau disagrees that it lacks authority to include a confirmed successor in interest in implementing FDCPA section 805(d)'s definition of consumer because, as the Bureau explained in the Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (2016 Servicing Final Rule),[172] and the concurrently issued FDCPA interpretive rule (2016 FDCPA Interpretive Rule),[173] the word ''includes'' in FDCPA section 805(d) indicates that section 805(d) is an exemplary, rather than an exhaustive, list of the categories of persons who are consumers for purposes of FDCPA section 805. The Bureau explained that FDCPA section 805 recognizes the importance of permitting debt collectors to communicate with a narrow category of persons other than the individual who owes or allegedly owes the debt who, by virtue of their relationship to that individual, may need to communicate with the debt collector in connection with the collection of the debt. The Bureau further explained that, given their relationship to the person who owes or allegedly owes the debt, confirmed successors in interest are—like the narrow categories of persons enumerated in FDCPA section 805(d)—the type of persons with whom a debt collector needs to communicate about the debt. The Bureau therefore interpreted the term consumer for purposes of FDCPA section 805 to include a confirmed successor in interest as that term is defined in Regulation X, 12 CFR 1024.31, and Regulation Z, 12 CFR 1026.2(a)(27)(ii).[174]

In response to the industry commenter's question regarding how the Bureau expects a debt collector to become aware of a successor in interest, the Bureau notes that Regulation X § 1024.38(b)(1)(vi) and comment 38(b)(1)(vi)–1 clarify that a mortgage servicer is not required to conduct a search for potential successors in interest if the mortgage servicer has not received actual notice of their existence.[175] Comment 38(b)(1)(vi)–1 further explains that a mortgage servicer may be notified of the existence of a potential successor in interest in a variety of ways. The comment provides a non-exclusive list of examples of ways in which a mortgage servicer could be notified of the existence of a potential successor in interest, including that a person could indicate that there has been a transfer of ownership or of an ownership interest in the property or that a borrower has been divorced, legally separated, or died, or a person other than a borrower could submit a loss mitigation application. The comment also explains that a mortgage servicer must maintain policies and procedures reasonably designed to ensure that the mortgage servicer can retain this information and promptly facilitate communication with potential successors in interest when a mortgage servicer is notified of their existence.[176] Nothing in this final rule is intended to

[165] 12 CFR 1024.31, 1026.2(a)(27)(ii).

[166] 81 FR 71977, 71978 (Oct. 19, 2016).

[167] 84 FR 23274, 23294–95 (May 21, 2019).

[168] *See* 12 CFR 1024.31; 1026.2(a)(27)(i).

[169] 12 CFR 1024.31.

[170] 12 CFR 1026.2(a)(27)(ii).

[171] 84 FR 23274, 23295 (May 21, 2019).

[172] 81 FR 72160 (Oct. 19, 2016).

[173] 81 FR 71977 (Oct. 19, 2016).

[174] *Id.* at 71979; 81 FR 72160, 72181 (Oct. 19, 2016).

[175] 12 CFR 1024.38(b)(1)(vi); comment 38(b)(1)(vi)–1.

[176] 81 FR 72160, 72211 (Oct. 19, 2016).

alter the successor in interest provisions in Regulations X and Z or to impose additional requirements.

In response to the request from a group of consumer advocates for further clarification, the Bureau determines that the text of proposed § 1006.6(a)(5) was sufficiently clear that a person who meets the definition of a confirmed successor in interest under § 1006.6(a)(5) is a confirmed successor in interest with respect to a property securing a mortgage loan or a dwelling securing a closed-end consumer credit transaction as described above, and that such person is not also a confirmed successor in interest for other purposes. As indicated by § 1006.6(a)(5)'s specific citations to Regulations X and Z, a successor in interest is a person to whom an ownership interest either in a property securing a mortgage loan subject to subpart C of Regulation X, or in a dwelling securing a closed-end consumer credit transaction under Regulation Z, is transferred, provided that the transfer meets one of several enumerated conditions.[177] The Bureau therefore declines to revise the proposed regulation text as requested.

For these reasons, and consistent with the 2016 Servicing Final Rule and FDCPA Interpretive Rule, the Bureau is finalizing § 1006.6(a)(5) as proposed with technical revisions as an interpretation of FDCPA section 805(d). Final § 1006.6(a)(5) provides that, for purposes of § 1006.6, the term consumer includes a confirmed successor in interest, as defined in Regulation X, 12 CFR 1024.31, or Regulation Z, 12 CFR 1026.2(a)(27)(ii).

6(b) Communications With a Consumer—In General

FDCPA section 805(a) restricts how a debt collector may communicate with a consumer in connection with the collection of any debt and provides certain exceptions to these prohibitions.[178] The Bureau proposed § 1006.6(b) to implement and interpret FDCPA section 805(a) to specify circumstances in which a debt collector is prohibited from communicating with a consumer in connection with the collection of any debt, and to interpret FDCPA sections 806 and 808 to prohibit a debt collector from attempting to communicate with a consumer if FDCPA section 805(a) would prohibit the debt collector from communicating with the consumer.[179] For the reasons discussed below, the Bureau is adopting § 1006.6(b) generally as proposed but with certain revisions designed principally to address commenters' requests for clarification in the commentary to proposed § 1006.6(b).[180]

Attempts To Communicate

The Bureau proposed to clarify in § 1006.6(b) that a debt collector is prohibited from attempting to communicate with a consumer in the same circumstances in which FDCPA section 805(a) prohibits the debt collector from communicating with the consumer. The phrase attempt to communicate [181] thus appeared throughout proposed § 1006.6(b)(1) through (4).[182] One consumer commenter supported the Bureau's proposal to include attempts to communicate within the prohibitions proposed in § 1006.6(b) on the basis that the attempt to communicate at the inconvenient place and time is, in fact, a concrete harm. A group of consumer advocates supported the addition as necessary if the Bureau were to finalize proposed § 1006.2(j) to allow limited-content messages, and as especially important to prevent debt collectors from sending limited-content messages after a cease communication request or refusal to pay from a consumer pursuant to proposed § 1006.6(c). One industry commenter did not oppose the Bureau's proposal to include attempts to communicate within the prohibitions under § 1006.6(b) but questioned the Bureau's reliance on FDCPA sections 806 and 808 to achieve that result on the basis that the Bureau would be adding to the conduct that is a violation of section 808. Instead, this commenter suggested the Bureau rely only on interpretations of FDCPA sections 805(a) and 806.

After considering the comments, the Bureau is finalizing § 1006.6(b) as proposed to limit attempts to communicate as well as communications based on interpretations of FDCPA sections 806 and 808. FDCPA section 806 prohibits a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.[183] Specifically, FDCPA section 806(5) provides that causing a telephone to ring repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number is an example of conduct the natural consequence of which is to harass, oppress, or abuse. FDCPA section 806(5) thus recognizes that telephone calls may have the natural consequence of harassment, oppression, or abuse if the consumer answers the telephone call or even if no conversation ensues. A consumer who hears a telephone ringing at an inconvenient time or place but who does not answer it may experience the natural consequence of harassment from the telephone ringing in much the same way as a consumer who answers and speaks to the debt collector on the telephone. For this reason, the Bureau adopts its interpretation of FDCPA section 806 as prohibiting a debt collector from attempting to communicate at times when and places where a communication would be prohibited as inconvenient.

FDCPA section 808 prohibits a debt collector from using unfair or unconscionable means to collect or attempt to collect any debt.[184] A debt collector who places a telephone call without any legitimate purpose may injure persons at the called number even if the call goes unanswered (and, therefore, is not a communication), and thus may be engaging in a prohibited unfair or unconscionable act under FDCPA section 808. Additionally, section 808 targets practices that pressure a consumer to pay debts the consumer might not otherwise have paid. A debt collector's attempts to communicate at a time when or a place where a communication would be prohibited could pressure the consumer to pay the debt to avoid further intrusions on the consumer's privacy, and the Bureau interprets such conduct as unfair or unconscionable under FDCPA section 808. In response to the industry commenter's suggestion that the Bureau's interpretation to include attempts to communicate within the prohibitions under § 1006.6(b) not rely on FDCPA section 808, the Bureau

[177] *See* 12 CFR 1024.31; 1026.2(a)(27)(i).

[178] 15 U.S.C. 1692c(a). Specifically, FDCPA section 805(a)(1) prohibits certain communications at unusual or inconvenient times and places, section 805(a)(2) prohibits certain communications with a consumer represented by an attorney, and section 805(a)(3) prohibits certain communications at a consumer's place of employment.

[179] 84 FR 23274, 23295–98 (May 21, 2019).

[180] The Bureau proposed introductory language to § 1006.6(b). The Bureau received no comments on that language and considers it largely repetitive of the provisions that follow in § 1006.6(b)(1) through (3). The Bureau therefore is not adopting that language in the final rule.

[181] As discussed in the section-by-section analysis of § 1006.2(b), the final rule defines an attempt to communicate as any act to initiate a communication or other contact about a debt with any person through any medium, including by soliciting a response from such person. For example, a debt collector who places a telephone call to discuss a consumer's debt that goes unanswered by the consumer has attempted to communicate with the consumer.

[182] The phrase attempt to communicate also appears in § 1006.14(h), as discussed below. *See* the section-by-section analysis of § 1006.14(h).

[183] 15 U.S.C. 1692d.

[184] 15 U.S.C. 1692f.

concludes that its interpretation is wholly consistent with FDCPA section 808's prohibition on a debt collector using unfair or unconscionable means to collect or attempt to collect a debt. The section itself states, ''without limiting the general application of the foregoing, the following conduct is a violation of this section,'' meaning that the general principles of unfairness and unconscionability under the FDCPA are not limited by the specific examples listed in FDCPA section 808(1) through (8). Consistent with that interpretation, and pursuant to its authority under FDCPA section 814(d) to write rules with respect to the collection of debts by debt collectors, the Bureau adopts its interpretation of FDCPA section 808 as prohibiting a debt collector from attempting to communicate at times when and places where a communication would be prohibited as inconvenient.

6(b)(1) Prohibitions Regarding Unusual or Inconvenient Times or Places

FDCPA section 805(a)(1) prohibits a debt collector from, among other things, communicating with a consumer in connection with the collection of any debt at any unusual time or place, or at a time or place that the debt collector knows or should know is inconvenient to the consumer, subject to certain exceptions. And, as discussed further in the section-by-section analysis of § 1006.6(b)(1)(i), FDCPA section 805(a)(1) establishes certain times that, in the absence of knowledge to the contrary, a debt collector shall assume are convenient for debt collection communications. The Bureau proposed § 1006.6(b)(1) and comment 6(b)(1)–1 to generally implement and interpret FDCPA section 805(a)(1)'s time and place restrictions, with proposed comment 6(b)(1)–1 clarifying how a debt collector knows or should know that a time or place is inconvenient based on information received from the consumer, *i.e.,* based on a consumer's designation of that time or place as inconvenient. Proposed § 1006.6(b)(1)(i) and its commentary specifically addressed time restrictions. Proposed § 1006.6(b)(1)(ii) specifically addressed place restrictions.[185]

A number of industry commenters supported the proposed prohibitions on contacting a consumer at an inconvenient time or place as consistent with the statutory prohibitions under FDCPA section 805(a), and one industry commenter stated that consumer requests must be respected when it comes to inconvenient times to communicate. Some industry commenters requested that the Bureau generally provide further clarity regarding inconvenience. For example, one industry commenter stated that FDCPA section 805(a) and proposed § 1006.6(b)(1) are very broad and leave too much room for interpretation and requested that the Bureau make § 1006.6(b)(1) more specific.

Other industry commenters went further to suggest that the Bureau not incorporate certain language from FDCPA section 805(a) in § 1006.6(b)(1) regarding inconvenient time and place. Some such commenters took issue with the Bureau's incorporation of the statutory language in FDCPA section 805(a) regarding a time or place ''which should be known to be inconvenient to the consumer,'' [186] with some commenters stating that ''should be known'' is too high a standard, creates unreasonable expectations, is unnecessary, and should be removed from the rule. One trade group commented specifically on the ''should know'' standard for times and suggested that the rule should omit any reference to consumer-designated inconvenient times and rely only on statutorily presumptive convenient times. Similarly, one industry commenter suggested that, because FDCPA section 805(a)(1) provides presumptively convenient hours of contact (*i.e.,* after 8:00 a.m. and before 9:00 p.m.), further limiting this timeframe by adopting a rule that would permit a consumer to also designate inconvenient times that a debt collector ''should know'' are inconvenient would unduly limit the ability of a debt collector to reach a consumer to discuss the account. Another industry commenter stated that the requirement to keep track of what times are inconvenient to a consumer will increase costs to debt collectors. With respect to place, one industry commenter stated that, given the difficulties presented by mobile technology, the Bureau should remove the reference to inconvenient place from the rule altogether.[187]

The Bureau recognizes that the statutory language under FDCPA section 805(a) is broad and, to implement the flexibility afforded under the statute, proposed to incorporate various examples through commentary to facilitate debt collector compliance. FDCPA section 805(a) specifically states that a debt collector may not communicate with a consumer in connection with the collection of any debt at any unusual time or place or a time or place ''known or which should be known'' to be inconvenient to the consumer.[188] Given this statutory provision, the Bureau declines commenters' requests to omit the ''should be known'' standard from § 1006.6(b)(1). The Bureau also notes that any costs of coming into compliance to record and respect a consumer's designations of inconvenient times (or places) are not a result of the Bureau's adopting § 1006.6(b)(1), but rather arise from compliance with FDCPA section 805(a). For the same reason, the Bureau declines to rely only on the statutorily prescribed presumptively convenient times, as suggested by one commenter. Just as the presumptively convenient times are statutorily prescribed, so is the ability for a consumer to designate additional convenient (or inconvenient) times for debt collection communications.[189] Nevertheless, as explained in detail below, the Bureau is finalizing comments 6(b)(1)–1 and –2 to include various additional illustrations in response to commenters' requests for clarity. Accordingly, the Bureau adopts a flexible approach while clarifying the contours of permissible and prohibited debt collector communications with a consumer to assist debt collectors in complying with the final rule.

One trade group commenter suggested that the statutory prohibition against communicating during inconvenient times and places shift altogether from a one-size-fits-all paradigm suited for 1977 when the FDCPA was enacted to a presumption that consumers can control when they would like to be contacted. And another trade group commenter encouraged the Bureau to adopt a reasonableness standard to prevent consumers from designating all, or almost all, times as inconvenient, or to require consumers to answer certain questions to trigger the protections on

[185] In this section-by-section analysis, the Bureau addresses feedback regarding inconvenience and the ''know or should know'' standard generally, or that focused on proposed comment 6(b)(1)–1 regarding a consumer's designation of time or place as inconvenient. To the extent that comments focused on specific aspects of either the proposed time restrictions or the proposed place restrictions, those comments are addressed in the section-by-section analysis of § 1006.6(b)(1)(i) or (ii), respectively.

[186] 15 U.S.C. 1692c(a)(1).

[187] For further discussion of communications or attempts to communicate at unusual or inconvenient places, see the section-by-section analysis of § 1006.6(b)(1)(ii).

[188] 15 U.S.C. 1692c(a)(1).

[189] Therefore, unless an exception in FDCPA section 805(a) or final § 1006.6(b)(4) applies, a debt collector is required to abide by a consumer's designation of inconvenient times, even if those times are presumptively convenient according to the statute.

communications at inconvenient times or places.

The statutory standard under FDCPA section 805(a)(1) is one of inconvenience. Additionally, the statute does not limit a consumer's ability to invoke the protections afforded under FDCPA section 805(a)(1) based on a reasonableness standard, and therefore it would not be appropriate for this rule to do so. Nor would such a limitation comport with the protections afforded a consumer under FDCPA section 805(c), which requires a debt collector to cease further communications with the consumer upon the consumer's written notification, or under FDCPA section 806, which prohibits a debt collector from engaging in conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

For all of these reasons, the Bureau is finalizing the general standard in § 1006.6(b)(1) as proposed to implement and interpret FDCPA section 805(a)(1).

Consumer Designation of Inconvenient Times or Places

The Bureau proposed comment 6(b)(1)–1 to provide general interpretations and illustrations of the time and place restrictions in § 1006.6(b)(1), including how a debt collector knows or should know that a time or place is inconvenient to a consumer. The Bureau proposed this comment to clarify one aspect of the knowledge standard for time and place, that is, that a debt collector knows or should know that a time or place is inconvenient if the consumer designates it as such. Proposed comment 6(b)(1)–1 provided general interpretations and illustrations regarding consumer designation, including that a debt collector knows or should know that a time or place is inconvenient even if the consumer does not use the word ''inconvenient.'' For the reasons discussed below, the Bureau is finalizing comment 6(b)(1)–1 with revisions to address feedback.[190]

Information transfer. One trade group commenter read the proposal as imposing a substantial information transfer requirement on a debt collector and worried that it would require debt collectors to rely upon the previous holder of the debt for details that can be excessively subjective. Some industry commenters expressed concerns regarding the difficulty associated with a creditor transferring information about a consumer's inconvenience designations to a debt collector. Another industry commenter stated that proposed comment 6(b)(1)–1 neglected to account for the significant amounts of information that may be available to a debt collector and whether the debt collector is bound to some duty of inquiry with respect to such information.

The proposal would not have required any transfer of information regarding a consumer's inconvenience designations from a creditor or previous debt collector to the current debt collector, and nor does this final rule. However, to illustrate a situation in which a debt collector knows or should know that specific times are inconvenient to a consumer based on recent notes in a file from the creditor placing the debt for collection, the Bureau includes a new example in final comment 6(b)(1)–1.i.

Specificity of designation. As noted above, the Bureau proposed that, even if a consumer does not use the word ''inconvenient'' to notify the debt collector, the debt collector may nevertheless know, or should know, based on the facts and circumstances, that a time or place is inconvenient to the consumer. Some industry commenters suggested shifting the onus to the consumer to utter specific words or undertake certain actions to trigger the FDCPA's communication protections. Two industry commenters suggested that it would be reasonable to require a consumer to use some specific language to put a debt collector on notice that contact at a certain time or place is inconvenient. One trade group commenter stated that the rule should require, as a trigger to compliance, consumers to use words that reasonably identify for a debt collector the inconvenient times during which the debt collector should refrain from contact.

One consumer commenter supported the proposal not to require that the consumer utter specific words to invoke the protections under FDCPA section 805(a) on the basis that how a consumer expresses what is convenient or inconvenient should not be restricted to approved words as an excuse for a debt collector's noncompliance.

The Bureau declines to restrict how a consumer may designate a time or place as inconvenient. The statute does not prescribe any specific actions or require precise responses or utterances on behalf of the consumer to invoke these communications protections, and nor does this final rule impose such requirements. The Bureau determines that a flexible approach is necessary when it comes to communications, which by their very nature are dynamic, depend upon the specific circumstances, and differ from consumer to consumer. Such fluid communications cannot be scripted, nor can every permutation be anticipated. The Bureau therefore is finalizing its proposed interpretation of FDCPA section 805(a)(1), which refers to what is ''inconvenient to the consumer,'' without specifying that a consumer must designate communications as inconvenient using the word ''inconvenient.''

One industry commenter stated the word ''inconvenient'' should not be a tool for a consumer to prevent communication with a debt collector. However, FDCPA section 805(a)(1) explicitly recognizes that communications must not occur at a time or place known or which should be known to be inconvenient to the consumer. The Bureau notes that a consumer also has the option under FDCPA section 805(c) to notify a debt collector to cease communications with the consumer altogether. Therefore, it serves not only consumers but also debt collectors for communications to occur at times and places that are convenient to the consumer, and to avoid requiring consumers to perform specific actions or require precise responses or utterances to achieve the protections under FDCPA section 805(a), lest consumers more simply resort to notifying debt collectors under FDCPA section 805(c) to cease further communication.

Some industry commenters asked the Bureau to clarify how debt collectors may appropriately determine a time or place is inconvenient if a consumer gives unclear, vague, or ambiguous instructions, or insufficient information for the debt collector to identify when or where the consumer does not want to be contacted. Some trade group commenters suggested that a debt collector be permitted to ask a consumer follow-up questions to obtain more specific information to honor the consumer's request. Two trade group commenters suggested that, unless a consumer provides readily understandable instructions as to the scope of any identified inconvenient time or place, a debt collector should be permitted to continue contacting the consumer as if no designation had been made.

The Bureau understands that a consumer's articulation of inconvenience sometimes may require further clarification. Because the standard in FDCPA section 805(a)(1) is

[190] While proposed comments 6(b)(1)–1.ii and .iv also addressed consumer-initiated communications at times previously designated as inconvenient, for organizational purposes, the Bureau is finalizing those examples under new comment 6(b)(1)–2.i and .ii and accordingly discusses feedback about those comments in the section-by-section analysis of comment 6(b)(1)–2 below.

based on what is ''inconvenient to the consumer,'' [191] the consumer is the best source of information for the debt collector to learn when is an inconvenient time or where is an inconvenient place. To clarify this point and to provide debt collectors guidance in circumstances in which the debt collector needs additional clarity or information from the consumer, the Bureau is revising comment 6(b)(1)–1 to specifically state that the debt collector may ask follow-up questions regarding whether a time or place is convenient to clarify statements by the consumer. The Bureau determines that this approach will allow consumers to exercise their right to limit communications at inconvenient times and places while decreasing uncertainty for debt collectors. Accordingly, the Bureau revises the example proposed as comment 6(b)(1)–1.i, now finalized as comment 6(b)(1)–1.ii, to illustrate such an exchange between a debt collector and a consumer.

Other industry commenters requested that the Bureau clarify how the rule applies if a consumer answers a telephone call from a debt collector, states that the consumer is ''busy right now'' or ''cannot talk right now,'' and immediately hangs up the telephone. If a debt collector does not have an opportunity to ask a consumer follow-up questions because the consumer has, for example, abruptly ended a telephone call, the standards regarding telephone call frequencies in § 1006.14(b)(2) may be instructive in assisting a debt collector in determining when the debt collector may call the consumer again.[192] Although § 1006.6(b)(1) would not require a debt collector to construe a consumer's statement that the consumer is ''busy right now'' or ''cannot talk right now'' without anything further to mean that the consumer is generally designating that time or place as inconvenient for future communications, the statement does indicate that the time or place is inconvenient for current communications.

Inconvenient places. As part of proposed comment 6(b)(1)–1, the Bureau included an example in proposed comment 6(b)(1)–1.iii to illustrate when a debt collector knows or should know that a place is inconvenient to a consumer. Proposed comment 6(b)(1)–1.iii assumed that a consumer tells a debt collector not to communicate with the consumer at school. Based on these facts, proposed comment 6(b)(1)–1.iii explained, the debt collector knows or should know that communications to the consumer at school are inconvenient and, thereafter, the debt collector must not communicate or attempt to communicate with the consumer at that place. The Bureau received many comments from industry asking how, in light of technology such as mobile telephones, which consumers can take with them everywhere, a debt collector could be sure to avoid contacting a consumer at an inconvenient place. Industry commenters requested that the Bureau either remove the example or revise it to include specific times or other information from the consumer that would enable the debt collector to know when the consumer is at the inconvenient place, suggesting that, without such information, the debt collector would have to make assumptions about the consumer's whereabouts.

To address these concerns, the Bureau is revising the example in comment 6(b)(1)–1.iii. Final comment 6(b)(1)–1.iii illustrates that once a debt collector knows or should know that communications to a place are inconvenient to a consumer, unless the consumer otherwise informs the debt collector that the place is no longer inconvenient, § 1006.6(b)(1)(ii) prohibits the debt collector from communicating or attempting to communicate with the consumer at that place, including by sending mail to the address associated with that place and by placing calls to the landline telephone number at that place. And in response to commenters' request for further clarification regarding when a consumer is at an inconvenient place, consistent with the addition to comment 6(b)(1)–1 discussed above that a debt collector may ask follow-up questions regarding whether a time or place is convenient to clarify statements by a consumer, a debt collector may ask a consumer to identify times associated with an inconvenient place. For further discussion regarding communications or attempts to communicate at an inconvenient place, see the section-by-section analysis of § 1006.6(b)(1)(ii).

Duty To Inquire

The Bureau did not propose to require, but requested comment on whether to require, a debt collector to ask a consumer at the outset of all debt collection communications whether the time or place is convenient to the consumer. An academic commenter as well as a group of consumer advocates supported such a requirement, with the group of consumer advocates stating that asking a consumer whether the time or place is convenient is a best practice for telephone calls or in-person communications and requesting the Bureau adopt that approach. A number of industry commenters disagreed, stating that such a requirement would be impractical and cumbersome as part of a lengthy telephone call introduction that already requires verifying the consumer's identity and providing various disclosures. One trade group commenter suggested that such a long introduction would annoy the consumer, and another stated that the natural reaction to receiving a call from an unknown individual who inquires whether the call is convenient would be to respond that the call is inconvenient.

The Bureau agrees that it would be impractical to require debt collectors to ask consumers at the outset of every debt collection communication whether the time or place is convenient. A debt collector, of course, is free to ask this question and may find that it is a natural question that arises as part of a communication with a consumer. However, the Bureau does not believe that such a requirement is necessary or warranted to implement FDCPA section 805(a)(1).

For the reasons discussed above, the Bureau is finalizing comment 6(b)(1)–1 regarding a consumer's designation of an inconvenient time or place to provide that a debt collector knows or should know that a time or place is inconvenient to a consumer if the consumer uses the word ''inconvenient'' to notify the debt collector. In addition, depending on the facts and circumstances, the debt collector knows or should know that a time or place is inconvenient even if the consumer does not specifically state to the debt collector that a time or place is ''inconvenient.'' Final comment 6(b)(1)–1 also provides that a debt collector may ask follow-up questions regarding whether a time or place is convenient to clarify statements by the consumer and, as discussed above, includes three illustrative examples.

Consumer-Initiated Communications at Previously Designated Inconvenient Times or Places

As part of proposed comment 6(b)(1)–1, the Bureau proposed to clarify that, if a consumer initiates a communication with a debt collector at a time or from a place that the consumer previously designated as inconvenient, the debt

[191] 15 U.S.C. 1692c(a)(1).

[192] See the section-by-section analysis of § 1006.14(b)(2) presuming compliance with § 1006.14(b)(1) if a debt collector places a telephone call to a particular person in connection with the collection of a particular debt not within a period of seven consecutive days after having had a telephone conversation with the person in connection with the collection of such debt.

collector may respond once; but thereafter, the debt collector must not communicate or attempt to communicate further with the consumer at that time or place until the consumer conveys that the time or place is no longer inconvenient. The Bureau also proposed two illustrative examples. The Bureau is finalizing this aspect of proposed comment 6(b)(1)–1 as comment 6(b)(1)–2, with revisions and additional examples in response to feedback as discussed below.

One consumer commenter supported the proposal's approach to permit one reply as protective of consumers and a fair compromise to debt collectors. A number of industry commenters requested clarification regarding the scope of a debt collector's one permitted reply if a consumer initiates a communication with a debt collector at a time or from a place that the consumer previously designated as inconvenient. Industry commenters suggested that, if a consumer contacts a debt collector during a time that the consumer previously designated as inconvenient, the debt collector either should be able to ask if the consumer has revoked the inconvenience designation or should be able to assume that the consumer has done so. One trade group commenter requested that the Bureau clarify whether a debt collector's unanswered call to a consumer would constitute the debt collector's one reply.

In response to commenters' suggestions, the Bureau notes that a debt collector is not prohibited from inquiring in the one permitted reply whether the consumer is revoking the inconvenient time or place designation. However, the consumer's act of simply initiating a communication does not revoke the inconvenient time or place designation. As comment 6(b)(1)–2 explains, after a debt collector's one permitted response, § 1006.6(b)(1) prohibits the debt collector from communicating or attempting to communicate further with the consumer at that time or place until the consumer conveys that the time or place is no longer inconvenient, unless an exception in § 1006.6(b)(4) applies. Additionally, in response to the trade group commenter's request for further clarity, the Bureau determines that a debt collector's unanswered call does constitute the debt collector's one permitted reply as described under comment 6(b)(1)–1. However, nothing prohibits the debt collector from communicating or attempting to communicate at times or places that are not inconvenient to the consumer, including to ask the consumer if the time or place previously designated by the consumer remains inconvenient.

The final rule further clarifies the scope of a debt collector's one permitted reply by specifying in final comment 6(b)(1)–2 that the debt collector's one reply must be through the same medium of communication used by the consumer to initiate the communication. For example, if a consumer sends a debt collector a text message at a time the consumer previously designated as inconvenient, the debt collector may reply once by text message; but unless the consumer provided prior consent to receive a telephone call, for example, the debt collector may not reply once by placing a telephone call to the consumer. The Bureau finds that a consumer-initiated communication is, by its nature, not inconvenient to the consumer, and that includes the medium of communication used by the consumer to initiate that communication. Because the consumer initiated the communication, the debt collector neither knows nor should know that responding to that communication through the same medium of communication is inconvenient to the consumer.[193] Additionally, if a consumer designates a period of time as inconvenient and subsequently initiates a communication with a debt collector during that time, although the debt collector may wait for the inconvenient time period to expire before contacting the consumer, final comment 6(b)(1)–2.i and .ii, discussed below, illustrate that the debt collector may respond once during the inconvenient time period on that day.

Accordingly, final comment 6(b)(1)–2 states that, if a consumer initiates a communication with a debt collector at a time or from a place that the consumer previously designated as inconvenient, the debt collector may respond once at that time or place through the same medium of communication used by the consumer.[194] After that response, § 1006.6(b)(1) prohibits the debt collector from communicating or attempting to communicate further with the consumer at that time or place until the consumer conveys that the time or place is no longer inconvenient, unless an exception in § 1006.6(b)(4) applies. Comment 6(b)(1)–2 also includes four examples illustrating how a debt collector may comply with § 1006.6(b)(1) if a consumer initiates a communication with a debt collector at a time or from a place that the consumer previously designated as inconvenient, with the third example focused on websites and mobile applications, and the fourth example focused on automated replies.

The first two examples under comment 6(b)(1)–2 were proposed as comments 6(b)(1)–1.ii and .iv, respectively. The Bureau is revising these examples consistent with the discussion above that a debt collector's one permitted reply must be through the same medium of communication used by the consumer in initiating the communication, and is finalizing them as comments 6(b)(1)–2.i and .ii. These two examples illustrate a debt collector responding once through the same medium of communication used by the consumer before the expiration of the consumer's otherwise inconvenient time or place designation.

The third example under comment 6(b)(1)–2.iii relates to websites and mobile applications. As discussed in the section-by-section analysis of final § 1006.2(b) and (d), some industry commenters asserted that the proposed definitions of attempt to communicate and communicate or communication would include information provided to consumers who visit or navigate a debt collector's website or online portal.[195] Such information may constitute an attempt to communicate or a communication depending on its content. However, as the example in comment 6(b)(1)–2.iii illustrates, when a consumer initiates a communication by navigating a debt collector's website or using a debt collector's mobile application at a time or from a place that the consumer previously designated as inconvenient, § 1006.6(b)(1) does not prohibit the debt collector from conveying information to the consumer about the debt through the website or mobile application. Accordingly, comment 6(b)(1)–2.iii provides clarity regarding websites and mobile applications.

The final example under comment 6(b)(1)–2.iv is focused on automated replies. The Bureau received a number of comments requesting that the Bureau clarify how § 1006.6(b)(1) applies to such replies. Specifically, several

[193] The Bureau notes, however, that some automated processes that would occur through different communication media, such as two-factor authentication, may be permissible because they are not attempts to communicate or communications if they are not about the debt. Alternatively, a consumer may provide prior consent to receive such communications, including, for example, providing prior consent to receive confirmation of payment by email or text message when making a payment on a debt collector's website at a time or from a place that the consumer previously designated as inconvenient.

[194] For more on medium of communication, see § 1006.14(h) and its associated commentary.

[195] Those comments are summarized in the section-by-section analyses of § 1006.2(b) and (d).

industry commenters expressed concern regarding the circumstance in which a consumer initiates an electronic communication, such as an email or text message, with a debt collector at a time or from a place that the consumer previously designated as inconvenient, and the debt collector's system generates an automated reply to confirm receipt of the consumer's message and inform the consumer when a response from the debt collector might be expected. Some industry commenters also expressed concern over an automated reply generated in response to a consumer-initiated communication received during the presumptively inconvenient times between 9:00 p.m. and 8:00 a.m., local time at the consumer's location. One trade group commenter suggested model language for an automated reply that would not meet the definitions of attempt to communicate or communication under § 1006.2(b) and (d).[196]

As discussed above, the Bureau finds that a consumer-initiated communication is, by its nature, not inconvenient to the consumer and that the debt collector may respond once, including by automated reply, through the same medium of communication used by the consumer. The Bureau is adopting comment 6(b)(1)–2.iv to clarify that, if a consumer initiates a communication by sending an email message at a time or from a place that the consumer previously designated as inconvenient or that is presumptively inconvenient, the debt collector is not prohibited from responding once, such as by sending a system-generated automated email reply.[197]

6(b)(1)(i)

FDCPA section 805(a)(1) provides, in relevant part, that a debt collector may not communicate with a consumer in connection with the collection of any debt at any unusual time, or at a time that the debt collector knows or should know is inconvenient to the consumer.[198] FDCPA section 805(a)(1) specifies that, in the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8:00 a.m. and before 9:00 p.m., local time at the consumer's location.

The Bureau proposed § 1006.6(b)(1)(i) to implement and interpret FDCPA section 805(a)(1)'s prohibition regarding unusual or inconvenient times.[199] The Bureau interpreted the language in FDCPA section 805(a)(1) that a debt collector shall assume that the convenient time for communicating with a consumer is after 8:00 a.m. and before 9:00 p.m. to mean that a time before 8:00 a.m. and after 9:00 p.m. local time at the consumer's location is inconvenient, unless the debt collector has knowledge of circumstances to the contrary. Comments regarding proposed § 1006.6(b)(1)(i) fell into three main categories, as discussed below.

Existing Violations of FDCPA Section 805(a)(1)

Several individual consumers noted that, notwithstanding the prohibition in FDCPA section 805(a)(1), they have received hateful and threatening debt collection calls before 8:00 a.m., after 9:00 p.m., and during all hours of the night. The Bureau notes that the FDCPA imposes a specific presumption against communicating with a consumer before 8:00 a.m. and after 9:00 p.m., local time at the consumer's location regardless of the content of the communication.[200] In the absence of knowledge of circumstances to the contrary, a debt collector's communications with a consumer before 8:00 a.m. and after 9:00 p.m. are inconvenient to the consumer and are prohibited under FDCPA section 805(a)(1) and final § 1006.6(b)(1)(i). Depending on the facts and circumstances, communications made at prohibited times in violation of § 1006.6(b)(1)(i) may also violate other provisions of the FDCPA or this final rule.

Inconvenient Times and Electronic Communications

The Bureau received several comments on the general application of § 1006.6(b)(1)(i)'s inconvenient time prohibition to electronic communications. A group of State Attorneys General supported applying § 1006.6(b)(1)(i) to electronic communications and agreed with the proposal to extend the FDCPA's limitation on permissible hours of communications to newer communication media including, but not limited to, email, text messaging, and social media. Many industry commenters, in contrast, expressed concern about the proposed approach. One industry commenter supported permitting debt collector communications by telephone call or text message during the presumptively convenient hours between 8:00 a.m. and 9:00 p.m., local time, as fair and reasonable, but requested that the Bureau exempt email and text messages from consumer-designated inconvenient time and place restrictions. Several industry commenters stated that, although a debt collector's telephone calls to a consumer should adhere to the inconvenient time restrictions, the Bureau should except email or text messages or both from any time restrictions, thereby permitting electronic messages to be sent by a debt collector to a consumer at any time. A number of these commenters suggested that electronic communications such as email messages are distinct in nature from other media of communication, as are the ways in which a consumer may determine whether to engage with such communications. One industry commenter suggested that requiring electronic messages to adhere to inconvenient time restrictions puts debt collectors at a competitive disadvantage because no other industry has such a restriction, while another industry commenter suggested that, because internet service providers limit the frequency of outgoing email messages, such communications should not be subject to any further restrictions, including the inconvenient time restrictions under proposed § 1006.6(b)(1)(i). This same industry commenter also suggested that the Bureau exclude email messages from the definition of ''communication'' in proposed § 1006.6(b)(1)(i). One trade group commenter suggested that the unsubscribe instructions in proposed § 1006.6(e) would sufficiently protect consumers, such that subjecting electronic communications to inconvenient time restrictions was unnecessary. Some industry commenters stated that the difficulty lies with technology and the inability of their software to time-stamp and track electronic communications, and with the associated costs of having to do so.

[196] As discussed in the section-by-section analyses of § 1006.2(b) and (d), other commenters suggested that the Bureau exclude automated replies from the definitions of attempt to communicate and communication. Those comments are addressed in the section-by-section analyses of § 1006.2(b) and (d).

[197] In response to comments concerned with an automated reply generated in response to a consumer-initiated communication received during the presumptively inconvenient times between 9:00 p.m. and 8:00 a.m., local time at the consumer's location, the Bureau believes that the consumer initiating a communication between those times may constitute the debt collector's ''knowledge of circumstances to the contrary'' under § 1006.6(b)(1)(i). *See* the section-by-section analysis of § 1006.6(b)(1)(i).

[198] 15 U.S.C. 1692c(a)(1).

[199] As discussed in the section-by-section analysis of § 1006.6(b), § 1006.6(b)(1)(i) also interprets FDCPA sections 806 and 808 to prohibit a debt collector from attempting to communicate with a consumer at a time when FDCPA section 805(a)(1) would prohibit the debt collector from communicating with the consumer.

[200] *See* 15 U.S.C. 1692c(a)(1).

The statutory requirement under FDCPA section 805(a)(1) broadly applies to all debt collection communications with a consumer, without distinguishing between communication media.[201] Consistent with the statute, the Bureau interprets FDCPA section 805(a)(1) to apply § 1006.6(b)(1)(i)'s inconvenient time prohibition to electronic communications and not just to telephone calls, for example, with the consumer.

In response to industry comments suggesting that the costs associated with compliance will be burdensome, although this final rule does not require electronic communications by debt collectors, it provides clarity for a debt collector who elects to send electronic communications to a consumer.

Decedent Debt Waiting Period

Although the Bureau did not propose to define a period after a consumer's death as an inconvenient time for communicating about the deceased consumer's debt with surviving spouses or parents (in the case of deceased minor consumers) or persons acting as executors, administrators, or personal representatives of a deceased consumer's estate, the Bureau requested comment on this topic.[202] The FTC declined to adopt such a waiting period in its Policy Statement on Decedent Debt because it did not have a sufficient record to establish the necessity of a waiting period or the optimal length of such a period. While the Bureau received some comments on this issue, it likewise does not have a sufficient basis to determine whether to impose such a waiting period or the proper duration of such a waiting period. Therefore, the Bureau declines to include a waiting period in the final rule.

For the reasons discussed above, the Bureau is finalizing § 1006.6(b)(1)(i) as proposed to provide that, except as provided in § 1006.6(b)(4), a debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of any debt at any unusual time, or at a time that the debt collector knows or should know is inconvenient to the consumer. In the absence of the debt collector's knowledge of circumstances to the contrary, a time before 8:00 a.m. and after 9:00 p.m. local time at the consumer's location is inconvenient.

The Bureau proposed comment 6(b)(1)(i)–1 to clarify that, for purposes of determining the time of an electronic communication under § 1006.6(b)(1)(i), an electronic communication occurs when the debt collector sends it, not, for example, when the consumer receives or views it. Two trade group commenters agreed with the proposed interpretation. One consumer commenter also supported it but suggested that the time of receipt by the consumer should control instead. And a group of consumer advocates supported the proposed interpretation but requested that the Bureau further clarify that ''sending'' does not include scheduling a message for later delivery.

The Bureau proposed the clarification in comment 6(b)(1)(i)–1 to assist debt collectors who elect to send consumers electronic communications in complying with § 1006.6(b)(1)(i). As the Bureau stated in the proposal, ambiguity exists about whether, for purposes of FDCPA section 805(a)(1), an electronic communication occurs at the time of sending by the debt collector or at the time of receipt or viewing by the consumer. A debt collector can control the time at which it chooses to send communications, whereas it often would be impossible for a debt collector to determine when a consumer receives or views an electronic communication. The Bureau determines that a bright-line rule that clarifies that an electronic communication occurs when the debt collector sends it makes it possible for a debt collector to comply with the final rule. The Bureau also clarifies that sending for purposes of comment 6(b)(1)(i)–1 does not include scheduling a message at one time for delivery at a later time. For these reasons, the Bureau is finalizing comment 6(b)(1)(i)–1 as proposed, with minor revisions.

The Bureau also proposed comment 6(b)(1)(i)–2 to provide a safe harbor and illustrate how a debt collector could comply with proposed § 1006.6(b)(1)(i) and FDCPA section 805(a)(1) if the debt collector has conflicting or ambiguous information regarding a consumer's location, such as telephone numbers with area codes located in different time zones or a telephone number with an area code and a physical address that are inconsistent. The Bureau is finalizing comment 6(b)(1)(i)–2 largely as proposed, with certain clarifications in response to comments, as discussed below.

A group of consumer advocates supported proposed comment 6(b)(1)(i)–2 as a commonsense interpretation that will protect consumers and give helpful guidance to debt collectors. One consumer advocate suggested that the better course is to require debt collectors to determine whether a telephone number is a cellular or landline telephone. One trade group commenter supported the idea of a safe harbor but suggested revising it to protect debt collectors when they use the time period during which communications would be convenient in both locations as indicated by the zip code of the residence and the area code of the telephone.

One industry commenter stated that debt collectors have no practical way of knowing the local time for a consumer at any particular point in time, and that a debt collector would be required to keep track of the consumer's whereabouts to avoid communicating at inconvenient times. One industry commenter suggested that the Bureau amend the proposed commentary to permit a debt collector to communicate with a consumer at times that are convenient in any location in which the consumer might be located, or alternatively, that the debt collector should be responsible only for the area code, address of record, and locations explicitly communicated by the consumer. Several industry commenters stated that a debt collector should be permitted to rely on the address of record or last known physical address because, as one commenter explained, telephones are portable and the area code is no longer a reliable source of the consumer's location. Specifically, one trade group commenter requested that mortgage servicers be allowed to determine call times based on the single, established billing address.

The Bureau is adopting this safe harbor to facilitate a debt collector's compliance with § 1006.6(b)(1)(i) when the debt collector has conflicting or ambiguous information regarding a consumer's location. As proposed, comment 6(b)(1)(i)–2 stated that the safe harbor would apply if the debt collector is unable to determine the consumer's location. In response to the commenter that a debt collector would be required to keep track of a consumer's whereabouts, the Bureau revises this language to clarify that the safe harbor would apply if the debt collector has conflicting or ambiguous information

[201] While commenters raised questions regarding new communication media and § 1006.6(b)(1)(i)'s prohibition on communicating or attempting to communicate with a consumer at an inconvenient time, none requested clarification regarding mailed communications. The Bureau understands that a consumer's designation of a time as inconvenient under FDCPA section 805(a)(1) has not prevented debt collectors from sending communications by mail through the United States Postal Service. Unlike mail, the time at which an electronic communication, such as an email or text message, is sent generally correlates with the time of receipt. Therefore, § 1006.6(b)(1)(i)'s prohibition on communicating or attempting to communicate with a consumer at an inconvenient time generally does not apply to mail in the same manner as it does to electronic communications.

[202] *See* 84 FR 23274, 23296 (May 21, 2019).

regarding the consumer's location. A debt collector is not required to determine where the consumer actually is located when communicating or attempting to communicate with the consumer and knowledge that a telephone number is associated with a mobile telephone does not, without more, create conflicting or ambiguous information. A debt collector with conflicting information may know or should know that it is inconvenient to communicate or attempt to communicate with a consumer at a time outside of the presumptively convenient times (8:00 a.m. to 9:00 p.m.) in any of the time zones in which the consumer might be located. As the Bureau explained in the proposal, some debt collectors already have adopted this approach for determining convenient times to contact a consumer if the debt collector has conflicting location information for the consumer.

This safe harbor would apply in circumstances in which the debt collector does not have knowledge of the consumer's location and can rely only on information indicating where the consumer might be located. For example, this may arise in a debt collector's initial communication with a consumer. One consumer commenter reported continually receiving calls as early as 5:00 a.m. (local time at the consumer's location) because the debt collector relied only on the consumer's telephone number area code, while ignoring information from the consumer that the consumer was in fact in a different time zone. However, once the debt collector has information about the consumer's location, for example by asking the consumer in an initial communication or being told by the consumer in a subsequent communication, the debt collector would no longer have conflicting or ambiguous information regarding the consumer's location and would not need to rely on the safe harbor provided in comment 6(b)(1)(i)–2.

As finalized, comment 6(b)(1)(i)–2 states that, under § 1006.6(b)(1)(i), in the absence of a debt collector's knowledge of circumstances to the contrary, an inconvenient time for communicating with a consumer is before 8:00 a.m. and after 9:00 p.m. local time at the consumer's location. If a debt collector has conflicting or ambiguous information regarding a consumer's location, then, in the absence of knowledge of circumstances to the contrary, the debt collector complies with § 1006.6(b)(1)(i) if the debt collector communicates or attempts to communicate with the consumer at a time that would be convenient in all of the locations at which the debt collector's information indicates the consumer might be located. Comment 6(b)(1)(i)–2 also provides two examples of how a debt collector complies with § 1006.6(b)(1)(i).

6(b)(1)(ii)

FDCPA section 805(a)(1) provides, in relevant part, that a debt collector may not communicate with a consumer in connection with the collection of any debt at any unusual place, or at a place that the debt collector knows or should know is inconvenient to the consumer.[203] As proposed, § 1006.6(b)(1)(ii) would have implemented this prohibition and generally restated the statute, with only minor changes for clarity. The Bureau is finalizing § 1006.6(b)(1)(ii) as proposed.[204] Accordingly, § 1006.6(b)(1)(ii) states that except as provided in § 1006.6(b)(4), a debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of any debt at any unusual place, or at a place that the debt collector knows or should know is inconvenient to the consumer.

Communications or Attempts To Communicate at Unusual and Inconvenient Places

The Bureau received many comments discussing the proposed approach to inconvenient places in response to proposed comment 6(b)(1)–1.iii asking how, in light of technology such as mobile telephones, which are not affixed to a particular place, a debt collector could be sure to avoid contacting a consumer at an inconvenient place.[205] With respect to unusual place, one industry commenter noted that, while the Bureau's proposal provided examples illustrating what may be considered ''inconvenient'' under the rule, the proposal did not provide examples illustrating what would constitute an ''unusual'' time or place under FDCPA section 805(a)(1). The commenter therefore requested the Bureau clarify what would be considered ''unusual,'' considering the extensive consumer use of mobile telephones and the mobile nature of consumers themselves. Another industry commenter suggested that the statutory language ''at any unusual . . . place'' be removed from § 1006.6(b)(1) based on the difficulties presented when a consumer could be at an ''unusual place'' (*e.g.,* a funeral), but without knowing where the consumer is, the debt collector calls the consumer's mobile telephone.

The Bureau recognizes that mobile technology has shifted how and where communications occur and may make it more difficult for a debt collector to know where a consumer is at the precise moment when the debt collector is communicating or attempting to communicate with the consumer. In this regard, the Bureau notes that the FDCPA does not require a debt collector to track a consumer's whereabouts; it prohibits communications with a consumer at any unusual place, or a place that the debt collector knows or should know is inconvenient to the consumer.

To further clarify how the FDCPA's prohibition regarding unusual and inconvenient places applies in the context of mobile technology, the Bureau is adopting new comment 6(b)(1)(ii)–1 to explain that some communication media, such as mailing addresses and landline telephone numbers, are associated with a place, whereas other communication media, such as email addresses and mobile telephone numbers, are not. Comment 6(b)(1)(ii)–1 provides that pursuant to § 1006.6(b)(1)(ii), a debt collector must not communicate or attempt to communicate with a consumer through media associated with an unusual place, or with a place that the debt collector knows or should know is inconvenient to the consumer. Unless the debt collector knows that the consumer is at an unusual place, or a place that the debt collector knows or should know is inconvenient to the consumer, comment 6(b)(1)(ii)–1 continues, § 1006.6(b)(1)(ii) does not prohibit a debt collector from communicating or attempting to communicate with a consumer through communication media not associated with the unusual or inconvenient place. The Bureau is also adopting an example in new comment 6(b)(1)(ii)–1.i. The Bureau believes this approach addresses the complexities presented by mobile technology, clarifies how debt collectors may comply with FDCPA section 805(a)(1)'s prohibitions on communications with a consumer at unusual and inconvenient places, and maintains the consumer protections under FDCPA section 805(a)(1). The Bureau also reiterates that, in addition to an inconvenient place designation under § 1006.6(b)(1)(ii), a consumer may invoke an inconvenient time

[203] 15 U.S.C. 1692c(a)(1).

[204] As discussed in the section-by-section analysis of § 1006.6(b), § 1006.6(b)(1)(ii) also interprets FDCPA sections 806 and 808 to prohibit a debt collector from attempting to communicate with a consumer at a place at which FDCPA section 805(a)(1) prohibits the debt collector from communicating with the consumer.

[205] For a discussion of and response to those comments, see the section-by-section analysis of final comment 6(b)(1)–1.iii above.

designation under § 1006.6(b)(1)(i) or a medium of communication restriction under § 1006.14(h)(1) to further control when or whether a debt collector can communicate or attempt to communicate with the consumer using mobile technology.

Additionally, as the Bureau noted in the proposal, in response to feedback received during the SBREFA process, the Bureau declined to propose an intervention under consideration that would have designated four categories of places as presumptively inconvenient.[206] Accordingly, this final rule does not designate categories of places as presumptively inconvenient. The Bureau is also not aware of confusion or concerns regarding places that are considered unusual under FDCPA section 805(a)(1). This final rule therefore implements the statutory language ''at any unusual time or place'' as part of final § 1006.6(b)(1) consistent with the statute and without further commentary or interpretation. To address commenter concerns, however, the Bureau is adding new comment 6(b)(1)(ii)–1 as discussed above to clarify how a debt collector may communicate through media that rely on mobile technology when a consumer may be at an unusual or inconvenient place.

6(b)(2) Prohibitions Regarding Consumer Represented by an Attorney

FDCPA section 805(a)(2) prohibits a debt collector from communicating with a consumer in connection with the collection of any debt if the debt collector knows the consumer is represented by an attorney with respect to the debt and has knowledge of, or can readily ascertain, the attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer.[207] The Bureau proposed § 1006.6(b)(2) to implement this prohibition and generally restate the statute.[208] For the reasons discussed below, the Bureau is finalizing § 1006.6(b)(2) as proposed, with minor revisions and with one clarification in response to comments, as discussed below.

The Bureau received comments requesting four specific clarifications. First, several industry commenters requested the Bureau define what constitutes ''a reasonable period of time'' by, for example, specifying a certain number of days. A number of industry commenters suggested the Bureau adopt 10, 21, or 30 days as a reasonable period of time, and some commenters drew parallels to existing State debt collection laws. One such industry commenter suggested the Bureau go further and clarify that, upon expiration of a 30-day period, a debt collector may assume the attorney is not representing the consumer. Two trade group commenters suggested that attempts to contact a consumer's attorney often go unanswered by the attorney to create an FDCPA violation.

One consumer advocate suggested that the reasonable period of time depends on the circumstances and on whether the communication from the debt collector is the type of communication that requires a response from the consumer's attorney, such as a settlement offer or a request for clarification pursuant to a verification request. However, the commenter suggested that, for debt collection communications seeking simply to persuade the consumer to pay the alleged debt, the attorney would not be obliged to respond and therefore no corresponding reasonable time exists.

The Bureau declines to adopt a specific time period under § 1006.6(b)(2). As explained in the section-by-section analysis of § 1006.10, the Bureau concludes that reasonableness generally depends upon the facts and circumstances surrounding a debt collector's communications with a consumer's attorney. Accordingly, the Bureau declines to specify a period of time in which a consumer's attorney must respond before a debt collector is permitted to communicate or attempt to communicate with a consumer.

Second, some trade group commenters suggested the Bureau adopt a requirement that the consumer's attorney, the consumer, or both, undertake specific steps to confirm the attorney's representation of the consumer. These suggestions included that the consumer's attorney respond to a debt collector's request for confirmation of representation, with one trade group commenter specifying that the attorney's response must be between five and seven days of the request and that the attorney must enter an appearance on behalf of the consumer. Additionally, this commenter suggested the consumer also be required to provide the attorney's full contact information, name, address, telephone number and, if applicable, email address, in order to confirm the consumer is in fact represented by an attorney. Similarly, another trade group commenter suggested the Bureau adopt an approach similar under the laws of one State where a notice of attorney representation must contain certain information to be effective,[209] and that the Bureau further require that the notice list the account(s) for which the attorney is representing the consumer.

In response to these comments, the Bureau notes that FDCPA section 805(a)(2) requires only that a debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address. This statutory provision does not require any further action on behalf of either the consumer's attorney or the consumer to confirm the representation and trigger the statutory protections afforded, namely that the debt collector may not communicate with the consumer in connection with the collection of any debt. The Bureau therefore declines to adopt the commenters' suggested approaches.

Third, some industry commenters requested that the Bureau clarify the effect of a consumer-initiated communication once the debt collector knows the consumer is represented by an attorney. One such commenter stated that, under such circumstances, the debt collector should be permitted to answer the consumer's questions and return the consumer's telephone call for the sole purpose of responding to that consumer-initiated communication and to also clarify whether the consumer is still represented by counsel. One industry commenter requested the Bureau clarify that a consumer can inform a debt collector that the consumer is no longer being represented by an attorney, while another industry commenter suggested that the debt collector must await a response from the attorney before communicating with the consumer.

The introductory paragraph of FDCPA section 805(a) contains exceptions for the prior consent of the consumer given directly to the debt collector and the express permission of a court of competent jurisdiction, which are implemented by the Bureau in § 1006.6(b)(4) and further discussed in that section's analysis below. In addition to the exceptions specific to FDCPA section 805(a)(2) (*e.g.,* unless the attorney fails to respond within a reasonable period of time to a

[206] 84 FR 23274, 23297 n.211 (May 21, 2019).

[207] 15 U.S.C. 1692c(a)(2).

[208] 84 FR 23274, 23297 (May 21, 2019). As discussed in the section-by-section analysis of § 1006.6(b), § 1006.6(b)(2) also interprets FDCPA sections 806 and 808 to prohibit a debt collector from attempting to communicate with a consumer who is represented by an attorney if FDCPA section 805(a)(2) prohibits the debt collector from communicating with that consumer.

[209] *See* W. Va. Code 46A–2–128(e).

communication from the debt collector or unless the attorney consents to direct communication with the consumer), the general exceptions contained in FDCPA section 805(b) also function as exceptions to FDCPA section 805(a)(2). Therefore, under the FDCPA, a consumer's prior consent given directly to a debt collector permits a debt collector to communicate with a consumer that the debt collector knows is represented by an attorney. Accordingly, the Bureau is adopting new comment 6(b)(2)–1 to clarify that a consumer-initiated communication from a represented consumer constitutes the consumer's prior consent to that communication under § 1006.6(b)(4)(i), and that therefore the debt collector may respond to that consumer-initiated communication. A debt collector is not prohibited from inquiring in that response whether the consumer is still represented by an attorney; however, as comment 6(b)(2)–1 explains, the consumer's act of initiating a communication does not negate the debt collector's knowledge that the consumer is represented by an attorney and does not revoke the protections afforded the consumer under § 1006.6(b)(2). Comment 6(b)(2)–1 further provides that after the debt collector's response, the debt collector must not communicate or attempt to communicate further with the consumer unless the debt collector knows the consumer is not represented by an attorney with respect to the debt, either based on information from the consumer or the consumer's attorney, or an exception under § 1006.6(b)(2)(i) or (ii) or § 1006.6(b)(4) applies.

Fourth, one industry commenter requested that the Bureau clarify whether a debt collector should assume that, if an attorney represents a consumer with respect to one debt, the attorney represents the consumer with respect to future debts; in particular, the commenter expressed concern about privacy and medical debts. FDCPA section 805(a)(2) states in relevant part that ''if the debt collector knows the consumer is represented by an attorney with respect to such debt.'' [210] The Bureau interprets the protections afforded a consumer under FDCPA section 805(a)(2) to apply to a particular debt allegedly owed by the consumer, but not to future or other debts allegedly owed by the consumer, unless the debt collector knows that an attorney represents the consumer with respect to those debts and has knowledge of, or can readily ascertain, the attorney's name and address. Accordingly, the Bureau revises § 1006.6(b)(2) to more closely mirror the statutory language and clarify that the protections under FDCPA section 805(a)(2) apply ''with respect to such debt.''

For the reasons discussed above, the Bureau is finalizing § 1006.6(b)(2) as proposed, with one revision to clarify that § 1006.6(b)(2) applies per debt. Accordingly, § 1006.6(b)(2) states that, except as provided in § 1006.6(b)(4), a debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of any debt if the debt collector knows the consumer is represented by an attorney with respect to such debt and knows, or can readily ascertain, the attorney's name and address, unless the attorney: (i) Fails to respond within a reasonable period of time to a communication from the debt collector; or (ii) consents to the debt collector's direct communication with the consumer.

6(b)(3) Prohibitions Regarding Consumer's Place of Employment

FDCPA section 805(a)(3) prohibits a debt collector from communicating with a consumer in connection with the collection of any debt at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.[211] The Bureau proposed § 1006.6(b)(3) to implement this prohibition and generally restate the statute.[212] For the reasons discussed below, the Bureau is finalizing § 1006.6(b)(3) as proposed.

Many consumers commented on the disruptive effects of debt collection calls to the workplace. Many commenters described these calls as harassing and disruptive, while many more consumers stated that frequent debt collection calls to the workplace have threatened their employment or led to them being fired, thus making repayment of the allegedly owed debt more unlikely. Some consumer and consumer advocate commenters explained that these calls are an unwelcome distraction that could jeopardize a consumer's ability to pay the debt and that interrupt the work not only of the consumer who allegedly owes the debt, but of others, including co-workers who may be responsible for answering incoming telephone calls to the workplace and employers. Other consumer commenters particularly objected to debt collectors calling and leaving messages with employers as placing undue pressure on employees because of the risk of being penalized by the employer.[213]

Consistent with these consumer comments, many consumer advocate commenters requested that the Bureau ban debt collectors from communicating or attempting to communicate with consumers at the workplace altogether. Alternatively, they recommended that the Bureau prohibit debt collectors from calling or leaving messages with employers at the workplace. One group of consumer advocates requested that the Bureau clarify that, under FDCPA section 805(a)(3) and § 1006.6(b)(3), a debt collector knows or has reason to know that an employer prohibits a consumer from receiving communications in connection with the collection of any debt at the workplace if the consumer asks the debt collector not to contact the consumer at work. And a group of State Attorneys General recommended that the Bureau prohibit a debt collector from calling a consumer's place of employment if the debt collector reliably learns, in any way, that the consumer's employer prohibits debt collection calls.

A number of industry commenters agreed that a debt collector should be expected to honor a consumer's request to stop contacting the consumer at the workplace, while generally requesting that the Bureau further clarify when a debt collector knows or has reason to know that a consumer's employer prohibits the consumer from receiving debt collection communications at the workplace. Many industry commenters suggested that a debt collector should not be responsible for having to proactively track and record, for all present and future consumers, which employers do or do not prohibit such communications, and that such a requirement for debt collectors to cross-reference their files would be unreasonable. One industry commenter explained that a communication from one consumer suggesting that the employer prohibits communication at work does not necessarily apply to all employees, as certain managers or supervisors may restrict such calls while the employer, as a matter of policy, may not. Accordingly, one industry commenter requested the

[210] 15 U.S.C. 1692c(a)(2).

[211] 15 U.S.C. 1692c(a)(3).

[212] 84 FR 23274, 23297 (May 21, 2019). As discussed in the section-by-section analysis of § 1006.6(b), § 1006.6(b)(3) also interprets FDCPA sections 806 and 808 to prohibit a debt collector from attempting to communicate with a consumer at the consumer's place of employment if FDCPA section 805(a)(3) prohibits the debt collector from communicating with the consumer there.

[213] As explained in the section-by-section analysis of final § 1006.2(j), the definition of limited-content message adopted under this final rule does not include third-party limited-content messages, either in live conversations or as voicemail messages knowingly left for a third party.

Bureau to clarify that an instruction from a consumer or employer to a debt collector to cease contacting a consumer through an employer-provided email address or telephone number is effective only as to that specific consumer and would not be imputed to the entirety of the employer's workforce.

Recognizing that a debt collection communication may cause problems for a consumer in the workplace, two industry commenters suggested that it would be reasonable to require a consumer to use specific language to put a debt collector on notice. One industry commenter explained that, because FDCPA section 805(a)(3)'s knowledge standard is difficult to fulfill, all a consumer needs to do is give notice to a debt collector that the consumer does not want telephone calls or email messages at a physical place of work or on a physical telephone owned and managed by the company.

In addition to the unusual and inconvenient time and place protections delineated under FDCPA section 805(a)(1), Congress separately provided consumers with the workplace protections afforded under FDCPA section 805(a)(3). Accordingly, the Bureau implements this prohibition and generally restates the statute in final § 1006.6(b)(3). This provision states that, except as provided in § 1006.6(b)(4), a debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of any debt at the consumer's place of employment, if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

As described by many consumer commenters, the Bureau recognizes the unique consumer harm presented by debt collection communications at a consumer's place of employment, including possible or actual termination of employment. Although some consumer group commenters requested that the Bureau ban all workplace telephone calls or all workplace communications generally, the Bureau declines to do so because FDCPA section 805(a)(3) prohibits a debt collector from communicating with a consumer at the consumer's place of employment only if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.[214]

In addition, consistent with the Bureau's interpretation regarding a consumer's designation of a time or place as inconvenient, as explained above,[215] the Bureau concludes that a consumer need not undertake specific actions or utter specific words to be afforded the statutory protections provided under FDCPA section 805(a)(3). The statute does not prescribe any specific actions or require precise responses or utterances on behalf of the consumer to invoke the workplace communications protections, and nor does this final rule impose such requirements. Even if a consumer does not precisely state that the employer prohibits the consumer from receiving debt collection communications at the workplace, the debt collector nevertheless may know or have reason to know, based on the facts and circumstances, that the employer prohibits such communications. Accordingly, the Bureau is finalizing revised comment 6(b)(3)–1 to provide that a debt collector knows or has reason to know that a consumer's employer prohibits the consumer from receiving such communication if, for example, the consumer tells the debt collector that the consumer cannot take personal calls at work. The debt collector may ask follow-up questions regarding the employer's prohibitions or limitations on contacting the consumer at the place of employment to clarify statements by the consumer.[216]

Once the debt collector knows or has reason to know of this limitation, the debt collector is prohibited from communicating or attempting to communicate with the consumer at the workplace by, for example, by mailing a letter to the consumer's workplace address or calling the consumer's work landline.

In response to those commenters suggesting that a debt collector would be required to track which employers prohibit their employees from receiving debt collection communications at the workplace, this final rule imposes no such requirement. The Bureau is adopting § 1006.6(b)(3) to implement the prohibition contained in FDCPA section 805(a)(3) and to restate the statute.

The Bureau also requested comment on whether additional clarification would be useful with respect to a debt collector's communications or attempts to communicate with a consumer while at work, for example, on a consumer's personal mobile telephone or portable electronic device. One consumer commented that, because many people use their mobile telephones for work and personal use, it would be extremely disruptive for a debt collector to send text messages during work hours while a consumer is using that mobile telephone for work purposes. Another consumer commented that the Bureau should clarify under § 1006.6(b)(3) that communications at the workplace include communications through a device or channel owned by an employer and through a personal device during a consumer's known work hours. A consumer advocate that suggested the Bureau adopt a bright-line rule against all debt collection communications through any medium with a consumer at the workplace also suggested that such a rule should extend to the use of mobile telephones, as long as the debt collector knows or has reason to know that the consumer is at work. The commenter explained that the debt collector may ask the consumer to inform the debt collector which hours the consumer is at work so the debt collector may avoid those times, and if the consumer states specific hours and times, the debt collector must respect those instructions. A group of consumer advocates suggested that the prohibition under proposed § 1006.6(b)(3) should also prohibit a debt collector from directing communications, including by voice or text message, to any personal mobile device during any known working hours. One local government commenter suggested that, consistent with proposed § 1006.22(f)(3), a debt collector should not be permitted to send mail to a consumer's place of employment or call, text, or leave voicemails on a consumer's work telephone without the consumer's prior consent.

Industry commenters generally requested clarity regarding debt collection communications with a consumer to a personal mobile

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[214] Recognizing that the risk of third-party disclosure is particularly high for communications sent to employer-provided email addresses, the Bureau is finalizing § 1006.22(f)(3) to prohibit debt collectors from communicating or attempting to communicate using an email address that the debt collector knows is provided by the consumer's employer. See the section-by-section analysis of § 1006.22(f)(3). For clarity, the Bureau is finalizing comment 6(b)(3)–2 to cross-reference this prohibition regarding employer-provided email addresses.

[215] *See* the section-by-section analysis of § 1006.6(b)(1).

[216] The Bureau nevertheless notes that a debt collector who does not know or have reason to know that the consumer's employer prohibits the consumer from receiving such communication and who elects to communicate or attempt to communicate with a consumer in connection with the collection of any debt at the consumer's place of employment should carefully manage any such communications or attempts so as to not risk a third-party disclosure as prohibited under FDCPA section 805(b) and implemented under final § 1006.6(d). For additional discussion of prohibited third-party communications and exceptions, respectively, see the section-by-section analysis of § 1006.d(1) and (2).

telephone or device while the consumer is at work. One industry commenter suggested that, because it is within the consumer's discretion whether to answer the call, telephone calls to a consumer's personal mobile telephone number should not be considered a communication at the consumer's place of employment. One trade group commenter suggested that the Bureau adopt a safe harbor to exempt from liability, absent a consumer's designation of a specified time as inconvenient or medium of communication restriction, a debt collector who unknowingly reaches a consumer at the place of employment if attempting to communicate with the consumer through a mobile telephone or other permissible communication media, for example, an email message to the consumer's personal email account. Alternatively, one trade group commenter suggested that a consumer may prefer to communicate privately during work hours through a personal device instead of during non-work hours when the consumer may prefer to focus on family or other pursuits.

As discussed above with respect to unusual and inconvenient places under FDCPA section 805(a)(1) and final comment 6(b)(1)(ii)–1,[217] the Bureau similarly recognizes here the complexities presented by mobile technology while debt collectors aim to comply with the statutory requirement under FDCPA section 805(a)(3) that a debt collector not communicate with a consumer at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

Final comment 6(b)(3)–1, discussed above, provides that a debt collector may ask follow-up questions regarding the employer's prohibitions or limitations on contacting the consumer at the place of employment to clarify statements by the consumer. For example, a debt collector may ask a consumer to identify times when the consumer is at the place of employment. As explained in the section-by-section analysis of § 1006.6(b)(1)(ii), some communication media are associated with a place.[218] At the consumer's place of employment, such media may include, for example, mail to the consumer's place of employment and calls to the consumer's work landline or employer-provided mobile telephone number. Consistent with the Bureau's approach in comment 6(b)(1)(ii)–1, a debt collector must not communicate or attempt to communicate with a consumer through media associated with the consumer's place of employment if, pursuant to § 1006.6(b)(3), the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication. For other communication media not associated with the consumer's place of employment, such as a personal email address or personal mobile telephone number, § 1006.6(b)(3) does not prohibit a debt collector from communicating or attempting to communicate with a consumer through such media unless the debt collector knows that the consumer is at the place of employment. Therefore, absent information regarding when the consumer is at the place of employment or other communication restriction,[219] the debt collector does not violate § 1006.6(b)(3) by placing a telephone call or sending an electronic communication to the consumer's personal mobile telephone number or portable electronic device, even if the consumer receives or views the communication while at the place of employment.

6(b)(4) Exceptions

FDCPA section 805(a) provides certain exceptions to its limitations on a debt collector's communications with a consumer. The Bureau proposed § 1006.6(b)(4) to implement and interpret the exceptions in FDCPA section 805(a).[220] For the reasons discussed below, the Bureau is finalizing § 1006.6(b)(4) as proposed.

6(b)(4)(i)

The Bureau proposed § 1006.6(b)(4)(i) to implement the introductory language in FDCPA section 805(a) that, in relevant part, sets forth the exception for the prior consent of the consumer given directly to the debt collector. Proposed § 1006.6(b)(4)(i) generally mirrored the statute, except that proposed § 1006.6(b)(4)(i) interpreted FDCPA section 805(a) to require that the consumer's prior consent must be given during a communication that would not violate proposed § 1006.6(b)(1) through (3), *i.e.,* the prohibitions on communications with a consumer at unusual or inconvenient times or places, communications with a consumer represented by an attorney, and communications at the consumer's place of employment. For the reasons discussed below, the Bureau is finalizing § 1006.6(b)(4)(i) as proposed.

A group of consumer advocates supported the Bureau's proposed interpretation of FDCPA section 805(a) to require that a consumer's prior consent must be given during a communication that would not violate proposed § 1006.6(b)(1) through (3) as an important additional protection for consumers.

The Bureau is adopting its interpretation of FDCPA section 805(a) to require that the consumer's prior consent must be given during a communication that would not violate § 1006.6(b)(1) through (3). For example, ordinarily a debt collector could not place a telephone call to a consumer at midnight and obtain the consumer's prior consent for future debt collection communications at that time. The Bureau interprets a consumer's prior consent to be consent obtained in the absence of conduct that would compromise or eliminate a consumer's ability to freely choose whether to consent. A communication that would violate § 1006.6(b)(1) through (3) (*e.g.,* consent obtained from a consumer at an unusual or inconvenient time or place) is likely to compromise or eliminate a consumer's ability to freely choose whether to consent. By prohibiting prior consent purported to be obtained during a communication that would violate § 1006.6(b)(1) through (3), the Bureau does not intend to suggest that prior consent obtained in other unlawful ways would comply with FDCPA section 805(a). Accordingly, the Bureau is adopting § 1006.6(b)(4)(i) as proposed to provide that the prohibitions in § 1006.6(b)(1) through (3) do not apply when a debt collector communicates or attempts to communicate with a consumer in connection with the collection of any debt with the prior consent of the consumer, given directly to the debt collector during a communication that does not violate § 1006.6(b)(1) through (3).

The Bureau also proposed comment 6(b)(4)(i)–1 to clarify the meaning of prior consent. Proposed comment 6(b)(4)(i)–1 explained that, if a debt collector learns during a communication that the debt collector is communicating with a consumer at an inconvenient time or place, the debt collector cannot during that communication ask the consumer to consent to the continuation of that debt collection communication. The Bureau proposed this comment as an interpretation of the language in FDCPA section 805(a) that consent must be ''prior'' and therefore given in

[217] *See* the section-by-section analysis of § 1006.6(b)(1)(ii).

[218] *See id.*

[219] Such a restriction could include, for example, an inconvenient time designation under § 1006.6(b)(1)(i) or a medium of communication restriction under § 1006.14(h)(1).

[220] 84 FR 23274, 23297–98 (May 21, 2019).

advance of a communication that otherwise would violate proposed § 1006.6(b)(1) through (3). For the reasons stated below, the Bureau is finalizing comment 6(b)(4)(i)–1 largely as proposed, with minor revisions.

One industry commenter opposed this proposed interpretation on the basis that it takes away a consumer's ability to freely choose to continue the communication and requested that the Bureau instead prohibit a debt collector from continuing or forcing the consumer to communicate if the time or place is considered inconvenient. Another industry commenter requested that the Bureau clarify whether a debt collector could ask the consumer whether the time or communication medium is inconvenient, and if so, whether the consumer prefers another time or communication medium.

The Bureau is finalizing comment 6(b)(4)(i)–1 largely as proposed, with minor revisions. The Bureau is adopting its proposed interpretation that prior consent must be given in advance of a communication that otherwise would violate § 1006.6(b)(1) through (3), because consent that satisfies FDCPA section 805(a) must be ''prior.'' Additionally, permitting a debt collector to ask a consumer to consent to a communication once the debt collector knows or should know the communication is occurring, for example, at an inconvenient time or place, would undermine the very protection guaranteed to the consumer under FDCPA section 805(a)(1). Therefore, final comment 6(b)(4)(i)–1 clarifies that the debt collector would be prohibited from asking the consumer to consent to the continuation of that inconvenient communication. The comment clarifies, however, that a debt collector may ask the consumer during that communication what time or place would be convenient. Accordingly, final comment 6(b)(4)(i)–1 states that § 1006.6(b)(4)(i) provides, in part, that the prohibitions in § 1006.6(b)(1) through (3) on a debt collector communicating or attempting to communicate with a consumer in connection with the collection of any debt do not apply if the debt collector communicates or attempts to communicate with the prior consent of the consumer. If the debt collector learns during a communication that the debt collector is communicating with the consumer at an inconvenient time or place, for example, the debt collector may ask the consumer during that communication what time or place would be convenient. However, § 1006.6(b)(4)(i) prohibits the debt collector from asking the consumer to consent to the continuation of that inconvenient communication.

Additionally, consistent with the introductory language in FDCPA section 805(a), the Bureau proposed comment 6(b)(4)(i)–2 to restate the rule that the prior consent of the consumer must be given directly to the debt collector, and to explain that a debt collector cannot rely on the prior consent of the consumer given to the original creditor or to a previous debt collector. The Bureau proposed this comment to implement the statutory requirement in FDCPA section 805(a) that the prior consent of the consumer be given directly to the debt collector. For the reasons discussed below, the Bureau is finalizing comment 6(b)(4)(i)–2 largely as proposed.

A consumer commenter supported the proposal and stated that prior consent should not be transferred along with an account, while one trade group commenter suggested that consumer consent given to the creditor should be passed to a debt collector hired by that creditor.

The Bureau is adopting comment 6(b)(4)(i)–2 as proposed, with minor revisions. A debt collector cannot rely on the prior consent of the consumer given to a creditor or to a previous debt collector because such prior consent is not given ''directly'' to the debt collector, as FDCPA section 805(a) expressly requires. This interpretation is also consistent with the FDCPA's legislative history.[221] Accordingly, comment 6(b)(4)(i)–2 states that § 1006.6(b)(4)(i) requires the prior consent of the consumer to be given directly to the debt collector. For example, a debt collector cannot rely on the prior consent of the consumer given to a creditor or to a previous debt collector.

6(b)(4)(ii)

The Bureau proposed § 1006.6(b)(4)(ii) to implement the introductory language in FDCPA section 805(a) that, in relevant part, sets forth the exception for the express permission of a court of competent jurisdiction. As proposed, § 1006.6(b)(4)(ii) generally restated the statute, with only minor wording and organizational changes for clarity. The Bureau received no comments on proposed § 1006.6(b)(4)(ii) and is finalizing it as proposed. Accordingly, final § 1006.6(b)(4)(ii) provides that the prohibitions in § 1006.6(b)(1) through (3) do not apply when a debt collector communicates or attempts to communicate with a consumer in connection with the collection of any debt with the express permission of a court of competent jurisdiction.

6(c) Communications With a Consumer—After Refusal To Pay or Cease Communication Notice

FDCPA section 805(c) provides that, subject to certain exceptions, if a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt.[222] The Bureau proposed § 1006.6(c) to implement and interpret FDCPA section 805(c) and pursuant to the Bureau's authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors. For the reasons discussed below, the Bureau is finalizing § 1006.6(c) largely as proposed.

6(c)(1) Prohibition

The Bureau proposed § 1006.6(c)(1) to implement FDCPA section 805(c)'s cease communication provision and generally restate the statute, with only minor changes for clarity. Proposed § 1006.6(c)(1) stated that, except as provided in proposed § 1006.6(c)(2), a debt collector must not communicate or attempt to communicate further with a consumer with respect to a debt if the consumer notifies the debt collector in writing that: (i) The consumer refuses to pay the debt; or (ii) the consumer wants the debt collector to cease further communication with the consumer.[223] For the reasons discussed below, the Bureau is finalizing § 1006.6(c)(1) largely as proposed, with non-

[221] *See* H. Rep. No. 95–131, at 5 (1977) (''The committee intends that in section [805] the 'prior consent' be meaningful, *i.e.,* that any prior consent by a consumer is to be a voluntary consent and shall be expressed by the consumer directly to the debt collector. Consequently, the committee intends that any term in a contract which requires a consumer to consent in advance to debt collection communication would not constitute 'prior consent' by such consumer.'').

[222] 15 U.S.C. 1692c(c). For ease of reference, through this section-by-section analysis, the Bureau refers to this as the FDCPA's ''cease communication'' provision, and to a consumer's notification that the consumer refuses to pay a debt or wishes the debt collector to cease further communication with the consumer as a consumer's ''cease communication request.''

[223] 84 FR 23274, 23298 (May 21, 2019). For the same reasons that § 1006.6(b) prohibits debt collectors from attempting to communicate with consumers if FDCPA section 805(a) prohibits communications with consumers, § 1006.6(c) interprets FDCPA sections 806 and 808 to prohibit a debt collector from attempting to communicate with a consumer if FDCPA section 805(c) prohibits the debt collector from communicating with the consumer.

substantive revisions to more closely mirror the statutory language.

Many consumers commented that a debt collector should be required to obey a consumer's oral request that the debt collector stop calling. Consistent with these consumer comments, one commenter that represents consumers cited a survey by a consumer advocate suggesting that the majority of consumers that asked a debt collector to stop calling were subsequently contacted by the debt collector. This commenter also suggested that the Bureau should require debt collectors to obey consumers' oral requests to stop calling.

A group of consumer advocates generally agreed that a debt collector should be required to stop contacting a consumer upon the consumer's oral request at any time. Other groups of consumer advocates requested that the Bureau clarify that ''stop calling'' requests can be made orally and should apply to all calls from a debt collector, unless a consumer asks to stop calls to one telephone number only. Some consumer advocates suggested that a consumer's oral request that the debt collector simply ''stop calling'' or a text message to the debt collector to ''stop'' should require the debt collector to discontinue contact with the consumer. One consumer advocate explained that, particularly for vulnerable consumers who may have limited literacy or language proficiency, making a request in writing can be burdensome.

FDCPA section 805(c) states that, if a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt unless certain exceptions apply. Because the writing requirement proposed in § 1006.6(c)(1) was intended to implement the language in FDCPA section 805(c) that a consumer notify a debt collector in writing, the Bureau is finalizing it as proposed.

As part of this final rule, however, the Bureau also is finalizing § 1006.14(h)(1), which prohibits a debt collector from communicating or attempting to communicate with a person through a medium of communication if the person has requested that the debt collector not use that medium to communicate with the person.[224] Therefore, even if a consumer does not notify a debt collector in writing that the consumer refuses to pay a debt or wishes the debt collector to cease further communication with the consumer as required under § 1006.6(c)(1), the consumer's oral request that the debt collector ''stop calling,'' for example, would constitute a request that the debt collector not use that medium of communication (*e.g.,* telephone calls) to communicate with the consumer, and, consistent with § 1006.14(h)(1), the debt collector would thereafter be prohibited from placing telephone calls to the consumer.

The Bureau proposed comment 6(c)(1)–1 to implement FDCPA section 805(c)'s provision that, if the consumer's cease communication request is made by mail, the notification is complete upon receipt by the debt collector.[225] The Bureau proposed to apply this standard to all written or electronic forms of a consumer's cease communication request. Proposed comment 6(c)(1)–1 thus provided that if, pursuant to § 1006.6(c)(1), a consumer notifies a debt collector in writing or electronically using a medium of electronic communication through which a debt collector accepts electronic communications from consumers that the consumer either refuses to pay a debt or wants the debt collector to cease further communication with the consumer, notification is complete upon the debt collector's receipt of that information.[226]

The Bureau requested comment on whether a debt collector should be afforded a certain period of time to update its systems to reflect a consumer's cease communication request even after the notification is received, and, if so, how long. One academic commenter opposed, without explanation, the creation of any grace period for a debt collector to update records when a consumer sends a cease communication request.

Industry commenters generally supported affording a debt collector a certain period of time to update its systems to reflect a consumer's cease communication request, though they differed in their specific recommendations. One trade group commenter suggested no less than two business days, because the immediacy of electronic communications makes it commercially impractical for debt collectors to update their records and comply with a consumer's cease communication request in real time. One industry commenter suggested that, for notification by letter, email, or text message, a timeframe of 72 hours from the next business day that the notification was received should be given, while another industry commenter suggested three business days from the date of receipt. Similarly, one trade group commenter suggested that a debt collector is deemed to have notice three days after receipt of the request. One trade group commenter suggested that, because electronic communications may be filtered and quarantined before actually being released into the debt collector's virtual environment, a certain amount of time, for example, a three-to-five-day grace period, should be afforded a debt collector to ''receive'' the electronic cease communication request and update its internal reporting systems to reflect it. Two industry commenters suggested that debt collectors should be required to send an acknowledgement and acceptance correspondence to the consumer within five days of receipt of a cease communication request. Another industry commenter suggested that, consistent with the CAN–SPAM Act of 2003,[227] the Bureau should adopt a ten-business day safe harbor given debt collectors' legitimate business and operational reasons. One industry commenter suggested that cease communication requests should be treated as received upon processing, as long as the debt collector has reasonable procedures for processing them.

The Bureau recognizes that any maximum period of time afforded a debt collector to update its systems to reflect a cease communication request must be short enough to protect consumers from unwanted communications, but long enough for compliance to be practical. Given the disparate periods of time suggested by commenters and the different methods by which a written or electronic cease communication request may be made by a consumer, this final rule does not specify the period of time afforded a debt collector to update its systems to reflect a cease communication request. However, depending upon the circumstances, FDCPA section 813(c)'s bona fide error defense to civil liability may apply if, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, a debt collector communicates or attempts to communicate with a consumer after

[224] This prohibition and its exceptions are explained in detail in the section-by-section analysis of § 1006.14(h).

[225] 15 U.S.C. 1692c(c).

[226] The Bureau proposed this clarification on the basis that FDCPA section 805(c) does not state that *only* mail notifications are complete upon receipt, but rather leaves ambiguous when other forms of notification are complete and, regardless of the medium, it may not be reasonable to consider a debt collector to have been notified before the debt collector has received a consumer's cease communication request. 84 FR 23274, 23298 (May 21, 2019).

[227] 15 U.S.C. 7701 *et seq.*

receiving, but before processing, a cease communication request. For example, if a debt collector who schedules an email message to be sent to a consumer subsequently receives a cease communication request by email but sends the previously scheduled email message to the consumer before the request can be processed (notwithstanding the maintenance of procedures to avoid such an error), the debt collector may be entitled to a bona fide error defense to civil liability under FDCPA section 813(c).[228]

For the reasons discussed above, the Bureau is finalizing comment 6(c)(1)–1 as proposed, and including a new example in comment 6(c)(1)–1.i to illustrate a consumer's cease communication request made by mail being complete upon receipt by a debt collector.

The Bureau proposed comment 6(c)(1)–2 to codify its interpretation of the E–SIGN Act enabling a consumer to satisfy, through an electronic request, FDCPA section 805(c)'s requirement that the consumer's notification be in writing. The Bureau proposed to interpret the applicability of the E–SIGN Act to a consumer electronically notifying a debt collector that the consumer refuses to pay a debt or wants the debt collector to cease further communication with the consumer.[229] For the reasons stated below, the Bureau is finalizing comment 6(c)(1)–2 as proposed.

A group of consumer advocates supported proposed comment 6(c)(1)–2 as entirely consistent with the E–SIGN Act and stated that the Bureau's interpretation will make it easier for consumers to access the protections of § 1006.6(c). One local government commenter supported the Bureau's proposal to interpret the writing requirement in FDCPA section 805(c) to include email messages but expressed concern with the proposed approach that a debt collector would be required to give legal effect to a consumer's notification submitted electronically only if the debt collector generally chose to accept electronic communications from consumers. The commenter suggested that the Bureau require a debt collector to accept email communications from a consumer regarding communication preferences. Another local government commenter requested that the Bureau mandate that consumers be permitted to make cease communication requests using any communication medium that the debt collector either has used to communicate with the consumer or has invited the consumer to use to communicate with the debt collector. This commenter stated that a cease communication request submitted by email, text message, or through a debt collector's website should be treated as a written communication for purposes of § 1006.6(c)(1).

The E–SIGN Act could affect whether a consumer satisfies the requirement in FDCPA section 805(c) that a cease communication request be ''in writing.'' Section 101(a)(1) of the E–SIGN Act generally provides that a record relating to a transaction in or affecting interstate or foreign commerce may not be denied legal effect, validity, or enforceability solely because it is in electronic form.[230] However, section 101(b)(2) of the E–SIGN Act does not require any person to agree to use or accept electronic records or electronic signatures, other than a governmental agency with respect to a record other than a contract to which it is a party.[231] Section 104(b)(1)(A) of the E–SIGN Act provides authority for a Federal agency with rulemaking authority under a statute to interpret by regulation the application of E–SIGN Act section 101 to that statute.[232]

The Bureau interprets the applicability of the E–SIGN Act as it relates to FDCPA section 805(c)'s requirement that a cease communication request be in writing. Specifically, the Bureau interprets FDCPA section 805(c)'s writing requirement as being satisfied when a consumer makes a cease communication request using a medium of electronic communication through which a debt collector accepts electronic communications from consumers, such as email messages or a website portal.[233] Thus, consistent with the Bureau's interpretation of the E–SIGN Act, pursuant to § 1006.6(c)(1), a debt collector is required to give legal effect to a consumer's electronic cease communication request if the debt collector generally accepts electronic communications from consumers. The Bureau adopts this interpretation to harmonize FDCPA section 805(c)'s writing requirement with the E–SIGN Act. Additionally, because the consumer may only use a medium of electronic communication through which a debt collector accepts electronic communications from consumers, section 101(b) of the E–SIGN Act is not contravened.

One trade group commenter suggested that the Bureau permit a debt collector to require a consumer to send an electronic cease communication request only to portals and email addresses designated by the debt collector. A group of consumer advocates requested the Bureau to clarify that a debt collector should be deemed to accept electronic cease communication requests from consumers through any non-public-facing medium listed on the debt collector's website or listed in any of the debt collector's outgoing communications to consumers.

Nothing in § 1006.6(c)(1) prohibits a debt collector from requesting a consumer to send an electronic cease communication request through online portals or to email addresses designated by the debt collector. As debt collectors likely already do for cease communication requests received by mail, debt collectors should maintain procedures reasonably adapted to avoid any errors in receiving such requests electronically. The final rule's prohibitions on harassing, deceptive, and unfair practices in §§ 1006.14, 1006.18, and 1006.22 may address many of the harms that commenters may have been concerned with, such as a debt collector intentionally ignoring a consumer's cease communication request received through an online portal or to an email address not designated by the debt collector for receiving such notifications.

[228] A number of courts have considered a debt collector's assertion of a bona fide error defense under such circumstances. *See, e.g., Webster* v. *ACB Receivables Mgmt., Inc.,* 15 F. Supp. 3d 619, 629 (D. Md. 2014) (holding debt collector not entitled to bona fide error defense where employees' communications with consumer after cease communication notification constituted good-faith human errors, but where debt collector failed to present any evidence of redundancy or safeguards in its policies and procedures to prevent such human errors); *Smith* v. *Transworld Sys., Inc.,* 953 F.2d 1025, 1036 (6th Cir. 1992) (holding debt collector's letter mailed shortly after receiving consumer's cease communication notification constituted bona fide error given debt collector's procedures, including a five-page instruction manual describing collection procedures, were reasonably adapted to avoid any such error); *Carrigan* v. *Cent. Adjustment Bureau, Inc.,* 494 F. Supp. 824, 827 (N.D. Ga. 1980) (assuming debt collector's violation of FDCPA section 805(c) was unintentional, denying debt collector bona fide error defense where debt collector failed to provide any evidence it maintained proper procedures governing handling mail and where error of being unaware of consumer's cease communication letter led to calling consumer).

[229] Section 104(b)(1)(A) of the E–SIGN Act provides authority for a Federal regulatory agency with rulemaking authority under a statute to interpret section 101 of the E–SIGN Act with respect to that statute by regulation. 15 U.S.C. 7004(b)(1)(A).

[230] 15 U.S.C. 7001(a)(1).

[231] 15 U.S.C. 7001(b)(2).

[232] 15 U.S.C. 7004(b)(1)(A).

[233] This interpretation is responsive to comments recommending that, if a debt collector makes an electronic means of communication available to consumers, electronic communications received from consumers through that channel should trigger the debt collector's obligations under FDCPA section 809(b).

One commenter asked what a debt collector should do if the debt collector receives a cease communication request after communicating with a consumer but before providing the consumer a validation notice pursuant to FDCPA section 809(a).[234] As the commenter explained, FDCPA section 809(a) generally requires a debt collector to send a consumer a validation notice within five days after the initial communication with the consumer (unless the validation was provided in the initial communication), and it is unclear what the debt collector should do if the consumer asks to cease communication before the validation notice is sent. To the extent any conflict exists between FDCPA sections 805(c) and 809(a), the Bureau notes that the conflict is statutory and not a result of this final rule. Nevertheless, the Bureau believes that such circumstances may be rare in practice because many debt collectors provide the validation notice in the initial communication as permitted under FDCPA section 809(a). And, to the extent that the validation notice is not provided in the initial communication, many validation notices will have been prepared for sending or sent before a debt collector receives and processes any such cease communication request.[235] The Bureau is not aware of any such conflict causing significant issues or consumer harms at this time. Accordingly, the Bureau will monitor this issue for any potential consumer harm or compliance concerns and revisit at a later time if needed.

6(c)(2) Exceptions

FDCPA section 805(c) provides exceptions to the cease communication provision. The exceptions allow a debt collector to communicate with a consumer even after a cease communication request: (1) To advise the consumer that the debt collector's further efforts are being terminated; (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.[236] The Bureau proposed § 1006.6(c)(2) to implement these exceptions and generally restate the statute, with only minor changes for clarity. The Bureau proposed comment 6(c)(2)–1 to clarify that, consistent with the 2016 Servicing Final Rule [237] and the concurrently issued 2016 FDCPA Interpretive Rule,[238] the Bureau interprets the written early intervention notice required under Regulation X [239] as falling within the cease communication exceptions in FDCPA section 805(c)(2) and (3) (proposed as § 1006.6(c)(2)(ii) and (iii)).[240]

The Bureau received no comments on proposed § 1006.6(c)(2) or on proposed comment 6(c)(2)–1 and therefore is finalizing them as proposed, with minor non-substantive edits. Relatedly, one industry commenter requested that the Bureau clarify whether periodic statements for residential mortgage loans required under Regulation Z, 12 CFR 1026.41(a) are exempt under FDCPA section 805(c)(2) and (3). The Bureau previously addressed this question in its 2013 bulletin providing implementation guidance for certain mortgage servicing rules,[241] in which the Bureau determined that, notwithstanding a consumer's cease communication request, a mortgage servicer who is subject to the FDCPA with respect to a mortgage loan would not be liable under the FDCPA for complying with certain servicing rule provisions, including requirements to provide a borrower with disclosures regarding the forced placement of hazard insurance,[242] a disclosure regarding an adjustable-rate mortgage's initial interest rate adjustment,[243] and a periodic statement for each billing cycle.[244] The Bureau explained that these disclosures are specifically mandated by the Dodd-Frank Act,[245] which makes no mention of their potential cessation under the FDCPA and presents a more recent and specific statement of legislative intent regarding these disclosures than does the FDCPA. The Bureau also explained that these notices provide useful information to consumers regardless of their collection status. The Bureau is adopting this relevant guidance in new comment 6(c)(2)–2 for mortgage servicers subject to the FDCPA with respect to a mortgage loan.

6(d) Communications With Third Parties

FDCPA section 805(b) prohibits a debt collector from communicating, in connection with the collection of any debt, with any person other than the consumer [246] or certain other persons.[247] FDCPA section 805(b) also identifies certain exceptions to this prohibition. The Bureau proposed § 1006.6(d)(1) and (2), respectively, to implement FDCPA section 805(b)'s general prohibition against communicating with third parties and the exceptions to that prohibition. Additionally, the Bureau proposed § 1006.6(d)(3) to specify, for purposes of FDCPA section 813(c), procedures that are reasonably adapted to avoid an error in sending an email or text message that would result in a violation of FDCPA section 805(b). The Bureau proposed § 1006.6(d) pursuant to its authority under FDCPA section 814(d) to write rules with respect to the collection of debts by debt collectors.

6(d)(1) Prohibitions

With limited exceptions, FDCPA section 805(b) prohibits a debt collector from communicating, in connection with the collection of any debt, with any person other than the consumer (as defined in FDCPA section 805(d)) or certain other persons. The Bureau proposed § 1006.6(d)(1) to implement FDCPA section 805(b) and generally restate the statute, with minor wording and organizational changes for clarity.[248] For the reasons discussed below, the Bureau is finalizing § 1006.6(d)(1) as proposed.

One consumer advocate requested that, to protect consumers' privacy across all forms of communication, the Bureau ban debt collectors from communicating with third parties without the consumer's written consent. The Bureau declines to adopt such an approach. FDCPA section 805(b) contemplates a debt collector communicating with third parties subject to the prior consent of the consumer given directly to the debt

[234] The Bureau proposed to implement FDCPA section 809(a) in § 1006.34. As discussed in the section-by-section analysis of § 1006.34, the Bureau intends to finalize that section in a disclosure-focused final rule addressing the validation notice.

[235] As discussed above, a debt collector who, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, communicates or attempts to communicate with a consumer after receiving, but before processing, a consumer's cease communication request pursuant to § 1006.6(c)(1) may have a bona fide error defense to civil liability under FDCPA section 813(c).

[236] 15 U.S.C. 1692c(c)(1)–(3).

[237] 81 FR 72160 (Oct. 19, 2016).

[238] 81 FR 71977, 72233–38 (Oct. 19, 2016).

[239] 12 CFR 1024.39(d)(3).

[240] 84 FR 23274, 23298–99 (May 21, 2019).

[241] CFPB Bulletin 2013–12, at 7 (Oct. 15, 2013), *https://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.*

[242] 12 CFR 1024.37.

[243] 12 CFR 1026.20(d).

[244] 12 CFR 1026.41.

[245] Dodd-Frank Act sections 1418 (ARM initial interest rate adjustment), 1420 (periodic statements), and 1463 (force-placed insurance).

[246] The Bureau implements the term consumer as used in section 805(b) in § 1006.6(a).

[247] 15 U.S.C. 1692c(b). Specifically, FDCPA section 805(b) prohibits communicating with any person other than the consumer, the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the creditor's attorney, or the debt collector's attorney.

[248] 84 FR 23274, 23299 (May 21, 2019).

collector but does not require that the consumer effectuate that prior consent in writing.

One industry commenter requested the Bureau clarify what constitutes a third party. This commenter explained that a debt collector frequently must speak with a consumer's insurance company or a State victim assistance program to verify enrollment, and that such a third-party communication is intended to benefit the consumer and should therefore be considered permissible by the Bureau.

FDCPA section 805(b) specifically delineates the following persons with whom a debt collector may communicate without violating the prohibition on communication with third parties: The consumer, the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector. If a debt collector needs to communicate with any other person in connection with the collection of any debt, FDCPA section 805(b) provides an exception, as discussed below,[249] permitting the debt collector to do so with the prior consent of the consumer given directly to the debt collector. Therefore, to the extent a debt collector needs to speak with persons other than those listed in FDCPA section 805(b) and implemented in § 1006.6(d)(1) of this final rule, certain exceptions may apply permitting the debt collector to do so.

One industry commenter suggested that the Bureau adopt a safe harbor for inadvertent communications with a third party, such as if a third party hears a debt collector's voicemail message left on an answering machine. This commenter suggested that, if the debt collector discloses the third-party communication to the consumer and stops future communications with that third party, the debt collector should not be liable for the disclosure.

Federal government agency staff and some courts have found that debt collectors do not violate the FDCPA's prohibition on third-party disclosures unless they have reason to anticipate that the communication may be heard or read by third parties.[250] As the FTC previously explained, ''[a] debt collector does not violate [FDCPA section 805(b)] when an eavesdropper overhears a conversation with the consumer, unless the debt collector has reason to anticipate the conversation will be overheard.''[251] As discussed in detail below, the Bureau is finalizing procedures in § 1006.6(d)(3) through (5) that are designed to ensure that a debt collector who uses a specific email address or telephone number to communicate with a consumer by email or text message does not have a reason to anticipate that an unauthorized third-party disclosure may occur.[252] In other situations, unless the debt collector has reason to anticipate that the communication may be heard or read by third parties, a debt collector who unintentionally communicates with a third party may be able to raise a bona fide error defense to civil liability under FDCPA section 813.

One State government commenter suggested that, for active service members, debt collectors often call the member's commanding officer to inform the supervisor about the outstanding debt. The commenter requested that the rule be revised to prohibit such violations of consumer privacy and job security. Unless the consumer has provided consent for such communications directly to the debt collector or another exception in § 1006.6(d)(2) applies, such conduct already is prohibited by FDCPA section 805(b) and will be prohibited by § 1006.6(d)(1).

For the reasons stated above, the Bureau is finalizing § 1006.6(d)(1) as proposed to provide that, except as provided in § 1006.6(d)(2), a debt collector must not communicate, in connection with the collection of any debt, with any person other than: The consumer (as defined in § 1006.6(a)); the consumer's attorney; a consumer reporting agency, if otherwise permitted by law; the creditor; the creditor's attorney; or the debt collector's attorney.

Proposed comment 6(d)(1)–1 explained that, because a limited-content message is not a communication, a debt collector does not violate § 1006.6(d)(1) if the debt collector leaves a limited-content message for a consumer orally with a third party who answers the consumer's home or mobile telephone. As discussed in the section-by-section analysis of § 1006.2(j), the Bureau is declining to finalize a definition of limited-content message that allows for such third-party limited-content messages. Accordingly, the Bureau is not adopting proposed comment 6(d)(1)–1.

6(d)(2) Exceptions

FDCPA section 805(b) specifies exceptions to the general prohibition against a debt collector communicating with third parties, including that a debt collector may engage in an otherwise prohibited communication with the prior consent of the consumer given directly to the debt collector. The Bureau proposed § 1006.6(d)(2) to implement the exceptions in FDCPA section 805(b) and generally restate the statute, with minor wording and organizational changes for clarity.[253] In relevant part, proposed § 1006.6(d)(2)(ii) would have implemented the statutory exception permitting third-party communications with a person when the debt collector has received prior consent directly from the consumer for such communications.

One industry commenter suggested that the Bureau clarify that prior consent under proposed § 1006.6(d)(2)(ii) includes consent the consumer gives to a third party to discuss debts with a debt collector. This commenter explained that, in some cases, a debt collector may receive from a debt settlement company an authorization signed by a consumer permitting the debt collector to communicate about a debt with the debt settlement company.

The Bureau declines to clarify the prior consent exception as requested because the scenario posed by the commenter will depend upon the specific facts and circumstances as to whether the consent provided satisfies § 1006.6(d)(2)(ii). The Bureau therefore is finalizing § 1006.6(d)(2) as proposed to provide that the prohibition in § 1006.6(d)(1) does not apply when a debt collector communicates, in connection with the collection of any debt, with a person: (i) For the purpose of acquiring location information, as provided in § 1006.10; (ii) with the prior consent of the consumer given directly to the debt collector; (iii) with the express permission of a court of competent jurisdiction; or (iv) as reasonably necessary to effectuate a postjudgment judicial remedy.

The Bureau proposed comment 6(d)(2)–1 to refer to the commentary to proposed § 1006.6(b)(4)(i) for guidance concerning a consumer giving prior consent directly to a debt collector. The Bureau received no comments on

[249] This exception is implemented in § 1006.6(d)(2) as discussed further in the section-by-section analysis below. *See* the section-by-section analysis of § 1006.6(d)(2).

[250] *See, e.g., Berg* v. *Merchants Ass'n Collection Div., Inc.,* 586 F. Supp. 2d 1336, 1342, 1345 (S.D. Fla. 2008); *Peak* v. *Prof'l Credit Serv.,* No. 6:14–cv–01856–AA, 2015 WL 7862774, at *5–6 (D. Or. Dec. 2, 2015); *Chlanda* v. *Wymard,* No. C–3–93–321, 1995 WL 17917574, at *2 (S.D. Ohio Sept. 5, 1995).

[251] *Statements of General Policy or Interpretation: Staff Commentary on the FDCPA,* 53 FR 50097, 50104 (Dec. 13, 1988).

[252] *See* the section-by-section analysis of § 1006.6(d)(3).

[253] 84 FR 23274, 23299 (May 21, 2019).

comment 6(d)(2)–1 and is finalizing it as proposed.

6(d)(3) Reasonable Procedures for Email and Text Message Communications

Proposed § 1006.6(d)(3) identified procedures reasonably adapted to avoid a violation of FDCPA section 805(b)'s prohibition on third-party disclosures when communicating by email or text message.[254] A debt collector who sent an email or text message in accordance with the proposed procedures would have been entitled to a bona fide error defense to civil liability under FDCPA section 813(c) in the event of an unintentional third-party disclosure.[255]

Specifically, the Bureau proposed § 1006.6(d)(3) to provide a debt collector with a safe harbor from civil liability[256] for an unintentional third-party disclosure if, when communicating with a consumer using an email address or, in the case of a text message, a telephone number, the debt collector's procedures included steps to reasonably confirm and document that the debt collector: (1) Obtained and used the email address or telephone number in accordance with one of the methods described in proposed § 1006.6(d)(3)(i); and (2) took additional steps, in accordance with proposed § 1006.6(d)(3)(ii), to prevent communications using an email address or telephone number that the debt collector knew had led to an unauthorized third-party disclosure. Proposed § 1006.6(d)(3)(i)(A) through (C) described three methods of obtaining and using an email address or telephone number for text messages, none of which would have required a debt collector to obtain a consumer's direct prior consent (or ''opt in'') before communicating by email or text message. As discussed throughout the section-by-section analysis of § 1006.6(d)(3) through (5), and pursuant to its authority under FDCPA section 814(d) to implement and interpret FDCPA sections 805(b) and 813(c), the Bureau is finalizing some portions of proposed § 1006.6(d)(3), and reorganizing and modifying others, as final § 1006.6(d)(3) through (5).

The Bureau received a large number of comments in response to proposed § 1006.6(d)(3), including thousands of comments from individual consumers, as well as comments from consumer advocates, creditors, debt collectors, trade associations, some members of Congress, State Attorneys General, local governments, and academics. Many commenters addressed specific aspects of proposed § 1006.6(d)(3); these comments are addressed where relevant in the section-by-section analysis of final § 1006.6(d)(3) through (5). Immediately below, the Bureau addresses the large number of comments that it received regarding the general operation of proposed § 1006.6(d)(3).

Risk of Consumer Harm Posed by Third-Party Disclosures

The Bureau received multiple comments regarding the general risks to consumers of third-party disclosures from electronic communications. Consumer and consumer advocate commenters argued that the reassignment of telephone numbers,[257] and the sharing of email accounts and telephone numbers between family members, increase the risk that a debt collector who sends an email or text message will disclose sensitive debt collection information to a third party not authorized to receive it. Moreover, some commenters noted, emails and text messages may be viewable by a consumer's email or telephone provider or appear on a publicly visible screen, such as when a consumer accesses email at the library. Several consumer advocate commenters stated that third-party disclosures could cause consumers to suffer reputational damage; increased risk of identity theft; and shame and other emotional pain, particularly when the third party to whom the disclosure is made is an employer, family member, or friend.

One industry commenter characterized email and text message communications as posing no more third-party disclosure risk than traditional mail and telephone communications. This commenter asserted that there is little third-party disclosure risk when a debt collector emails a consumer's current or former personal email address because, unlike telephone numbers, email addresses are rarely reassigned. Although the commenter conceded that the reassignment of telephone numbers increases the risk of third-party disclosure when debt collectors send text messages, the commenter asserted that, because consumers regularly change home addresses, the same degree of risk is present when a debt collector mails information to a consumer's last known address. Further, the commenter argued, any third-party disclosure risk that exists when a third party accesses a consumer's email account or sees an email or text message on a publicly visible screen is entirely within the consumer's control.

The Bureau recognizes that electronic communications in debt collection offer benefits to consumers and debt collectors. The Bureau also recognizes that electronic communications pose a risk of third-party disclosure, such as when a debt collector sends a text message to a telephone number that no longer belongs to the consumer, and, for some consumers, such a disclosure may cause harm. However, the Bureau emphasizes that there is no empirical data in the rulemaking record demonstrating whether and to what extent the privacy risks from electronic communications in debt collection are greater than, the same as, or less than those associated with non-electronic communications in debt collection. In finalizing the procedures in § 1006.6(d)(3) through (5), the Bureau has considered the benefits and risks of electronic communications based on the information in the rulemaking record.[258]

Reason-To-Anticipate Standard

A few commenters addressed the Bureau's proposal to design the procedures in proposed § 1006.6(d)(3) so that a debt collector who uses them does not have reason to anticipate a third-party disclosure.[259] A consumer advocate commenter opposed the reason-to-anticipate standard, noting that consumers can be harmed even by

[254] *See* 15 U.S.C. 1692c(b); 84 FR 23274, 23299–04 (May 21, 2019).

[255] 15 U.S.C. 1692k(c) (providing that a debt collector may not be held liable in any action brought under the FDCPA if the debt collector shows by a preponderance of the evidence that the violation was not intentional, that it resulted from a bona fide error, and that it occurred even though the debt collector maintained procedures reasonably adapted to avoid the error). As explained in the proposal, the Bureau reasoned that a debt collector who communicated by email or text message in compliance with the proposed procedures would not have reason to anticipate a prohibited third-party disclosure. *See* 84 FR 23274, 23300 (May 21, 2019).

[256] See note 6, *supra,* explaining the Bureau's use of the phrase ''safe harbor from civil liability'' throughout this Notice when discussing the effect of following the procedures in § 1006.6(d)(3) through (5).

[257] According to a 2018 FCC notice of proposed rulemaking, nearly 35 million telephone numbers are disconnected and made available for reassignment each year. *Advanced Methods to Target and Eliminate Unlawful Robocalls,* 83 FR 17631, 17632 (Apr. 23, 2018) (''Consumers disconnect their old numbers and change to new telephone numbers for a variety of reasons, including switching wireless providers without porting numbers and getting new wireline telephone numbers when they move.'').

[258] Section 1006.6(d)(3) through (5) addresses the risk of third-party disclosure posed by electronic communications. Other risks posed by electronic communications, such as the potential that debt collectors may use them in harassing ways, are addressed in other provisions of the final rule, including § 1006.6(e) and § 1006.14(a).

[259] *See* 84 FR 23274, 23300 n.238 (May 21, 2019) (citing FTC staff and court opinions finding that debt collectors do not violate FDCPA section 805(b) unless they have reason to anticipate that a disclosure may be heard or read by third parties).

unforeseeable disclosures. An industry commenter supported the standard, arguing that debt collectors should not be penalized for third-party disclosures they had no reason to anticipate, particularly when the circumstances giving rise to a disclosure, such as a third party's access to the consumer's email account or telephone, are out of the debt collector's control.

As in the proposal, the Bureau has designed the procedures in the final rule around the reason-to-anticipate standard. The reason-to-anticipate standard recognizes that it is generally not possible for a debt collector to eliminate entirely the risk that a third party will see or hear a debt collection communication. The standard is therefore consistent with FDCPA section 813(c), which protects debt collectors who unintentionally violate the statute notwithstanding the use of reasonable procedures. FDCPA section 813(c), like the reason-to-anticipate standard, generally recognizes that a debt collector acting in good faith pursuant to reasonable procedures should not be liable for errors (in this context, a third-party disclosure) that the debt collector did not intend and could not have foreseen.

Reasonably Confirm and Document

An industry commenter asked the Bureau to clarify the proposed requirement that a debt collector's procedures include steps to reasonably confirm and document that the debt collector acted in accordance with proposed § 1006.6(d)(3).[260] Another industry commenter suggested that procedures to reasonably confirm and document compliance should include an audit component and asked the Bureau to publish sample procedures. Consumer and consumer advocate commenters generally did not address the proposed requirement to reasonably confirm and document compliance.

The final rule retains the requirement that a debt collector's procedures include steps to reasonably confirm and document that the debt collector acted in accordance with § 1006.6(d)(3). Depending on their size, the scope of their operations, and other business-specific facts, different debt collectors may take different approaches to reasonably confirming and documenting compliance with § 1006.6(d)(3). The Bureau declines to specify by rule a single set of steps or elements that all procedures must or should include under § 1006.6(d)(3). As the Bureau noted in the preamble to the proposal, however, procedures permitting a debt collector to use obviously incorrect email addresses merely because the addresses were obtained consistent with § 1006.6(d)(3) would not satisfy the requirement to reasonably confirm and document compliance.[261] In this circumstance, any purported confirmation of the debt collector's compliance with § 1006.6(d)(3) would not be reasonable.

Scope of Procedures

The procedures in proposed § 1006.6(d)(3) would have applied only to a debt collector's email and text message communications.[262] Two industry commenters requested that the Bureau clarify the term email. One did not propose a definition, while the other asked the Bureau to adopt an expansive definition that would include private communication tools offered by social media platforms. This commenter asserted that social media accounts, like email accounts, are password protected and generally not reassigned, and, as a result, direct messaging communications on social media should be treated the same as email communications. The commenter also stated that the definition of email should include mobile application or web-based technologies that allow consumers to initiate a live written conversation with a business through a ''chat box.''

A group of consumer advocate commenters asked the Bureau to clarify that the term email does not include direct messages, whether sent through social media platforms or free-standing messaging platforms. These commenters asserted that, on some direct messaging platforms, users search for each other by first and last name rather than by a distinct and individual user name, which increases the likelihood of misdirected messages, particularly among consumers with common names.

In light of the apparent variations in direct messaging technology, the Bureau is unable to assess how well the procedures in final § 1006.6(d)(3) through (5) would address the risk of third-party disclosures in the direct messaging context. Therefore, for purposes of § 1006.6(d)(3) through (5), the Bureau declines to define the term email to include direct messaging technology in mobile applications or on social media. Debt collectors may use these communication media, subject to the requirements and prohibitions of the FDCPA and the final rule.

Multiple industry commenters advocated expanding the procedures in proposed § 1006.6(d)(3), or developing new procedures, to cover additional communication technologies, such as smart phone notifications, ringless voicemails, and traditional telephone calls and voicemails. Each of these contexts may pose third-party disclosure risks that differ, in varying degrees, from the third-party disclosure risks posed by email and text message communications. Because the Bureau did not propose procedures related to other communications technologies, it lacks the benefit of public comment about what such procedures might look like.[263] Developing procedures to cover such technologies is outside the scope of this rulemaking.

The Bureau reiterates, however, that the final rule identifies neither the only circumstances in which a debt collector may communicate with a consumer electronically nor the only technologies a debt collector may use to do so. Nor does it identify the only procedures that may be reasonably adapted to avoid a violation of the prohibition on third-party disclosures. Thus, a debt collector would not necessarily violate § 1006.6(d)(1) or FDCPA section 805(b) by communicating with a consumer electronically other than by email or text message, or by email or text message without using the procedures in § 1006.6(d)(3) through (5). Moreover, depending on the facts, a debt collector might be able to show by a preponderance of the evidence that any third-party disclosures were unintentional and that the debt collector employed procedures reasonably adapted to avoid them.

First-Party Debt Collectors

Two credit union commenters asked the Bureau to clarify the rules for creditors' use of email and text messages. The procedures in § 1006.6(d)(3) through (5) apply to FDCPA debt collectors only. Creditors who are not FDCPA debt collectors are not subject to the FDCPA's prohibition on third-party disclosures, although they are covered by other consumer financial laws. To the extent commenters were requesting that the Bureau develop and finalize procedures applicable to creditors, such a request is outside the scope of this rulemaking.

[260] *See id.* at 23301.

[261] *See id.* at 23300.

[262] *See id.*

[263] *See* 84 FR 23274, 23300 (May 21, 2019) (''The procedures in proposed § 1006.6(d)(3) address email and text message communications only. At this time, the Bureau does not propose procedures related to the use of less-developed and less-widespread forms of electronic communications because consumers do not appear accustomed to using such technologies in their financial lives.'').

Telephone Consumer Protection Act

The Telephone Consumer Protection Act (TCPA) generally prohibits the use of automated dialing equipment to call a telephone number without a consumer's consent.[264] A group of consumer advocate commenters asked the Bureau to clarify how the Bureau's procedures interact with the TCPA. Congress has vested the FCC—not the Bureau—with authority to implement the TCPA.[265] The final rule does not interpret the TCPA; nor does anything in the final rule alter any FCC rule or any obligation imposed on debt collectors by such a rule.

For the reasons discussed above, the Bureau is finalizing § 1006.6(d)(3), which sets forth procedures that debt collectors may use to reduce their risk of civil liability for unintentional third-party disclosures when communicating with consumers by email or text message. In response to numerous comments regarding the details of the proposed procedures, and as discussed in detail below, the Bureau is finalizing procedures that differ substantively and organizationally from those that the Bureau proposed.[266]

6(d)(3)(i)

As proposed, § 1006.6(d)(3)(i) identified the first of two conditions that a debt collector would have had to satisfy to obtain a safe harbor from civil liability for an unintentional third-party disclosure when communicating by email or text message. Under proposed § 1006.6(d)(3)(i), the debt collector's procedures would have had to include steps to reasonably confirm and document that the debt collector communicated using an email address, or telephone number for text messages, in accordance with one of the three methods described in proposed § 1006.6(d)(3)(i)(A) through (C).

As proposed, § 1006.6(d)(3)(i)(A) through (C) provided a safe harbor if, among other things, the consumer had used the email address or telephone number to communicate with the debt collector (proposed § 1006.6(d)(3)(i)(A), the ''consumer-use'' method); the consumer received notice and an opportunity to opt out of the debt collector's use of the email address or telephone number for text messages (proposed § 1006.6(d)(3)(i)(B), the ''notice-and-opt-out'' method); or the creditor or a prior debt collector had obtained the email address or telephone number from the consumer and used it to communicate about the debt (proposed § 1006.6(d)(3)(i)(C), the ''creditor-or-prior-debt-collector-use'' method). As proposed, the methods in § 1006.6(d)(3)(i)(A) through (C) did not distinguish between communications sent by email and communications sent by text message.

Many commenters offered substantive feedback about the three methods of obtaining and using email addresses and telephone numbers described in proposed § 1006.6(d)(3)(i)(A) through (C). Those comments are addressed where relevant in the section-by-section analysis of § 1006.6(d)(4) and (5). Some commenters also highlighted the differences between email and text message communications, noting the unique third-party disclosure risks presented by the reassignment of mobile telephone numbers.

After considering the public comments, the Bureau is, as proposed, finalizing § 1006.6(d)(3)(i) to identify the first of two conditions that a debt collector must satisfy to obtain a safe harbor from civil liability for an unintentional third-party disclosure when communicating by email or text message. However, in light of comments highlighting the different third-party disclosure risks of email communications and text message communications, the final rule sets forth different procedures for email messages and text messages and also addresses them separately (email in § 1006.6(d)(4) and text messages in § 1006.6(d)(5)). To reflect this change, final § 1006.6(d)(3)(i) provides that, for a debt collector to obtain a safe harbor from civil liability for an unintentional third-party disclosure, a debt collector's procedures must include steps to reasonably confirm and document that the debt collector communicated with the consumer by sending an email to an email address described in § 1006.6(d)(4) or a text message to a telephone number described in § 1006.6(d)(5).

6(d)(3)(ii)

Proposed § 1006.6(d)(3)(ii) identified the second of two conditions a debt collector would have had to satisfy to obtain a safe harbor from civil liability for an unintentional third-party disclosure when communicating by email or text message. Specifically, under proposed § 1006.6(d)(3)(ii), the debt collector's procedures would have had to include steps to reasonably confirm and document that the debt collector took additional steps to prevent communications using an email address or telephone number that the debt collector knew had led to an unauthorized third-party disclosure. The Bureau proposed § 1006.6(d)(3)(ii) on the basis that a debt collector whose procedures are not designed to prevent recurrence of a known violation may intend to convey information related to the debt or its collection to a third party.

A group of consumer advocate commenters argued that proposed § 1006.6(d)(3)(ii) did not sufficiently address the risk of repeat third-party disclosures. According to these commenters, the Bureau should simply require debt collectors to stop using an email address or telephone number for text messages if the debt collector knows that using the address or telephone number has led to a third-party disclosure, unless the consumer has expressly consented. One industry commenter requested that the Bureau provide examples of additional steps a debt collector could take to prevent communications using an email address or telephone number that the debt collector knows has led to a third-party disclosure.

The Bureau is finalizing § 1006.6(d)(3)(ii) with modifications for clarity. Specifically, § 1006.6(d)(3)(ii) provides that, to obtain a safe harbor from civil liability, a debt collector's procedures must include steps to reasonably confirm and document that the debt collector did not communicate with the consumer by sending an email to an email address or a text message to a telephone number that the debt collector knows has led to a disclosure prohibited by § 1006.6(d)(1).

The Bureau is not adopting the suggestion to require debt collectors simply to stop using email addresses and telephone numbers that have led to third-party disclosures. As noted, the Bureau is finalizing § 1006.6(d)(3) through (5) as an interpretation of FDCPA section 813(c)'s bona fide error defense. A bona fide error defense is only available under FDCPA section 813(c) if a debt collector maintains procedures reasonably adapted to avoid an error. Accordingly, § 1006.6(d)(3)(ii) is framed in terms of a debt collector's procedures. The Bureau notes, however, that, if a debt collector sends repeated emails to an email address or text messages to a telephone number that the debt collector knows has led to a third-party disclosure, that conduct would likely show that the debt collector's procedures are not reasonable and that

[264] *See* 47 U.S.C. 227; *ACA Int'l* v. *Fed. Commc'ns Comm'n,* 885 F.3d 687 (D.C. Cir. 2018).

[265] *See* 47 U.S.C. 227(b)(2).

[266] The text of the introductory paragraph of final § 1006.6(d)(3) is largely the same as the text of the introductory paragraph of proposed § 1006.6(d)(3), with technical edits for clarity.

the debt collector is not entitled to a safe harbor from civil liability.[267]

In response to the industry commenter's request for examples, the Bureau is adopting new comment 6(d)(3)(ii)–1, which clarifies that, for purposes of § 1006.6(d)(3)(ii), a debt collector knows that sending an email to an email address or a text message to a telephone number has led to a disclosure prohibited by § 1006.6(d)(1) if any person has informed the debt collector of that fact. Thus, to comply with § 1006.6(d)(3)(ii), it is necessary (but not sufficient) for a debt collector to accept and track complaints.

6(d)(4) Procedures for Email Addresses

As noted above, the final rule reorganizes proposed § 1006.6(d)(3)(i) by separating email procedures and text message procedures, and final § 1006.6(d)(4) describes the three procedures that a debt collector may use to obtain a safe harbor from civil liability for an unintentional third-party disclosure when communicating by email. The final email procedures are discussed in detail in the section-by-section analysis of § 1006.6(d)(4)(i) through (iii).

The Bureau received one overarching comment regarding its proposed email procedures. One industry commenter stated that requiring debt collectors to encrypt email communications or protect them with passwords would reduce the risk of third-party disclosure. As proposed, the email procedures would not have required encryption or password protection, and the Bureau declines to require debt collectors to take these steps to obtain a safe harbor from civil liability for third-party disclosures. The Bureau notes, however, that a debt collector who encrypts its emails or protects them with a password would not thereby lose access to a safe harbor from civil liability under § 1006.6(d)(3) for which the debt collector otherwise qualified.

6(d)(4)(i) Procedures Based on Communication Between the Consumer and the Debt Collector

Proposed § 1006.6(d)(3)(i)(A) (the ''consumer-use'' method) for emails provided that a debt collector could obtain a safe harbor from civil liability for an unintentional third-party disclosure if, in addition to complying with § 1006.6(d)(3)(ii), the debt collector maintained procedures to reasonably confirm and document that the debt collector communicated with the consumer using an email address, including an employer-provided email address, that the consumer recently used to contact the debt collector for purposes other than opting out of electronic communications.[268] As discussed below, the Bureau is finalizing the email procedures in proposed § 1006.6(d)(3)(i)(A) as § 1006.6(d)(4)(i), with modifications and additions to address comments received, and with revisions for clarity.

The Bureau received numerous comments regarding its assumption that a debt collector may not have reason to anticipate a third-party disclosure when sending an email to an email address, including an employer-provided email address, that the consumer recently used to communicate with the debt collector. The Bureau reasoned that a consumer generally is better positioned than a debt collector to determine whether third parties have access to a specific email address, and a consumer's decision to communicate with a debt collector using a specific email address may suggest that the consumer assessed the risk of third-party disclosure to be low.[269]

In general, industry commenters supported the Bureau's reasoning, while several consumer advocate commenters rejected it. Consumer advocate commenters generally asserted that it is unlikely that consumers will have done a third-party disclosure risk analysis before using a particular email address to communicate with a debt collector, and that consumers who lack regular access to a computer or email address might use another person's email address to communicate with the debt collector. Consumer advocate commenters also asserted that a consumer may feel some urgency to contact a debt collector and may use a certain email address to do so without intending to establish that address as a regular means of contact. As to employer-provided email addresses specifically, consumer advocate commenters argued that employees may not be aware that employers can and do monitor emails sent or received on employer-provided accounts, and that even consumers who are aware of this possibility likely would be unaware that sending a carefully worded email to a debt collector could insulate the debt collector from third-party disclosure liability if the debt collector replied to that address.

The Bureau determines that consumers are generally better positioned than debt collectors to determine if third parties have access to a particular email account, whether personal or employer provided. A consumer who uses a particular email address to contact a debt collector about a debt likely expects the debt collector to respond using the same address. In addition, because a third party with access to a consumer's email account typically can read outgoing and incoming communications, an email message sent by a consumer to a debt collector may, like an email message received by a consumer from a debt collector, result in a third-party disclosure. For these reasons, the Bureau continues to believe that a consumer's willingness to use an email address to contact a debt collector without conditions suggests that the risk of third-party disclosure is low if the debt collector responds to that email. Therefore, a debt collector who uses such an email address generally would lack reason to anticipate a third-party disclosure, unless the consumer has asked the debt collector not to engage in such communications.[270]

The Bureau also received numerous comments regarding proposed § 1006.6(d)(3)(i)(A)'s recency requirement, *i.e.,* the requirement that the email address be one that the consumer recently used to contact the debt collector. While many commenters confirmed that telephone numbers are regularly reassigned, several industry commenters stated that email addresses typically are not reassigned and that the proposed recency requirement for email addresses therefore was unnecessary. Several industry commenters also objected on the ground that a recency requirement would impose a burden on debt collectors to track information, such as when a consumer last used an email address. A group of consumer advocate commenters acknowledged that email addresses are reassigned far

[267] Moreover, depending on the facts, a debt collector who repeatedly sends an email or a text message to an email address or telephone number that the debt collector knows has led to a third-party disclosure may violate FDCPA section 808's prohibition on unfairness.

[268] As noted, proposed § 1006.6(d)(3)(i)(A) would have applied to both email addresses and telephone numbers, but final § 1006.6(d)(4)(i) applies only to email addresses. This section-by-section analysis therefore addresses proposed § 1006.6(d)(3)(i)(A) only with respect to comments that specifically discussed email addresses, or that did not distinguish between email addresses and telephone numbers. Comments received in response to proposed § 1006.6(d)(3)(i)(A) that discussed telephone numbers are addressed in the section-by-section analysis of § 1006.6(d)(5)(i).

[269] *See* 84 FR 23274, 23301 (May 21, 2019) (discussing the Bureau's rationale for including both employer-provided and personal email addresses in the proposed § 1006.6(d)(3)(i)(A) safe harbor).

[270] The Bureau notes that § 1006.14(h) prohibits a debt collector from communicating or attempting to communicate with a person through a medium of communication if the person has requested that the debt collector not use that medium to communicate with the person.

less frequently than telephone numbers but nevertheless supported the recency requirement for email addresses.

The Bureau has decided not to include a recency requirement as part of the email procedures in final § 1006.6(d)(4)(i).[271] The Bureau proposed the recency requirement principally to address the risk that a telephone number might be reassigned from one consumer to another, and would have applied the requirement to email addresses largely for consistency and ease of administration.[272] In light of comments asserting that a recency requirement imposes some burden on creditors and debt collectors to track and transfer information, and comments indicating that emails are reassigned infrequently if at all, the Bureau concludes that a recency requirement should not apply to email addresses.[273]

Several industry commenters requested that the Bureau expand the procedures in proposed § 1006.6(d)(3)(i)(A), or create new procedures, to protect a debt collector who communicates with a consumer by email after receiving the consumer's permission to use the email address for debt collection communications, such as if the consumer provides the email address to the debt collector over the telephone or while using the debt collector's website, or provides the email address to a court for purposes of receiving electronic service of process.[274] The Bureau concludes that, if a consumer has directly consented to a debt collector's use of a particular email address and has not withdrawn that consent,[275] the debt collector generally does not have reason to anticipate that using the email address to communicate with the consumer will lead to a third-party disclosure. Accordingly, and as discussed below, the final rule includes a new provision, § 1006.6(d)(4)(i)(B), to account for the direct consent scenario.[276]

Many industry commenters also requested that the Bureau expand the procedures in proposed § 1006.6(d)(3)(i)(A), or create new procedures, to cover not only an email address that the consumer provided to the debt collector, but also an email address that the consumer provided to, or used to contact, the creditor. Some of these commenters argued that, if a consumer provided an email address when opening an account or communicating with a creditor, the consumer knew or should have known that the debt collector would use the email address to collect the debt, and there is no need to delay the collection process by requiring consumers to re-confirm their preferences. Similarly, an industry commenter argued that a consumer who has chosen to communicate with a creditor electronically should be assumed to prefer communicating with a debt collector electronically, and that an opt-in system burdens consumer choice and delays the collection process by imposing an additional requirement before debt collectors may begin electronic debt collection communications. Some commenters advocated for a safe harbor from civil liability as long as the creditor's account opening materials disclosed that an email address the consumer gives the creditor could be used for debt collection purposes. Other commenters, recognizing that a consumer's communication preferences may change over time and that years may elapse between when a consumer provides a creditor with electronic contact information and when a creditor transfers the consumer's debt to a debt collector, suggested a safe harbor for email addresses provided by the consumer to the creditor within a particular timeframe, such as within the 270 days preceding the debt collector's use. Another industry commenter suggested a safe harbor for a debt collector who sends an email to an email address used by the creditor to send the consumer delinquency communications in the months before an account is placed for collection.

As the Bureau noted in the proposal, a consumer might agree to receive electronic communications from a creditor without considering the risk that a third party might read those communications, but a consumer who is indifferent to the disclosure of creditor communications may not be indifferent to the disclosure of debt collection communications.[277] Thus, a consumer's decision to communicate electronically with a creditor does not, without more, suggest that the risk of third-party disclosure is particularly low. Nor does a disclosure in account opening materials, without more, suggest that the risk of third-party disclosure is particularly low. Years may pass, and a consumer's circumstances may change, between the time a consumer opens an account and the time the account is transferred to a debt collector. The Bureau therefore declines to add the procedures requested by these commenters. The Bureau notes, however, that nothing in § 1006.6(d)(4)(i) prohibits a debt collector from sending an email to an email address provided by the consumer to the creditor. Depending on the facts, a debt collector may be able to do so without violating FDCPA section 805(b).[278]

For the reasons discussed above, the Bureau is finalizing proposed § 1006.6(d)(3)(i)(A) as § 1006.6(d)(4)(i). Section 1006.6(d)(4)(i)(A) provides that a debt collector may obtain a safe harbor from civil liability for an unintentional third-party disclosure when sending an email to an email address if the consumer used the email address to communicate with the debt collector about the debt and the consumer has not since opted out of communications to that email address.[279] Section

[271] As discussed in the section-by-section analysis of § 1006.6(d)(5), the Bureau is finalizing a recency requirement as part of the text message procedures.

[272] *See* 84 FR 23274, 23301 (May 21, 2019) (discussing that emails are not regularly reassigned but proposing to apply the recency requirement to emails as well as to telephone numbers for consistency and ease of administration of the regulation). Although it appears that at least one email provider does allow email addresses to be reassigned, it is unclear how often this occurs and commenters generally agreed that, to the extent it happens, email reassignment is far less common that telephone number reassignment. *See* AJ Dellinger, *Yahoo Hack: Why You Shouldn't Delete Your Email Address, Account,* Int'l Bus. Times (Oct. 5, 2017).

[273] To the extent that commenters addressed specific elements of the proposed recency requirement for emails, such as how to define "recent," those comments are moot because the Bureau is not finalizing a recency requirement for emails. The Bureau therefore does not discuss them.

[274] Relatedly, a group of academic commenters requested that the Bureau prohibit debt collectors from using embedded cookies, which can track a user's browsing history, on their websites. The Bureau does not further address this comment, as it is outside the scope of the rulemaking.

[275] As explained in the section-by-section analysis of § 1006.6(e), a debt collector who communicates electronically must provide consumers with a reasonable and simple way to opt out of such communications.

[276] As discussed in the section-by-section analysis of § 1006.6(d)(5)(ii), the final rule similarly includes a new provision covering a debt collector who communicates with a consumer by text message after receiving the consumer's unwithdrawn direct consent to do so.

[277] *See* 84 FR 23274, 23304 (May 21, 2019).

[278] For example, in some circumstances, a consumer's willingness to receive delinquency communications from a creditor electronically may better suggest that the risk of third-party disclosure is low than a consumer's willingness to receive routine account communications from a creditor electronically. Similarly, in some circumstances, a debt collector's use of an email address or telephone number recently provided by the consumer to the creditor may pose lower third-party disclosure risk than a debt collector's use of an email address or telephone number provided by the consumer to the creditor at account opening.

[279] Proposed § 1006.6(d)(3)(i)(A) specified that a debt collector could not use an email address used by the consumer to opt out of electronic communications. As finalized, § 1006.6(d)(4)(i)(A) retains this prohibition: A debt collector is not covered by § 1006.6(d)(4)(i)(A) if the debt collector communicates using an email address the consumer used to opt out of electronic communications.

1006.6(d)(4)(i)(B) provides that a debt collector may obtain a safe harbor from civil liability for an unintentional third-party disclosure when sending an email to an email address if the debt collector has received directly from the consumer prior consent to use the email address to communicate with the consumer about the debt and the consumer has not withdrawn that consent.

The Bureau also is adopting new comments 6(d)(4)(i)(B)–1 and –2 to clarify the meaning of direct prior consent for purposes of § 1006.6(d)(4)(i)(B). Comment 6(d)(4)(i)(B)–1 clarifies that a consumer may provide direct consent orally, in writing, or electronically. Comment 6(d)(4)(i)(B)–2 clarifies that, if a consumer provides an email address to a debt collector (including on the debt collector's website or online portal), the debt collector may treat the consumer as having consented directly to the debt collector's use of the email address to communicate with the consumer about the debt for purposes of § 1006.6(d)(4)(i)(B) if the debt collector discloses clearly and conspicuously that the debt collector may use the email address to communicate with the consumer about the debt.[280]

6(d)(4)(ii) Procedures Based on Communication by the Creditor

Proposed § 1006.6(d)(3)(i)(B) (the ''notice-and-opt-out'' method) generally provided that a debt collector could obtain a safe harbor from civil liability for an unintentional third-party disclosure if, in addition to complying with § 1006.6(d)(3)(ii), the debt collector maintained procedures to reasonably confirm and document that: (1) The debt collector communicated with the consumer using a personal email address after the creditor or the debt collector provided the consumer with notice of such communications and a reasonable opportunity to opt out; and (2) the consumer did not opt out.[281]

The Bureau received a number of comments relating to the general concept of permitting a debt collector to use notice-and-opt-out procedures to obtain a safe harbor from civil liability for unintentional third-party disclosures when sending an email to a consumer.[282] Industry commenters generally supported the Bureau's reasoning that a consumer's failure to opt out after receiving notice that an email address could be used for debt collection communications may suggest that the consumer has assessed the risk of third-party disclosure to be low. Industry commenters also generally opposed any requirement that consumers opt into electronic communications, with several predicting that few consumers would opt in, and that, as a result, electronic communications would be unlikely to take place at all. These commenters noted that, in at least one State that requires consumers to opt into email communications, debt collectors generally do not use email to communicate with consumers.[283]

Consumer advocate commenters requested that the Bureau not adopt a notice-and-opt-out approach. These commenters argued that the Bureau should permit electronic communications only pursuant to an opt-in approach, which would enable consumers, before agreeing to electronic communications, to: (1) Weigh any risks due to irregular internet or cellphone access; (2) confirm the addresses and telephone numbers to which electronic communications may be directed, ensuring that, particularly for consumers who regularly change telephone numbers or abandon email addresses, communications are sent to the consumer rather than to a third party; (3) weigh the financial cost of electronic communications (for consumers with limited text message or data plans); (4) familiarize themselves with the sender and weigh any security risks, helping to ensure that consumers actually would open emails and minimizing the chance that emails would be blocked by spam filters and other screening devices;[284] and (5) weigh any privacy-related risks, including that emails and text messages could be viewed by a consumer's telephone or email provider, could appear on a publicly visible computer or telephone screen, or could be coming from a phony, rather than legitimate, debt collector.

The Bureau recognizes that, as consumer advocates observed, for an opt-out system to work the consumer must, among other things, actually receive the opt-out notice and have the opportunity to consider it. The Bureau also recognizes that a consumer who receives an opt-out notice may ignore it, fail to consider the risks of receiving emails (including the risk of third-party disclosure), or not take the steps necessary to opt out. However, the Bureau believes that the safeguards it has incorporated in the rule, which are discussed below, will mitigate these concerns.[285] For these reasons, the Bureau is finalizing the notice-and-opt-out method in proposed § 1006.6(d)(3)(i)(B) as § 1006.6(d)(4)(ii), with modifications as discussed in the section-by-section analysis of § 1006.6(d)(4)(ii)(A) through (E) to increase the likelihood that a consumer will have an opportunity to make an adequately informed choice whether to opt out of receiving emails.

6(d)(4)(ii)(A)

As proposed, the notice-and-opt-out method in § 1006.6(d)(3)(i)(B) generally would have provided a safe harbor from civil liability for debt collector communications sent to any personal email address other than the address to which the opt-out notice itself was sent, provided the other opt-out requirements were met. Under proposed § 1006.6(d)(3)(i)(B), then, a debt collector could have used the notice-and-opt-out method to obtain a safe harbor from civil liability for an unintentional third-party disclosure when sending an email to an email

[280] A consumer who consents to electronic service of process typically provides consent to the court rather than to the debt collector. Accordingly, a consumer's consent to electronic service of process generally is not covered by § 1006.6(d)(4)(i)(B). The Bureau believes, however, that a debt collector generally would lack reason to anticipate a third-party disclosure when sending an email to an email address if the consumer has agreed to receive litigation communications relating to the debt at that address.

[281] As noted, proposed § 1006.6(d)(3)(i)(B) would have applied to both email addresses and telephone numbers, but final § 1006.6(d)(4)(ii) applies only to email addresses. This section-by-section analysis therefore addresses proposed § 1006.6(d)(3)(i)(B) only with respect to comments that specifically discussed email addresses, or that did not distinguish between email addresses and telephone numbers. Comments received in response to proposed § 1006.6(d)(3)(i)(B) that discussed telephone numbers are addressed in the section-by-section analysis of § 1006.6(d)(5).

[282] Commenters also submitted numerous comments about particular aspects of proposed § 1006.6(d)(3)(i)(B); those comments are addressed where relevant in the section by section analysis of § 1006.6(d)(4)(ii)(A) through (E).

[283] *See* 23 CRR–NY 1.6 (permitting a debt collector to communicate with a consumer by email only if the consumer has ''(1) voluntarily provided an electronic mail account to the debt collector which the consumer has affirmed is not an electronic mail account furnished or owned by the consumer's employer; and (2) consented in writing to receive electronic mail correspondence from the debt collector in reference to a specific debt'').

[284] As the Bureau noted in the proposal, several Federal agencies advise consumers not to open emails from senders they do not recognize. *See* 84 FR 23274, 23363 n.578 (May 21, 2019).

[285] See in particular the section-by-section analysis of § 1006.6(d)(4)(ii)(C), which discusses that: (1) The opt-out notice must come from the creditor, be provided in written or electronic form, and describe the third-party disclosure considerations implicated by debt collection communications; and (2) the consumer must be provided a reasonable and simple method to opt out and at least 35 days to do so. See also the section-by-section analysis of § 1006.6(d)(4)(ii)(E), which clarifies that debt collectors proceeding under the opt-out method generally cannot obtain a safe harbor from civil liability when emailing a consumer at an employer-provided email address.

address obtained through skip tracing or any other method.

To increase the likelihood that the email address for which a debt collector using the notice-and-opt-out method obtains a safe harbor actually belongs to the consumer, and thereby minimize the risk of a third-party disclosure, the Bureau finds that it is important to limit the types of email addresses debt collectors may use on an opt-out basis. An email address obtained by the creditor directly from the consumer is highly likely to belong to the consumer; by contrast, an email address obtained through skip tracing generally lacks the same degree of reliability.[286] For these reasons, the Bureau is finalizing § 1006.6(d)(4)(ii)(A), which provides that, for purposes of the notice-and-opt-out method, the debt collector may send an email only to an email address that a creditor obtained from the consumer.

Final § 1006.6(d)(4)(ii)(A) is similar to an aspect of proposed § 1006.6(d)(3)(i)(C),[287] which, as discussed in the section-by-section analysis of final § 1006.6(d)(4)(iii), provided that a debt collector could satisfy the ''creditor-or-prior-debt-collector-use'' method of obtaining a safe harbor only if, among other things, the debt collector used an email address obtained from the consumer by the creditor or a prior debt collector.[288] In response to that proposed requirement, a group of consumer advocate commenters asked the Bureau to clarify how a creditor could obtain an email address from the consumer and how a debt collector would know that a creditor had done so. There are many ways for a creditor to obtain an email address from a consumer for purposes of the notice-and-opt-out procedures in § 1006.6(d)(4)(ii). For example, the creditor may request the email address at account opening,[289] or at a later stage of the parties' relationship, or the consumer might voluntarily provide the email address on a website or otherwise. The Bureau does not believe it is necessary to specify by rule precisely how a debt collector would know that the creditor had obtained an email address from the consumer. Different debt collectors may have different approaches to reasonably confirming and documenting this fact.

6(d)(4)(ii)(B)

As noted, the notice-and-opt-out method in proposed § 1006.6(d)(3)(i)(B) generally would have provided a safe harbor for debt collector communications sent to any personal email address other than the address to which the opt-out notice was sent, provided the other opt-out requirements were met. There was no requirement that the creditor (or any other person) previously had used the email address to communicate with the consumer.

To further reduce the risk of a third-party disclosure when debt collectors use the notice-and-opt-out method, the Bureau believes that it is important to incorporate such a requirement into § 1006.6(d)(4)(ii). While any requirement that the email address had been used by the creditor to communicate with the consumer (even if only for advertising or marketing) would help achieve this goal, the Bureau determines that requiring the creditor to have used the email address to communicate with the consumer about the account reduces the risk of third-party disclosure even further. Although the FDCPA recognizes that creditor communications are less sensitive than debt collector communications, some creditor communications, such as communications about the account, are more sensitive than others, such as advertising or marketing communications. The Bureau therefore believes that a consumer's willingness to communicate electronically with a creditor about an account says more about the risk of third-party disclosure should the account enter collections than a consumer's willingness to receive advertisements or marketing materials electronically. Conversely, if a consumer has asked a creditor to stop using an email address to communicate about an account, a debt collector may have reason to anticipate that using the address to communicate about the debt could lead to a third-party disclosure.

For these reasons, the Bureau is finalizing § 1006.6(d)(4)(ii)(B), which provides that, for purposes of the notice-and-opt-out method, a debt collector may send an email only to an email address used by the creditor to communicate with the consumer about the account, and only if the consumer did not ask the creditor to stop using it. The Bureau also is adopting new comment 6(d)(4)(ii)(B)–1 to clarify the types of communications that constitute communications about the account for purposes of § 1006.6(d)(4)(ii)(B).

Final § 1006.6(d)(4)(ii)(B) is similar to aspects of proposed § 1006.6(d)(3)(i)(C), which, as discussed in the section-by-section analysis of final § 1006.6(d)(4)(iii), provided that a debt collector could satisfy the ''creditor-or-prior-debt-collector-use'' method of obtaining a safe harbor only if, among other things, the debt collector used an email address to which the creditor or a prior debt collector sent communications about the debt, and the consumer did not ask the creditor or prior debt collector to stop. The Bureau received a number of comments regarding those aspects of proposed § 1006.6(d)(3)(i)(C), and those comments have informed final § 1006.6(d)(4)(ii)(B).[290]

An industry commenter objected to requiring the creditor to have communicated ''about the debt,'' arguing that the requirement should be eliminated or broadened to include communications ''about the account'' because a creditor's communications with a consumer typically involve the account rather than the debt. By contrast, a group of consumer advocate commenters argued the requirement would not sufficiently protect consumers because it would not have required that the consumer actually received or accessed the communications, or that the creditor or debt collector took any steps to confirm the consumer's receipt and access. In addition, the consumer advocate commenters noted, any requirements placed on creditors would not be enforceable against creditors who were not also FDCPA debt collectors. The commenters also argued that a

[286] An industry commenter urged the Bureau to create a safe harbor permitting the use of any email address that has been ''verified.'' The commenter did not define ''verify'' but noted that it is possible to obtain email addresses from commercially available databases. Because the Bureau currently lacks information to evaluate the completeness and accuracy of such databases, the Bureau declines the commenter's suggestion to provide a safe harbor to a debt collector who ''verifies'' a consumer's email address using such a database.

[287] As discussed in the section-by-section analysis of § 1006.6(d)(4)(iii), the Bureau is not finalizing § 1006.6(d)(3)(i)(C) as proposed but, as here, is incorporating aspects of that provision into the final notice-and-opt-out procedures. The Bureau therefore responds to certain comments made in response to § 1006.6(d)(3)(i)(C) in this section-by-section analysis.

[288] Unlike proposed § 1006.6(d)(3)(i)(C), final § 1006.6(d)(4)(ii) does not cover a debt collector's use of an email address obtained by a prior debt collector. Safe harbor procedures covering a debt collector's use of such an email address are found in final § 1006.6(d)(4)(iii).

[289] The Bureau notes that § 1006.6(d)(4)(ii) does not provide a safe harbor to a debt collector who simply sends an email to an email address obtained by the creditor at account opening. Instead, for a debt collector to obtain a safe harbor from civil liability under § 1006.6(d)(4)(ii), the other requirements of the notice-and-opt-out procedures must be satisfied.

[290] As discussed in the section-by-section analysis of § 1006.6(d)(4)(iii), the Bureau is not finalizing § 1006.6(d)(3)(i)(C) as proposed but, as here, is incorporating aspects of that provision into the final notice-and-opt-out procedures. The Bureau therefore responds to certain comments addressing § 1006.6(d)(3)(i)(C) in this section-by-section analysis.

consumer's failure to request that the creditor stop using a particular email address is just as likely to mean that messages to that address had gone to the consumer's spam folder or had reached the wrong person as to mean that the consumer had assessed third-party disclosure risk to be low. In addition, these commenters noted, a creditor is under no obligation to inform the consumer of the right or ability to opt out of communications, so a consumer's failure to opt out should not implicitly authorize a debt collector to send emails to that email address.

The Bureau determines that, given the multiple consumer protections built into the final notice-and-opt-out procedures to limit the likelihood of a third-party disclosure—including requirements relating to the form and content of the opt-out notice, as well as who may deliver it and in what manner—it is not necessary to require the creditor to have used the email address to communicate about the debt, as distinguished from the account. Nor does the Bureau believe it is necessary to require that the consumer actually received or was able to view the creditor's communications, or that the creditor took steps to confirm the consumer's receipt and access of those communications. Under § 1006.6(d)(4)(ii)(A), the email address must have been obtained by the creditor from the consumer and is therefore highly likely to belong to the consumer, particularly because email addresses generally are not reassigned. Moreover, a consumer who provides an email address to a creditor is likely to expect email communications about the account from the creditor and to follow up should any expected communications not arrive, diminishing the risk that a creditor's emails will be blocked by a spam filter.[291] In addition, to the extent that the email address is one for which the creditor has obtained consent under the E–SIGN Act, the creditor will already have confirmed the consumer's ability to access the communications.[292] Further, under § 1006.6(d)(4)(ii), a consumer's failure to opt out of a creditor's past use of an email address does not, without more, provide a safe harbor to a debt collector who uses that email address; the creditor must, among other things, provide the consumer with notice and a reasonable opportunity to opt out of debt collection communications to that address. Accordingly, the final rule does not treat a consumer's failure to exercise an undisclosed opt-out right as implicitly authorizing a debt collector to send emails to that email address.

Regarding the requirement that the consumer did not ask the creditor to stop using the address, one industry commenter suggested, without further explanation, that only a consumer's written request should suffice. The Bureau declines the commenter's suggestion; an oral request can suggest just as well as a written request that the risk of third-party disclosure is high.

For these reasons, the Bureau is finalizing § 1006.6(d)(4)(ii)(B) as described above.

6(d)(4)(ii)(C)

As proposed, § 1006.6(d)(3)(i)(B)(*1*) contained a number of requirements regarding the opt-out notice. The creditor or debt collector would have been required to notify the consumer clearly and conspicuously, no more than 30 days before the debt collector sent its first email communication, that the debt collector might use a particular personal email address for such communications. The creditor or debt collector also would have been required to provide the notice other than through the email address that the debt collector planned to use for debt collection communications, and to describe how to opt out. For the reasons discussed below, the Bureau is finalizing proposed § 1006.6(d)(3)(i)(B)(*1*), with modifications and additions, as final § 1006.6(d)(4)(ii)(C) to provide that, before a debt collector uses an email address to communicate with a consumer about a debt under § 1006.6(d)(4)(ii), the creditor must send the consumer a written or electronic notice that clearly and conspicuously discloses the information identified in § 1006.6(d)(4)(ii)(C)(*1*) through (*5*).[293]

Who May Provide the Opt-Out Notice

Proposed § 1006.6(d)(3)(i)(B)(*1*) would have permitted either the creditor or the debt collector to provide the opt-out notice. Several industry commenters observed that a creditor who provides the opt-out notice itself will incur costs to do so, while a group of consumer advocate commenters expressed concern about enforcing the law against creditors who provide the opt-out notice in a manner that violates the rule. As commenters also noted in discussing electronic communications generally, many consumers are suspicious of communications from entities they do not know or recognize, such as debt collectors. Consumers may ignore or delete such communications without opening them and may be reluctant to click on any links they contain, including links to opt out of further communications. Indeed, as the Bureau noted in the proposal, several Federal agencies have warned consumers against clicking on links from unknown senders.[294]

The Bureau recognizes, as industry commenters noted, that creditors will incur a cost to send the opt-out notice. Some creditors may absorb these costs while others may seek to require debt collectors to absorb them. The Bureau notes, however, that debt collectors are not required to follow the procedures in § 1006.6(d)(4)(ii). A debt collector who deems the procedures too expensive may use the other procedures in § 1006.6(d)(4) or operate outside of the safe harbor. As to the consumer advocate commenter's concern about enforceability, the Bureau reiterates that the final rule may be enforced against FDCPA debt collectors.[295]

The Bureau agrees that consumers may be reluctant to open emails from, or click on hyperlinks in emails from, unknown or untrusted sources. However, the Bureau determines that these concerns are less salient when a written or electronic communication comes from a recognized entity with which the consumer has an ongoing relationship, such as a creditor who has communicated with the consumer. For these reasons, the Bureau is finalizing § 1006.6(d)(4)(ii)(C) to provide that the

[291] The Bureau is not aware of evidence suggesting that creditor communications are especially likely to be blocked by spam filters. *Cf.* Gmail Help, *Prevent Mail to Gmail Users From Being Blocked or Sent to Spam, https://support.google.com/mail/answer/81126?hl=en* (last visited Oct. 1, 2020) (identifying factors that trigger Gmail's spam filter).

[292] *See* 15 U.S.C. 7001(c).

[293] For clarity, the Bureau is finalizing the notice content requirements as § 1006.6(d)(4)(ii)(C)(*1*) through (*5*) and addresses content-related comments in that section-by-section analysis.

[294] For example, the FTC advises consumers not to open links or attachments to emails they do not recognize, in order to prevent phishing and malware. *See* Fed. Trade Comm'n, *How to Recognize and Avoid Phishing Scams* (May 2019), *https://www.consumer.ftc.gov/articles/how-recognize-and-avoid-phishing-scams;* Fed. Trade Comm'n, *Malware* (Nov. 2015), *https://www.consumer.ftc.gov/articles/0011-malware.* The FDIC offers consumers similar guidance. *See* Fed. Deposit Ins. Corp., *Beware of Malware: Think Before You Click, https://www.fdic.gov/consumers/consumer/news/cnwin16/malware.html* (last updated Mar. 8, 2016).

[295] Thus, if a debt collector relies on a creditor to take an action that a creditor does not actually take, such as sending an opt-out notice in compliance with § 1006.6(d)(4)(ii), the creditor generally would not be liable under the rule. But the rule still may be enforced against the debt collector. For example, a consumer could allege that, to the extent the debt collector's procedures led it to rely on a creditor who did not send the opt-out notice, those procedures did not reasonably confirm and document that the debt collector communicated in accordance with § 1006.6(d)(4)(ii), and the debt collector is not entitled to a safe harbor from civil liability.

creditor, and only the creditor, may send the opt-out notice.

How the Opt-Out Notice May Be Provided

Proposed § 1006.6(d)(3)(i)(B)(*1*) would not have permitted the creditor or the debt collector to send the notice to the specific email address the debt collector intended to use for future communications. Consumer advocate commenters generally did not address this limitation. Several industry commenters opposed it, arguing that it effectively would require a debt collector to establish right-party contact before providing the opt-out notice, which could require multiple calls to the consumer. These commenters also argued that the limitation could be confusing to consumers, who are used to receiving emails and clicking on unsubscribe links to stop future emails to that email address, not to prevent future emails to a different email address.

The final rule does not include the requirement to send the opt-out notice other than to the email address the debt collector intends to use. The purpose of this requirement was to prevent a third-party disclosure of the opt-out notice itself. That concern was more salient under the proposal, which would have permitted debt collectors to send the opt-out notice. Because only creditors may provide the opt-out notice under the final rule and because the opt-out notice may be sent only to an email address the creditor used to communicate with the consumer about the account, the Bureau believes that the proposed requirement is unnecessary in the final rule. The final rule does, however, require the creditor to send the opt-out notice to an address the creditor obtained from the consumer and used to communicate with the consumer about the account. The purpose of this requirement is to help ensure that the consumer receives the opt-out notice.[296]

Form of Opt-Out Notice

Proposed § 1006.6(d)(3)(i)(B)(*1*) would have required the creditor or the debt collector to provide clearly and conspicuously the information in the opt-out notice. It also would have permitted the notice to be provided orally, in writing, or electronically.

Industry commenters generally did not address these delivery issues. A group of consumer advocate commenters appeared to support delivery of the opt-out notice by mail only. According to these commenters, telephone calls to consumers, particularly telephone calls from debt collectors, already involve multiple disclosures, and an opt-out notice related to electronic debt collection communications may be missed by consumers overwhelmed with other information. These commenters also asserted that consumers would be unlikely to listen to opt-out messages delivered by robocall, and they expressed concern that an opt-out notice delivered electronically might not be seen at all, particularly if blocked by a consumer's spam filter.

Final § 1006.6(d)(4)(ii)(C) retains the requirement that the information in the opt-out notice be clear and conspicuous. In addition, final § 1006.6(d)(4)(ii)(C) requires that the notice be delivered in writing or electronically, rather than orally (whether in a robocall or live conversation).[297] Requiring that the notice be delivered in writing or electronically helps ensure that consumers can review the contents of the notice while making their opt-out decisions. The Bureau declines, however, to require that the opt-out notice be provided only by mail. The Bureau believes that the risk that a spam filter might block an opt-out notice was of greater concern under the proposal, which would have permitted debt collectors to send the opt-out notice. Under the final rule, however, the opt-out notice can be provided only by the creditor, a known sender, to an email address the creditor used to communicate with the consumer about the account, which should reduce the risk that an electronic notice would be flagged as spam.[298]

Timing of Opt-Out Notice

To ensure that consumers could make their opt-out decisions at a time reasonably contemporaneous with potential electronic debt collection communications, proposed § 1006.6(d)(3)(i)(B)(*1*) would have required the opt-out notice to be provided no more than 30 days before the debt collector engaged in debt collection communications by email.

Consumer advocate commenters generally did not address this requirement. A few industry commenters supported the requirement as proposed; others asked that the period be lengthened or eliminated altogether. One industry commenter who called for eliminating the timing requirement argued that, once a debt is in collection, a consumer typically has ignored the creditor for 120 or 180 days. According to this commenter, such a consumer also is likely to ignore a notice sent from the creditor or the debt collector, so the timing requirement would serve no purpose. Another industry commenter argued that a timing requirement could interfere with the mortgage servicing practice of sending Real Estate Settlement Procedures Act of 1974 (RESPA)[299]-required transfer-of-servicing letters, also known as hello and goodbye letters, by email in some cases. This commenter suggested that, as long as a consumer has consented to receiving email communications from a prior servicer, the final rule should allow a new servicer to provide a hello letter by email if the email also includes the opt-out notice. Industry commenters who asked the Bureau to extend the 30-day period generally argued that 30 days is too little time for a creditor to send the consumer an opt-out notice and place the account with a debt collector, and for a debt collector to then process the file for collections and send an electronic communication. One such commenter asked the Bureau to adopt a 90-day period; another requested a 180-day period.

The Bureau determines that consumers should receive the opt-out notice at a time reasonably contemporaneous with potential debt collection communications. As discussed elsewhere, the Bureau believes that a notice provided by the creditor at account opening would generally not serve this goal because years may pass, and a consumer's circumstances may change, between the time the consumer opens an account and the time a debt enters collections.

[296] As noted above, nothing prohibits a creditor from sending the opt-out notice to the email address the debt collector intends to use, and the Bureau expects that, for convenience, most creditors who send the notice electronically will send it to that email address.

[297] Because § 1006.6(d)(4)(ii)(C), unlike proposed § 1006.6(d)(3)(i)(B)(*1*), permits a creditor to send the opt-out notice to the specific email address the debt collector intends to use for future communications, the Bureau believes that there is less need to permit creditors to deliver the opt-out notice orally.

[298] *See, e.g.,* Google, *Email Whitelists and Blacklists, https://support.google.com/a/answer/60752?hl=en*(last visited Oct. 4, 2020) (identifying how users can block unknown senders); Yahoo!, *Yahoo Mail Safety Guide, https://safety.yahoo.com/SafetyGuides/Mail/index.htm* (last visited Oct. 1, 2020) (same); AOL, *Manage Spam and Privacy in AOL Mail, https://help.aol.com/articles/aol-mail-spam-and-privacy* (last visited Oct. 1, 2020) (same); *Cf.* Cade Metz, *Google Says Its AI Catches 99.9 Percent of Gmail Spam,* Wired, *https://www.wired.com/2015/07/google-says-ai-catches-99-9-percent-gmail-spam/* (July 9, 2015) (noting that, in 2015, Google's false positive rate for spam—*i.e.,* legitimate email misidentified as spam—was .05 percent).

[299] Public Law 93–533, 88 Stat. 1274 (1974).

In light of industry commenters' concerns, however, final § 1006.6(d)(4)(ii)(C) does not contain a specific timing requirement. Instead, as discussed in the section-by-section analysis of § 1006.6(d)(4)(ii)(C)(*1*), the Bureau addresses the timing issue by requiring the opt-out notice to identify the debt collector to which the creditor has transferred or will transfer the debt. Creditors usually decide to whom they will transfer a debt close to the time they transfer it, which, in turn, is likely to be reasonably contemporaneous with the potential debt collection communication.[300]

For the reasons discussed above, the Bureau is finalizing § 1006.6(d)(4)(ii)(C), which provides that a debt collector may obtain a safe harbor from civil liability for an unintentional third-party disclosure if, among other things, before the debt collector used an email address to communicate with the consumer about the debt, the creditor sent a written or electronic notice, to an address the creditor obtained from the consumer and used to communicate with the consumer about the account, that clearly and conspicuously disclosed the information listed in § 1006.6(d)(4)(ii)(C)(*1*) through (*5*). The Bureau also is adopting new comments 6(d)(4)(ii)(C)–1 through –3 to clarify certain aspects of § 1006.6(d)(4)(ii)(C). Comment 6(d)(4)(ii)(C)–1 clarifies the requirement to provide the notice clearly and conspicuously.[301] Comment 6(d)(4)(ii)(C)–2 provides sample language that a creditor may use to comply with § 1006.6(d)(4)(ii)(C). Comment 6(d)(4)(ii)(C)–3 clarifies that the opt-out notice may be contained in a larger communication that conveys other information, as long as the notice is clear and conspicuous.[302]

6(d)(4)(ii)(C)(1)

Proposed § 1006.6(d)(3)(i)(B)(*1*) would have required the opt-out notice to contain the legal name of the debt collector to which the debt was being transferred. Commenters generally did not address this requirement.

To harmonize the proposed requirement with the final rule's approach that only the creditor may provide the opt-out notice, and to address the timing concerns discussed in the section-by-section analysis of § 1006.6(d)(4)(ii)(C), final § 1006.6(d)(4)(ii)(C)(*1*) retains the proposed requirement but modifies it to provide that the opt-out notice must disclose that the debt has been or will be transferred to the debt collector. Comment 6(d)(4)(ii)(C)(*1*)–1 clarifies that, to satisfy this requirement, the opt-out notice must identify the name of the specific debt collector to which the debt has been or will be transferred.

The Bureau understands that most creditors do not know the precise debt collector to which they will transfer a debt until relatively close in time to the transfer. Moreover, the Bureau believes that, even among creditors who use only a single debt collector to collect their debts, or who otherwise know the identity of a debt collector well in advance, many would not send the opt-out notice before the consumer has become delinquent, because doing so could undermine the creditor's relationship with the consumer. In addition, the Bureau anticipates that, to facilitate compliance with recordkeeping obligations imposed by other consumer protection statutes and regulations, many creditors will choose to send the opt-out notice close in time to the debt collector's communication. The Bureau therefore finds that § 1006.6(d)(4)(ii)(C)(*1*)'s requirement to identify a specific debt collector will adequately ensure that the consumer receives the opt-out notice at a time reasonably contemporaneous with the proposed electronic communications, reducing the likelihood that the consumer's circumstances will have changed by the time the debt collector communicates electronically.

In addition, although consumers generally do not have pre-existing relationships with particular debt collectors, it is possible that some consumers, particularly those with multiple debts in collection, may have interacted with a particular debt collector in the past. Requiring the creditor to identify the debt collector by name in the opt-out notice allows such a consumer to make a more informed choice about whether to opt out of electronic communications.

6(d)(4)(ii)(C)(2)

Proposed § 1006.6(d)(3)(i)(B)(*1*) would have required the opt-out notice to contain the email address that the debt collector proposed to use for debt collection communications. The Bureau received no comments regarding this requirement and is finalizing it as § 1006.6(d)(4)(ii)(C)(*2*), which provides that the opt-out notice must disclose the email address and the fact that the debt collector might use the email address to communicate with the consumer about the debt.

6(d)(4)(ii)(C)(3)

Proposed § 1006.6(d)(3)(i)(B)(*1*) would not have required the opt-out notice to disclose that others with access to the email address might see the debt collector's communications. The Bureau believes that such a requirement would focus the consumer's attention on the risk of third-party disclosure from debt collection communications and thereby help to address consumer advocates' concerns, discussed elsewhere, that a consumer's failure to opt out after receiving the opt-out notice might not reflect a consumer's assessment of the risk of a third-party disclosure. For this reason, the Bureau is finalizing § 1006.6(d)(4)(ii)(C)(*3*) to provide that the opt-out notice must disclose that, if others have access to the email address, then it is possible they may see the emails.

6(d)(4)(ii)(C)(4)

Proposed § 1006.6(d)(3)(i)(B)(*1*) would have required the opt-out notice to describe one or more methods that the consumer could use to opt out. As proposed, a debt collector could have employed any opt-out method—even a potentially inconvenient one—as long as it was disclosed in the notice. While commenters generally did not address this proposed requirement, the Bureau is finalizing it with modifications to ensure that the burden of opting out does not prevent or unduly hinder consumers who want to opt out from doing so.

Specifically, final § 1006.6(d)(4)(ii)(C)(*4*) requires the opt-out notice to disclose instructions for a reasonable and simple method by which the consumer can opt out of a debt collector's use of the email address identified in the opt-out notice. A reasonable-and-simple requirement, which is also used in the Bureau's Regulation V,[303] should help to ensure that a consumer who wishes to opt out is not deterred by the process of doing so. Comment 6(d)(4)(ii)(C)(4)–1 provides

[300] With respect to the industry commenter's concern about sending transfer-of-servicing letters by email, the Bureau notes that § 1006.6(d)(4)(iii) includes procedures that servicers can use in that situation. The Bureau is not adopting the commenter's suggested solution because, for the reasons discussed earlier in this section-by-section analysis, final § 1006.6(d)(4)(ii) requires the opt-out notice to come from the creditor.

[301] This comment resembles proposed comment 6(d)(3)(i)(B)(*1*)–1, with modifications to reflect the fact that the final rule does not permit a creditor to deliver the opt-out notice orally.

[302] Proposed comment 6(d)(3)(i)(B)(*1*)–3 would have clarified that a debt collector or a creditor may include the opt-out notice in the same communication as the opt-out notice described in proposed § 1006.42(d)(1) or (2), as applicable. As explained in the section-by-section analysis of final § 1006.42, the Bureau is not finalizing proposed § 1006.42(d). Accordingly, the Bureau is not adopting proposed comment 6(d)(3)(i)(B)(*1*)–3.

[303] 12 CFR 1022.25.

illustrative examples of opt-out methods that satisfy the reasonable-and-simple standard.

6(d)(4)(ii)(C)(5)

Proposed § 1006.6(d)(3)(i)(B)(*1*) would have required the opt-out notice to specify a reasonable period within which a consumer could opt out, but it did not define the term reasonable period.

Several industry commenters opposed an opt-out period, arguing that a consumer who provided electronic contact information to a creditor at account opening has decided to communicate electronically and, for these consumers, an opt-out period would only delay the use of electronic communications. Other industry commenters warned that failing to define the term reasonable period would create legal uncertainty and litigation risk, thereby discouraging use of the safe harbor and, in turn, electronic communications in debt collection. These commenters suggested opt-out periods ranging between five and 14 days, variously noting that almost all requests to opt out would be received within the first week, that the CAN–SPAM Act requires covered entities to process email opt-out requests within 10 days,[304] and that mortgage servicers must provide consumers at least 14 days to respond to an offer of loss mitigation in certain circumstances under the Bureau's mortgage servicing rules.[305] A group of consumer advocate commenters also urged the Bureau to define the term reasonable period, suggesting that an opt-out period of fewer than 30 days could result in consumer confusion given the 30-day validation period required by FDCPA section 809.[306]

The Bureau declines the suggestion to eliminate the opt-out period altogether. As explained in the section-by-section analysis of § 1006.6(d)(4)(i), a consumer's decision to communicate electronically with a creditor does not, without more, suggest that the risk of third-party disclosure is particularly low. However, the Bureau agrees with industry and consumer advocate commenters about the need to define the opt-out period more clearly. Leaving the period undefined, or relying on a reasonableness requirement, could create legal uncertainty that could hamper the use of electronic communications in debt collection and make it harder for consumers to enforce their rights.

Accordingly, the final rule specifies that the opt-out period must last at least 35 days from the date the opt-out notice is sent. In deciding to finalize a 35-day minimum opt-out period, the Bureau concluded that, consistent with FDCPA section 809, which affords consumers 30 days within which to exercise certain statutory rights, consumers should be afforded at least 30 days within which to inform the debt collector of a decision to opt out. The Bureau included an additional five days to account for the time it might take an opt-out notice to reach a consumer by mail.[307]

For the reasons discussed above, the Bureau is finalizing § 1006.6(d)(4)(ii)(C)(*5*), which requires the opt-out notice to disclose the date by which the debt collector or the creditor must receive the consumer's request to opt out, which must be at least 35 days after the date the notice is sent. The Bureau may consider changing the 35-day period in the future based on actual stakeholder experience with this provision.[308] The Bureau also is adopting new comment 6(d)(4)(ii)(C)(*5*)–1 to clarify that the opt-out notice may instruct the consumer to respond to the debt collector or to the creditor but not to both. The comment is meant to provide creditors and debt collectors with the flexibility to decide among themselves who will be responsible for receiving and processing opt-out requests, and to design the opt-out process accordingly.[309]

6(d)(4)(ii)(D)

Proposed § 1006.6(d)(3)(i)(B)(*2*) provided that, for a debt collector to obtain a safe harbor from civil liability under the notice-and-opt-out method, the opt-out period must have expired, and the consumer must not have opted out. Proposed comment 6(d)(3)(i)(B)(*2*)–1 clarified that, notwithstanding the expiration of the § 1006.6(d)(3)(i)(B)(*2*) opt-out period, a consumer would remain free to request that a debt collector not use a particular email address, or not communicate using email generally, under proposed § 1006.14(h). For the reasons discussed below, the Bureau is finalizing proposed § 1006.6(d)(3)(i)(B)(*2*) as § 1006.6(d)(4)(ii)(D), largely as proposed but with non-substantive changes to reflect the revised organization and terminology in the final rule. The Bureau also is adopting new commentary for clarity and in response to feedback.

First, an industry commenter raised a possible implementation issue regarding proposed § 1006.6(d)(3)(i)(B)(*2*), observing that, given the time necessary for an opt-out notice to reach a consumer and for the consumer to notify a debt collector of a decision to opt out, a debt collector acting in good faith may risk communicating with the consumer after the opt-out period ends but before receiving the consumer's request to opt out. The commenter urged the Bureau to address this issue by creating a bright-line rule allowing for communication up to 45 days after the opt-out period ends.

The Bureau believes that the commenter's proposed solution entails an unnecessarily prolonged risk of third-party disclosure. After the opt-out period ends, a debt collector who sends an email to an email address pursuant to the procedures in § 1006.6(d)(4)(ii) remains within the safe harbor unless and until the debt collector receives the consumer's request to opt out of emails to that email address. Once the debt collector receives such a request, future emails to that email address would not be protected by the safe harbor.[310]

Second, a group of consumer advocate commenters requested that the Bureau revise proposed comment 6(d)(3)(i)(B)(*2*)–1 to clarify that consumers can, even after the expiration

[304] 15 U.S.C. 7704(a)(4)(A); *see also* 84 FR 13115, 13118 (Apr. 4, 2019).

[305] 12 CFR 1024.41(e).

[306] 15 U.S.C. 1692g.

[307] The Bureau recognizes that, if a creditor sends the opt-out notice by email, a consumer might receive it instantaneously and read it soon thereafter. The Bureau notes, however, that some consumers, particularly those with limited internet access, do not check email regularly. Accordingly, a 35-day minimum period applies no matter how the opt-out notice is delivered.

[308] The Bureau recognizes that the information in a validation notice is more extensive than the information in the opt-out notice, and that a consumer's decision about how to engage with a debt collector in response to a validation notice may be more complex than a consumer's decision about whether to communicate with a debt collector using a particular email account.

[309] Proposed comment 6(d)(3)(i)(B)(*1*)–2 would have clarified that, if a creditor or a debt collector provides the opt-out notice orally, the creditor or the debt collector may require the consumer to make an opt-out decision during that same communication. Because final § 1006.6(d)(4)(ii) does not permit oral delivery of the opt-out notice, the Bureau is not finalizing proposed comment 6(d)(3)(i)(B)(*1*)–2.

[310] Moreover, future emails to that address would be covered by § 1006.14(h), which prohibits communicating or attempting to communicate with a person through a medium of communication if the person has requested that the debt collector not use that medium to communicate with the person. *See* the section-by-section analysis of § 1006.14(h) and comment 14(h)(1)–1. Section 1006.14(h) would apply regardless of when the debt collector receives the consumer's request to opt out, *i.e.,* whether before or after the opt-out period ends. A debt collector who sends an email to an email address after receiving a consumer's request to opt out under § 1006.6(d)(4)(ii) but before processing that request may have a bona fide error defense to civil liability under FDCPA section 813(c) with respect to unintentional violations of § 1006.14(h).

of the opt-out period: (1) opt out of the debt collector's use of an email address pursuant to § 1006.6(e); [311] and (2) cease communication under § 1006.6(c)(1).[312] The Bureau is finalizing proposed comment 6(d)(3)(i)(B)(*2*)–1 as comment 6(d)(4)(ii)(D)–1, with revisions to incorporate these suggestions.

Finally, industry commenters requested that the Bureau clarify whether a debt collector should treat a consumer's request to opt out as a request to cease communication under § 1006.6(c)(1). A consumer's request to opt out in response to an opt-out notice that identifies a particular email address to which debt collection communications may be sent is generally not a request to opt out of all communications. Accordingly, new comment 6(d)(4)(ii)(D)–2 clarifies that, in the absence of evidence that the consumer refuses to pay the debt or wants the debt collector to cease all communication with the consumer, a consumer's request to opt out under § 1006.6(d)(4)(ii)(D) is not a request to cease all communication with respect to the debt under § 1006.6(c)(1).

6(d)(4)(ii)(E)

The notice-and-opt-out procedures in proposed § 1006.6(d)(3)(i)(B) would not have covered a debt collector who knew or should have known that the email address to which the debt collector sent an email was provided by the consumer's employer. In support of this proposed limitation, the Bureau explained that employer-provided email addresses present a heightened risk of third-party disclosure because many employers have a legal right to read messages sent and received by employees on employer-provided email accounts, and some employers exercise that right. The Bureau expressed concern that, unlike a consumer's affirmative decision to contact a debt collector using an employer-provided email address, a consumer's failure to opt out of a debt collector's use of an employer-provided email address after receiving an opt-out notice may not indicate that the consumer has assessed the risk of third-party disclosure to be low.[313]

Consumer advocate commenters generally supported the Bureau's proposal to exclude employer-provided email addresses from the proposed notice-and-opt-out procedures, while industry commenters generally opposed it. Many industry commenters raised operational concerns, stating that there is generally no way to know whether an email address is employer provided. These commenters stated that no database of employer-provided email addresses exists, and that reviewing domain names is a labor-intensive and manual process, as well as insufficient to determine whether an address is employer provided. For example, an ''.edu'' domain name may indicate that a consumer is either a student or an employee of an educational institution. According to these commenters, because it is difficult to distinguish employer-provided email addresses from personal ones, excluding employer-provided email addresses from the notice-and-opt-out procedures would create an implementation problem that would discourage debt collectors from using the procedures, thus stifling electronic communications and harming consumers.

In addition to these operational concerns, industry commenters noted that consumers often disclose employer-provided email addresses to creditors, including on account-opening documents. According to these commenters, a consumer who has disclosed an employer-provided email address to a creditor has chosen to communicate about the account by email, and that choice should be honored even after the account is transferred to a debt collector. Conversely, these commenters argued, a consumer who does not want to receive debt collection communications on an employer-provided email account can decline to provide the creditor with such an email address.

In addition, several industry commenters argued that, although the Bureau based its proposal to exclude employer-provided email addresses from the safe harbor on its belief that many employers have the right to monitor emails received on employer-provided accounts, the Bureau presented no evidence justifying that belief. Relatedly, an industry commenter argued that the Bureau's concern about employer monitoring is misplaced because a personal email account may be monitored by a consumer's commercial email provider. Industry commenters also argued that other proposed rule provisions—such as the requirement in proposed § 1006.6(e) to include, in all electronic communications, instructions for opting out of such communications—would sufficiently protect consumers who receive unwanted emails on employer-provided accounts.

As the Bureau noted in the proposal, many employers have a legal right to read, and frequently do read, messages sent or received by employees on employer-provided email accounts.[314] The Bureau disagrees that a debt collector who sends an email to an employer-provided email address should be entitled to a safe harbor from civil liability as long as the consumer provided that address to the creditor. As discussed in the section-by-section analysis of § 1006.6(d)(4)(i), a consumer's decision to communicate by email with a creditor does not, without more, suggest that the risk of third-party disclosure is particularly low should a debt collector send an email to the same email address. Although the Bureau agrees that proposed § 1006.6(e)—which the Bureau is finalizing largely as proposed in final § 1006.6(e)—would help limit the risk of third-party disclosure by enabling consumers to opt

[311] Section 1006.6(e) requires a debt collector who communicates or attempts to communicate with a consumer electronically in connection with the collection of a debt using a specific email address, telephone number for text messages, or other electronic-medium address to include in such communication or attempt to communicate a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number.

[312] Section 1006.6(c)(1) prohibits a debt collector from communicating or attempting to communicate further with a consumer with respect to a debt if the consumer notifies the debt collector in writing that the consumer refuses to pay the debt or the consumer wants the debt collector to cease further communication with the consumer.

[313] Proposed § 1006.22(f)(3) would have prohibited a debt collector from communicating or attempting to communicate with a consumer using an email address that the debt collector knew or should have known was provided to the consumer by the consumer's employer, unless the debt collector received directly from the consumer either prior consent to use that email address or an email from that email address. As discussed in the section-by-section analysis of final § 1006.22(f)(3), the Bureau is finalizing that provision with modifications. A debt collector who sends an email in conformity with § 1006.6(d)(4)(ii) complies with § 1006.22(f)(3).

[314] *See* 84 FR 23274, 23324 n.357 (May 21, 2019) (citing Am. Mgmt. Ass'n & ePolicy Inst., *Electronic Monitoring and Surveillance 2007 Survey* (2008), *http://www.epolicyinstitute.com/2007-survey-results* (reporting that a survey of employers conducted in 2007 found that, among other things, 43 percent of employers monitored their employees' email accounts and 66 percent of employers monitored their employees' internet connection, with 45 percent of employers tracking the content, keystrokes, and time spent at the keyboard); *Bingham* v. *Baycare Health Sys.,* No. 8:14–CV–73–T–23JSS, 2016 WL 3917513, at *4 (M.D. Fla. July 20, 2016) (collecting cases and concluding that ''the majority of courts have found that an employee has no reasonable expectation of privacy in workplace emails when the employer's policy limits personal use or otherwise restricts employees' use of its system and notifies employees of its policy'')); *see generally* Andrew Milam Jones, *Employee Monitoring: An Overview of Technologies, Treatment, and Best Practices,* 83 Tx. B.J. 98 (2020); Shawn Marie Boyne, *Data Protection in the United States,* 66 Am. J. Comp. L. 299, 313–14 (2018).

out of electronic communications easily, the Bureau notes that the protection afforded by § 1006.6(e) is effective only after the debt collector has sent an email to the consumer and the consumer's privacy interest has already been compromised.

As for the observation that a personal email account may be monitored or scanned by a commercial email provider, the Bureau believes that monitoring by an employer is distinguishable from monitoring or scanning by a non-employer email provider. Congress and the courts have recognized that a consumer may suffer significant harm, including loss of employment, if an employer learns that the consumer has a debt in collection.[315] Although some commercial email providers monitor or scan consumer email accounts to deliver targeted advertisements or services through associated applications,[316] this type of activity generally does not threaten a consumer's employment or reputation in the same way.

The Bureau recognizes that distinguishing between employer-provided and personal email addresses presents a practical challenge for debt collectors. The Bureau is aware of no database of employer-provided email addresses that debt collectors can consult, and reviewing domain names will not always answer whether an email address is personal or employer provided. The Bureau finds, however, that most employer-provided email addresses have domain names that are not available to the general public and that it is relatively straightforward for a debt collector to distinguish domain names that are publicly available from those that are not. The Bureau also finds that, if employer-provided email addresses have domain names that are publicly available, it will be difficult (absent actual knowledge) for a debt collector to distinguish such an email address from a personal one.

For these reasons, the Bureau is finalizing § 1006.6(d)(4)(ii)(E) to maintain the exclusion of most employer-provided email addresses from the notice-and-opt-out safe harbor, but also to clarify how debt collectors can distinguish between employer-provided and personal email addresses for purposes of satisfying the safe harbor. Specifically, § 1006.6(d)(4)(ii)(E) provides that a debt collector may obtain a safe harbor from civil liability for an unintentional third-party disclosure if, among other things, the debt collector communicated by sending an email to an email address with 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. The Bureau believes that § 1006.6(d)(4)(ii)(E) effectively excludes most employer-provided email addresses from the notice-and-opt-out safe harbor, thereby largely avoiding the third-party disclosure risks associated with such addresses while imposing a manageable operational burden on debt collectors. To the extent a debt collector regards the limitation in § 1006.6(d)(4)(ii)(E) as overbroad—because, for example, it does not cover a debt collector who sends an email to an ''.edu'' address—the Bureau reiterates that a debt collector may communicate by email without following the procedures in § 1006.6(d)(4)(ii). Such a debt collector would, however, lose the protection of the safe harbor (unless the debt collector's use of the email address otherwise satisfies the requirements of § 1006.6(d)(3)).

The Bureau also is adopting new comments 6(d)(4)(ii)(E)–1 and –2 to clarify certain aspects of final § 1006.6(d)(4)(ii)(E). Comment 6(d)(4)(ii)(E)–1 clarifies that the domain name of an email address is available for use by the general public when multiple members of the general public are permitted to use the same domain name, whether for free or through a paid subscription. Such a name includes, for example, *john.doe@gmail.com* and *john.doe@yahoo.com.* Such a name does not include one that is reserved for use by specific registrants, such as a domain name branded for use by a particular commercial entity (*e.g., john.doe@springsidemortgage.com*) or reserved for particular types of institutions (*e.g., john.doe@agency.gov, john.doe@university.edu,* or *john.doe@nonprofit.org*). Comment 6(d)(4)(ii)(E)–2 clarifies that, for purposes of § 1006.6(d)(4)(ii)(E), a debt collector knows that an email address is provided by the consumer's employer if any person has informed the debt collector that the address is employer provided. Comment 6(d)(4)(ii)(E)–2 further clarifies that § 1006.6(d)(4)(ii)(E) does not require a debt collector to conduct a manual review of consumer email addresses to determine whether an email address might be employer provided.

6(d)(4)(iii) Procedures Based on Communication by the Prior Debt Collector

Proposed § 1006.6(d)(3)(i)(C) (the ''creditor-or-prior-debt-collector-use'' method) provided that a debt collector could obtain a safe harbor from civil liability for an unintentional third-party disclosure if, in addition to complying with § 1006.6(d)(3)(ii), the debt collector maintained procedures to reasonably confirm and document that: (1) The debt collector communicated with the consumer using a personal email address that the creditor or a prior debt collector obtained from the consumer to communicate about the debt; (2) the creditor or the prior debt collector recently sent communications about the debt to that email address; and (3) the consumer did not ask the creditor or the prior debt collector to stop such communications.[317]

Many consumer advocate commenters opposed proposed § 1006.6(d)(3)(i)(C) on the ground that, when consumers provide email addresses to creditors, they typically do not think about the

[315] S. Rep. No. 382, *supra* note 52, at 1699 (''[A] debt collector may not contact third persons such as a consumer's friends, neighbors, relatives, or employer. Such contacts are not legitimate collection practices and result in serious invasions of privacy, as well as the loss of jobs.''); *id.* at 1696 (''Collection abuse takes many forms, including . . . disclosing a consumer's personal affairs to friends, neighbors, or an employer.''); 122 Cong. Rec. H730707 (daily ed. July 19, 1976) (remarks of Rep. Annunzio on H. Rep. No. 13720) (Clearinghouse No. 31,059U) (''Communication with a consumer at work or with his employer may work a tremendous hardship for a consumer because such calls can embarrass a consumer and can result in his losing a deserved promotion'' and ''[i]f a consumer loses his job, he is in a worse, not better, position to pay the debt.''); *Am. Fin. Servs. Ass'n* v. *Fed. Trade Comm'n,* 767 F.2d 957, 974 (D.C. Cir. 1985) (upholding provision in the FTC's Credit Practices Rule that prohibited certain wage assignments because, among other things, the rulemaking record showed that ''employers tend to view the consumer's failure to repay the debt as a sign of irresponsibility. As a consequence, many lose their jobs after wage assignments are filed. Even if the consumer retains the job, promotions, raises, and job assignments may be adversely affected.'') (citing Credit Practices Rule, 49 FR 7740, 7758 (Mar. 1, 1984) (codified at 16 CFR 444)); *Fed. Trade Comm'n* v. *LoanPointe, LLC,* No. 2:10–CV–225DAK, 2011 WL 4348304, at *6–8 (D. Utah Sept. 16, 2011) (holding that ''Defendants' practice of disclosing debts and the amount of the debts to consumers' employers'' violated the FDCPA and ''qualifies as an unfair practice under the FTC Act''), *aff'd,* 525 F. App'x 696 (10th Cir. 2013).

[316] *See, e.g.,* Jack Schofield, *What's the Best Email Service That Doesn't Scan Emails for Ad Targeting,* The Guardian (Apr. 19, 2018), *https://www.theguardian.com/technology/askjack/2018/apr/19/whats-the-best-email-service-that-doesnt-scan-emails-for-ad-targeting; cf.* Daisuke Wakabayashi, *Google Will No Longer Scan Gmail for Ad Targeting,* N.Y. Times (June 23, 2017), *https://www.nytimes.com/2017/06/23/technology/gmail-ads.html.*

[317] As noted, proposed § 1006.6(d)(3)(i)(C) would have applied to both email addresses and telephone numbers, but final § 1006.6(d)(4)(iii) applies only to email addresses. This section-by-section analysis therefore addresses proposed § 1006.6(d)(3)(i)(C) only with respect to comments that specifically discussed email addresses, or that did not distinguish between email addresses and telephone numbers. Comments received in response to proposed § 1006.6(d)(3)(i)(C) that discussed telephone numbers are addressed in the section-by-section analysis of § 1006.6(d)(5).

possibilities that they will fail to make payments, that the account will be transferred to a debt collector, and that the debt collector will use the email address to communicate electronically. In addition, these commenters noted, years may pass, and a consumer's circumstances may change, between the time a consumer provides an email address to a creditor and the time a debt collector uses that email address to try to collect a debt. Thus, according to these commenters, a consumer's decision to provide an email address to a creditor says little about the risk of third-party disclosure if a debt collector uses that email address at some later date, and a debt collector who followed the procedures in proposed § 1006.6(d)(3)(i)(C) could not claim that it lacked reason to anticipate a third-party disclosure. The Bureau agrees with these concerns and notes that there are other reasons why a consumer might provide an email address to a creditor but not to a debt collector. For example, a consumer may conclude that the potential risk to a creditor's reputation and the potential risk of losing the consumer as a customer—risks that may not exist, or that may exist to a lesser extent, for debt collectors—constrain the creditor from misusing the email address. The Bureau therefore declines to finalize a safe harbor based solely on the creditor's prior use of an email address.[318] For the reasons discussed below, however, the Bureau is finalizing other aspects of proposed § 1006.6(d)(3)(i)(C), with revisions, as § 1006.6(d)(4)(iii).

First, like the proposal, the final rule provides a debt collector in certain circumstances with a safe harbor from civil liability for an unintentional third-party disclosure when sending an email to an email address obtained and used by a prior debt collector. However, unlike the proposal, a safe harbor is available under § 1006.6(d)(4)(iii) only if the debt collector uses an email address obtained by a prior debt collector in accordance with either § 1006.6(d)(4)(i) or (ii). As already discussed, the Bureau determines that an email address obtained by a debt collector pursuant to the procedures in § 1006.6(d)(4)(i) or (ii) presents a relatively low risk of unintentional third-party disclosure.[319] Second, like the proposal, the final rule requires that a prior debt collector actually have communicated with the consumer about the debt using the email address the current debt collector intends to use.[320] However, unlike the proposal, a safe harbor is available under § 1006.6(d)(4)(iii) only if the immediately prior debt collector—*i.e.,* the debt collector immediately preceding the current one—used the email address to communicate with the consumer about the debt. A consumer's personal circumstances may change over time, and limiting § 1006.6(d)(4)(iii) to email addresses used by the immediately prior debt collector decreases this risk in some circumstances. Third, the final rule requires that, for a debt collector to obtain a safe harbor from civil liability under § 1006.6(d)(4)(iii), the consumer must not have asked the immediately prior debt collector to stop using the email address for debt collection communications.

Accordingly, final § 1006.6(d)(4)(iii) provides that a debt collector may obtain a safe harbor from civil liability for an unintentional third-party disclosure when sending an email to an email address if: (1) Any prior debt collector obtained the email address in accordance with § 1006.6(d)(4)(i) or (ii); (2) the immediately prior debt collector used the email address to communicate with the consumer about the debt; and (3) the consumer did not opt out of such communications.[321] The Bureau is adopting new comment 6(d)(4)(iii)–1 to clarify that, for purposes of § 1006.6(d)(4)(iii), the immediately prior debt collector is the debt collector immediately preceding the current debt collector. The Bureau also is adopting new comment 6(d)(4)(iii)–2 to provide examples illustrating the rule.

6(d)(5) Procedures for Telephone Numbers for Text Messages

As noted above, the final rule reorganizes proposed § 1006.6(d)(3)(i) by separating email procedures and text message procedures. Final § 1006.6(d)(5) describes the procedures that a debt collector may use to obtain a safe harbor from civil liability for an unintentional third-party disclosure when communicating by text message. The final text message procedures are discussed in detail in the section-by-section analysis of § 1006.6(d)(5)(i) and (ii).

Proposed Provisions Not Finalized

The proposal identified opt-out procedures (proposed § 1006.6(d)(3)(i)(B)) and creditor-and-prior-debt-collector-use procedures (proposed § 1006.6(d)(3)(i)(C)) that a debt collector could use to reduce the risk of liability for an unintentional third-party disclosure when sending emails or text messages to a consumer. The Bureau is not finalizing either set of procedures as to text messages.

As discussed in the section-by-section analysis of § 1006.6(d)(5)(i), the practice of reassigning telephone numbers increases the risk of third-party disclosure when a debt collector sends a text message to a telephone number. The Bureau determines that the text message procedures it is finalizing in § 1006.6(d)(5)(i) and (ii)—which, as explained below, resemble an opt-in approach—address the risk posed by reassignment comprehensively. The Bureau will monitor debt collectors' use of the text message procedures in § 1006.6(d)(5) and may revisit at a later date whether additional procedures, including procedures similar to those in final § 1006.6(d)(4)(ii) and (iii), can be designed to address the risk of third-party disclosure. Although the Bureau is not finalizing notice-and-opt-out or prior-use safe harbor procedures for text messages, the Bureau notes that the final rule does not prohibit debt collectors from communicating with consumers by text message outside of the safe harbors.

6(d)(5)(i)

As proposed, § 1006.6(d)(3)(i)(A) (the ''consumer-use'' method) for text messages provided that a debt collector could obtain a safe harbor from civil

[318] As discussed in the section-by-section analysis of § 1006.6(d)(4)(ii), however, the Bureau is strengthening the final notice-and-opt-out procedures by incorporating aspects of proposed § 1006.6(d)(3)(i)(C) into them, including by requiring the creditor to send the notice to an email address obtained from the consumer and used to communicate about the account. The Bureau discusses those aspects of proposed § 1006.6(d)(3)(i)(C), and public comments related to them, where relevant in the section-by-section analysis of § 1006.6(d)(4)(ii).

[319] Section 1006.6(d)(4)(ii), as noted, does not protect a debt collector who uses an email address that a debt collector knows is provided by a consumer's employer. Section 1006.6(d)(4)(iii) does not include a similar prohibition. This is because a condition of § 1006.6(d)(4)(iii) is that the consumer not have opted out of the immediately prior debt collector's use of the particular email address, a factor that, when satisfied, suggests that the risk of third-party disclosure is low if the later debt collector uses the email address. Therefore, a later debt collector may obtain a safe harbor from civil liability under § 1006.6(d)(4)(iii) even if it knows that the consumer's email address is employer provided.

[320] The final rule eliminates the proposed recency requirement for the same reasons discussed in the section-by-section analysis of § 1006.6(d)(4)(i)(A).

[321] As noted in the section-by-section analysis of § 1006.6(d)(4)(ii)(C), an industry commenter expressed concern about how the procedures apply to the mortgage servicing practice of sending RESPA-required transfer-of-servicing letters, also known as hello and goodbye letters, by email. If a mortgage servicer who is an FDCPA debt collector sends such a hello letter, the debt collector may, under § 1006.6(d)(4)(iii), obtain a safe harbor from civil liability for an unintentional third-party disclosure if the debt collector sends the letter to an email address that any prior debt collector obtained in accordance with § 1006.6(d)(4)(i) or (ii), the immediately prior debt collector used the email address to communicate with the consumer, and the consumer did not opt out of such communications.

liability for an unintentional third-party disclosure if, in addition to complying with § 1006.6(d)(3)(ii), the debt collector maintained procedures to reasonably confirm and document that the debt collector sent a text message to the consumer using a telephone number that the consumer recently used to contact the debt collector for purposes other than opting out of electronic communications.[322] As discussed below, the Bureau is finalizing the proposed consumer-use method for text messages as § 1006.6(d)(5)(i), with modifications and additions to address comments received, and with revisions for clarity.

The Bureau based the proposed consumer-use procedures for text messages on the same assumption as the proposed consumer-use procedures for email addresses, *i.e.,* that a debt collector may not have a reason to anticipate a third-party disclosure when sending a text message to a telephone number that the consumer recently used to communicate with the debt collector. The Bureau reasoned that, as with email addresses, consumers generally are better positioned than debt collectors to determine if third parties have access to a particular telephone number for text messages.[323]

Feedback from industry and consumer advocate commenters regarding the Bureau's reasoning was similar to feedback regarding the consumer-use procedures for email addresses, with industry generally supporting the Bureau's reasoning and consumer advocates generally opposing it for the reasons discussed in the section-by-section analysis of § 1006.6(d)(4)(i). Also for the reasons discussed in that section-by-section analysis, the Bureau determines that a debt collector who sends a text message to a telephone number that the consumer has used to communicate with the debt collector by text message generally would lack reason to anticipate a third-party disclosure. However, for the reasons discussed in § 1006.14(h)(1), a debt collector could not continue to use a telephone number for text messages if the consumer asked the debt collector not to engage in such communications.

An industry commenter and a group of consumer advocate commenters asked whether the proposed consumer-use method—which would have provided a safe harbor for text messages sent to a telephone number that the consumer had used ''to contact'' the debt collector—would protect a debt collector who sent a text message to a telephone number that the consumer had used to call (but not to text) the debt collector. The group of consumer advocate commenters argued that a call from a telephone number does not invite a text message to that number, while the industry commenter simply asked for clarification. Because a consumer who places a telephone call to a debt collector generally can control who listens to the conversation by initiating or engaging in the call in private, the Bureau does not believe that a consumer's decision to call a debt collector, without more, generally suggests that the risk of third-party disclosure is low if the debt collector sends a text message to the same telephone number. Therefore, the text of § 1006.6(d)(5)(i), and new comment 6(d)(5)(i)–1, clarify that the consumer-use method for text messages does not apply if the consumer only used the telephone number to communicate with the debt collector about the debt by telephone call.

An industry commenter asked whether, under the proposed consumer-use method, a debt collector would be protected from liability when responding to a consumer by text message if, after attempting to communicate with the consumer by telephone, the debt collector received a text message from the consumer asking ''Who is this? What is this about? Please text me back.'' The Bureau determines that a consumer who responds to a missed telephone call by sending a text message asking ''who is this? what is this about?'' and requesting a return text message likely does not know that the underlying communication or attempted communication was from a debt collector or related to a debt. Such a request therefore would not, without more, suggest that the risk of third-party disclosure is low if the debt collector responded by text message.[324] For this reason, the Bureau is finalizing the consumer-use method for text messages with a clarification that it applies only if the consumer used the telephone number to communicate with the debt collector about the debt. Accordingly, § 1006.6(d)(5)(i) does not cover a debt collector who sends a text message to a consumer after receiving a text message from the consumer asking ''Who is this? What is this about? Please text me back.''

The Bureau received numerous comments regarding proposed § 1006.6(d)(3)(i)(A)'s recency requirement, *i.e.,* the requirement that the consumer have recently used the telephone number to contact the debt collector. As discussed in the section-by-section analysis of § 1006.6(d)(4)(i), multiple industry, consumer, and consumer advocate commenters confirmed the Bureau's understanding, as discussed in the proposal, that telephone numbers are regularly reassigned. Consumer advocate commenters thus generally supported applying the recency requirement to telephone numbers, and industry commenters generally did not oppose doing so.

Consumer advocate and industry commenters both argued, however, that the Bureau should define the term ''recently,'' with consumer advocates noting that a definition would better protect consumers and industry commenters noting that failing to define the term would create unnecessary litigation risk. A consumer advocate commenter urged the Bureau to define recent as within the past 30 days to reflect the month-to-month nature of many pay-as-you-go mobile telephone plans. This commenter also expressly opposed defining recent as within the past year, arguing that a period of this length fails to recognize that low-income consumers in financial crisis may change telephone numbers multiple times in a single year. Some industry commenters argued that 30 days would adequately protect consumers while allowing debt collectors sufficient time to respond to consumer inquiries. A few industry commenters argued in favor of 60 days without explaining their reasoning, and others supported a one-year period.

As discussed in the proposal, and as confirmed by commenters, millions of telephone numbers are disconnected and made available for reassignment each year, increasing the risk of third-party disclosure when a debt collector sends a text message.[325] For this reason, the Bureau is finalizing a recency requirement as part of the consumer-use

[322] Proposed § 1006.6(d)(3)(i)(A) would have applied to both email addresses and telephone numbers for text messages, but final § 1006.6(d)(5)(i) only applies to telephone numbers for text messages. This section-by-section analysis therefore addresses proposed § 1006.6(d)(3)(i)(A) only with respect to comments that specifically discussed text messages. Comments received in response to proposed § 1006.6(d)(3)(i)(A) that discussed email addresses are addressed in the section-by-section analysis of § 1006.6(d)(4)(i).

[323] *See* the section-by-section analysis of § 1006.6(d)(4)(i).

[324] Nothing in the final rule prohibits a debt collector from communicating by text message in this scenario, although the Bureau notes that the prohibition in § 1006.6(d)(1) would apply.

[325] *See* 84 FR 23274, 23301 (May 21, 2019) (noting that, according to a 2018 FCC notice of proposed rulemaking, 35 million telephone numbers are disconnected and made available for reassignment each year).

method for text messages. The Bureau agrees with commenters that the final rule should better define what constitutes ''recently.'' In this regard, the Bureau notes that the FCC has established a 45-day minimum aging period and a 90-day maximum aging period for telephone number reassignments.[326] In other words, no fewer than 45 days and no more than 90 days may pass between the time a carrier disconnects a telephone number and the time it reassigns the number to a new consumer. The Bureau does not have reason to believe that a significant number of consumers have their telephone numbers disconnected the same day they contact a debt collector. Accordingly, the Bureau believes that basing the text message recency requirement on the 45-day minimum-aging period would be unnecessarily restrictive. At the same time, because all disconnected telephone numbers must be reassigned within 90 days, the Bureau believes that basing the text message recency requirement on the 90-day maximum aging period would not adequately address the risk of third-party disclosure posed by reassignment. The Bureau therefore is finalizing a 60-day recency requirement as part of the consumer-use procedures for text messages. The Bureau finds that a 60-day period will protect consumers against the risk of reassignment, facilitate the responsible use of text message communications in debt collection, and provide stakeholders with clarity.

An alternative way to address the risk of third-party disclosure posed by the reassignment of telephone numbers is to require debt collectors to confirm that a telephone number belongs to a consumer before sending a text message to that number, such as by consulting a reliable third-party database. Indeed, several industry commenters urged the Bureau to incorporate the use of a third-party database into the procedures. For example, several industry commenters argued that debt collectors should receive a safe harbor from civil liability for an unintentional third-party disclosure when using any telephone number for text messages as long as the telephone number has recently been verified or validated as accurate. One industry commenter would have defined validated to mean that a debt collector had confirmed the accuracy of the telephone number using a third-party database.[327]

The FCC has observed that, although commercial databases currently exist to help callers determine whether a telephone number has been reassigned, these databases are not comprehensive.[328] For this reason, in December 2018, the FCC announced the creation of a new database to serve as a single, comprehensive source for determining whether a telephone number has been reassigned.[329] The purpose of the database, known as the Reassigned Numbers Database, is to help curb the proliferation of unwanted telephone calls directed to reassigned telephone numbers.[330] Once operational, the database will contain reassigned number information from each provider that obtains North American Numbering Plan U.S. geographic numbers and toll-free numbers.[331] Users will be able to consult the database to determine whether a telephone number has been permanently disconnected since a particular date—such as the date the consumer last consented to communicate by text message or the date of the consumer's most recent text message—and therefore no longer belongs to the consumer.[332] If the database shows that a particular telephone number has been disconnected, then a debt collector has reason to anticipate that sending a text message to that number will result in a third-party disclosure. Thus, once operational, the FCC's Reassigned Numbers Database can help debt collectors comply with FDCPA section 805(b) and the final rule's prohibition on third-party disclosures.

Accordingly, the final rule permits debt collectors sending text messages to use a complete and accurate database to verify that a particular telephone number continues to belong to the consumer. Debt collectors may rely either on this method or on the receipt of a recent text message from the consumer. Comment 6(d)(5)–1 clarifies that, for purposes of the consumer-use procedures, the FCC's Reassigned Numbers Database qualifies as a complete and accurate database,[333] as does any commercially available database that is substantially similar in terms of completeness and accuracy to the FCC's Reassigned Numbers Database.[334] The Bureau recognizes that, as a result of technological developments, debt collectors and others may develop new methods to confirm whether a telephone number has been reassigned, some of which may offer a level of certainty comparable to consulting a complete and accurate database. The Bureau will monitor the market for any such developments and consider whether to modify or expand the text message safe harbor procedures in the future.

For the reasons discussed above, the Bureau is finalizing § 1006.6(d)(5)(i), which provides that a debt collector may obtain a safe harbor from civil liability for an unintentional third-party disclosure when sending a text message to a telephone number if the consumer used the telephone number to communicate with the debt collector about the debt by text message, the consumer has not since opted out of text message communications to that telephone number, and within the past 60 days either: (1) The consumer sent a text message to the debt collector from that telephone number; or (2) the debt collector confirmed, using a complete and accurate database, that the telephone number has not been reassigned from the consumer to another user since the date of the consumer's most recent text message to the debt collector from that telephone number. As noted, the Bureau also is adopting new comment 6(d)(5)–1 to clarify the meaning of complete and accurate database, and new comment 6(d)(5)(i)–1 to clarify that § 1006.6(d)(5)(i) does not apply if the consumer used the telephone number to communicate with the debt collector about the debt only by telephone call.

[326] *See In re Advanced Methods to Target & Eliminate Unlawful Robocalls,* 33 FCC Rcd. 12024, 12030–31 (Dec. 12, 2018) (citing 47 CFR 52.15(f)(1)(ii), 52.103(d)).

[327] A consumer advocate commenter also proposed requiring debt collectors to verify consumers' contact information before communicating electronically, but the commenter did not define the term verify, and it is possible the commenter was simply advocating for an opt-in system.

[328] *Reassigned Numbers Database (RND) Technical Requirements Document,* 35 FCC Rcd. 38, ¶ 1.3 (Jan. 13, 2020) (observing that ''[c]ommercial databases exist to aid callers, but these databases are not comprehensive''); 33 FCC Rcd. at 12027 (observing that commercial databases ''are not comprehensive'').

[329] 33 FCC Rcd. at 12025.

[330] *Id.*

[331] *Id.*

[332] *Id.* at 12029.

[333] The Bureau recognizes that the FCC's Reassigned Numbers Database is not yet operational. Once it is operational, debt collectors may incorporate its use into their procedures under § 1006.6(d)(5)(i).

[334] As noted, the FCC has observed that currently available commercial databases are not comprehensive. 33 FCC Rcd. at 12027. If a commercially available database that is substantially similar in terms of completeness and accuracy to the FCC's Reassigned Numbers Database does exist or come into existence, debt collectors may incorporate its use into their procedures under § 1006.6(d)(5)(i).

6(d)(5)(ii)

Several industry commenters requested that the Bureau expand the procedures in proposed § 1006.6(d)(3)(i)(A), or create new procedures, to protect a debt collector who communicates with a consumer by text message after receiving the consumer's permission to do so. The Bureau believes that, if a consumer has consented to a debt collector's use of a particular telephone number for text messages and has not withdrawn that consent, the debt collector generally does not have reason to anticipate that using the telephone number to communicate with the consumer by text message will lead to a third-party disclosure—as long as the debt collector has taken steps to confirm that the telephone number has not been reassigned.[335] For this reason, the Bureau is finalizing § 1006.6(d)(5)(ii), which provides that a debt collector may obtain a safe harbor from civil liability for an unintentional third-party disclosure when sending a text message to a telephone number if the debt collector received directly from the consumer prior consent to use the telephone number to communicate with the consumer about the debt by text message, the consumer has not since withdrawn that consent, and within the past 60 days the debt collector either: (1) Obtained the prior consent or renewed consent from the consumer; or (2) confirmed, using a complete and accurate database, that the telephone number has not been reassigned from the consumer to another user since the date of the consumer's most recent consent to use that telephone number to communicate about the debt by text message. The additional steps to confirm that the telephone number has not been reassigned are similar to those in § 1006.6(d)(5)(i), and, like those steps, are designed to increase the likelihood that the telephone number continues to belong to the consumer when the debt collector communicates by text message.

As noted in the section-by-section analysis of § 1006.6(d)(5)(i), new comment 6(d)(5)–1 clarifies that the FCC's Reassigned Numbers Database qualifies as a complete and accurate database for purposes of § 1006.6(d)(5)(ii), as does any commercially available database that is substantially similar in terms of completeness and accuracy to the FCC's Reassigned Numbers Database. The Bureau also is adopting new commentary to clarify the meaning of prior consent provided directly to a debt collector in the context of § 1006.6(d)(5)(ii). Specifically, new comment 6(d)(5)(ii)–1 refers to comment 6(d)(4)(i)(B)–1 for guidance concerning how a consumer may provide prior consent directly to a debt collector generally, and to comment 6(d)(4)(i)(B)–2 for guidance concerning when a debt collector may treat a consumer who provides a telephone number for text messages as having provided prior consent directly to the debt collector.

6(e) Opt-Out Notice for Electronic Communications or Attempts To Communicate

The use of electronic media for debt collection communications can further the interests of both consumers and debt collectors. As the Bureau explained in the proposal, however, electronic communications also pose potential consumer harms.[336] One potential harm relates to consumer harassment. Because the marginal cost of transmitting electronic communications to consumers is low, particularly when compared to mail communications, debt collectors have less economic incentive to limit the number of such communications. Repeated or continuous debt collection communications can have the natural consequence of harassing, oppressing, or abusing the recipient.[337]

Another potential consumer harm relates to communication costs. As explained in the section-by-section analysis of § 1006.6(d)(3), consumers without unlimited text messaging plans may incur a charge each time they receive a text message, or each time they receive a text message that exceeds a specified limit. Some consumers without unlimited data plans also may incur a charge when they receive emails.

A way to help consumers address potentially harassing or costly electronic communications is to provide them with a convenient way to opt out of such communications.[338] Thus, proposed § 1006.6(e) would have required debt collectors to describe, clearly and conspicuously in every electronic communication, how consumers can opt out of receiving such communications directed at a specific email address, telephone number for text messages, or other electronic-medium address.[339] It also would have prohibited a debt collector from requiring, directly or indirectly, that the consumer, to opt out, pay any fee to the debt collector or provide any information other than the email address, telephone number for text messages, or other electronic-medium address subject to the opt-out request. In response to feedback, the Bureau is finalizing proposed § 1006.6(e) with modifications for clarity as described below. Among other things, final § 1006.6(e) increases protection for consumers and increases clarity for debt collectors by specifying that the opt-out method debt collectors provide must be reasonable and simple.

Opt-Out Concept in General

Most industry commenters supported proposed § 1006.6(e) although, as explained below, many industry commenters also requested that the Bureau clarify certain aspects of the proposal. Several industry commenters appeared to oppose proposed § 1006.6(e) on the ground that it would make electronic communications more difficult, and one suggested that, instead of requiring debt collectors to provide opt-out instructions in each electronic

[335] The section-by-section analysis of § 1006.6(d)(4)(i) explains the basis for the Bureau's belief that a debt collector generally does not have reason to anticipate a third-party disclosure when communicating by email with the consumer's permission. The same explanation applies to text messages.

[336] In this section-by-section analysis, the Bureau uses the phrase ''electronic communication'' to refer to emails, text messages, and other similar electronic communications that are readable.

[337] As explained in the section-by-section analysis of § 1006.14(a), the general prohibition in § 1006.14(a) prohibits conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. In the final rule, the Bureau is adopting two comments to clarify that the general prohibition on harassing conduct applies to debt collectors' use of communication media other than telephone calls, including cumulative communications involving telephone calls and other media.

[338] As the Bureau noted in the proposal, an opt-out requirement is consistent with several established public policies protecting consumers who receive electronic communications. For example, with respect to emails, the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN–SPAM) Act of 2003, 15 U.S.C. 7701 *et seq.,* reflects a public policy in favor of providing consumers with a specific mechanism to opt out of certain email messages. *See* 15 U.S.C. 7704(a)(3) (requiring that commercial emails include a functioning return email address or other internet-based mechanism, clearly and conspicuously displayed, for the recipient to request not to receive future email messages from the sender at the address where the message was received); Fed. Trade Comm'n, *CAN–SPAM Act: A Compliance Guide for Business* (Sept. 2009), *https://www.ftc.gov/tips-advice/business-center/guidance/can-spam-act-compliance-guide-business* (explaining that messages covered by the CAN–SPAM Act ''must include a clear and conspicuous explanation of how the recipient can opt out of getting email from [the sender] in the future''). In addition, the FTC's regulations implementing the CAN–SPAM Act prohibit charging a fee or imposing other requirements on recipients who wish to opt out of certain email communications. 16 CFR 316.5.

[339] *See* 84 FR 23274, 23304–06 (May 21, 2019). Proposed comment 6(e)–1 would have clarified the meaning of clear and conspicuous and provided examples of how to comply with proposed § 1006.6(e).

communication, the Bureau should allow debt collectors to inform consumers periodically of the right to opt out, or in a standard notice on the debt collector's website. The Bureau determines that periodically notifying consumers of the right to opt out, or requiring consumers to find and review a notice on a debt collector's website, does not adequately protect consumers from potentially harassing and costly electronic communications. A consumer who finds electronic communications harassing or costly should not endure additional harassment or cost while waiting for a debt collector to explain how to opt out, and a consumer should not bear the burden and risk of locating, reviewing, and using an opt-out notice that appears only on a debt collector's website. Nor does the Bureau believe that allowing consumers to opt out of electronic communications makes such communications more difficult. Presumably, many consumers who opt out of electronic communications with a debt collector would not respond to such communications even if opting out were difficult or impossible.[340]

Although, as discussed in the section-by-section analysis of § 1006.6(d)(4), many consumer advocate commenters and multiple government and academic commenters urged the Bureau to adopt an opt-in system for electronic communications, they also supported allowing consumers to opt out of electronic communications once such communications have begun. These commenters argued that the ability to opt out of electronic communications is critical to prevent harassment, particularly because the Bureau did not include emails and texts messages in proposed § 1006.14(b)'s frequency limits.[341] Consumer advocate commenters also argued that enabling consumers to opt out of electronic communications is especially important for certain groups of consumers, such as those who are contacted using an employer-provided email address or telephone number and wish to end those contacts immediately, those who lack reliable access to a particular medium of electronic communication and therefore prefer to opt out of communications using that medium, and those who are contacted erroneously and prefer to opt out rather than to call the debt collector.

However, many consumer and consumer advocate commenters, and several government and academic commenters, also expressed concern that proposed § 1006.6(e), on its own, would not sufficiently protect consumers from the risks of electronic debt collection communications. For example, some commenters noted that, if a consumer was worried about phishers and scammers, the consumer might be reluctant to exercise an opt-out right, particularly one that required clicking on a link or replying to an email or text message from an unknown sender. Other commenters expressed concern that a debt collector might not honor a consumer's opt-out request, pointing to the difficulty reported by some consumers when trying to opt out of electronic communications outside of the debt collection context and to the Bureau's consumer survey, which showed that 75 percent of surveyed consumers who asked a creditor or debt collector to stop contacting them (orally or in writing) reported that the creditor or debt collector attempted to contact them anyway.[342] An academic commenter and a local government commenter also asserted that opt-out procedures generally create barriers to consumer action and that certain vulnerable populations, such as older consumers, might have difficulty navigating even relatively simply opt-out procedures.

The Bureau determines that a way to address potentially harassing or costly electronic communications is to provide consumers with a convenient way to opt out of such communications. In response to concerns that the ability to opt out, on its own, does not sufficiently protect consumers from the risks of electronic communications, the Bureau notes that § 1006.6(e) is one of several provisions in the final rule designed to address those risks. For example, § 1006.6(d)(3) through (5) describes procedures to limit third-party disclosures when sending an email or text message; § 1006.14(a) prohibits a debt collector from communicating electronically in a manner that has the natural consequence of harassing, oppressing, or abusing any person in connection with the collection of a debt; § 1006.14(h) prohibits a debt collector from using a medium of communication if a person has requested that the debt collector not use that medium; and §§ 1006.18(d) and 1006.22(f)(4) include protections regarding debt collectors' use of social media.

Ease of Use of Opt-Out Instructions

Many consumer and consumer advocate commenters, several academic commenters, a group of State Attorneys General, and other State and local government commenters noted that proposed § 1006.6(e) would have required a debt collector to describe how to opt out, but it would not have required the opt-out mechanism to take a particular form. For example, these commenters expressed concern that, as drafted, proposed § 1006.6(e) would have permitted a debt collector to construct a complicated opt-out mechanism, such as requiring a consumer to opt out by mail only, or by telephone call during particular hours. Several consumer advocate commenters observed that, even if a debt collector does not intend to make it difficult to opt out, an unnecessarily limited opt-out method may be problematic for some consumers. For example, if a debt collector inadvertently emailed a consumer at work, an opt-out method that required a return email from that email address could be problematic for a consumer whose employer-provided account is monitored and who would therefore prefer to contact the debt collector by telephone or through another communication medium. Similarly, if a debt collector required opt-out requests to be communicated by telephone during particular hours, those hours might not be convenient for a consumer. A group of State Attorneys General and a group of consumer advocate commenters argued that, in this respect, proposed § 1006.6(e) was less protective of consumers than other

[340] To the extent commenters asked the Bureau to clarify whether a creditor's electronic communications must include opt-out instructions, the Bureau confirms that § 1006.6(e) applies only to FDCPA debt collectors.

[341] One local government commenter argued that an opt-out approach for text messages effectively would permit an unfair debt collection practice. Specifically, the commenter argued that only an opt-in approach is consistent with FDCPA section 808(5), which prohibits a debt collector from causing charges to be made to any person for communications by concealment of the true purpose of the communication and provides, as an example, a consumer incurring collect telephone call charges because the debt collector concealed the true purpose of the call. While, as the commenter noted, the Bureau referred to FDCPA section 808(5) in the section-by-section analysis of proposed § 1006.6(e), the Bureau does not believe and did not mean to suggest that a debt collector necessarily violates FDCPA section 808(5) by sending a text message to a consumer with a limited text messaging plan. Rather, the Bureau believes that, as with any communication, a violation of FDCPA section 808(5) would require the debt collector to engage in concealment of the true purpose of the text message. The Bureau believes that a debt collector who communicates by text message pursuant to the procedures in § 1006.6(d)(5) would be unlikely to engage in such concealment. As explained further in the relevant section-by-section analysis, § 1006.6(d)(5) provides a safe harbor from civil liability to a debt collector who sends a text message to a telephone number only if, among other things, the consumer used the telephone number to send a text message to the debt collector or the consumer consented directly to the debt collector's use of text messages. In both cases, the consumer has evidenced a familiarity with the debt collector and a willingness to communicate by text message.

[342] *See* CFPB Debt Collection Consumer Survey, *supra* note 16, at 35.

consumer protection laws and regulations. For example, the CAN–SPAM Act requires email marketers to provide a reply email or internet-based means by which an opt-out request may be sent by the consumer,[343] and the FCC allows consumers to revoke consent under the TCPA in any manner that clearly expresses a desire not to receive further messages.[344]

Consumer, consumer advocate, government, and academic commenters who urged the Bureau to strengthen proposed § 1006.6(e) offered several suggestions. Many such commenters urged the Bureau to require a debt collector to accept an opt-out request in the same medium in which the debt collector communicated with the consumer and the opt-out instructions were delivered. Thus, for example, a consumer should be permitted to opt out of email communications by replying to a debt collector's email. Other commenters urged the Bureau to require a debt collector to accept an opt-out request in any medium that the debt collector uses to communicate with consumers. Thus, for example, a debt collector who communicates with consumers by telephone, email, and mail would have to accept an opt-out request submitted by any of those methods, even if the request is in response to an email. Other commenters argued that the final rule should adopt a more general standard, such by as requiring debt collectors to allow consumers to opt out using any ''convenient method'' or any ''reasonable method.''

Relatedly, several consumer advocate commenters urged the Bureau to strengthen proposed § 1006.6(e) by elaborating generally on the procedural and disclosure requirements that debt collectors must follow. For example, a consumer advocate commenter urged the Bureau to require debt collectors to provide consumers with a hyperlink allowing them to opt out of electronic communications. A group of consumer advocate commenters urged the Bureau to require debt collectors to list all the ways a consumer may opt out of electronic communications, and to do so in textual rather than graphic format to ensure that the information is available to visually impaired consumers who use text reading tools and to consumers who use email programs that do not download graphics. Other commenters suggested that the Bureau require debt collectors to disclose that the right to opt out can be exercised at any time, and to ensure that the disclosure appears in the body of a communication where it can be seen without scrolling down.

The Bureau agrees that the ability to opt out of electronic communications affords little protection if the costs to consumers of opting out prevent or unduly hinder them from making that choice. Accordingly, final § 1006.6(e) clarifies that a debt collector must describe a reasonable and simple method by which the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to a particular electronic address or telephone number.[345] The Bureau also is adopting commentary providing examples, informed by suggestions from commenters, of opt-out methods that comply with the reasonable-and-simple standard. Specifically, comment 6(e)–1 clarifies that, in the context of text message communications, the standard is satisfied if a consumer can opt out by replying ''stop'' to the debt collector. Comment 6(e)–1 also clarifies that, in the context of email communications, the standard is satisfied if a consumer can opt out by clicking on a link in the email or replying with the word ''stop'' in the subject line. The Bureau expects that most debt collectors will follow these examples when they communicate electronically with consumers.

Permissible Fees and Required Information in Connection With Opt-Out Requests

Proposed § 1006.6(e) would have prohibited a debt collector from requiring, directly or indirectly, that the consumer, in order to opt out, pay any fee to the debt collector. A group of consumer advocate commenters noted that, because this prohibition was limited to paying a fee to a debt collector, a debt collector could still require the consumer to pay a fee to a third party. For example, the commenters noted, proposed § 1006.6(e) would appear to have allowed debt collectors to require a certified letter to opt out, with the fee paid to the postal service. In addition, these commenters observed, a debt collector who requires consumers to send a text message to opt out would force consumers with limited text messaging plans to incur a charge, with the fee paid to the consumer's telephone provider. An industry commenter recommended that debt collectors include, in all text messages to consumers, a statement that message rates may apply.

Final § 1006.6(e) retains the prohibition on fees as proposed. The consumer advocate commenters' concern about the cost of an opt-out notice sent by certified mail (and other similarly inconvenient media) is addressed by § 1006.6(e)'s reasonable-and-simple requirement; an opt-out method that requires a consumer to use certified mail (which entails the consumer arranging for a special form of delivery that is costlier than ordinary mail and generally unwarranted under the circumstances) is not reasonable and simple. Section 1006.6(e) does not, however, prohibit a consumer from incurring a fee for sending an opt-out request by text message as long as such fee is not paid, directly or indirectly, to the debt collector. Because such a consumer has already expressed a willingness to incur the costs of text message communications, the Bureau does not believe it is necessary to prohibit consumers from incurring such costs in § 1006.6(e). And, as discussed in detail in the section-by-section analyses of §§ 1006.6(b)(1) and 1006.14(h), a consumer may control communications in other ways, including by, for example, informing a debt collector by telephone that the consumer does not want to receive text messages. The Bureau also does not believe it is necessary to require debt collectors to note, in text messages to consumers, that message rates may apply. The Bureau understands from consumer advocate commenters that consumers with limited text messaging plans generally are aware that they may be charged for text messages.

Proposed § 1006.6(e) also would have prohibited a debt collector from requiring that the consumer, in order to opt out, provide any information other than the email address, telephone number for text messages, or other electronic-medium address subject to the opt-out request. Federal government agency staff encouraged the Bureau to ensure that this prohibition would not inadvertently prevent consumers from also sharing their opt-out preferences. The Bureau intended to allow debt collectors to solicit a consumer's opt-out preferences, and the final rule expressly adds the consumer's opt-out preferences to the list of information that a debt collector may require the consumer to provide.

[343] *See* 15 U.S.C. 7704(a)(3)(A) (making it ''unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message that does not contain a functioning return electronic mail address or other internet-based mechanism'').

[344] *See In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991,* 30 FCC Rcd. 7961, 7996 (July 10, 2015), *set aside in part by ACA Int'l* v. *Fed. Commc'ns Comm'n,* 885 F.3d 687 (D.C. Cir. 2018).

[345] As explained in the section-by-section analysis of § 1006.6(d)(4)(ii), the reasonable-and-simple standard also appears in the Bureau's Regulation V. 12 CFR 1022.25.

Processing Period for Opt-Out Requests

Multiple industry commenters and one consumer advocate commenter requested that the Bureau specify the time period within which a debt collector would be required to process a consumer's request to opt out. One industry commenter suggested that the Bureau require debt collectors to process opt-out requests within a ''reasonable'' period of time, while another industry commenter suggested a 72-hour processing period. Several industry commenters suggested a 10-day processing period, which is the period the FTC has set for processing opt-out requests under the CAN–SPAM Act. An industry commenter who presently communicates with consumers by email stated that it processes opt-out requests in less than 10 minutes, another industry commenter predicted that debt collectors would be able to process opt-out requests in 24 to 48 hours, and another industry commenter predicted that debt collectors would be able to process opt-out requests in fewer than 10 days. A consumer advocate commenter proposed a processing period of 24 hours, arguing that the frequency of some debt collection communications means that a short compliance period is necessary to ensure that a consumer's opt-out request is honored.

The Bureau recognizes that any maximum processing period for opt-out requests under § 1006.6(e) must be short enough to protect consumers from unwanted electronic communications but long enough for compliance to be practical. Given the disparate periods of time suggested by commenters, and the fact that few debt collectors communicate electronically and process electronic opt-out requests today, the final rule does not specify the period of time afforded a debt collector to process an opt-out request under § 1006.6(e). However, depending on the circumstances, a debt collector who unintentionally communicates with a consumer electronically after receiving a consumer's request to opt out but before processing the request may have a bona fide error defense to civil liability under FDCPA section 813(c). For example, if a debt collector who schedules an email to be sent to a consumer later receives an opt-out request from the consumer but sends the previously scheduled email to the consumer before the request can be processed (notwithstanding the maintenance of procedures to avoid such an error), the debt collector may have a bona fide error defense to civil liability under FDCPA section 813(c).[346]

Other Requests for Clarification

The requirements of final § 1006.6(e), like the requirements of proposed § 1006.6(e), apply to all electronic communications using a specific email address, telephone number for text messages, or other electronic-medium address. A group of consumer advocate commenters expressed concern that direct messages sent using certain social media platforms—such as platforms that allow users to search by name rather than by email address, telephone number, or another account identifier—might not be covered by proposed § 1006.6(e) because those platforms may not use electronic-medium addresses. These commenters urged the Bureau to clarify that opt-out notices are required for all electronic communications. The language of § 1006.6(e) makes clear that it applies to all electronic communications, regardless of whether that particular form of electronic communication is specified in the rule. This includes direct messaging communications on social media and communications in an application on a website, mobile telephone, or computer. It also includes electronic communications using platforms that allow users to search by name or another identifier rather than by email address or telephone number.

Several industry commenters asked the Bureau to clarify the scope of an opt-out request made under § 1006.6(e). For example, some industry commenters asked whether a § 1006.6(e) opt-out request applies to all of a consumer's debts being collected by a particular debt collector or only to the specific debt about which the debt collector communicated. Other industry commenters asked whether a § 1006.6(e) opt-out request applies to all electronic communication media or only to the medium of electronic communication (or the particular address or telephone number) used by the debt collector to communicate with the consumer. Some industry commenters asked whether a § 1006.6(e) opt-out request should be treated as a request to cease all communication regardless of medium, while other industry commenters asked whether a consumer's request that a debt collector cease sending text messages to a particular telephone number should also be treated as request to cease telephone calls to that number. A consumer advocate commenter and a local government commenter asked whether a § 1006.6(e) opt-out request made to one debt collector binds future debt collectors collecting the same debt.

Consistent with proposed § 1006.6(e), final § 1006.6(e) requires a debt collector to describe how to opt out of further electronic communications or attempts to communicate by the debt collector to a particular address or telephone number. In general, the Bureau determines that a consumer who requests that a debt collector cease using a particular address or telephone number to communicate electronically about one of the consumer's debts likely wishes the debt collector to cease using that particular address or telephone number to communicate about any other debt being collected by the debt collector. Comment 14(h)(1)–3.ii addresses this issue further.

Moreover, absent evidence to the contrary, a consumer's request to opt out of electronic communications to a particular address or telephone number is not a request to opt out of electronic communications to a different address or telephone number, a request to opt out of all electronic communications, or a request to opt out of communications altogether. A consumer who objects to receiving electronic communications sent to a particular address or telephone number (because, for example, that address or number has been provided by the consumer's employer or is subject to usage fees) may not object to a debt collector's use of a different address or number or to a debt collector's use of a different medium of communication.

Similarly, absent evidence to the contrary, a consumer's request to opt out of text messages to a particular telephone number is not a request to opt out of telephone calls to that number. A consumer who objects to receiving text messages from a debt collector (because, for example, the consumer is charged for each such message) may not object to receiving telephone calls. Nor does a consumer's request to opt out under § 1006.6(e) bind a subsequent debt

[346] *Cf. Transworld Sys., Inc.*, 953 F.2d at 1036 (holding debt collector's letter, mailed shortly after receiving consumer's cease communication notification, constituted bona fide error where debt collector's procedures were reasonably adapted to avoid such an error); *ACB Receivables Mgmt., Inc.*, 15 F. Supp. 3d at 629 (denying bona fide error defense where debt collector communicated with consumer after receiving consumer's cease communication notification but failed to present any evidence of redundancy or safeguards in its procedures to prevent such errors); *Carrigan*, 494 F. Supp. at 827 (denying bona fide error defense where debt collector communicated with consumer after receiving consumer's cease communication notification but failed to provide evidence that it maintained proper procedures governing mail handling).

collector.[347] A consumer who objects to one debt collector's use of electronic communications might not object to another debt collector's use of such communications if, for example, the timing and frequency of the communications differ or the consumer's personal circumstances have changed.

In the proposal, the Bureau requested comment on whether to identify in the final rule a non-exclusive list of words or phrases—such as ''stop,'' ''unsubscribe,'' ''end,'' ''quit,'' or ''cancel''—that express an opt-out instruction. Several industry commenters requested that the final rule include such a list. Two industry commenters argued that the final rule should allow debt collectors to identify for consumers the exact words needed to opt out and that, if a consumer uses different words, a debt collector should have more time to process the request. Another industry commenter suggested that the Bureau identify an exclusive list of words that express an opt-out request. An industry commenter suggested that debt collectors should be required to treat only two words as expressing an opt-out instruction: ''stop'' and ''opt out.'' A group of consumer advocate commenters urged the Bureau to require debt collectors to honor standard opt-out phrases, such as ''stop,'' ''unsubscribe,'' ''end,'' ''quit,'' and ''cancel.''

The Bureau determines that words such as ''stop,'' ''unsubscribe,'' ''end,'' ''quit,'' or ''cancel'' generally express a consumer's intent to opt out. But these are not the only words that express such an intent. A consumer may respond to a debt collector's electronic communication with an email or text message that makes the consumer's desire to opt out clear without using one of these words. Given the variety of ways in which a consumer may express an intent to opt out, the Bureau declines to identify an exclusive list of words that express such an intention. Conversely, a debt collector who receives a request to ''stop,'' ''unsubscribe,'' ''end,'' ''quit,'' or ''cancel'' will be considered to have received an opt-out request even though the specific term the consumer used does not conform precisely to the opt-out instructions provided by the debt collector pursuant to § 1006.6(e).

Proposed § 1006.6(e) would have required a debt collector to describe how to opt out clearly and conspicuously, and proposed comment 6(e)–1 would have clarified, among other things, that an email would comply with the clear and conspicuous requirement by including instructions in a textual format, in a type size no smaller than the other text in the email. Several industry and consumer advocate commenters requested that the Bureau elaborate on the clear and conspicuous requirement, including by specifying a minimum type size for instructions contained in emails and clarifying whether a font comparison to the rest of an email should exclude graphics, logos, or other non-substantive content within the message. Several industry commenters also urged the Bureau to provide model instructions that would satisfy the clear and conspicuous requirement.

Final § 1006.6(e) retains the clear and conspicuous requirement. The Bureau also is adopting commentary that refers to comment 6(d)(4)(ii)(C)–1 for guidance on the meaning of clear and conspicuous and provides examples illustrating how to comply with the rule when sending a text message or email. The Bureau declines, however, to specify precisely where in an electronic communication the instructions required by § 1006.6(e) must be placed or how large the type size must be. Different debt collectors may design their electronic communications in different ways, and the Bureau does not believe it is necessary or warranted to specify such details, as long as the disclosure satisfies the clear and conspicuous standard.

An industry commenter asked the Bureau to clarify whether a debt collector who receives an opt-out request under § 1006.6(e) may send the consumer a single reply to acknowledge the request and advise the consumer that the request applies only to the specific communication medium used by the debt collector and the specific debt being collected. The same commenter also asked the Bureau to provide model language. As noted above, and as comment 14(h)(1)–3.ii illustrates, a consumer's request to opt out under § 1006.6(e) applies to any of the consumer's debts being collected by the debt collector—not just the specific debt being collected. Further, although § 1006.14(h)(2)(i) permits a debt collector to send an electronic confirmation of a consumer's request to opt out provided that the confirmation contains no information other than a statement confirming the person's request and that the debt collector will honor it, the Bureau does not believe it is necessary or warranted to provide model language given the brevity of the communication.

A group of consumer advocate commenters observed that, although proposed § 1006.6(e) would have required a debt collector to describe how to opt out of electronic communications directed to a particular address or telephone number, it would not have explicitly required the debt collector to honor such a request; instead, the requirement to honor an opt-out request would have appeared in proposed § 1006.14(h). The final rule retains the same structure, with the requirement to disclose an opt-out method appearing in § 1006.6(e) and the requirement to honor an opt-out request appearing in § 1006.14(h)(1). Section 1006.14(h)(1) broadly prohibits debt collectors from communicating or attempting to communicate with a person through a medium of communication if the person has requested that the debt collector not use that medium to communicate with the person, and comment 14(h)(1)–3.ii illustrates that such a request includes an opt-out request made pursuant to the § 1006.6(e) instructions.

Another consumer advocate commenter recommended that the Bureau permit consumers to provide debt collectors with a list of third parties who should not be contacted for any reason, including for location-call purposes. Although nothing in the final rule would prohibit a consumer from offering such a list or a debt collector from requesting or accepting such a list, the commenter's request is outside the scope of this rulemaking.

A local government commenter recommended that the Bureau require debt collectors to disclose to consumers additional information about how to limit debt collection communications. For example, the commenter suggested that the Bureau require debt collectors to disclose that consumers can cease all telephone communications or cease telephone communications to a particular number. As the Bureau noted in the proposal, § 1006.6(e) addresses a group of concerns that are unique to electronic communications and attempts to communicate. With respect to telephone calls in particular, consumers likely know how to ask debt

[347] The Bureau notes, however, that, as explained above, § 1006.6(d)(4)(iii) provides that a debt collector may obtain a safe harbor from civil liability for an unintentional third-party disclosure when sending an email to an email address if: (1) Any prior debt collector obtained the email address in accordance § 1006.6(d)(4)(i) or (ii); (2) the immediately prior debt collector used the email address to communicate with the consumer about the debt; and (3) the consumer did not opt out of such communications. Thus, if a consumer opts out of the immediately prior debt collector's use of an email address by following instructions provided pursuant to § 1006.6(e), a subsequent debt collector who uses that email address to communicate with the consumer would not be covered by § 1006.6(d)(4)(iii). Such a debt collector may, however, be covered by § 1006.6(d)(4)(i) or (ii).

collectors to stop placing unwanted telephone calls; § 1006.14(h)(1) would require debt collectors to honor such requests; and the rebuttable presumptions established by § 1006.14(b)(2) would address the frequency of such calls. For these reasons, the Bureau declines the commenter's suggestion to require debt collectors to provide more detailed information about how consumers may limit telephone communications.

An industry commenter asked the Bureau to create an exception to § 1006.6(e) for electronic communications sent to an email address provided by the consumer to a court pursuant to a State's e-filing rules, arguing that there may be a potential conflict with some State court e-filing rules. The Bureau declines the commenter's request. As discussed above, § 1006.6(e) requires a debt collector to disclose an opt-out method, whereas § 1006.14(h)(1) requires a debt collector to honor an opt-out request. The Bureau believes that the situation raised by the commenter is addressed by final § 1006.14(h)(2)(iii), which provides that, notwithstanding the prohibition in § 1006.14(h)(1), a debt collector may, if required by applicable law, communicate or attempt to communicate with a person in connection with the collection of any debt using a medium that the person has requested the debt collector not use.[348]

For all of the reasons discussed above, the Bureau is finalizing § 1006.6(e), which provides that a debt collector who communicates or attempts to communicate with a consumer electronically in connection with the collection of a debt using a specific email address, telephone number for text messages, or other electronic-medium address must include in such communication or attempt to communicate a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number. Final § 1006.6(e) also provides that the debt collector may not require, directly or indirectly, that the consumer, in order to opt out, pay any fee to the debt collector or provide any information other than the consumer's opt-out preferences and the email address, telephone number for text messages, or other electronic-medium address subject to the opt-out request. In addition, the Bureau is adopting comment 6(e)–1, which refers to comment 6(d)(4)(ii)(C)–1 for guidance on the meaning of clear and conspicuous and to comment 6(d)(4)(ii)(C)(*4*)–1 for guidance on the meaning of reasonable and simple, and provides examples illustrating the rule.

The Bureau is finalizing § 1006.6(e) as an interpretation of FDCPA sections 806 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 806 prohibits conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Because the marginal cost of transmitting electronic communications to consumers is low, particularly when compared to mail communications, debt collectors have less economic incentive to limit the number of such communications. As multiple consumer advocate commenters confirmed, a reasonable and simple mechanism to opt out allows some consumers to protect themselves from emails and text messages they believe are harassing, oppressive, or abusive. Section 1006.6(e) provides consumers with such a mechanism.

FDCPA section 808 prohibits the use of unfair or unconscionable means to collect or attempt to collect any debt. It is unfair or unconscionable under the FDCPA for a debt collector to send a consumer an electronic communication, such as an email or text message, without providing a reasonable and simple method to opt out. Because the marginal cost of transmitting electronic communications to consumers is low, particularly when compared to mail communications, debt collectors have less economic incentive to limit the number of such communications. Moreover, as multiple consumer advocate commenters confirmed, for a consumer who does not maintain an unlimited data plan, emails and text messages can lead to charges the consumer does not want to incur. In the absence of a reasonable and simple opt-out method, a consumer who wants to unsubscribe from electronic communications may incur time and cost doing so. On balance, in the Bureau's view, these costs to consumers do not outweigh the benefits to debt collectors of omitting opt-out instructions from electronic communications.

The Bureau also is finalizing § 1006.6(e) pursuant to its authority under section 1032(a) of the Dodd-Frank Act to prescribe rules to ensure that the features of any consumer financial product or service are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. A consumer's ability to opt out of electronic communications from a debt collector is a feature of debt collection, and the opt-out instructions required by proposed § 1006.6(e) disclose that feature to consumers.

Section 1006.10 Acquisition of Location Information

FDCPA section 804 imposes certain requirements and limitations on a debt collector who communicates with any person other than the consumer for the purpose of acquiring location information about the consumer.[349] FDCPA section 803(7) defines the term location information.[350] The Bureau proposed § 1006.10 to implement FDCPA sections 803(7) and 804.[351] Proposed § 1006.10 generally mirrored the statute, with minor wording and organizational changes for clarity. In addition, proposed § 1006.10(c) would have clarified that proposed § 1006.14(b)'s limits on telephone calls also apply to location calls, and proposed comments 10(a)–1 and 10(b)(2)–1 would have clarified how § 1006.10 applies in the decedent debt context.

The Bureau received two overarching comments regarding proposed § 1006.10. First, several consumer advocates recommended prohibiting any communications with third parties, including for location purposes. These commenters argued that such communications risk violating the privacy of consumers, subjecting the third parties to harassment, and giving domestic abusers the opportunity to learn details of a consumer's financial situation or to manipulate the debt collector into revealing other private information about the consumer. The Bureau declines to adopt such a prohibition because FDCPA section 804 expressly allows debt collectors to contact third parties to seek location information and, as discussed below, includes restrictions on the form, content, and frequency of location communications that are specifically designed to protect consumers' privacy and third parties from harassment.

FDCPA section 805(c) provides that, subject to certain exceptions, if a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further

[348] For additional discussion, see the section-by-section analysis of § 1006.14(h)(2)(iii).

[349] 15 U.S.C. 1692b.

[350] 15 U.S.C. 1692a(7).

[351] *See* 84 FR 23274, 23307 (May 21, 2019).

communication with the consumer, the debt collector shall cease further communication with the consumer with respect to such debt.[352] A group of State Attorneys General recommended giving third parties (*i.e.,* parties who are not consumers under either FDCPA section 803(3) or 805(d)) the right to cease communications from debt collectors. The Bureau declines to include such a provision—which does not appear in the FDCPA and which the Bureau did not propose—in this final rule. However, several other provisions in the statute or the final rule (or both) apply to location communications and may provide third parties similar protection. For example, under the final rule, a third party's request to never be contacted again is a factor that may rebut a debt collector's presumption of compliance with § 1006.14(b)(1) and FDCPA section 806(5) when telephone call volume is at or below the levels specified in § 1006.14(b)(2)(i).[353] Moreover, as discussed below, FDCPA section 804(3) and final § 1006.10(c) prohibit debt collectors from communicating more than once with a third party to seek location information unless requested to do so by such person, or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information. For these reasons, and for the reasons discussed below, the Bureau is finalizing proposed § 1006.10 largely as proposed, with minor changes for clarity. The Bureau is finalizing proposed § 1006.10 pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors and to interpret FDCPA section 804.

10(a) Definition

Consistent with the statute, the Bureau proposed § 1006.10(a) to provide that location information means a consumer's place of abode and telephone number at such place or the consumer's place of employment. The Bureau received several comments on this proposed definition. Several industry commenters asked the Bureau to clarify that location information includes a consumer's mobile telephone number and email address. Other commenters noted that proposed § 1006.10(a) mirrored the FDCPA section 803(7)'s disjunctive definition of location information, *i.e.,* the consumer's place of abode and telephone number at such place, ''or'' the consumer's place of employment. An industry commenter asked whether debt collectors could continue seeking one element of location information if they already had the other, while a consumer advocate asked the Bureau to clarify that possessing one element prohibits a debt collector from further location communications. Finally, consumer advocates recommended that the Bureau prohibit a debt collector from calling third parties under the pretense of gaining information that the debt collector already possesses.

The Bureau declines to finalize the types of clarifications the commenters requested. The Bureau believes the definition of ''location information'' currently does not present a serious source of harm to consumers or burden to debt collectors. For example, the Bureau is unaware of significant recent litigation or enforcement actions concerning the definition of location information. While the Bureau understands that there may be some uncertainty regarding mobile telephone numbers and email addresses, the Bureau notes that nothing in the final rule prohibits a debt collector who is engaged in a permissible location communication from requesting other pieces of contact information for the consumer. Finally, the Bureau does not believe that it is necessary or warranted to provide additional interpretation regarding the pretext for location communications. The Bureau notes that § 1006.10(b) specifies that communications under this section must be ''for the purpose of acquiring location information.'' The Bureau will monitor this definitional issue for any potential consumer harm or compliance concerns and revisit at a later time if needed.

10(b) Form and Content of Location Communications

The Bureau proposed § 1006.10(b) to implement the paragraphs of FDCPA section 804 that address the form and content of location communications.[354] Proposed § 1006.10(b) generally mirrored the statute, and the Bureau received only a few comments addressing it. For the reasons discussed below, the Bureau is finalizing § 1006.10(b) as proposed.

Two industry commenters expressed dissatisfaction with FDCPA section 804(1), proposed to be implemented as § 1006.10(b)(1), which requires that, during location communications, debt collectors state, among other things, ''that [they are] confirming or correcting location information'' for the consumer. The commenters believed that such language reveals that the consumer owes a debt. A group of State Attorneys General asked the Bureau to adopt a broad interpretation of FDCPA section 804(5) (proposed to be implemented as § 1006.10(b)(4)). FDCPA section 804(5) restricts debt collectors from using any language or symbol in mailed location communications that indicates the debt collector is in the debt collection business. The commenter requested that the Bureau interpret this restriction as applying to location communications sent by media in addition to mail.

The Bureau has considered these comments but declines to interpret the statutory requirement related to these provisions. The Bureau did not propose changes to these statutory provisions and concludes that additional information, including through public comment, would be advisable before adopting any such interpretations.

One industry commenter asked for clarity on proposed § 1006.10(b)(5), which would have implemented FDCPA section 804(6), and provided, in relevant part that, if a debt collector knows that a consumer is represented by an attorney, the debt collector must not communicate with any person other than the attorney, unless the attorney fails to respond ''within a reasonable period of time.'' The commenter asked the Bureau to clarify the meaning of a ''reasonable period of time.'' The Bureau believes that reasonableness generally depends upon the facts and circumstances surrounding a debt collector's communications with a consumer's attorney. Accordingly, the Bureau declines to identify a blanket period of time after which all communications with persons other than a consumer's attorney are permissible in all cases.

Finally, in its Policy Statement on Decedent Debt, the FTC stated that it would refrain from taking enforcement action under FDCPA section 804(2) against debt collectors who state that they are seeking to locate a person ''with the authority to pay any outstanding bills of the decedent out of the decedent's estate.'' [355] The Bureau requested comment on the language debt collectors may use to locate a person handling the decedent's affairs in the FTC's Policy Statement (''with the authority to pay any outstanding bills of the decedent out of the decedent's estate'') compared to proposed comment

[352] 15 U.S.C. 1692c(c).

[353] *See* the section-by-section analysis of § 1006.14(b)(2).

[354] *See* FDCPA section 804(1)–(2) and (4)–(6), 15 U.S.C. 1692b(1)–(2) and (4)–(6) (proposed as § 1006.10(b)(1) through (5)).

[355] FTC Policy Statement on Decedent Debt, *supra* note 157, at 44918–23.

10(b)(2)–1 (''authorized to act on behalf of the deceased consumer's estate''). An industry commenter supported the Bureau's language, while a trade group commenter and a group of consumer advocates stated that they had no concerns with the proposal. Several commenters, however, preferred that debt collectors use other language to locate the person authorized to act on behalf of the deceased consumer's estate. Most of these commenters preferred the FTC's language for several reasons, including that some individuals might be authorized to act on behalf of the estate only in limited ways that do not involve paying the deceased consumer's debts; that the privacy interests the FDCPA aimed to protect were lower in the decedent debt context; and that referring to the authority to act on behalf of the estate was likely to prompt clarifying questions that might reveal that the consumer owes a debt. One industry commenter stated that it asked for the person ''handling the financial affairs'' of the deceased consumer and that the Bureau should adopt this language. A trade group commenter asked the Bureau to allow debt collectors to use the FTC's language in response to follow-up questions during a location communication, while another trade group commenter suggested that the rule allow both the FTC's and the Bureau's language.

The Bureau understands commenters' policy arguments but remains concerned about the phrase ''outstanding bills'' from the FTC's Policy Statement. FDCPA section 803(5) defines debt broadly to include ''any obligation or alleged obligation of a consumer to pay money arising out of a transaction . . . primarily for personal, family, or household purposes.'' [356] Because the definition is not limited to delinquent or defaulted obligations, even references to outstanding bills may reveal that the consumer owes a debt under the FDCPA. Accordingly, the Bureau is finalizing comment 10(b)(2)–1, in relevant part, as proposed. To increase flexibility, final comment 10(b)(2)–1 also permits debt collectors to identify the person authorized to act on behalf of the deceased consumer's estate as the person handling the financial affairs of the deceased consumer because the Bureau notes that this language is also unlikely to reveal the existence of a debt.

Two commenters made additional suggestions. A trade group commenter requested that the Bureau exempt location communications from the definition of communication in the decedent debt context. And consumer advocates asked the Bureau to require debt collectors to check whether public records listed an executor or administrator, and if so, to prohibit communications with anyone other than that individual. The Bureau declines to interpret communications so as not to include any location communications in the decedent debt context. The Bureau also declines to adopt a requirement to check public records. The Bureau supports the FTC's encouragement for debt collectors to make good-faith efforts to search public records before communicating with a deceased consumer's estate.[357] Nevertheless, the Bureau concludes that final § 1006.10's provisions regulating location communications, combined with final § 1006.6(a)'s restrictions on the individuals with whom debt collectors may communicate, provides sufficient restrictions on communications consistent with the statutory provisions, without the need for definitional changes or new record-checking requirements.

For the reasons discussed above, the Bureau is finalizing § 1006.10 and comments 10(a)–1 and 10(b)(2)–1 largely as proposed, with minor changes for clarity.

Comment 10(a)–1 provides that, if a consumer obligated or allegedly obligated to pay any debt is deceased, location information includes the information described in § 1006.10(a) for a person who is authorized to act on behalf of the deceased consumer's estate, as described in § 1006.6(a)(4) and its associated commentary. Comment 10(b)(2)–1 provides that, if the consumer obligated or allegedly obligated to pay the debt is deceased, and the debt collector is attempting to locate the person who is authorized to act on behalf of the deceased consumer's estate, the debt collector does not violate § 1006.10(b)(2) by stating that the debt collector is seeking to identify and locate the person who is authorized to act on behalf of the deceased consumer's estate. The debt collector may also state that the debt collector is seeking to identify and locate the person handling the financial affairs of the deceased consumer.

10(c) Frequency of Location Communications

Proposed § 1006.10(c) would have implemented FDCPA section 804(3), which provides that a debt collector must not communicate with a person for the purpose of obtaining location information more than once, unless the debt collector reasonably believes that the person's earlier response was erroneous or incomplete and that the person now has correct or complete information. Proposed § 1006.10(c) also specified that debt collectors engaging in location communications by telephone must comply with the telephone frequency limits in § 1006.14(b).

A government commenter and several consumers and consumer advocates objected to the proposal to apply the same frequency limits to location calls as to telephone calls generally (*i.e.,* up to seven unanswered telephone calls to a person during a seven-day period).[358] These commenters stated that the proposed frequency limits were too high for any person, but especially for third parties receiving location calls, who may be more likely to find such calls harassing because they do not owe the debt. Consumer advocates also suggested that third parties were unlikely to answer location telephone calls and therefore would not receive the benefit of proposed § 1006.10(c)'s restriction on debt collectors communicating more than once with third parties for location information purposes. Some of these commenters proposed various alternative frequency limits, such as one attempt per third party per week.

The Bureau declines to revise § 1006.10(c) to set forth unique telephone calling frequencies for third parties. As discussed in the section-by-section analysis of § 1006.14, the Bureau finds that the frequency standards described in that section are appropriate for third parties as well as consumers. Moreover, as discussed above, debt collectors' telephone calls to third parties are cabined by the general statutory prohibition, implemented in § 1006.6(d), against communicating with third parties unless they have the purpose of obtaining location information. The Bureau acknowledges that, as suggested by some consumer advocates, some third parties could receive excess telephone calls. The Bureau is not aware, however, that debt collectors are routinely or successfully claiming in litigation or enforcement

[356] 15 U.S.C. 1692a(5). *See also* the section-by-section analysis of § 1006.2(h).

[357] FTC Policy Statement on Decedent Debt, *supra* note 157, at 44919–20.

[358] Specifically, proposed § 1006.14(b) provided a bright-line rule that a debt collector does not violate FDCPA section 806(5)'s prohibition against repeated or continuous telephone calls if the debt collector places seven or fewer telephone calls to a person about a debt during a seven-day period (and does not place another telephone call to the person after having had a telephone conversation with the person during the seven-day period). 84 FR 23274, 23401 (May 21, 2019).

actions that such telephone calls are properly placed for the purpose of acquiring location information and consistent with the prohibition against communicating more than once with a third party to seek location information. Finally, location communications are subject to § 1006.14's general prohibition on harassing, oppressive, or abusive conduct.

Section 1006.14 Harassing, Oppressive, or Abusive Conduct

FDCPA section 806 [359] prohibits a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. It lists six non-exhaustive examples of such prohibited conduct. The Bureau proposed § 1006.14 to implement and interpret FDCPA section 806.[360] Except with respect to § 1006.14(b) and (h), proposed § 1006.14 generally restated the statute, with only minor wording and organizational changes for clarity.

The following section-by-section analyses summarize and address comments related to proposed § 1006.14(a), (b), and (h). Apart from one comment related to proposed § 1006.14(g) that does not require any changes to regulation text or commentary,[361] the Bureau did not receive feedback specifically addressing proposed § 1006.14(c) through (g) and therefore is finalizing these paragraphs as proposed. The Bureau is finalizing § 1006.14 pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors, as well as pursuant to its authority to implement and interpret FDCPA section 806.

The Bureau notes that it received many comments from individual and consumer advocate commenters describing harassing conduct that they or their clients have experienced by debt collectors. For example, some commenters stated that they are afraid to answer telephone calls because debt collectors have called them repeatedly and used profane language. Other commenters described feeling shame when debt collectors disclosed information to neighbors and friends about debts they allegedly owed. Commenters described debt collectors threatening them with criminal prosecution or bodily harm if they did not pay an alleged debt immediately. Some commenters explained that these types of behaviors by debt collectors cause them stress that manifests into physical symptoms such as increased blood pressure, heavy breathing, pain, and loss of sleep. The Bureau emphasizes that the conduct described by commenters above is prohibited by FDCPA section 806 and final § 1006.14, even if specific examples of such conduct are not discussed in the regulation text or commentary.

14(a) In General

As noted, FDCPA section 806 generally prohibits a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt, and FDCPA section 806(1) through (6) lists six non-exhaustive examples of such prohibited conduct. Proposed § 1006.14(a) would have largely restated FDCPA section 806.[362] For the reasons discussed below, the Bureau is finalizing § 1006.14(a) generally as proposed but is adopting new comments 14(a)–1 and –2 in response to feedback requesting clarity about its scope.

The Bureau received a number of comments requesting clarification about the scope of FDCPA section 806 as it would have been implemented in proposed § 1006.14(a). For example, a group of consumer advocates asked that the Bureau include in the rule text or commentary the statement the Bureau made in the preamble to the proposal that § 1006.14(a) applies to communication media other than telephone calls. The same group of consumer advocates asked the Bureau to clarify that § 1006.14(a) applies based on the cumulative effect of a debt collector's conduct across multiple communication media. An industry commenter asked the Bureau to confirm the opposite—*i.e.,* that § 1006.14(a) applies separately to each communication method used by the debt collector.

In light of these comments, the Bureau is adopting two comments to clarify that the general prohibition on harassing conduct in FDCPA section 806, as implemented in § 1006.14(a), applies whether debt collectors place telephone calls or use other communication media. In addition, the comments clarify that all communication media are analyzed individually as well as cumulatively.[363]

Comment 14(a)–1 clarifies that § 1006.14(a), which implements FDCPA section 806, sets forth a general standard that prohibits a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. The comment clarifies, further, that the general prohibition covers the specific conduct described in § 1006.14(b) through (h), as well as any conduct by the debt collector that is not specifically prohibited by § 1006.14(b) through (h) but that the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. The comment explains that the conduct can occur regardless of the communication media the debt collector uses, including in-person interactions, telephone calls, audio recordings, paper documents, mail, email, text messages, social media, or other electronic media, even if not specifically addressed by § 1006.14(b) through (h).

Comment 14(a)–1 also includes an example involving a scenario in which, in connection with the collection of a debt: A debt collector sends a consumer numerous, unsolicited text messages per day for several consecutive days; the consumer does not respond; the debt collector does not communicate or attempt to communicate with the consumer using any other communication medium; and that, by sending the text messages, the debt collector has not violated § 1006.14(b) through (h). The comment clarifies that even though the debt collector has not violated any specific prohibition under § 1006.14(b) through (h), it is likely that the natural consequence of the debt collector's text messages is to harass,

[359] 15 U.S.C. 1692d.

[360] *See* 84 FR 23274, 23307–22 (May 21, 2019).

[361] The commenter requested guidance on a debt collector's responsibility to identify the person the debt collector has reached during a telephone call (*i.e.,* whether the debt collector has reached, or is being contacted by, the consumer or a third party). The commenter noted that this question is relevant to complying with the requirement under FDCPA section 806(6) (proposed as § 1006.14(g)) to meaningfully disclose, except with respect to location information calls, the debt collector's identity on telephone calls, as well as with respect to other requirements and prohibitions under the FDCPA and the regulation (as proposed). In response to this comment, the Bureau confirms that there are a number of contexts, including the meaningful disclosure of identity provision, in which the statute (and final rule) requires a debt collector to determine the identity of the person to whom the debt collector is speaking; the Bureau declines to provide detailed guidance as to how debt collectors should make such a determination.

[362] *See* 84 FR 23274, 23307 (May 21, 2019).

[363] As provided for in comment 14(b)(1)–1, a debt collector who complies with § 1006.14(b)(1) and FDCPA section 806(5) complies with § 1006.14(a) and FDCPA section 806 solely with respect to the frequency of its telephone calls. When a debt collector both places telephone calls and uses at least one other type of communication media, compliance with § 1006.14(a) depends on the whether the cumulative communications involving telephone calls and any other communication media have the natural consequence of harassing, oppressing, or abusing any person in connection with the collection of a debt.

oppress, or abuse the person receiving them and that when such natural consequence occurs, the debt collector has violated § 1006.14(a) and FDCPA section 806.

Comment 14(a)–2 addresses cumulative communications by the debt collector, and clarifies that, depending on the facts and circumstances, conduct that on its own would violate neither the general prohibition in § 1006.14(a), nor any specific prohibition in § 1006.14(b) through (h), nonetheless may violate § 1006.14(a) when such conduct is evaluated cumulatively with other conduct. The comment further clarifies that such conduct can occur through any communication medium the debt collector uses, including in-person interactions, telephone calls, audio recordings, paper documents, mail, email, text messages, social media, or other electronic media. The comment then provides an example in which the debt collector places seven unanswered telephone calls within seven consecutive days to a consumer in connection with the collection of a debt and, during the same time period, sends multiple additional unsolicited emails about the debt to the consumer, to which the consumer does not respond. The comment notes that it is likely that the natural consequence of the cumulative effect of the debt collector's telephone calls and emails is to harass, oppress, or abuse the person receiving them; when such natural consequence occurs, the debt collector has violated § 1006.14(a) and FDCPA section 806.

The Bureau notes that, as discussed in the section-by-section analysis of § 1006.14(b) setting forth the Bureau's final rule regarding telephone call frequencies, the Bureau received thousands of comments from consumers, consumer advocates, a local government, a group of State Attorneys General, members of Congress, and other commenters expressing concern that the proposal—which included numeric limits for debt collection telephone calls but did not include numeric limits for debt collection contacts through other communication media—would have allowed debt collectors to send excessive or unlimited text messages and emails, or otherwise inundate consumers with these electronic communications. Some commenters expressed concern, for example, that debt collectors would program their systems to send multiple emails per second and cause consumers' data and text messaging plans to be maxed out, preventing consumers from using their devices.

The Bureau understands that few debt collectors currently send electronic communications, and the Bureau is not aware of these debt collectors sending excessive electronic communications. Even if, as a result of this final rule, debt collectors choose to send electronic communications more frequently than they currently do, the Bureau does not believe that sending excessive electronic communications, including by programming systems to send multiple emails per second, generally would be a profitable strategy for debt collectors. Additionally, this type of conduct would undoubtedly harm consumers. It would not have been permitted by the proposal and is not permitted by the final rule. FDCPA section 806, as implemented by § 1006.14(a), covers, among other things, the debt collector's use of any communication medium in connection with the collection of a debt. Consequently, a debt collector would violate the FDCPA and Regulation F by sending text messages or emails, making social media posts, or the like, if the natural consequence of that conduct is to harass, oppress, or abuse any person in connection with the collection of a debt. New final comments 14(a)–1 and –2 further clarify this point.

Finally, the Bureau received a request to clarify that § 1006.14(a) applies even if a consumer does not opt out of receiving electronic debt collection communications or communication attempts pursuant to the instructions in § 1006.6(e) or exercise the right to request that the debt collector stop using a particular communication medium under § 1006.14(h). The Bureau affirms that it does. Sections 1006.6(e) [364] and 1006.14(h) [365] provide consumers with tools to limit or stop debt collectors from communicating or attempting to communicate with them.[366] Regardless of whether a consumer uses such tools, the final rule prohibits a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt, as provided for in FDCPA section 806 and § 1006.14(a). Because neither the text of § 1006.14(a) nor the text of § 1006.6(e) or § 1006.14(h) states or implies that a consumer would have to opt out of receiving electronic communications or request the debt collector stop using a particular communication medium to trigger § 1006.14(a)'s general prohibition against harassing, oppressive, or abusive conduct, the Bureau concludes that it is not necessary or warranted to add new commentary to specify this fact.

For the reasons discussed above, the Bureau is finalizing § 1006.14(a) largely as proposed, but with a minor grammatical revision to more closely align with the statute. Final § 1006.14(a) thus provides that a debt collector must not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt, including, but not limited to, the conduct described in § 1006.14(b) through (h). In addition, as discussed, the Bureau is finalizing new comments 14(a)–1 and –2 to clarify that § 1006.14(a) applies, among other things, to a debt collector's conduct in using any medium of communication in connection with the collection of a debt.

14(b) Repeated or Continuous Telephone Calls or Telephone Conversations

FDCPA section 806(5) [367] describes one example of conduct prohibited by section 806: Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number. Proposed § 1006.14(b) would have implemented and interpreted FDCPA section 806(5)—and, by extension, the general prohibition on harassing conduct in FDCPA section 806.[368] Specifically, proposed § 1006.14(b)(1) set forth the prohibition on placing telephone calls or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass; § 1006.14(b)(2) described bright-line frequency limits for telephone calls and telephone conversations during a seven-day period; and proposed § 1006.14(b)(3) through (5) described telephone calls excluded from the frequency limits, the

[364] Pursuant to § 1006.6(e), a debt collector who communicates or attempts to communicate with a consumer electronically in connection with the collection of a debt using a specific email address, telephone number for text messages, or other electronic-medium address must include in such communication or attempt to communicate a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number.

[365] Section 1006.14(h)(1) provides that, in connection with the collection of any debt, a debt collector must not communicate or attempt to communicate with a person through a medium of communication if the person has requested that the debt collector not use that medium to communicate with the person.

[366] A consumer may also notify a debt collector in writing that the consumer wants the debt collector to cease further communication with the consumer, and pursuant to § 1006.6(c)(1), a debt collector must not communicate or attempt to communicate further with a consumer with respect to such debt.

[367] 15 U.S.C. 1692d(5).

[368] *See* 84 FR 23274, 23308–21 (May 21, 2019).

effect of complying with the frequency limits, and a definition, respectively.

As discussed in detail in the section-by-section analysis of final § 1006.14(b)(1) through (4), the Bureau is finalizing its proposal regarding telephone call frequencies with revisions in light of feedback. Among other things, rather than finalizing a bright-line rule for permissible and prohibited telephone call frequency, the Bureau is finalizing telephone call frequencies in the form of a rebuttable presumption that a debt collector has either complied with or violated the prohibition in § 1006.14(b)(1) regarding repeated or continuous telephone calls and telephone conversations.

In this section-by-section analysis, the Bureau addresses feedback regarding proposed comment 14(b)(1)–1, which, for the reasons discussed below, the Bureau is finalizing, with revisions, as comment 14(b)–1. The Bureau also addresses feedback regarding proposed § 1006.14(b)(1)(ii) and (4), which the Bureau is not finalizing as part of this rule. Public comments regarding all other aspects of proposed § 1006.14(b) are addressed in turn in the section-by-section analysis of final § 1006.14(b)(1) through (4).

Final Comment 14(b)–1

As noted, proposed § 1006.14(b)(1) contained the provision implementing FDCPA section 806(5). Specifically, as proposed, § 1006.14(b)(1)(i) provided that, in connection with the collection of a debt, a debt collector must not place telephone calls or engage any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.[369] As discussed further in the section-by-section analysis of final § 1006.14(b)(1), proposed § 1006.14(b)(1)(i) thus largely restated FDCPA section 806(5), except that, whereas the statute prohibits ''[c]ausing a telephone to ring,'' proposed § 1006.14(b)(1)(i) would have applied when a debt collector ''place[s] telephone calls.'' This interpretation meant that the proposed prohibition would have applied even if a debt collector's telephone call did not cause a traditional ring, as long as the telephone call connected to the dialed number. Proposed comment 14(b)(1)–1 would have clarified that, for purposes of the proposed telephone call frequency limits, ''placing a telephone call'' includes conveying a ringless voicemail (or ''voicemail drop'') but does not include sending an electronic message (*e.g.,* a text message or an email) to a mobile telephone.

The Bureau received comments questioning whether the phrase ''placing a telephone call'' in proposed commentary to § 1006.14(b)(1) also applied to the bright-line telephone call frequency limits in proposed § 1006.14(b)(2), which used similar language. The Bureau intended proposed comment 14(b)(1)–1 to apply to the concept of placing a telephone call everywhere that concept is used in § 1006.14(b). Therefore, the Bureau is renumbering proposed comment 14(b)(1)–1 as comment 14(b)–1 and is revising it to clarify that the interpretation applies throughout § 1006.14(b).

Ringless voicemails. The Bureau received a number of comments regarding its proposal in comment 14(b)(1)–1 to interpret the phrase ''placing a telephone call'' to apply to ringless voicemails. Some industry commenters argued that the consumer experience with ringless voicemails is fundamentally different—and better—than with telephone calls and that ringless voicemails therefore should not be subject to telephone call frequency limits. They explained that a ringless voicemail is more like an email or text message than a telephone call. As described by one commenter, with a ringless voicemail, a consumer only receives a new voicemail according to the consumer's prescribed preferences, and, after receiving a new voicemail, the consumer can then choose if, when, and how the actual voicemail message content is presented. The commenter explained that, in most ringless voicemail applications, a consumer can swipe away any voicemail the consumer does not wish to read, listen to, or otherwise engage with, just like a consumer can do with an email or text message. This commenter also noted compliance challenges with tracking the cumulative number of telephone calls and ringless voicemails, given that the two types of calls are placed through independent systems run by different vendors. The commenter said that, if debt collectors have to track both telephone calls and ringless voicemails, they will opt to use one over the other instead of dealing with the complexities of cross channel frequency limit tracking. However, other industry commenters, Federal government agency staff, local government commenters, a group of consumer advocate commenters, and other commenters supported the proposal to clarify that ''placing a telephone call'' includes conveying a ringless voicemail.

As noted above, section 806(5) of the FDCPA prohibits a debt collector from ''causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.''[370] The focus on telephone calls suggests that the provision was meant to apply to communications that present the opportunity for the parties to engage in a live telephone conversation or that result in an audio message. Ringless voicemails are audio messages that allow debt collectors to bypass a person's opportunity to answer the telephone by connecting directly to the person's voicemail. Even telephone calls that result in an audio message without an audible ring, if made repeatedly and continuously, nonetheless may be intended to harass or may have the natural consequence of harassing a person in ways that the FDCPA prohibits, particularly if, for example, the messages contain similar content and do not provide new information to the person receiving the messages. The Bureau recognizes that its interpretation of FDCPA section 806(5) may result in compliance challenges for a small number of debt collectors who place telephone calls and ringless voicemails using different systems and different vendors. However, the Bureau expects that those debt collectors will be able to overcome such challenges by developing new tracking systems; modifying their business models to use either telephone calls or ringless voicemails but not both; or using both in volumes that, even if combined, would be unlikely to create a violation.

Communication media other than telephone calls. The Bureau received a large number of comments regarding its proposal in comment 14(b)(1)–1 to interpret the phrase ''placing a telephone call'' not to include sending an electronic message (*e.g.,* a text message or an email) to a mobile telephone, as well as its decision to not otherwise propose specific frequency limits for communication media other than telephone calls.

Consumer, consumer advocate, State and local government, and State Attorneys General commenters stated that the Bureau should impose frequency limits on electronic communication media.[371] State Attorneys General commenters described the prohibition in proposed § 1006.14(a)—which would have

[369] *See id.* at 23308.

[370] 15 U.S.C. 1692d(5).

[371] Some of these commenters stated more broadly that the Bureau should apply frequency limits to all forms of communication media.

covered, and as finalized does cover, electronic communications—as insufficient to protect consumers from excessive electronic communications, noting that FDCPA section 806 has been difficult to apply in any context and has resulted in a significant amount of litigation and conflicting court opinions. One Federal government commenter reasoned that ''placing a telephone call'' should include sending a text message because the FCC has interpreted the phrase ''mak[ing] any call'' in the TCPA as encompassing the sending of text messages.[372]

Commenters criticized the Bureau's rationale for not proposing to impose numeric limits on electronic communications. In the proposal, the Bureau grounded its justification in the specific language of FDCPA section 806(5), which the Bureau believed indicated Congress's intention to apply the provision to communications that present the opportunity for the parties to engage in a live telephone conversation or that result in an audio message. The Bureau also explained that it was not aware of debt collectors sending electronic messages to consumers repeatedly or continuously with intent to harass them or to cause substantial injury. Commenters asserted that the Bureau's reasoning for proposing telephone call frequency limits is equally applicable to electronic communication media, arguing that electronic communications are not less intrusive than telephone calls because consumers often receive notifications when they get text messages or emails that interrupt what they are doing and require them to assess whether such communications need immediate attention. Some commenters also criticized the Bureau's justification that there is little, if any, evidence that electronic communications harm consumers, arguing that the only reason evidence is lacking is because such communication media are not specifically contemplated under current law and thus not yet widely used by industry.

A group of State Attorneys General and State and local government commenters, among others, predicted that, if the Bureau did not impose numeric limits on electronic debt collection communications or communication attempts, debt collectors would rely on them heavily; some of these commenters explained that electronic communications are virtually costless.[373] Some commenters also observed that, absent a numeric limit on electronic communications, consumers with limited or pay-per-service plans—who tend to be lower-income and more likely to be subject to debt collection—will incur costs when debt collectors send text messages and emails.[374]

Consumer advocates recommended that, if the Bureau does not impose numeric frequency limits on electronic communications, the Bureau should at least require debt collectors to report on their use of emails, text messages, and direct messages. Consumer advocates also encouraged the Bureau to consider specific limits in the future if debt collectors abuse these communication media.

The Bureau received a large number of comments from the credit and collections industry expressing general support for the Bureau's proposal not to apply numeric frequency limits to communication media other than telephone calls.[375] Many industry commenters distinguished electronic communications from telephone calls, arguing that, unlike telephone calls, electronic communication media do not harass consumers because they are passive communications that consumers can engage with at their convenience or can opt out of receiving entirely.[376] Industry commenters argued that the proposed opt-out provision in § 1006.6(e) and the general prohibition against conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt in proposed § 1006.14(a), along with FDCPA section 806, would impose sufficient limits on a debt collector's use of electronic communications.

Industry commenters asserted that a numeric frequency limit on electronic communication media would harm consumers.[377] Many of these industry commenters explained that consumers prefer to communicate through electronic media because they can interact with and respond to an electronic message when it is most convenient. If the Bureau were to impose numeric frequency limits on electronic communications, it could discourage debt collectors from utilizing such media to communicate with consumers. Other industry commenters explained that the ability to communicate by email and text message will offset the negative impacts of the proposed telephone call frequency limits, such as the inability to establish contact with consumers.[378] Some industry commenters cautioned that, if communications are restricted too much, debt collectors will instead file lawsuits against consumers to collect the debts.

The Bureau declines to impose numeric limitations on a debt collector's use of electronic communication media or of a combination of telephone calls and electronic communication media. Because debt collectors do not presently engage in widespread use of electronic communications, the Bureau concludes that it does not have sufficient information to warrant applying numeric limitations to electronic communications. However, the Bureau reiterates that FDCPA section 806 and § 1006.14(a) apply to debt collectors' conduct in using such media,[379] and the final rule contains several other provisions designed to curb harassment

[372] *See, e.g., In re Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991,* 18 FCC Rcd. 14,014, 14,115 ¶ 165 (2003).

[373] Some commenters recommended specific numeric limits for electronic communications, ranging from one per week to two per day, or specific numeric limits for cumulative communications across all communication media, ranging from two per week to one per day.

[374] To address concerns about the cost of text messaging, at least one consumer advocate commenter requested that the Bureau require debt collectors to use FTEU text messaging. Members of Congress stated that the Bureau, by not requiring FTEU text messaging, is placing the cost burden of text messages on consumers. More generally, a large number of commenters identified a consumer's lack of consent to electronic communications as a significant concern and requested that the Bureau require consumers to opt into receiving such communications from debt collectors. The Bureau addresses these comments in the section-by-section analysis of § 1006.6, which discusses communications in debt collection generally.

[375] However, one industry commenter acknowledged that the scope of FDCPA section 806 and 806(5) is broad enough to include modern communication media such as emails and text messages if they are used to harass, oppress, or abuse a person in connection with the collection of a debt. Another industry commenter agreed but cautioned the Bureau against attributing carrier errors, such as sending the same text message multiple times, to the debt collector.

[376] *See* the section-by-section analysis of § 1006.6. Industry commenters made similar points about communications by mail. Since the Bureau did not receive comments suggesting that communications solely by mail should be subject to particular weekly frequency limits, the Bureau does not further address those comments in this section-by-section analysis.

[377] One industry commenter asked the Bureau to provide a safe harbor when the frequency of a debt collector's electronic communications is at or below the proposed telephone call frequency limits without a corresponding per se violation or presumption of a violation when the frequency of a debt collector's electronic communications is above the proposed limits.

[378] However, at least one industry commenter disagreed and explained that debt collectors may not have valid, personal email addresses for all accounts and may be unable to send text messages to certain telephone numbers.

[379] In particular, new comments 14(a)–1 and –2 address many policy concerns raised by stakeholders about how the proposal would have treated debt collectors' use of text messages and other electronic communication media.

from electronic communications and empower consumers to restrict debt collection communications.[380] The Bureau also intends to actively monitor the market and to gather information on these electronic communications in general so that it may determine in the future whether numeric limitations on electronic communications are necessary and warranted and, if so, what specific numeric limitations the Bureau should consider.

For the reasons discussed above, the Bureau is finalizing proposed comment 14(b)(1)–1 as final comment 14(b)–1 with minor revisions to provide that ''placing a telephone call'' for purposes of § 1006.14(b) includes conveying a ringless voicemail but does not include sending an electronic message (*e.g.,* a text message or an email) that may be received on a mobile telephone.[381]

Proposed Provisions Not Finalized

Identification and prevention of Dodd-Frank Act unfair act or practice. As noted above, proposed § 1006.14(b)(1) set forth the prohibition regarding repeated or continuous telephone calls and telephone conversations, with proposed § 1006.14(b)(1)(i) largely restating the text of the prohibition in FDCPA section 806(5). The Bureau proposed § 1006.14(b)(1)(ii), in turn, to identify, for FDCPA debt collectors who were also covered by the Dodd-Frank Act, the conduct articulated in FDCPA section 806(5) as an unfair act or practice under section 1031 of the Dodd-Frank Act.[382] As proposed, § 1006.14(b)(1)(ii) provided that, to prevent the unfair act or practice, a debt collector must not exceed the bright-line telephone call frequency limits that were set forth in proposed § 1006.14(b)(2).[383]

As discussed in the section-by-section analysis of § 1006.1(c), while some commenters supported the Bureau's proposed use of its Dodd-Frank Act section 1031 authority, a number of industry commenters expressed concern that the Bureau's proposed use of its Dodd-Frank Act section 1031 authority could—despite the stated limits of the proposal as only applying to FDCPA debt collectors—lead, if finalized, to provisions that relied on such authority, including the prohibitions on unfair, deceptive, and abusive acts and practices under section 1031 of the Dodd-Frank Act, being applied to first-party debt collectors. These commenters urged the Bureau to adopt proposed § 1006.14(b)(1) using only its FDCPA authority. The Bureau understands commenters' concerns that conduct the Bureau deemed to be prohibited by the FDCPA and the Dodd-Frank Act when undertaken by FDCPA debt collectors could be construed also to be prohibited when undertaken by other entities collecting debts, even if they are not FDCPA debt collectors. In response to commenters' concerns, the Bureau notes, as discussed elsewhere in this Notice,[384] that the FDCPA recognizes the special sensitivity of communications by FDCPA debt collectors relative to communications by creditors, and, therefore, the FDCPA provides protections for consumers receiving such communications from debt collectors but not creditors.

Moreover, as noted above, and as is discussed in detail below, the Bureau has determined to finalize a rebuttable-presumption approach in § 1006.14(b)(2), rather than a bright-line rule, regarding telephone call frequencies. As discussed in the section-by-section analysis of § 1006.14(b)(2), whether the presumption of compliance or of a violation, as applicable, may be rebutted depends upon the relevant facts and circumstances. Furthermore, the final rule specifies non-exhaustive factors that, considered together with whether the frequency of a debt collector's telephone calls exceeded or was within the rule's specified frequencies, are relevant to determining whether a debt collector's conduct violated the prohibition in FDCPA section 806(5) and final § 1006.14(b)(1), including whether the debt collector had the intent to annoy, abuse, or harass the person at the called number. In light of this change, the Bureau has determined that it is not necessary to also identify the conduct described in FDCPA section 806(5) or § 1006.14(b) as an unfair, deceptive, or abusive act or practice under section 1031 of the Dodd-Frank Act or to find that the telephone call frequencies will prevent such an unfair act or practice. Accordingly, the Bureau is not finalizing proposed § 1006.14(b)(1)(ii) and is renumbering the FDCPA standard in proposed § 1006.14(b)(1)(i) as final § 1006.14(b)(1).

Effect of complying with telephone call frequencies. Proposed § 1006.14(b)(4)[385] would have clarified that a debt collector who did not exceed the telephone call frequency limits described in proposed § 1006.14(b)(2) complied with § 1006.14(b)(1) and FDCPA section 806(5) and did not, based on the frequency of its telephone calls, violate § 1006.14(a), FDCPA section 806, or sections 1031 or 1036(a)(1)(B) of the Dodd-Frank Act.[386] Because the Bureau is not finalizing the proposed bright-line frequency limits for telephone calls, the Bureau is not finalizing proposed § 1006.14(b)(4) regarding the effects of complying with those limits. As discussed in the section-by-section analysis of § 1006.14(b)(1), however, the Bureau is incorporating similar concepts in newly adopted comments 14(b)(1)–1 and –2 and as part of final § 1006.14(b)(2).

14(b)(1) In General

Proposed § 1006.14(b)(1)(i) would have implemented the statutory prohibition in FDCPA section 806(5) by providing that, in connection with the collection of a debt, a debt collector must not place telephone calls or engage any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.[387] As discussed above, the Bureau is finalizing proposed § 1006.14(b)(1)(i) renumbered as § 1006.14(b)(1). For the reasons discussed below, the Bureau is finalizing the text of § 1006.14(b)(1)(i) as proposed but is adopting new comments 14(b)(1)–1 and –2 to clarify the interaction of final § 1006.14(b)(1) and (2).[388]

[380] For example, under § 1006.6(e), a debt collector who communicates or attempts to communicate with a consumer electronically in connection with the collection of a debt using a specific email address, telephone number for text messages, or other electronic-medium address must include in such communication or attempt to communicate a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number. In addition, § 1006.14(h)(1) provides that, in connection with the collection of any debt, a debt collector must not communicate or attempt to communicate with a person through a medium of communication if the person has requested that the debt collector not use that medium to communicate with the person. A consumer may also notify a debt collector in writing that the consumer wants the debt collector to cease further communication with the consumer, and pursuant to § 1006.6(c)(1), a debt collector must not communicate or attempt to communicate further with a consumer with respect to such debt.

[381] Unlike proposed comment 14(b)(1)–1, final comment 14(b)–1 does not refer to section 1031 of the Dodd-Frank Act because, as discussed elsewhere in this section-by-section analysis, the Bureau is not relying on its Dodd-Frank Act section 1031 authority to finalize any part of § 1006.14.

[382] 12 U.S.C. 5531(b), (c).

[383] *See* 84 FR 23274, 23309 (May 21, 2019).

[384] *See, e.g.,* the section-by-section analysis of § 1006.6(d)(3) through (5).

[385] *See* 84 FR 23274, 23319 (May 21, 2019).

[386] 12 U.S.C. 5531, 5536(a)(1)(B).

[387] *See* 84 FR 23274, 23308 (May 21, 2019).

[388] In addition to the issues discussed in this section-by-section analysis, the Bureau reiterates that, for the reasons discussed in the section-by-section analysis of § 1006.14(b), the Bureau is finalizing the proposal to interpret FDCPA section 806(5)'s prohibition against ''causing a telephone to ring'' to be a prohibition against ''placing telephone calls.''

Consistent with FDCPA section 806(5), proposed § 1006.14(b)(1)(i) would have applied to telephone calls placed by a debt collector to any person, not just to the consumer. Thus, as proposed, § 1006.14(b)(1)(i) would have applied to, among other things, telephone calls placed to obtain location information about a consumer as described in § 1006.10. Federal government agency staff supported this approach. One individual commenter expressed concern that a consumer would be negatively affected if a debt collector placed numerous location information calls to the consumer's employer. A group of consumer advocates recommended that the Bureau limit location information calls to third parties to one telephone call attempt per third party per week, while another consumer advocate commenter recommended that location information calls to third parties be prohibited altogether. Some commenters, including individuals and a consumer advocate commenter, incorrectly stated that the proposal would permit ''unlimited'' telephone calls to third parties.

In response to commenters' concerns, the Bureau notes that FDCPA section 806(5) protects ''any person'' from such conduct. Because FDCPA section 806(5) does not distinguish between a debt collector's conduct toward third parties and consumers, the Bureau is applying the same telephone call standards to all telephone calls placed by debt collectors in connection with the collection of a debt.[389] Consistent with FDCPA section 804, the final rule places additional limits on telephone calls to third parties for the purpose of acquiring location information.[390] The Bureau also notes that, as discussed in the section-by-section analysis of § 1006.14(b)(2), a debt collector's presumption of compliance with § 1006.14(b)(1) and FDCPA section 806(5) may be rebutted, based on the facts and circumstances.

Some industry commenters asked the Bureau to define the term telephone conversation that appears in § 1006.14(b)(1). A group of consumer advocates suggested the term should include any time the consumer answers the debt collector's telephone call, even if the debt is not discussed. The term telephone conversation in final § 1006.14(b)(1) comes directly from FDCPA section 806(5) and has the same meaning as it does in the statute. To be clear, however, the term is not synonymous with a debt collection communication, as defined in FDCPA section 803(2) and implemented in final § 1006.2(d). A debt collection communication occurs if information regarding a debt is conveyed directly or indirectly to any person through any medium. If a debt collector leaves a voicemail for a consumer that includes details about the debt, the debt collector has engaged in a debt collection communication with the consumer but has not had a telephone conversation. Likewise, if a consumer answers a debt collector's telephone call and, before anything else is said, asks the debt collector to call back in 10 minutes, the debt collector has engaged in a telephone conversation with the consumer but may not have had a debt collection communication.

Several industry commenters also raised hypothetical questions asking whether particular types of telephone calls would count as ''placed'' for purposes of § 1006.14(b)(1) and, in turn, for purposes of the proposed telephone call frequency limits in § 1006.14(b)(2). Elsewhere in § 1006.14(b), the Bureau is adopting new commentary clarifying how to count placed telephone calls. That commentary further clarifies when a debt collector has placed a telephone call or engaged in a telephone conversation for purposes of § 1006.14(b).[391]

For the reasons discussed above, the Bureau is finalizing the text of proposed § 1006.14(b)(1)(i) as final § 1006.14(b)(1). The Bureau is also adding new comments 14(b)(1)–1 and –2 to clarify the effect of complying with § 1006.14(b)(1).[392]

Specifically, comment 14(b)(1)–1 provides that a debt collector who complies with final § 1006.14(b)(1) and FDCPA section 806(5)'s specific prohibition also complies with final § 1006.14(a) and FDCPA section 806's general prohibition solely with respect to the frequency of its telephone calls. The comment further clarifies that the debt collector nevertheless could violate § 1006.14(a) and FDCPA section 806 if the natural consequence of another aspect of its telephone calls, unrelated to frequency, is to harass, oppress, or abuse any person in connection with the collection of a debt. Comment 14(b)(1)–2 provides an illustrative example.

14(b)(2) Telephone Call Frequencies; Presumptions of Compliance and of a Violation

FDCPA section 806[393] prohibits a broad range of debt collection communication practices that harm consumers and others. Section 806(5),[394] in particular, prohibits debt collectors from causing a telephone to ring or engaging a person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass. Proposed § 1006.14(b)(2) would have set forth bright-line frequency limits for debt collection telephone calls.[395] Proposed § 1006.14(b)(2) provided that, subject to exclusions in proposed § 1006.14(b)(3), a debt collector violates the FDCPA section 806(5) prohibition implemented in proposed § 1006.14(b)(1)(i) and the unfair act or practice under section 1031 of the Dodd-Frank Act the Bureau proposed to identify in § 1006.14(b)(1)(ii) by exceeding the telephone call frequency limits in proposed § 1006.14(b)(2). Specifically, proposed § 1006.14(b)(2)(i) provided that, subject to exclusions, a debt collector must not place a telephone call to a person[396] more than seven times within seven consecutive days in connection with the collection of a particular debt. Proposed § 1006.14(b)(2)(ii) provided that, subject to exclusions, a debt collector must not place a telephone call to a person in connection with the collection of a particular debt within a period of seven consecutive days after having had a telephone conversation with that person in connection with the collection of such debt (with the date of the telephone conversation being the first

[389] Given the interplay between proposed § 1006.14(b)(1) and (2), the application of proposed § 1006.14(b)(1)(i) to any person would have meant that the proposed telephone call frequency limits in § 1006.14(b)(2) also would have applied to telephone calls placed by a debt collector to any person. Likewise, the telephone call frequencies in final § 1006.14(b)(2) apply to location information calls and balance a debt collector's potential need to obtain information about a consumer necessary to establish right party contact with the potentially harassing effect such calls may have directly on the third party, or indirectly on the consumer.

[390] *See* the section-by-section analysis of § 1006.10. Pursuant to § 1006.10(c), a debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer must not communicate more than once with such person unless requested to do so by such person, or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information.

[391] *See* the section-by-section analysis of final § 1006.14(b)(4).

[392] As discussed in the section-by-section analysis of § 1006.14(b), the Bureau is renumbering proposed comment 14(b)(1)–1 as comment 14(b)–1.

[393] 15 U.S.C. 1692d.

[394] 15 U.S.C. 1692d(5).

[395] *See* 84 FR 23274, 23309 (May 21, 2019).

[396] Proposed § 1006.14(b)(2) would have applied not only to debt collection calls placed to consumers who owe or are alleged to owe debt, but to any person (with certain exceptions described below). See the section-by-section analysis of § 1006.14(b)(1) for further discussion on this aspect of the proposal.

day of the seven-consecutive-day period).[397]

The Bureau requested comment on all aspects of proposed § 1006.14(b)(2), including on whether the Bureau should adopt a rebuttable-presumption approach in lieu of the proposed bright lines,[398] and if so, whether the Bureau should retain any of the exclusions described in proposed § 1006.14(b)(3).

The Bureau received thousands of comments from a variety of stakeholders about the proposed telephone call frequency limits, including about the merits of a bright-line rule versus a rebuttable-presumption approach and about the specific proposed limits. Commenters addressed both the proposed seven telephone call weekly frequency limit and the proposed one telephone conversation weekly frequency limit. Notably, commenters voiced stronger criticisms of the proposed seven telephone call weekly frequency limit, with most commenters opposing it because in their view it was either too high (*i.e.,* too permissive) or too low (*i.e.,* too restrictive).

In light of feedback, and for the reasons discussed below, the Bureau is finalizing proposed § 1006.14(b)(2) to retain the proposed telephone call frequencies but to replace the bright-line rule with an approach under which a debt collector who places telephone calls or engages in telephone conversations: (1) Within those frequencies has a rebuttable presumption of compliance with FDCPA section 806(5) and § 1006.14(b)(1); and (2) in excess of one or both of those frequencies has a rebuttable presumption of a violation of FDCPA section 806(5) and § 1006.14(b)(1).

Comments Regarding Bright-Line Rule

Commenters spanning a wide spectrum of stakeholders—including debt collectors, industry trade groups, consumer advocates, and a group of State Attorneys General—conceptually supported a bright-line rule. A variety of reasons were cited by the different commenters, including that FDCPA section 806(5) is vague, courts have not consistently interpreted the provision, industry needs more clarity and certainty, and a bright-line limit will provide relief to consumers. One consumer advocate commented that a bright-line rule ran counter to the Bureau's observations elsewhere in the proposal about the importance of context in determining whether a particular contact is abusive or harassing, but nonetheless found merit in the Bureau seeking to develop a bright-line rule on the number of permitted telephone calls. The SBA suggested that more exceptions were needed for a bright-line limit to work, particularly for law firms trying to negotiate settlements.

Some industry commenters opposed a bright-line rule conceptually because they asserted that it would depart from the statutory language in FDCPA section 806(5), which contains an express intent requirement. They commented that FDCPA jurisprudence has established that there is no bright-line number of telephone calls to demonstrate whether a debt collector had the intent to harass and that courts have found that placing more than seven telephone call attempts in seven days is not harassing or abusive. These commenters described how case law has established factors to consider when determining whether a debt collector had the requisite intent, such as the pattern and frequency of telephone calls, the time between calls, the presence or absence of abusive language on those calls, the location to which those calls were placed, and whether the debt collector called back after the recipient hung up.

One industry trade group commenter took a different approach, acknowledging that using a bright-line ''number-of-calls'' surrogate to determine either the debt collector's awareness of natural consequences or the debt collector's intent may be appropriate if the telephone number is known by the debt collector to belong to the consumer. This may be the case if the debt collector had prior contact with the consumer at that number or if the consumer is identified in a voicemail greeting. However, this commenter asserted that, if a telephone number is not known to belong to the consumer, and especially if the debt collector has several possible numbers for the consumer provided either by the creditor or a prior debt collector or obtained through the debt collector's own location efforts, then the proposed bright-line rule is at odds with the statutory mandate because there would be no intent to annoy, abuse, or harass.

Some industry commenters found the proposed bright-line rule to be too inflexible and noted a preference for a multi-factor approach to telephone call frequencies. These commenters were concerned that the bright-line approach would limit a debt collector's ability to reach consumers at different times and on different dates, and that it would hinder communication particularly in the context of settlement negotiations, loss mitigation discussions, and litigation. A credit union commenter expressed concern that a bright-line approach ignored the nature and content of the telephone conversation, which the commenter asserted is more instructive as to whether successive telephone calls have the effect of harassment, oppression, or abuse.

Several industry commenters advocated for a rule that would make telephone calls within particular limits per se compliant but allow debt collectors to rebut the presumption that calls in excess of any call frequency limit violate the FDCPA. One of these commenters claimed that the proposal would have deemed non-harassing telephone calls in excess of the proposed frequency limits a per se violation and therefore would have been inconsistent with FDCPA section 806(5). Another commenter disputed that the Bureau properly could conclude that every telephone call above the proposed limits would be problematic. The commenter urged the Bureau to permit a debt collector to make additional telephone calls if the debt collector concludes that there is a compelling reason to do so and that doing so will not harm the consumer, provided that the debt collector appropriately documents the basis for its decision.

A group of consumer advocates commented that a bright-line rule is generally in the best interest of consumers. However, the group also pointed out that setting the limits on a per-debt basis, as proposed, would insulate from liability a debt collector who was collecting on seven accounts even if the debt collector made the maximum allowable 49 calls per week, every week, with the intent to annoy, abuse, or harass. These commenters urged the Bureau to provide in the rule that complying with the telephone call frequency limits would create only a rebuttable presumption of compliance with § 1006.14(b)(1) and FDCPA section 806(5).[399]

[397] For ease of reference in this part of the section-by-section analysis, the Bureau sometimes refers to the limit in proposed § 1006.14(b)(2)(i) as the ''proposed seven telephone call weekly frequency limit,'' the limit in proposed § 1006.14(b)(2)(ii) as the ''proposed one telephone conversation weekly frequency limit,'' and the two limits together as the ''proposed telephone call frequency limits.''

[398] The Bureau requested comment on different variations, such as adopting only a rebuttable presumption of a violation or only a rebuttable presumption of compliance. In the proposal, the rebuttable-presumption alternative was discussed in the section-by-section analyses of proposed § 1006.14(b)(2) and § 1006.14(b)(4).

[399] This commenter also argued that the telephone call frequency limits in proposed § 1006.14(b)(2) should not create a safe harbor under the general prohibition in proposed § 1006.14(a) or FDCPA section 806, because it would be possible to violate these general prohibitions even while complying with the telephone call frequency limits. As support, the

The same group of consumer advocates expressed concern that under the proposed bright-line rule, debt collectors who placed telephone calls within the specific proposed frequency limits would not be liable even if they placed those calls in rapid succession. The group also noted that debt collectors could target their successive telephone calls on weekends or holidays, which might be more likely to harass consumers. Another consumer advocate commented that it was less likely that a debt collector would use all of its permissible telephone calls on the same day if the frequency limit for weekly telephone calls was lower than what the Bureau proposed (this commenter suggested an alternative limit of three), but cautioned that, if a debt collector made seven telephone calls in one day, it would often be perceived as harassment by the consumer. A few industry commenters stated that it would be unlikely for debt collectors to make rapid succession telephone calls under a bright-line rule because that would use up the limited number of weekly telephone call attempts available to debt collectors. One commenter asserted that debt collectors would strategically space their telephone calls throughout the seven-day period to establish contact with the consumer. A nonprofit commenter, writing on behalf of a variety of stakeholders, expressed concern that imposing a bright-line limit on telephone calls and providing a safe harbor for compliance under that limit might encourage debt collectors to place the maximum permissible telephone call attempts, perhaps more than they would have placed without such a limit in place.

Comments Regarding Proposed Seven Telephone Call Weekly Frequency Limit

Some consumer and industry commenters supported the proposed seven telephone call weekly frequency limit in proposed § 1006.14(b)(2)(i).[400] A debt buyer commenter stated the belief that the proposed limit would strike an appropriate balance by enabling consumers who demonstrate a willingness to pay their debts to connect by telephone with a representative to achieve a voluntary repayment schedule and thus avoid legal collection efforts. Industry commenters wrote that the proposed limit would provide a debt collector with multiple opportunities to connect with the consumer and give the debt collector time to work through multiple telephone numbers. Other commenters, including some consumers, believed the proposed limit would prevent harassment. Some industry commenters thought the proposed limit would reduce unnecessary litigation. Others urged the Bureau not to impose a lower limit than proposed because doing so, they asserted, would mean less opportunity for consumers to work out a payment plan and might lead to unintended harmful impacts on consumers and the economy if it were to hamper the efficiency of the debt collection process.

In contrast, as noted above, a significant number of commenters opposed the proposed seven telephone call weekly frequency limit. Many commenters argued that the proposed limit was too high (*i.e.,* too permissive). Many others argued that it was too low (*i.e.,* too restrictive).

A diverse group of stakeholders criticized the proposed seven telephone call weekly frequency limit as too permissive to provide meaningful consumer protection. Thousands of consumers opposed the proposed seven telephone call weekly frequency limit because it would, in their view, allow debt collectors to harass consumers by calling them up to seven times per week, per debt. Other commenters criticized the proposed limit as applied to a consumer with multiple debts in collection, observing, for example, that the proposed limit would have permitted debt collectors to call a consumer with eight medical debts 56 times per week, or a consumer with five overdue bills 35 times per week.

Commenters, including consumers, consumer advocates, legal aid providers, members of Congress, State Attorneys General, academic institutions, an FTC Commissioner, and local governments, expressed concern that the proposed limit would lead to an excessive number of telephone calls. Some commenters believed this proposed limit would encourage debt collectors to engage in FDCPA-prohibited behavior. For example, a group of State Attorneys General noted that the proposal acknowledged that debt collectors are aware that many consumers have multiple debts in collection and are receiving telephone calls from other debt collectors and thus may place additional telephone calls with intent to annoy, abuse, or harass.

Some commenters raised the concern that, for a consumer with five debts being collected by the same debt collector, the permissible call volume for that debt collector would surpass the threshold for potential violations of FDCPA section 806(5). These commenters explained that courts have found as few as three to six telephone calls per week to be harassing and cited to existing frequency limits in Massachusetts, Washington State, and New York City as models for the Bureau. Some commenters discussed how technology advances may make consumers' experience of receiving repeated telephone calls more harassing. They noted that consumers often carry their mobile telephones with them, making frequent calls less necessary and more harassing; that the use of cloud-based services to link devices means that one message can notify a consumer multiple times; and that dialers can lead to repeated and annoying telephone calls.

Commenters, including legal aid providers, consumer advocates, and consumers, among others, described a plethora of ways that the proposed seven telephone call weekly frequency limit would negatively impact consumers. Some commenters claimed the number of potential telephone calls would cause various social and emotional effects, such as overwhelming stress; anxiety; emotional distress, withdrawal, and social isolation; harms to one's social well-being and mental health; and physical health problems, including susceptibility to disease as a result of chronic stress and sleep disruptions. Some commenters cited lower work productivity as an effect of the number of potential telephone calls, because consumers could not easily turn off their mobile telephones to avoid telephone calls due to their need to remain reachable to work colleagues and family. Commenters also stated that the number of potential telephone calls would negatively affect certain subsets of consumers. Some expressed concern that the number of potential telephone calls would lead to consumers being pressured or coerced into paying even if their income is exempt from garnishment under Federal law—especially seniors and disabled individuals who are particularly vulnerable to abusive debt collection practices and who may be unaware of such protection. One local government commenter asserted that the proposed limit would disproportionately affect lower-income and minority consumers. Several commenters explained that

commenter pointed to rapid succession calling. Comments about the interplay between proposed § 1006.14(a) and (b) are addressed in the section-by-section analysis of final § 1006.14(b)(1).

[400] In some instances, where commenters addressed the proposed telephone call frequency limits, it was not clear whether they were addressing the proposed seven telephone call weekly frequency limit, the proposed one telephone conversation weekly frequency limit, or both proposed limits. Where it was not clear which proposed limit the commenter was addressing, generally the comments are summarized in the section-by-section analysis describing the proposed seven telephone call weekly frequency limit.

lower-income consumers often have limited telephone plans, meaning that a high number of telephone calls may cause their plans to trigger a maximum limit or fill their voicemail boxes.

Some commenters argued that there is little to no evidence that debt collectors' ability to collect would be negatively impacted if the proposed limit was set at a number less than seven. Several consumer and nonprofit commenters asserted that a high number of telephone calls does not result in increased collections, with one commenter noting that a consumer's ability to pay will not increase regardless of how frequently the debt collector contacts the consumer. A State Attorney General and a nonprofit commenter suggested that the number of telephone calls that would be permitted under the proposed limit could result in consumers disengaging or being too stressed to answer the telephone, which would frustrate, rather than facilitate, debt resolution. One commenter noted how the Bureau of the Fiscal Service of the U.S. Department of Treasury conducted a pilot program focused on servicing defaulted student loans; the program found that borrowers answered less than 2 percent of telephone calls, which the commenter argued shows the ineffectiveness of repeated calls. An FTC Commissioner commented that, with each successive telephone call after the first, the value decreases to the consumer because the consumer is less likely to answer and receive information, yet the value increases to the debt collector because it causes undue stress to the alleged debtor; thus, by the time a sixth or seventh call comes in, harassing rather than informing seems to be the marginal utility.

Consumer, legal aid provider, and consumer advocate commenters asserted that the proposed seven telephone call weekly frequency limit would increase telephone call volume from the status quo, particularly, as some noted, for location information calls. Some commenters acknowledged that the proposal would appear to limit or decrease telephone call volume for consumers with one debt but noted that telephone call volume would likely increase overall for consumers with multiple debts in collection.

Relatedly, some commenters focused their criticism on how the proposed seven telephone call weekly frequency limit would not have covered the cumulative number of communications, particularly electronic communications, and how the proposed limit was structured as a per-debt limit, not a per-person limit. Some commenters expressed the view that allowing up to seven telephone calls per week per debt would be excessive and permit harassing tactics in the absence of additional limits on electronic communications. A group of State legislators and several consumer advocate commenters identified the number of telephone calls for student loan and medical debt that would be permitted under the proposal as particularly concerning. Others explained that it is common for seniors in particular to have several medical debts placed with the same debt collector, and that it is common for a debt collection agency to collect numerous separate accounts for the same consumer. A legal aid provider noted that consumers seeking its assistance with debt collection issues usually have more than one debt, which multiplies the number of telephone calls they receive daily. The commenter asserted that this situation increases the chance that any one debt collector will say or do something untruthful or threatening, which in turn increases the probability that consumers will act hastily and not understand their rights.

Commenters suggested a variety of lower limits for permissible telephone call frequency. A large number of consumer commenters urged specific limits, such as two or three telephone call attempts per consumer, per week.[401] Consumer advocate and nonprofit commenters also recommended the Bureau limit debt collectors to three telephone call attempts per consumer, per week. Other suggestions included: Seven attempts per week, per type of debt (*i.e.,* medical, credit card); three cumulative attempts across all communication media per week, per consumer; and three attempts per week, per debt. One nonprofit and one local government commenter urged the Bureau to follow the limits discussed in the Small Business Review Panel Outline.[402] A local government agency commenter noted the local government has operated for decades under a limit of two contacts about a debt per seven-day calendar period.

Industry trade groups and other industry commenters generally opposed the proposed seven telephone call weekly frequency limit, arguing it was too restrictive. The Bureau received hundreds of comments from industry stakeholders who expressed concern that the proposed telephone call frequency limits were too constraining. Hundreds of creditor and collections industry commenters stated that reaching consumers by telephone is very difficult because most consumers have several telephone numbers and are often unavailable to speak. They wrote that the proposed limit would make it harder to connect with consumers and asserted that consumers would face various unintended consequences, including failure to reach workable repayment plans, additional interest and fees, negative credit reporting, and debt collection litigation. Separately, many accounts receivable management industry commenters stated that limiting communication would harm consumers because consumers fare best when they know their full financial situation and all available options.

Industry commenters asserted that, based on their experience, the proposed limit would not have permitted enough telephone call attempts to establish contact with consumers. Some commenters argued that the Bureau should not limit telephone call attempts because debt collectors must attempt to contact multiple numbers at various times of the day in order to establish right party contact, while other commenters requested that the proposed limit be increased for the same reasons. One industry trade group commenter, citing a 2016 survey of its members, noted that certain debt categories have an average of more than six telephone numbers per account and that student loans have an average of four telephone numbers per account. Another industry trade group commenter, representing debt collectors for student loans, among other members, cited data from one of its members that it takes 20 attempts on average to reach a consumer. A debt collector commented that it typically receives one to two telephone numbers from the creditor from which its debts are purchased and three to five new telephone numbers when trying to locate a consumer, meaning that it takes approximately 50 to 75 telephone calls to reach a single consumer. One commenter explained that, because consumers can always request that a debt collector stop calling, there is no need for a limit on weekly telephone

[401] Over a thousand commenters supported a limit of one telephone conversation per week and two telephone call attempts per consumer (not per debt). Other commenters supported limiting telephone call attempts to three per week, per consumer, or to one telephone conversation and three attempts per week, per consumer (not per debt).

[402] The Small Business Review Panel Outline described a proposal under consideration that would have limited a debt collector's weekly contact attempts with consumers by any communication medium. The proposal under consideration would have specifically limited debt collectors to three contact attempts per unique communication medium and six total contact attempts before confirming consumer contact; and to two contact attempts per unique communication medium and three total contact attempts after confirming consumer contact. *See* Small Business Review Panel Outline, *supra* note 36, at 25–26.

calls. A debt collector commenter suggested limiting only actual communications and not attempts, noting that debt collectors often have multiple telephone numbers to work through.

Industry stakeholders and other commenters expressed various concerns about the proposed seven telephone call weekly frequency limit and stated it could have negative impacts on consumers. Some asserted that it would be overly burdensome; explained that a different approach may be needed based on the type of consumer, debt, or account status; and suggested the limit should account for smartphone technology and call blocking rules that have increased blocked calls from legitimate financial service providers. Some commenters expressed concern that the proposed limit would increase debt collectors' costs or more broadly have a negative impact on the economy, especially for small businesses. Commenters asserted that the limit would lengthen the debt resolution process and provide fewer opportunities to resolve debts in the manner best suited for the situation and, as a result, increase interest, fees, and penalties for consumers. Commenters wrote that consumers would be unable to obtain critical information about their accounts in collections, including when they ask a debt collector to call them back at a different, more convenient time or after they gather more information. Commenters also stated that consumers would experience increases in litigation, credit reporting, and wage garnishment and offsets. Commenters explained that the proposed limit would negatively affect access to credit and increase the cost of credit for all consumers. They also argued that the proposed limit would lead to an increase in letters, text messages, and emails, even though some consumers may prefer telephone calls to other communication media.

Some industry commenters argued that the Bureau lacked data and other evidence to support the proposed seven telephone call weekly frequency limit. Some urged the Bureau to study more thoroughly the number of telephone call attempts that would be necessary to ensure that effective communication is not needlessly hindered.

Some commenters requested that the Bureau impose different limits on telephone call frequency to address different circumstances. For example, some commenters argued that the proposed telephone call frequency limits should not apply once litigation or other civil action is initiated (or, as the SBA urged, specifically while a settlement is being negotiated) to enable communication between consumers and attorneys to resolve the matter quickly before going to court. These commenters explained that a debtor may need to consult with someone else before agreeing to a repayment plan and may need additional telephone calls with the debt collector during the week. One debt collector commenter suggested an alternative frequency limit of 15 telephone call attempts per consumer, per debt, which the commenter wrote was based on an internal data analysis. An industry trade group pointed to specific circumstances necessitating additional calls, such as resolving a dishonored check or correcting a deficiency in loan consolidation or rehabilitation paperwork. Some commenters also identified reverse mortgages and student loans as specific markets that would be negatively affected by the proposed limit.

Several commenters challenged the Bureau's exercise of FDCPA authority to impose the proposed telephone call frequency limits.[403] Commenters focused on what they believed was the failure of the proposed telephone call frequency limits to properly reflect the FDCPA section 806(5) ''intent'' standard. Some noted that there are a number of reasons why debt collectors would make such telephone calls, most of which are not intended to intimidate or pressure the consumer. Another commenter argued that Congress considered and rejected telephone call frequency limits when it passed the FDCPA.

Comments Regarding Proposed One Telephone Conversation Weekly Frequency Limit

Many commenters, including comments from approximately 500 credit unions, expressed support for the proposed one telephone conversation weekly frequency limit. Some commenters stated agreement with the Bureau's reasoning in the proposal that a debt collector who has been able to engage in a telephone conversation with a consumer about a debt generally has less reason to communicate with the consumer within the following week and expressed the belief that the proposed limit would permit regular communication while also preventing harassment. An industry commenter noted that, if there is a legitimate reason for another telephone call, proposed § 1006.14(b)(3) provided for several reasonable exceptions. A consumer advocate commenter noted that the proposed limit was intuitive because it would permit a weekly reminder to consumers who owe a debt, but nevertheless stated a belief that the limit would be problematic when coupled with the proposed seven telephone call weekly frequency limit.

Many commenters, including a group of consumer advocates, supported the proposed one telephone conversation weekly frequency limit but expressed the view that imposing such a limit on a per-debt basis would be too permissive because it could result in harassment for consumers who have multiple debts in collection.[404] Some commenters noted that the proposed one telephone conversation weekly frequency limit is particularly concerning in the context of medical debt and student loan debt, where there are often several debts collected by the same debt collector.

In contrast, a number of industry commenters expressed concern with the proposed one telephone conversation weekly frequency limit. They asserted that the proposed limit would undermine the proposal's purpose of assisting consumers in making better-informed decisions about debts they owe or allegedly owe and would instead harm consumers by causing them to miss information and opportunities to avoid negative consequences. Several industry commenters explained that, for debt collectors, consistency in communications and good customer service is essential to providing the best solutions. Others noted that, after successful communication has been established with a consumer, limiting continued communication is not in the best interest of the consumer or the debt collector. One industry trade group commenter cautioned that the proposed one telephone conversation weekly frequency limit would result in higher rates of delinquency, which in turn would cause creditors to tighten

[403] Some industry commenters also criticized the Bureau's proposed use of unfairness authority under Dodd-Frank Act section 1031 to impose the proposed telephone call frequency limits. As discussed in the section-by-section analysis of § 1006.14(b), commenters raised several concerns about how the proposal, if finalized, could be applied to first-party debt collectors. A few commenters, moreover, challenged the Bureau's proposed identification of an unfair practice and the necessity of imposing telephone call frequency limits to prevent the identified unfair practice. As noted earlier, the Bureau is finalizing § 1006.14(b)(1) through (4) pursuant to its authority under the FDCPA only and not section 1031(b) of the Dodd-Frank Act.

[404] Some commenters cited the CFPB Debt Collection Consumer Survey as support for this argument, noting that the Consumer Survey found that the majority of consumers who had been contacted about repaying a debt in the prior year had been contacted about more than one debt, with 57 percent contacted about two to four debts, and 15 percent contacted above five or more debts. Others cited the same fact without citing the Consumer Survey.

underwriting and lend less money generally. Another commenter noted that the proposed limit would lead to increased credit reporting and litigation.

Commenters identified a number of situations for which they believed more frequent communication would be particularly important. Industry trade group commenters cited the examples of a consumer working out a debt modification or forbearance and of debts involving motor vehicles if there is a risk of repossession. Several industry commenters described the scenario of a consumer asking for more time to pay or promising to pay but the consumer did not follow through. Some commenters pointed to if consumers are at risk of foreclosure or engaged in loss mitigation.

In the proposal, the Bureau sought comment on the alternative of limiting only the total number of telephone calls a debt collector could place about a debt during a defined time period, regardless of whether the debt collector had engaged in a conversation with that person about that debt during the relevant period. At least one commenter supported this alternative approach of limiting the total number of telephone calls, but not conversations, while another commenter supported the inverse—limiting actual conversations, but not the total number of telephone calls.

A small number of commenters addressed how the proposal generally would have counted a consumer-initiated conversation as the debt collector's one permissible telephone call for the next seven consecutive days. A group of consumer advocates supported this aspect of the proposal, asking the Bureau to specify that the proposed one telephone conversation weekly frequency limit applies regardless of whether the debt collector or consumer initiated the conversation. On the other hand, an industry trade group requested that the Bureau exempt consumer-initiated calls from the proposed one telephone conversation weekly frequency limit. See the section-by-section analysis of § 1006.14(b)(4) for more detail on how these comments are addressed.

Commenters also addressed the exclusions in proposed § 1006.14(b)(3) in the context of the proposed one telephone conversation weekly frequency limit. The Bureau discusses comments relating to the proposed exclusions in more detail in the section-by-section analysis of § 1006.14(b)(3) below.

Some commenters suggested alternative time periods for the proposed one telephone conversation weekly frequency limit. A group of nonprofit commenters suggested a limit of one telephone call every two weeks, explaining that a biweekly limit would decrease the overall frequency of telephone calls directed toward consumers, while still allowing debt collectors the opportunity to collect payment based on a timeframe whereby the consumer is more likely to have the funds to pay the debt. Other comments suggesting alternative time periods are described under the subheading *Comments Regarding Proposed Seven Telephone Call Weekly Frequency Limit* above.

The Final Rule

The Bureau is not finalizing the proposed telephone call frequency limits, which would have imposed bright-line rules regarding telephone calls. Rather, final § 1006.14(b)(2) includes telephone call frequencies as part of a more flexible rebuttable-presumption framework.

Final § 1006.14(b)(2)(i) provides that, subject to the exclusions in § 1006.14(b)(3), a debt collector is presumed to comply with § 1006.14(b)(1) and FDCPA section 806(5) if the debt collector places a telephone call to a particular person in connection with the collection of a particular debt neither: (1) More than seven times within seven consecutive days; nor (2) within a period of seven consecutive days after having had a telephone conversation with the person in connection with the collection of such debt (with the date of the telephone conversation being the first day of the seven-consecutive-day period).[405] Section 1006.14(b)(2)(ii) provides that, subject to the exclusions in § 1006.14(b)(3), a debt collector is presumed to violate § 1006.14(b)(1) and FDCPA section 806(5) if a debt collector places a telephone call to a particular person in connection with the collection of a particular debt in excess of either of the telephone call frequencies described in § 1006.14(b)(2)(i). Comments 14(b)(2)(i)–1 and 14(b)(2)(ii)–1 include examples illustrating when a debt collector has a presumption of compliance or of a violation, respectively. Comments 14(b)(2)(i)–2 and 14(b)(2)(ii)–2 clarify how the presumptions can be rebutted and include non-exhaustive lists of factors that may rebut the respective presumptions. More detail on the operation of the rebuttable-presumption framework and the rebuttal factors described in the commentary is provided below.

Rebuttable-presumption approach generally; rationale for change from proposed bright-line rule. The Bureau proposed § 1006.14(b)(2) to specify a bright-line rule for telephone call frequencies that would have violated FDCPA section 806 and 806(5) and Regulation F, with narrow exceptions in proposed § 1006.14(b)(3). As noted earlier, FDCPA section 806 prohibits a broad range of debt collection communication practices that harm consumers and others, and section 806(5) in particular prohibits debt collectors from making telephone calls or engaging a person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass. FDCPA section 806(5) does not identify a specific number of telephone calls or telephone conversations within any particular timeframe that would violate the statute. In the FTC Staff Commentary on the FDCPA, the FTC noted, among other interpretations, that "'[c]ontinuously' means making a series of telephone calls, one right after the other" and "'[r]epeatedly' means calling with excessive frequency under the circumstances."[406] Since the FDCPA was enacted in 1977, courts interpreting FDCPA section 806(5) have not developed a consensus or bright-line test for telephone call frequency that would violate that provision. Moreover, while several States and localities have imposed numerical limits on debt collection contacts, the limits vary, and most jurisdictions have not established any numerical limits.[407] Technological developments also have intensified the consumer-protection concerns underlying FDCPA section 806(5), as described in the proposal.[408]

In light of these developments, numerous problems with telephone call frequency persist. As the proposal described, frequent telephone calls are a consistent source of consumer-initiated litigation and consumer complaints to Federal and State regulators, and consumers' lawsuits allege injuries such as feeling harassed, stressed, intimidated, or threatened, and sometimes allege adverse impacts on employment.[409] In addition, from 2011 through 2018, the Bureau and the FTC received over 100,000 complaints about repeated debt collection telephone

[405] A debt collector who places no telephone calls during this time period would similarly be presumed to comply with the telephone call frequency limits under § 1006.14(b)(2)(i), and in fact would comply with them, for such time period.

[406] *See* 53 FR 50097, 50105 (Dec. 13, 1988).

[407] *See* 84 FR 23274, 23309 (May 21, 2019).

[408] *See id.* at 23309–10 (describing the development of the predictive dialer).

[409] *See id.* at 23310.

calls.[410] As described in the FDCPA 2020 Annual Report, during 2019, consumers submitted complaints about communication tactics used when collecting debts, and the majority of complaints about communication tactics concerned communication over the telephone. Common categories of complaints about communication tactics were frequent or repeated calls (55 percent) and continued contact attempts despite requests to stop contact (29 percent).[411]

Consumers' experiences with, and complaints about, repeated or continuous debt collection telephone calls do not necessarily establish that the conduct in each instance would have violated FDCPA section 806(5).[412] But they do suggest, as described in the proposal, a widespread consumer protection problem that has persisted for 40 years notwithstanding the FDCPA's existing prohibitions and case-by-case enforcement by the FTC and the Bureau as well as private FDCPA actions.[413] To address this persistent harm, the Bureau proposed § 1006.14(b)(2) as described above.

The proposed telephone call frequency limits accounted for a number of competing considerations, as described in the proposal. On the one hand, even a small number of debt collection calls may have the natural consequence of causing a consumer to experience harassment, oppression, or abuse, and therefore, assuming the debt collector is aware of this effect, the debt collector's placement of even a small number of such calls to that consumer may indicate that the debt collector has the requisite intent to annoy, abuse, or harass.[414] At the same time, debt collectors have a legitimate interest in reaching consumers because communicating with consumers is central to their ability to recover amounts owed to creditors, and too greatly restricting debt collectors' and consumers' ability to communicate with one another could prevent debt collectors from establishing right-party contact and resolving debts, even when doing so is in the interests of both consumers and debt collectors.[415] The Bureau also considered whether debt collectors' reliance on making repeated telephone calls to establish contact with consumers could be reduced by other aspects of the proposal designed to address legal uncertainty regarding how and when debt collectors may communicate with consumers[416] and regarding how debt collectors may use electronic communication media.[417] In view of all these considerations, the Bureau proposed to draw the line at which a debt collector places telephone calls repeatedly or continuously with the intent to annoy, abuse, or harass any person at the called number (and the line at which such calls have the natural consequence of harassing, oppressing, or abusing any person) at seven telephone calls in a seven-day period about a particular debt. The proposal would have allowed debt collectors to call up to seven times per week across multiple telephone numbers (*e.g.,* a home landline, mobile, work), and to leave a limited-content message each time, and it would have not placed a specific numerical limit on how many letters, emails, and text messages debt collectors could send.

The Bureau similarly balanced a variety of policy considerations in proposing the one telephone conversation weekly frequency limit, as described in the proposal. The Bureau considered both the legitimate interests of consumers and debt collectors in resolving debts and the potentially harmful effects on consumers of repeated or continuous telephone calls after a telephone conversation. A debt collector who already has engaged in a telephone conversation with a consumer about a debt may have less of a need to place additional telephone calls to that consumer about that debt within the next seven days than a debt collector who has yet to reach a consumer. As a result, a debt collector who has already conversed with a consumer may be more likely to intend to annoy, abuse, or harass the consumer by placing additional telephone calls within one week after a telephone conversation. At the same time, a consumer who has spoken by telephone to a debt collector about a debt may be more likely than a consumer who has not spoken by telephone to a debt collector about a debt to experience annoyance, abuse, or harassment if the debt collector places additional, unwanted telephone calls to the consumer about that debt again within the next seven days.[418]

[410] *See id.* Citing the Bureau's FDCPA Annual Reports published from 2012 through 2019 and the Bureau's consumer complaint database generally, the proposal described how some consumers describe being called multiple times per day, every day of the week, for weeks or months at a time and how some consumers report that repeated calls make them feel upset, stressed, intimidated, hounded, or weary, or that such calls interfere with their health or sleep or—when debt collection voicemails fill their inboxes—their ability to receive other important messages. The proposal noted certain caveats about the counts of consumer complaints. *See id.* at 23310 n.287.

[411] 2020 FDCPA Annual Report, *supra* note 9, at 15 (*see* Line 4 of Table 1).

[412] For example, consumers may complain about telephone calls they do not want to receive, but this does not necessarily mean that the debt collector who placed the calls had the intent to annoy, harass, or abuse necessary to establish a violation of FDCPA section 806(5), or that the telephone calls had the natural consequence of harassing, oppressing, or abusing the consumer in violation of FDCPA section 806.

[413] *See* 84 FR 23274, 23310 n.292 (May 21, 2019) (detailing examples of FTC complaints alleging FDCPA section 806(5) violations based on frequency of telephone calls to consumers).

[414] *See id.* at 23311–12. The proposal described how in the Bureau's Debt Collection Consumer Survey, nearly 90 percent of respondents who said they were contacted more than three times per week indicated that they were contacted too often; 74 percent of respondents who said they were contacted one to three times per week indicated that that they were contacted too often; and 22 percent of respondents who said that they were contacted less than once per week indicated that even this level of contact was too often. The Bureau notes, however, that a consumer reporting that a debt collector called too frequently does not necessarily establish that the debt collector called in violation of the FDCPA.

[415] *See id.* at 23312. In the proposal, the Bureau described feedback from small entity representatives that consumers who do not communicate with a debt collector may have negative information furnished to consumer reporting agencies or may face additional fees or a collection lawsuit, which has financial or opportunity costs. The Bureau also noted that as much as some consumers might prefer to avoid speaking to debt collectors, many consumers benefit from communications that enable them to promptly resolve a debt through partial or full payment or an acknowledgement that the consumer does not owe some or all of the alleged debt.

[416] *Id.* In the proposal, the Bureau described how, for example, debt collectors who leave voicemails for consumers currently face a dilemma about whether to risk liability under FDCPA sections 806(6) and 807(11) by omitting disclosures required under those sections, or to risk liability under FDCPA section 805(b) by including the disclosures and potentially disclosing a debt to a third party who might overhear the message. The Bureau proposed § 1006.2(j) to address that dilemma by defining a limited-content message that debt collectors may leave for consumers without violating FDCPA sections 805(b), 806(6), or 807(11). The Bureau wrote that permitting such messages should ensure that debt collectors can leave voicemails with a return call number for a consumer to use at the consumer's convenience, which may help reduce the need for debt collectors to place repeated telephone calls to contact consumers. As described in more detail in the section-by-section analysis for § 1006.2(j), the Bureau is finalizing § 1006.2(j) with a few changes to the scope of the definition—limiting the definition of limited-content message to voicemail messages that are not knowingly left with third parties—as well as to the required and optional content.

[417] *Id.* The Bureau's proposals in §§ 1006.6(d)(3) and 1006.42 were designed to clarify that debt collectors may communicate electronically with consumers who prefer to communicate that way. Further, the Bureau did not propose to subject email, text messages, or other electronic communications to numerical frequency limits. See the discussion of electronic communications in the section-by-section analysis of § 1006.14(a) and (b).

[418] *See* 84 FR 23274, 23316–17 (May 21, 2019). The Bureau explained further that a consumer may experience, and a debt collector may intend to cause, such annoyance, abuse, or harassment from a second telephone conversation within one week

Continued

In the proposal, the Bureau sought comment on a rebuttable-presumption approach as an alternative to a bright-line rule where: (1) A debt collector who places telephone calls at or below the frequency limits presumptively would comply with § 1006.14(b)(1); (2) a debt collector who exceeds the frequency limits presumptively would violate § 1006.14(b)(1); and (3) the presumptions could be rebutted based on the facts and circumstances of a particular situation. The Bureau explained that it did not propose the rebuttable-presumption approach because the benefits of such an approach were unclear. The Bureau stated its preliminary view that most, if not all, of the circumstances that might require a debt collector to exceed the proposed telephone call frequency limits could be addressed by specific exceptions to a bright-line rule; and the Bureau wrote that a well-defined, bright-line rule with specific exceptions could provide needed flexibility without sacrificing the clarity of a bright-line rule. The Bureau noted that a bright-line rule may also promote predictability and reduce the risk and uncertainty of litigation.[419]

The comments from thousands of stakeholders, evidencing a range of viewpoints on the issue of telephone call frequency limits, reflect the inherent challenges in trying to craft a rule for telephone call frequencies that appropriately balances consumer protection with the interests of debt collectors and consumers in efficient operation of the debt collection process. The Bureau proposed to draw a bright line, reasoning that the certainty and predictability of telephone call frequency limits outweighed the benefits of a more flexible approach, such as a rebuttable-presumption rule. After considering the robust comments on the proposal, the Bureau now has decided to adopt a different approach.

As described earlier, consumer advocates, State Attorneys General, legal aid providers, consumers, and various other stakeholders strongly opposed the proposed telephone call frequency limits, arguing that the proposed bright-line rule would insufficiently protect consumers. They cited various scenarios in which seven or fewer telephone calls within a week could still annoy, harass, or abuse consumers and indicate the debt collector's intent to do so. One scenario commenters highlighted was rapid succession calling, in which a debt collector places a series of telephone calls in rapid succession over the course of just a few minutes as a potential way of harassing, annoying, or abusing a consumer, even if the cumulative number of telephone calls did not exceed the proposed seven telephone call weekly frequency limit. Commenters also argued, for example, that consumers could be harassed, annoyed, or abused if a debt collector placed up to seven telephone calls over the course of a week even after the consumer had indicated the consumer did not want to be contacted again or did not owe the debt in question.[420] The consistent theme in these comments was that the proposed telephone call frequency limits still left room for consumers to be annoyed, harassed, or abused depending on the circumstances of the telephone calls.

At the same time, debt collectors, industry trade groups, and other industry commenters provided a variety of arguments for why a bright-line rule for telephone call frequencies would be potentially detrimental to consumers and unworkable from an operational perspective. They asserted that various types of telephone calls warranted a more permissive approach, such as telephone calls required by applicable law (*e.g.,* to alert the consumer of loss-mitigation options) or placed as part of active litigation. Others argued that the rule should permit debt collectors to place telephone calls that would enable the consumer to avoid imminent, demonstrable negative consequences, such as an impending foreclosure or automobile repossession. Having considered these comments, the Bureau has decided that the proposed bright-line rule may not have adequately accounted for situations in which the purpose, context, and effect of certain telephone calls may reflect not an intent to harass, annoy, or abuse the consumer, but rather an intent to help the consumer avoid a negative outcome or an intent to comply with law. Although the Bureau did propose a handful of exclusions from the telephone call frequency limits,[421] the Bureau recognizes that it is difficult to anticipate all scenarios that would merit exclusion or more lenient treatment and has decided that the proposal's list of exclusions was insufficient.

The Bureau also recognizes the arguments made by stakeholders about the weight of the evidence the Bureau used to justify the proposed telephone call frequency limits and the particular legal authorities on which the Bureau proposed to rely. Consumer advocates and other commenters challenging the proposed telephone call frequency limits cited, among other sources, language in the proposal's preamble, Bureau and FTC consumer complaint data, certain judicial decisions, and some State and local laws to argue for stricter limits. On the other hand, industry commenters challenged the Bureau's basis for setting the limits in the proposal by citing different case law, internal data analyses in some cases, and other sources. Moreover, as discussed above, under the proposal the Bureau would have interpreted the FDCPA to set bright-line limits at the specified levels; the Bureau also proposed that such limits were necessary to prevent an identified unfair practice under section 1031 of the Dodd-Frank Act, premises which were challenged by some stakeholders.

As discussed above, there are competing considerations inherent in crafting a workable telephone call frequency standard that adequately protects consumers. During this rulemaking process, telephone call frequency limits generated strong reaction from stakeholders who possess different and reasonably held views on what the limits should be, or whether there even should be limits at all. And as noted above, case law is unsettled on the question of how FDCPA section 806(5) draws the line at permissible telephone call frequency,[422] which is

even if the consumer, rather than the debt collector, initiated the first telephone conversation. Therefore, under the proposal, if a consumer initiated a telephone conversation with the debt collector, that telephone conversation generally would have counted as the debt collector's one permissible telephone conversation for the next week, subject to certain exclusions in proposed § 1006.14(b)(3).

[419] *See id.* at 23311, 23319–20.

[420] This scenario would be a violation of the cease-communication provision in final § 1006.6(c)(1).

[421] *See* the section-by-section analysis of § 1006.14(b)(3).

[422] *See, e.g., Rigby* v. *Crosscheck Servs., LLC,* No. 19–cv–36–jdp, 2020 WL 1492893, at *5–6 (W.D. Wis. Mar. 27, 2020) (concluding that it was a genuine issue of fact whether a debt collector intended to annoy, abuse, or harass the consumer by placing a total of 76 telephone calls over a period of four-and-a-half months, sometimes repeatedly within the span of a few minutes, and when the debt collector was asked to pause or stop the calls on three occasions); *Bruner* v. *AllianceOne Receivables Mgmt., Inc.,* No. 15 C 9726, 2017 WL 770993, at *2–3 (N.D. Ill. Feb. 28, 2017) (finding that 11 telephone calls made over six weeks "plausibly indicates intent to harass or annoy" under the circumstances). *But see, e.g., Martin* v. *Allied Interstate, LLC,* 192 F. Supp. 3d 1296, 1307 (S.D. Fla. 2016) (finding that 19 telephone calls over a month, the majority unanswered, without more—*e.g.,* where derogatory language was used during the call—is not sufficient to sustain a claim of harassment under FDCPA section section 806(5)); *Carman* v. *CBE Grp., Inc.,* 782 F. Supp. 2d 1223, 1229, 1232 (D. Kan. 2011) (granting summary judgment on FDCPA section 806(5) claim in debt collector's favor even though the debt collector called the debtor 149 times during two months,

reinforced by the fact that commenters cited different opinions to buttress their respective positions on the proposed limits.[423]

The Bureau has reconsidered the bright-line rule approach and has decided to finalize instead a rebuttable-presumption approach to telephone call frequency. The rebuttable-presumption framework provides additional flexibility, as well as enhanced consumer protections in certain respects. The telephone call frequencies remain as proposed—*i.e.,* seven telephone calls and one conversation per week, per debt—but, under the final rule, the debt collector is only presumed to comply with or violate § 1006.14(b)(1) and FDCPA section 806(5) based on those frequency levels. As discussed below, the commentary being adopted in the final rule clarifies the operation of the rebuttable presumption and includes lists of non-exhaustive factors that stakeholders may use to rebut the presumptions, along with examples.

The Bureau has determined that the rebuttable-presumption framework better balances the competing considerations regarding telephone call frequency. As the Bureau noted in the proposal, a rebuttable-presumption approach does not provide the same level of predictability or litigation-risk reduction as a bright-line rule. But the final rule does provide greater certainty than the status quo. The Bureau is adopting a standard that anchors the telephone call frequency limits at specified levels—seven telephone calls per week, per debt, and one conversation per week, per debt—while permitting variances from those frequency levels when stakeholders can prove that specific factual circumstances merit them. Moreover, the detailed commentary being adopted in the final rule clarifying the operation of the rebuttable presumption and including examples will inform judicial analysis of line-drawing questions in applying FDCPA section 806(5). More broadly, the Bureau is now persuaded that the additional flexibility afforded by the rebuttable-presumption approach outweighs the enhanced certainty and clarity that would have been provided by the proposed bright-line rule. The final rule also contains certain enhanced consumer protections. For example, the proposed bright-line rule would not have addressed circumstances in which debt collectors engage in rapid succession calling while still complying with the proposed seven telephone call weekly frequency limit. This final rule addresses this conduct.[424]

Notwithstanding the final rule's shift to a rebuttable-presumption approach, the Bureau is retaining the specific numeric frequency limits that it proposed. The Bureau determines as a general matter that the FDCPA case law, the high volume of consumer complaints in this area, the evidence described in the Bureau's FDCPA Reports, technological developments, and other policy considerations described in this section-by-section analysis and in the proposal support a regulatory intervention that clarifies the limits on telephone call frequency. In addition, as discussed in the proposal, when Congress conferred FDCPA rulemaking authority on the Bureau through the Dodd-Frank Act in 2010, it relied, in part, on consumers' experiences with repeated or continuous debt collection telephone calls to observe that case-by-case enforcement of the FDCPA had not ended the consumer harms that the statute was designed to address.[425]

Relatedly, the Bureau declines to change the specific levels for the telephone call frequency in § 1006.14(b)(2) in response to certain commenters' suggestions to set lower or higher limits. As noted above, a common suggestion by commenters urging stricter limits was three telephone call attempts per week, per consumer. Conversely, industry commenters urged the Bureau to adopt more permissive limits, such as 15 telephone calls per week, per debt. The Bureau has determined that the specific levels proposed as telephone call frequency limits—seven telephone calls and one conversation, per debt, in each seven-consecutive-day period—are reasonable policy judgments in view of the existing evidence and the competing considerations discussed above (and in the proposal), within a rebuttable-presumption framework. The final rule allows rebuttal of the presumption of compliance or of a violation, respectively, even if the debt collector places telephone calls at or below, or in excess of, the telephone call frequency levels. Consequently, the rebuttable-presumption framework addresses many of the policy concerns animating the requests for higher or lower limits under a bright-line rule.[426]

The Bureau recognizes that many commenters—particularly consumer advocates, State Attorneys General, and consumers—criticized the proposal for imposing limits on a per-debt, rather than per-person, basis. The per-debt approach is unchanged in the final rule. The section-by-section analysis of § 1006.14(b)(4) discusses the Bureau's reasoning for finalizing the per-debt approach as proposed.

because there was ''no evidence of an unacceptable pattern of calls'').

[423] One Federal district court opinion cited by a group of consumer advocates urging the Bureau to impose stricter telephone call frequency limits illustrates this point. The court allowed an FDCPA section 806(5) claim to proceed based on a consumer's receipt of 15 telephone calls over a three-week period. *See Ambroise* v. *Am. Credit Adjusters, LLC,* No. 15–22444–CIV–ALTONAGA/O'Sullivan, 2016 WL 6080454, at *3 (S.D. Fla. Mar. 22, 2016). The court, however, noted that while the telephone call frequency ''weighs in favor of granting the maximum statutory damages,'' it could not conclude ''the violations were intentional or particularly egregious,'' pointing to (among other things) how the debt collector did not make any additional telephone calls after the consumer told the debt collector to stop calling. For this reason, the court declined to allow recovery of the statutory maximum for damages. *Id.*

[424] The final rule contains a presumption of compliance under final § 1006.14(b)(2)(i) which the commentary clarifies may be rebutted where there is evidence of rapid succession calling. *See* comment 14(b)(2)(i)–2.i. The Bureau notes that, in addition to commenters raising concerns about rapid succession calling, various judicial decisions have recognized this practice as a potential basis for an FDCPA section 806(5) violation. *See, e.g., Neu* v. *Genpact Servs., LLC,* No. 11–CV–2246 W(KSC), 2013 WL 1773822, at *4–5 (S.D. Cal. Apr. 25, 2013) (holding that 150 telephone calls in 51 days raised a triable issue of fact as to the debt collector's intent to harass and observing that ''[a] reasonable trier of fact could find that [calling the consumer six times in one day] alone, apart from the sheer volume of calls placed by [the debt collector], is sufficient to find that [the debt collector] had the 'intent to annoy, abuse or harass' ''); *Arteaga* v. *Asset Acceptance, LLC,* 733 F. Supp. 2d 1218, 1228 (E.D. Cal. 2010) (''Calling a debtor numerous times in the same day, or multiple times in a short period of time, can constitute harassment under the FDCPA.'').

[425] *See* 84 FR 23274, 23310 (May 21, 2019). The proposal described how in a 2010 report prepared in connection with the Restoring American Financial Stability Act of 2010 (the Senate's predecessor bill to the Dodd-Frank Act), the Senate Committee on Banking, Housing, and Urban Affairs cited consumer complaints to the FTC about, among other things, debt collectors ''bombarding [them] with continuous calls'' to conclude that abusive debt collection practices had continued to proliferate since the FDCPA's passage. S. Rep. No. 111–176, at 19 (2010). In connection with that finding, among others, Congress granted the Bureau the authority to prescribe rules with respect to the activities of FDCPA debt collectors. 15 U.S.C. 1692*l.* The Bureau also cites these Dodd-Frank Act legislative history and FDCPA provisions in response to commenters who argued that the FDCPA legislative history does not support the imposition of the telephone call frequency limits proposed by the Bureau.

[426] Although the Bureau's adoption of a rebuttable-presumption framework using the same proposed frequency levels could, as some commenters asserted, lead to an increase in letters, text messages, and emails for consumers who may have preferred telephone calls, the general prohibition against harassing, oppressive, or abusive conduct in § 1006.14(a) and FDCPA section 806 would protect consumers from undue increases in debt collectors' use of such communication media, and the Bureau has clarified in newly adopted commentary to § 1006.14(a) that the general prohibition addresses communications and attempted communications involving other types of media. *See* comments 14(a)–1 and –2.

The Bureau also is not finalizing any of the variations of the rebuttable-presumption approach on which the Bureau sought comment in the proposal, such as finalizing only a presumption of compliance or violation (but not both), or finalizing a safe harbor for telephone calls below the specified frequency paired with a presumption of a violation for telephone calls above the specified frequency (or the opposite). The Bureau believes these variations would add needless complexity to the framework without clear benefits, in comparison to the rebuttable-presumption approach adopted in the final rule. Further, any variation that includes a per se rule as an element of the framework would suffer from the same disadvantages as commenters identified with the proposed bright-line rule.

Rebuttable Presumption of Compliance

As noted above, § 1006.14(b)(2)(i) provides for a rebuttable presumption of compliance. Under § 1006.14(b)(2)(i), subject to the exclusions in § 1006.14(b)(3), a debt collector is presumed to comply with § 1006.14(b)(1) and FDCPA section 806(5) if the debt collector places a telephone call to a particular person in connection with the collection of a particular debt neither: (1) More than seven times within seven consecutive days; nor (2) within a period of seven consecutive days after having had a telephone conversation with the person in connection with the collection of such debt. The date of the telephone conversation is the first day of the seven-consecutive-day period.

The final rule includes new commentary to clarify various aspects of the telephone call frequency provisions and the rebuttable-presumption framework.[427] Comment 14(b)(2)(i)–1 describes the rebuttable presumption of compliance and emphasizes that, to have the presumption of compliance, the debt collector's telephone call frequencies must not exceed the limits set in either prong of § 1006.14(b)(2)(i). The comment also includes three examples illustrating the application of the rule and the circumstances in which the debt collector would be presumed to comply with § 1006.14(b)(1) and FDCPA section 806(5).

Comment 14(b)(2)(i)–2 clarifies how the presumption of compliance can be rebutted and includes a non-exhaustive list of factors that may rebut the presumption of compliance. The comment first clarifies that, to rebut a presumption of compliance, it must be proven that a debt collector who did not place a telephone call in excess of either of the telephone call frequencies described in § 1006.14(b)(2)(i) nevertheless placed a telephone call or engaged a person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number. This language in the comment generally tracks the language of FDCPA section 806(5). Comment 14(b)(2)(i)–2 also explains that, for purposes of determining whether the presumption of compliance has been rebutted, it is assumed that debt collectors intend the natural consequence of their actions. The Bureau has included this language to clarify how the rebuttable presumption relates to the ''natural consequence'' language in FDCPA section 806 and the intent requirement in FDCPA section 806(5). The Bureau notes that some commenters criticized the proposed telephone call frequency limits as not incorporating the FDCPA section 806(5) intent requirement. In the proposal, the Bureau cited judicial decisions to support the interpretation that debt collectors generally intend the natural consequence of their actions.[428] The Bureau finds the two opinions cited in the proposal persuasive because one logically harmonizes the ''natural consequence'' language in FDCPA section 806 with the intent requirement in FDCPA section 806(5),[429] while the other recognizes ''perhaps the oldest rule of evidence'' applied across areas of law—that a person ''is presumed to intend the natural and probable consequences of [that person's] acts.''[430] Accordingly, the Bureau has incorporated this concept in comment 14(b)(2)(i)–2.[431]

Comment 14(b)(2)(i)–2 also clarifies that the non-exhaustive list of factors in comments 14(b)(2)(i)–2.i through .iv may be considered either individually or in combination with one another or with other, non-specified factors. The comment further clarifies that the factors may be viewed in light of any other relevant facts and circumstances and therefore may apply to varying degrees. The Bureau notes that the factors included in comments 14(b)(2)(i)–2.i through .iv are generally aligned with circumstances cited by courts as relevant to the determination of whether FDCPA section 806(5) has been violated.[432]

Comment 14(b)(2)(i)–2.i clarifies that the frequency and pattern of telephone calls the debt collector places to a person, including the intervals between them, is a factor that may rebut the presumption of compliance. The comment further clarifies the considerations relevant to this factor include whether the debt collector placed telephone calls to a person in rapid succession (*e.g.,* two unanswered telephone calls to the same telephone number within five minutes) or in a

[427] While the final rule retains aspects of the proposed commentary for § 1006.14(b)(2), including some similar examples, the commentary has been revised to such a degree in light of the rebuttable-presumption approach that this section-by-section analysis does not describe particular differences from the proposed language and instead just focuses on the final content.

[428] *See* 84 FR 23274, 23312 n.304 (May 21, 2019) (citing *Litt* v. *Portfolio Recovery Assocs. LLC,* 146 F. Supp. 3d 857, 873 (E.D. Mich. 2015); *United States* v. *Falstaff Brewing Corp.,* 410 U.S. 526, 570 n.22 (1973) (Marshall, J., concurring in result)).

[429] *See Litt,* 146 F. Supp. 3d at 873 (''[W]hile the general proscription of § 1692d does not use the word 'intent,' such a requirement is inferred from the necessity to establish that the natural tendency of the conduct is to embarrass, upset or frighten a debtor. If the natural tendency of certain conduct is to embarrass, upset or frighten, then one who engages in such conduct can be presumed to have intended the natural consequences of his acts.'').

[430] *Falstaff,* 410 U.S. at 570 n.22 (Marshall, J., concurring in result).

[431] In the proposal, the Bureau posited that the alternative rebuttable-presumption approach could allow a consumer to show that the debt collector knew or should have known that the proposed telephone call frequency limits would have the natural consequence of harassing, oppressing, or abusing the consumer. However, the Bureau declines to specify a more particularized intent standard under § 1006.14(b)(2), such as ''know or have reason to know'' because the Bureau believes doing so would entail significant legal and practical complexity. The Bureau also has concern that imposing a more particularized intent standard could lead to evasion if debt collectors could then try to disclaim an intent to harass, annoy, or abuse the consumer after the fact by attesting to their lack of intent.

[432] *See, e.g., Davis* v. *Diversified Consultants, Inc.,* 36 F. Supp. 3d 217, 228 (D. Mass. 2014) (''[T]here are no bright-line rules as to what constitutes harassment or what demonstrates intent to annoy. Instead, such findings have been based on a consideration of multiple factors. For example, in determining whether the intent requirement is met, courts often look to the volume, frequency, and persistence of calls, to whether defendant continued to call after plaintiff requested it cease, and to whether plaintiff actually owed the alleged debt.''); *Valle* v. *Nat'l Recovery Agency,* No. 8:10–cv–2775–T–23MAP, 2012 WL 1831156, at *1 (M.D. Fla. May 18, 2012) (''Factors often examined in assessing a claimed violation of Section 1692d and Section 1692d(5) include (1) the volume and frequency of attempts to contact the debtor, (2) the volume and frequency of contacts with the debtor, (3) the duration of the debt collector's attempted communication and collection, (4) the debt collector's use of abusive language, (5) the medium of the debt collector's communication, (6) the debtor's disputing the debt or the amount due, (7) the debtor's demanding a cessation of the communication, (8) the debt collector's leaving a message, (9) the debt collector's calling at an unreasonable hour, (10) the debt collector's calling the debtor at work, (11) the debt collector's threatening the debtor, (12) the debt collector's lying to the debtor, (13) the debt collector's impersonating an attorney or a public official, (14) the debt collector's contacting a friend, co-worker, employee, employer, or family member, and (15) the debt collector's simulating or threatening legal process.'').

highly concentrated manner (*e.g.,* seven telephone calls to the same telephone number within one day). Comment 14(b)(2)(i)–2.i then provides an example illustrating application of this factor. The Bureau has included this factor because many commenters raised the pattern and frequency of telephone calls as relevant to determining intent under FDCPA section 806(5), and courts have often cited this factor as well, as described above. The Bureau believes that the frequency and pattern of the telephone calls, including the intervals between them, are indicative of both the intent of the debt collector and the natural consequence on the person called. The Bureau has also included specific language in the comment to address concerns raised by commenters about debt collectors engaging in rapid succession calling or placing telephone calls in a concentrated matter on days that may be less convenient for some consumers (such as Sundays or holidays).[433] Application of this factor is not limited to rapid succession or highly concentrated calling, however, and is dependent on all of the relevant facts and circumstances that may indicate an intent on the part of the debt collector to harass, annoy, or abuse the consumer.

Comment 14(b)(2)(i)–2.ii clarifies that the frequency and pattern of any voicemails the debt collector leaves for a person, including the intervals between them, is another factor that may rebut the presumption of compliance. The comment notes that the considerations relevant to this factor include whether the debt collector left voicemails for a person in rapid succession (*e.g.,* two voicemails within five minutes left at the same telephone number) or in a highly concentrated manner (*e.g.,* seven voicemails left at the same telephone number within one day). The Bureau included this factor for similar reasons to those underlying inclusion of the factor in comment 14(b)(2)(i)–2.i.

Comment 14(b)(2)(i)–2.iii clarifies that another factor that may rebut the presumption of compliance is the content of a person's prior communications with the debt collector. The comment explains that among the considerations relevant to this factor are whether the person previously informed the debt collector, for example, that the person did not wish to be contacted again about the particular debt, that the person refused to pay the particular debt, or that the person did not owe the particular debt. The comment clarifies that this factor also includes a consumer's cease communication notification described in § 1006.6(c) and a consumer's request under § 1006.14(h) that the debt collector not use telephone calls to communicate or attempt to communicate with the consumer. The comment also clarifies that the amount of time elapsed since any such prior communications may be relevant to this factor. The Bureau has included this factor based on concerns raised by commenters that a debt collector could annoy, harass, or abuse consumers by continuing to place telephone calls even after the person informed the debt collector about the person's desire not to be contacted again about the particular debt or that the consumer does not owe or refuses to pay the particular debt. Although the number of additional telephone calls at issue would not exceed the telephone call frequencies, in view of the prior conversation, especially a recent prior conversation, the person may be more likely to find the additional telephone calls annoying, harassing, or abusive. Moreover, the Bureau believes that in this circumstance it generally would be more likely that the debt collector intended to annoy, harass, or abuse the person.[434]

Comment 14(b)(2)(i)–2.iv clarifies that a factor that may be used to rebut the presumption of compliance is the debt collector's conduct in prior communications or attempts to communicate with the person. The comment explains that among the considerations relevant to this factor are whether, during a prior communication or attempt to communicate with a person, the debt collector, for example, used obscene, profane, or otherwise abusive language (*see* § 1006.14(d)), used or threatened to use violence or other criminal means to harm the person (*see* § 1006.14(c)), or called at an unusual or inconvenient time or place (*see* § 1006.6(b)(1)). The comment also clarifies that the amount of time elapsed since any such prior communications or attempts to communicate may be relevant to this factor. The Bureau has included this factor for similar reasons as comment 14(b)(2)(i)–2.iii. The Bureau believes that, if a debt collector previously used obscene language or threatened violence during a debt collection telephone call, or called at an inconvenient place or time, and thereby violated another rule provision (and the FDCPA itself), then the person receiving the subsequent telephone calls may be more likely to find they are annoying, harassing, or abusive. The Bureau also believes that by placing the subsequent telephone calls, it generally would be more likely that the debt collector intended to annoy, harass, or abuse the person.

Comment 14(b)(2)(i)–3, which is substantively unchanged from proposed comment 14(b)(2)–2, addresses misdirected telephone calls. The comment explains that, for purposes of the telephone call frequencies in § 1006.14(b)(2)(i), if within a period of seven consecutive days, a debt collector attempts to communicate with a particular person by placing telephone calls to a particular telephone number, and the debt collector then learns that the telephone number is not that person's number, the telephone calls that the debt collector made to that number are not considered to have been telephone calls placed to that person during that seven-day period for purposes of § 1006.14(b)(2)(i). The comment also provides an example illustrating application of the rule. As the Bureau wrote in the proposal, a person is unlikely to be harassed by debt collection calls that are placed to a telephone number that belongs to someone else.[435]

Rebuttable Presumption of a Violation

As noted above, § 1006.14(b)(2)(ii) provides that a debt collector is presumed to violate § 1006.14(b)(1) and FDCPA section 806(5) if the debt collector places a telephone call to a particular person in connection with the collection of a particular debt in excess of either of the telephone call frequencies described in

[433] Courts evaluating FDCPA section 806(5) claims sometimes have focused on rapid succession calling as well, as noted in some of the cases cited earlier in this section-by-section analysis. The FTC Staff Commentary on the FDCPA, while not binding on the Bureau, also provides support for interpreting FDCPA section 806(5) to prohibit rapid succession calling under the ''continuously'' prong. *See* 53 FR 50097, 50105 (Dec. 13, 1988).

[434] The Bureau notes the comment it received from a credit union pointing out that the nature and content of a conversation may be instructive as to whether successive calls may harass, annoy, or abuse consumers.

[435] A small number of comments discussed whether the Bureau should provide additional clarification about how a debt collector determines that a telephone number is not associated with a particular person. A compliance consulting firm commented that the Bureau should let company policy dictate the determination, while another commenter believed that the Bureau should give additional clarification. Consumer advocate commenters urged the Bureau to require debt collectors to check the telephone number against the FCC's Reassigned Number Database or one of the commercial databases that is already available to see if it has been reassigned since the debt collector last verified that it belonged to the consumer. The Bureau declines to mandate any particular method by which a debt collector must learn that the telephone number is not associated with a particular person within the meaning of the comment.

§ 1006.14(b)(2)(i). The telephone call frequencies are subject to the exclusions in § 1006.14(b)(3). Comment 14(b)(2)(ii)–1 provides two examples illustrating the rule.

Comment 14(b)(2)(ii)–2 clarifies how the presumption of a violation can be rebutted and includes a non-exhaustive list of factors that may rebut the presumption of a violation. The comment clarifies that, to rebut the presumption of a violation, it must be proven that a debt collector who placed a telephone call in excess of either of the frequencies described in § 1006.14(b)(2)(i) nevertheless did not place a telephone call or engage any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number. The comment clarifies that, for purposes of determining whether a presumption of a violation has been rebutted, it is assumed that debt collectors intend the natural consequence of their actions. The comment notes that comments 14(b)(2)(ii)–2.i through .iv provide a non-exhaustive list of factors that may rebut the presumption of a violation.[436] The comment explains that the factors may be considered either individually or in combination with one another or other non-specified factors.[437] The comment also clarifies that the factors may be viewed in light of any other relevant facts and circumstances and therefore may apply to varying degrees.[438]

Comment 14(b)(2)(ii)–2.i clarifies that one factor that may rebut the presumption of a violation is whether a debt collector placed a telephone call to comply with, or as required by, applicable law. The comment provides an example in which a debt collector placed one telephone call above the applicable telephone call frequency limit to inform the consumer of available loss mitigation options in compliance with the Bureau's mortgage servicing rules under Regulation X, 12 CFR 1024.39(a). The comment clarifies that the debt collector's compliance with applicable law is a factor that may rebut the presumption of a violation. The Bureau includes this factor because telephone calls placed to comply with or as required by applicable law generally would not reflect an intent on the part of the debt collector to harass, annoy, or abuse a consumer. Numerous commenters cited compliance with applicable law as a basis for excluding a telephone call from the proposed bright-line telephone call frequency limits pursuant to § 1006.14(b)(3). The Bureau is not excluding this category of telephone calls from the frequency limits entirely, however, because, as stated in the proposal, the Bureau understands that legally required communications infrequently are delivered over the telephone, in contrast to by mail or other means.

Comment 14(b)(2)(ii)–2.ii describes that another factor that may rebut the presumption of a violation is whether a debt collector placed a telephone call that was directly related to active litigation involving the collection of a particular debt. The comment provides an example in which an additional telephone call beyond the applicable telephone call frequency was placed to complete a court-ordered communication with the consumer about the debt, or as part of negotiations to settle active debt collection litigation regarding the debt. The comment explains that the direct relationship between the additional telephone call and the active debt collection litigation is a factor that may rebut the presumption of a violation.[439] The Bureau has included this factor because these types of telephone calls may enable communication between consumers and debt collectors to resolve a debt collection matter during litigation and, depending on the facts and circumstances, may not reflect an intent on the part of the debt collector to harass, annoy, or abuse the consumer.

Comment 14(b)(2)(ii)–2.iii clarifies that another factor that may rebut the presumption of a violation is whether a debt collector placed a telephone call in response to a consumer's request for additional information when the exclusion in § 1006.14(b)(3)(i) for telephone calls made with the consumer's prior consent given directly to the debt collector did not apply. The comment includes an example in which, during a telephone conversation, the consumer tells the debt collector that the consumer would like more information about the amount of the debt but that the consumer cannot talk at that moment, and the consumer ends the telephone call before the debt collector can seek prior consent under § 1006.14(b)(3)(i) to call back with the requested information.[440] The fact that the debt collector placed the additional call in response to the consumer's request is a factor that may rebut the presumption of a violation. The Bureau has included this factor based on consideration of circumstances in which the debt collector places a telephone call in response to the consumer's request, and thus may be placing the call without intent to harass, annoy, or abuse the consumer, but where the exclusion under § 1006.14(b)(3)(i) does not apply because the debt collector has not obtained the consumer's consent.

Comment 14(b)(2)(ii)–2.iv clarifies that a factor that may rebut the presumption of a violation is whether a debt collector placed a telephone call to convey information to the consumer that, as shown through evidence, would provide the consumer with an opportunity to avoid a demonstrably negative effect relating to the collection of the particular debt, where the negative effect was not in the debt collector's control, and where time was of the essence.[441] Comment 14(b)(2)(ii)–2.iv.A provides the following example: A debt collector and consumer engage in a lengthy conversation regarding settlement terms; the call drops toward the end of the conversation; and the debt collector immediately places an additional telephone call to complete

[436] While the Bureau believes that telephone calls placed under these four circumstances generally would not reflect an intent on the part of the debt collector to harass, annoy, or abuse the consumer, it is possible that there could be factual circumstances where such a telephone call *is* placed with that intent. Therefore, the Bureau is including such telephone calls within the rebuttable presumption rather than excluding them from the telephone call frequencies altogether under final § 1006.14(b)(3).

[437] As suggested by commenters, there may be other circumstances where it may be proven that a debt collector who placed telephone calls in excess of either of the telephone call frequencies described in § 1006.14(b)(2)(i) nevertheless did not place a telephone call or engage any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number. Because the list of factors identified in comments 14(b)(2)(ii)–2.i through .iv is not exhaustive, other factors may be considered, if warranted by the relevant facts and circumstances.

[438] The language in comment 14(b)(2)(ii)–2, including how debt collectors are assumed to intend the natural consequence of their actions and how the factors may apply to varying degrees, parallels the language in comment 14(b)(2)(i)–2 describing the rebuttable presumption of compliance. This reflects how operation of the two presumptions under the rule—but not the factors themselves—is intended to be the same.

[439] Commenters, including the SBA, suggested that the proposed telephone call frequency limits should not apply once litigation or other civil action is initiated (or specifically while a settlement is being negotiated). This factor responds to the commenters' suggestion.

[440] This factor addresses concerns raised by some commenters that the proposed seven telephone call weekly frequency limit would harm consumers by preventing a debt collector from calling a consumer back, at the consumer's request, at a different, more convenient, time or after they gather more information; and ultimately lead to increases in litigation, negative credit reporting, and wage garnishment and offsets.

[441] This factor addresses concerns raised by some commenters that the proposed seven telephone call weekly frequency limit would provide fewer opportunities to resolve debts in manner best suited for the situation, and as a result, would increase interest, fees, and penalties for consumers.

the conversation. As explained in the comment, the fact that the debt collector placed the telephone call to permit the debt collector and the consumer to complete the conversation about settlement terms, which provides the consumer an opportunity to avoid a demonstrably negative effect that was not in the debt collector's control (*i.e.,* having to repeat a substantive conversation with a potentially different representative of the debt collector) and where time was of the essence (*i.e.,* to prevent the delay of settlement negotiations by seven days), is a factor that may rebut the presumption of a violation.

Comment 14(b)(2)(ii)–2.iv.B provides an example in which: A consumer previously entered into a payment plan with the debt collector regarding a debt; the conditions for the payment plan were set by the creditor; among those conditions is that only the creditor, in its sole discretion, may approve waivers of late fees; the debt collector learns on a Monday that the consumer's payment failed to process, and the applicable grace period is set to expire the next day; and the debt collector places a telephone call to the consumer on that Monday to remind the consumer that a late fee will be applied by the creditor for non-payment unless the consumer makes the payment by the next day. As explained in the comment, the fact that the debt collector placed the telephone call to alert the consumer to the pending penalty, giving the consumer an opportunity to avoid a demonstrably negative effect that was not in the debt collector's control and where time was of the essence, is a factor that may rebut the presumption of a violation.

Comment 14(b)(2)(ii)–2.iv.C provides a counterexample to the first two scenarios in which: On a Monday, a debt collector placed a telephone call to a consumer to offer a ''one-time only'' discount on the payment of a debt; the debt collector stated that the offer would expire the next day; yet, in fact, the debt collector could have offered the same or a similar discount through the end of the month. The comment explains that because the negative effect on the consumer was in the debt collector's control, the discount offer is not a factor that may rebut the presumption of a violation.

The Bureau has included the rebuttal factor described in comment 14(b)(2)(ii)–2.iv and the illustrative examples in comments 14(b)(2)(ii)–2.iv.A through .C based on consideration of comments to the proposal. As noted earlier in this section-by-section analysis, industry commenters presented a variety of fact patterns that they believed called for exclusions because the consumer would avoid harm or potentially would benefit from the communication. However, the Bureau declines to include categorical exclusions for these types of telephone calls. Because the rebuttal factors are non-exhaustive, the Bureau need not address each scenario raised by commenters; the question of whether the presumption can be rebutted in a given case ultimately depends on the circumstances. Furthermore, the Bureau has included language and structured the examples in this comment to emphasize the factor's limitations: That evidence must show that the additional telephone call provided the consumer with an opportunity to avoid a demonstrably negative effect; that the negative effect was not in the debt collector's control; and that time was of the essence. The Bureau concludes that cabining the factor in this manner is necessary for clarity and to avoid circumvention.

14(b)(3) Certain Telephone Calls Excluded From the Telephone Call Frequencies

Proposed § 1006.14(b)(3) would have excluded four types of telephone calls from the telephone call frequency limits in proposed § 1006.14(b)(2).[442] Specifically, proposed § 1006.14(b)(3)(i) would have excluded telephone calls made to respond to a request for information from the person whom the debt collector is calling; proposed § 1006.14(b)(3)(ii) would have excluded telephone calls made with such person's prior consent given directly to the debt collector; proposed § 1006.14(b)(3)(iii) would have excluded telephone calls that do not connect to the dialed number; and proposed § 1006.14(b)(3)(iv) would have excluded telephone calls placed to a person described in proposed § 1006.6(d)(1)(ii) through (vi).[443] For the reasons discussed below, the Bureau is not finalizing the proposed § 1006.14(b)(3)(i) exclusion for telephone calls made to respond to a request for information from the person whom the debt collector is calling. The Bureau is finalizing the other proposed exclusions as § 1006.14(b)(3)(i) through (iii), with certain revisions discussed below.

Proposed Provision Not Finalized

Proposed § 1006.14(b)(3)(i) would have excluded from the frequency limits telephone calls that a debt collector places to a person to respond to a request for information from that person.[444] Proposed comment 14(b)(3)(i)–1 would have clarified that, once a debt collector responds to a person's request for information, the exception in proposed § 1006.14(b)(3)(i) would not apply to subsequent telephone calls placed by the debt collector to the person, unless the person makes another request for information. Proposed comment 14(b)(3)(i)–2 provided an example of the rule.

Industry commenters requested clarification on a variety of issues related to the proposed § 1006.14(b)(3)(i) exclusion. For example, commenters asked the Bureau to define ''request for information''; questioned whether certain scenarios fit within the exception; asked how specific the consumer's request for information must be; and asked how many follow-up telephone call attempts are permitted under the proposed exclusion.[445] A group of consumer advocate commenters recommended that the exclusion not apply if debt collectors placed telephone calls in response to requests for information that consumers submitted through other communication media.

The Bureau is not providing the requested clarifications or making the recommended changes because the Bureau is not finalizing proposed § 1006.14(b)(3)(i). After considering the comments, the Bureau recognizes that a telephone call that a debt collector places to a person to respond to a request for information from that person usually also fits under the exclusion for prior consent in proposed § 1006.14(b)(3)(ii). Therefore, in an effort to streamline the final rule, the Bureau is not finalizing proposed § 1006.14(b)(3)(i) and instead is expanding the examples in the commentary to the prior consent exclusion, renumbered as final § 1006.14(b)(3)(i), to describe a scenario in which a person, through a request for information, also provides prior consent for a debt collector to place additional telephone calls, and the debt collector then places telephone calls to the

[442] *See* 84 FR 23274, 23317–19 (May 21, 2019).

[443] Persons described in proposed § 1006.6(d)(1)(ii) through (vi) include the consumer's attorney, a consumer reporting agency, the creditor, the creditor's attorney, and the debt collector's attorney.

[444] *See* 84 FR 23274, 23318 (May 21, 2019).

[445] However, one industry commenter stated it was not necessary to clarify how to determine whether a debt collector makes a particular telephone call in response to a request for information, as opposed to for some other purpose, or how to determine whether the debt collector has responded to a request for information.

person to respond to a request for information from that person.[446] The Bureau also is specifying in comment 14(b)(2)(ii)–2.iii that, in the unlikely event that a person's request for information from a debt collector does not meet the requirements of the prior consent exclusion in final § 1006.14(b)(3)(i), the fact that a debt collector placed a telephone call in response to a consumer's request for additional information is a factor that may be used by a debt collector to rebut a presumption of a violation under § 1006.14(b)(2)(ii).[447]

Scope of Exclusions

Industry commenters and the SBA asked the Bureau to exclude additional types of telephone calls from the proposed § 1006.14(b)(2) telephone call frequency limits.[448] For example, industry commenters requested that the Bureau add an exclusion for telephone calls required by, or made to comply with, applicable law, as well as telephone calls related to litigation.[449] Industry commenters also requested exclusions for other types of telephone calls such as telephone calls that would be ''beneficial'' to the consumer; telephone calls placed to a consumer after a consumer does not follow through with an agreed-upon payment or the consumer's payment is declined; telephone calls placed before a debt collector has established contact with a person; and ringless voicemails. The SBA requested that the Bureau exclude all telephone calls placed by small entity debt collectors from the proposed § 1006.14(b)(2) telephone call frequency limits.

The Bureau declines to add additional exclusions to § 1006.14(b)(3). As discussed in the section-by-section analysis of § 1006.14(b)(3)(i) through (iii), the Bureau is finalizing three of the proposed exclusions. These exclusions cover telephone calls placed with a person's prior consent (§ 1006.14(b)(3)(i)), telephone calls that do not connect to the dialed number (§ 1006.14(b)(3)(ii)), and telephone calls placed to certain professional persons (§ 1006.14(b)(3)(iii)). The Bureau is excluding these categories of telephone calls from the § 1006.14(b)(2)(i) telephone call frequencies because the Bureau concludes that such telephone calls are not placed by debt collectors with intent to annoy, abuse, or harass a person and generally do not have the natural consequence of harassing, oppressing, or abusing any person.[450]

As discussed in the section-by-section analysis of § 1006.14(b)(2), the Bureau is finalizing a rebuttable-presumption approach instead of the proposed telephone call frequency limits. The rebuttable-presumption approach inherently acknowledges that there are individual circumstances, beyond the categorical exclusions identified in § 1006.14(b)(3), in which telephone calls exceeding the final § 1006.14(b)(2)(i) frequencies are not placed with the intent to annoy, abuse, or harass, and do not have the natural consequence harassing, oppressing, or abusing any person. The rebuttable-presumption approach will provide debt collectors with many of the flexibilities that they sought from the requested exclusions, while also allowing for consideration of the particular facts and circumstances surrounding a telephone call that exceeds the final § 1006.14(b)(2)(i) frequencies.

Depending on the facts and circumstances, the Bureau's rebuttable-presumption approach to telephone call frequencies may, in fact, provide more flexibility to debt collectors with respect to other scenarios for which commenters requested exclusions, such as telephone calls that would be beneficial to the consumer and telephone calls placed to a consumer after a consumer does not follow through with an agreed upon payment or the consumer's payment is declined. More specifically, as described in comment 14(b)(2)(ii)–2.iv, another factor that may be used to rebut a presumption of a violation is whether a debt collector placed a telephone call to convey information to the consumer that, as shown through evidence, would provide the consumer with an opportunity to avoid a demonstrably negative effect relating to the collection of the particular debt, where the negative effect was not in the debt collector's control, and where time was of the essence.

Regarding other specific requests for exclusions, industry commenters explained that the proposed § 1006.14(b)(2) telephone call frequency limits are in tension with the Bureau's mortgage servicing rules' live contact and early intervention requirements in Regulation X, 12 CFR part 1024. Another industry commenter identified tension with the U.S. Department of Housing and Urban Development's Home Equity Conversion Mortgage program regulations, 24 CFR part 206, and State servicing laws that require a servicer to attempt to contact a borrower when a loan is initially called due and payable. Industry commenters also explained that, during litigation, attorneys may be directed to notify the consumer of scheduling matters, to coordinate the date for a hearing or mediation, or to respond to settlement discussions. Industry commenters also stated that court rules may require parties to confer prior to scheduling a hearing. Industry commenters noted that it may be necessary to have multiple, time-sensitive discussions during settlement negotiations, and while the proposed consent exclusion would seem to address this concern, debt collectors may forget to request consent from a consumer to place additional telephone calls.

The Bureau understands that very few legally required communications must be delivered by telephone. However, the Bureau also acknowledges that legally required communications delivered by telephone may facilitate consumer engagement and reach consumers more quickly than if other communication media are used. As discussed in more detail in the section-by-section analysis of § 1006.14(b)(2), the telephone calls that commenters describe could be covered by two factors that a debt collector may use to rebut a presumption of a violation of § 1006.14(b)(1), including: Whether a debt collector placed a telephone call to comply with, or as required by, applicable law, as discussed in comment 14(b)(2)(ii)–2.i; and whether a debt collector placed a telephone call that was directly related to active litigation involving the collection of a particular debt, as discussed in comment 14(b)(2)(ii)–2.ii.[451]

The Bureau also declines to add an exclusion for telephone calls placed before a debt collector has established contact with a person. FDCPA section 806(5) prohibits a debt collector from causing a telephone to ring or engaging any person in a telephone call

[446] See the section-by-section analysis of § 1006.14(b)(3)(i) for more information on the exclusion for telephone calls placed with a person's prior consent.

[447] See the section-by-section analysis of § 1006.14(b)(2) for more information on the telephone call frequencies and the factors that may rebut the presumption of a violation.

[448] The Bureau specifically requested comment on this topic. See also the section-by-section analysis of § 1006.14(b)(2) for further discussion of comments relating to potential exclusions from the proposed telephone call frequency limits.

[449] The SBA requested an exclusion for telephone calls made while a debt collector is trying to negotiate a settlement.

[450] The Bureau is finalizing certain limits on telephone calls placed with a person's prior consent so that such telephone calls do not have the natural consequence of harassing, oppressing, or abusing the person who consented to the additional telephone calls. *See* the section-by-section analysis of § 1006.14(b)(3)(i).

[451] *See* the section-by-section analysis of § 1006.14(b)(2).

repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number, without regard to whether the debt collector has previously established contact with that person. At the same time, as described in the section-by-section analysis of § 1006.14(b)(2), the Bureau recognizes that debt collectors have a legitimate interest in reaching consumers, and that communicating with consumers is central to debt collectors' ability to recover amounts owed to creditors. The Bureau expects that the flexibility provided by the rebuttable-presumption approach to telephone call frequencies, discussed in the section-by-section analysis of § 1006.14(b)(2), as well as debt collectors' ability to leave limited-content messages, discussed in the section-by-section analysis of § 1006.2(j), will enable debt collectors to reach consumers in a timely manner without introducing additional consumer harms.

The Bureau declines to add an exclusion for ringless voicemails for the reasons discussed in the section-by-section analysis of § 1006.14(b).

In response to the SBA's request to exclude small entities from the § 1006.14(b)(2)(i) telephone call frequencies, the Bureau notes that the final rule applies to debt collectors, as that term is used in the FDCPA. Small entities are only excluded from the definition of debt collector to the extent they meet the criteria for one of the specific exclusions from the general definition.[452]

Exclusions Under Rebuttable-Presumption Approach

A few industry commenters asked the Bureau to maintain the proposed § 1006.14(b)(3) exclusions even if the final rule adopted a rebuttable-presumption approach. One commenter explained that maintaining the exclusions would aid courts in determining whether the debt collector has rebutted the presumption of a violation when excess telephone calls fall under one or more of the proposed § 1006.14(b)(3) exclusions.

As discussed in the section-by-section analysis of § 1006.14(b)(2), the Bureau is implementing a rebuttable-presumption approach in this final rule and finalizing three of the proposed exclusions. Telephone calls placed by a debt collector that are excluded under § 1006.14(b)(3) do not count toward the telephone call frequencies in § 1006.14(b)(2)(i) that determine whether a debt collector is presumed to comply with or violate § 1006.14(b)(1) and FDCPA section 806(5). Therefore, telephone calls excluded under § 1006.14(b)(3) will not be used to determine whether a debt collector has rebutted a presumption of a violation under § 1006.14(b)(2)(ii).[453]

14(b)(3)(i)

Proposed § 1006.14(b)(3)(ii) would have excluded from the proposed telephone call frequency limits in § 1006.14(b)(2) telephone calls that a debt collector places to a person with the person's prior consent given directly to the debt collector.[454] Under the proposal, a debt collector would have been permitted to place as many telephone calls as necessary before reaching the consumer, but once the debt collector reached the consumer, further telephone calls would not have been covered by the prior consent exclusion. Proposed comment 14(b)(3)(ii)–1 would have referred to the commentary to proposed § 1006.6(b)(4)(i) for guidance concerning a person giving prior consent directly to a debt collector, and proposed comment 14(b)(3)(ii)–2 provided an example of the rule. For the reasons discussed below, the Bureau is revising the proposed prior consent exclusion, renumbered as § 1006.14(b)(3)(i), to limit the duration of prior consent to no more than seven consecutive days.

One industry commenter recommended that the Bureau limit the number of telephone calls permitted per day and per week under the § 1006.14(b)(3) exclusions, including the prior consent exclusion, while another industry commenter opposed such limits. Some industry commenters explained that it is not necessary to limit telephone calls made under the prior consent exclusion because consumers can withdraw consent at any time. One industry commenter recommended that the proposed § 1006.14(b)(2) telephone call frequency limits reset when a consumer asks a debt collector to call back at another time. Industry commenters also requested clarification about what constitutes prior consent, whether certain scenarios fit within the exclusion, and how to document prior consent. Consumer advocate commenters requested that the Bureau limit the prior consent exclusion to one additional telephone call and expressed concern that debt collectors could otherwise pressure consumers into providing blanket consent for unlimited additional telephone calls over an unspecified period of time.

In general, the Bureau believes that a person can determine when additional telephone calls from, or telephone conversations with, a debt collector would not be harassing, and that a debt collector who has a person's prior consent to place additional telephone calls does not place such calls with intent to annoy, abuse, or harass the person. In the proposal, the prior consent exclusion would have lasted until the debt collector reached the person who consented to the additional telephone calls. Therefore, if the debt collector were unable to reach the person, the person's prior consent to additional telephone calls would have lasted indefinitely. The Bureau recognizes that the debt collector's additional telephone calls, placed indefinitely, may have the natural consequence of which is to harass, oppress, or abuse the person in connection with the collection of a debt.

The Bureau considered limiting the number of telephone calls a debt collector may place under the prior consent exclusion, as suggested by consumer advocate commenters, but concluded that such an approach would be impractical, given that it often takes debt collectors multiple telephone calls to reach a person. Instead, the Bureau is amending proposed § 1006.14(b)(3)(ii), renumbered as § 1006.14(b)(3)(i), to limit the duration of prior consent to no more than seven consecutive days, which is the same time period to which the telephone call frequencies in § 1006.14(b)(2)(i) apply. Specifically, final § 1006.14(b)(3)(i) provides that telephone calls placed to a person do not count toward the § 1006.14(b)(2)(i) telephone call frequencies if they are placed with such person's prior consent given directly to the debt collector and within a period no longer than seven consecutive days after receiving the prior consent.[455] In addition, as explained in new comment 14(b)(3)(i)–2, a person's seven-consecutive-day prior consent described in § 1006.14(b)(3)(i) will expire sooner, if any of the following occurs prior to the conclusion of the seven-consecutive-day period: (1) The person consented to the additional telephone calls for a shorter time period and such time period has ended; (2) the person revokes such prior consent; or (3) the debt collector has a

[452] *See* the section-by-section analysis of § 1006.2(i).

[453] See the section-by-section analysis of, and commentary to, § 1006.14(b)(2)(i) and (ii) for a non-exhaustive list of factors that may be used to rebut presumptions of compliance with, and violation of, § 1006.14(b)(1) and FDCPA section 806(5).

[454] *See* 84 FR 23274, 23318 (May 21, 2019).

[455] The date the debt collector receives prior consent counts as the first day of the seven-consecutive-day period.

telephone conversation with the person regarding the particular debt.

In response to commenters' requests for clarification about what constitutes prior consent, the Bureau is amending proposed comment 14(b)(3)(ii)–1, renumbered as comment 14(b)(3)(i)–1. The comment continues to refer to § 1006.6(b)(4)(i) and its associated commentary for guidance about giving prior consent directly to a debt collector, but it also clarifies that nothing in § 1006.14(b)(3)(i) regarding prior consent for telephone call frequencies permits a debt collector to communicate, or attempt to communicate, with a consumer as prohibited by §§ 1006.6(b) and 1006.14(h).

Industry commenters raised a variety of hypothetical scenarios and asked whether the consent exclusion would apply to specific fact patterns. The Bureau is revising proposed comment 14(b)(3)(ii)–2, renumbered as comment 14(b)(3)(i)–3.i through .iii, to address how the consent exclusion applies in a number of scenarios raised by commenters. For example, the Bureau is adding an illustrative example in comment 14(b)(3)(i)–3.iii that describes a situation in which a consumer provides prior consent to receive additional telephone calls by sending an email to the debt collector requesting additional information.

Industry commenters also asked about how to document a consumer's prior consent. The Bureau declines to prescribe a specific manner in which debt collectors could document a consumer's prior consent. However, as discussed in the section-by-section analysis of § 1006.100(a), debt collectors must retain records created in the ordinary course of business that evidence compliance with the FDCPA and Regulation F, as well as records created in the ordinary course of business that evidence that the debt collector refrained from conduct prohibited by the FDCPA and the regulation.[456]

14(b)(3)(ii)

Proposed § 1006.14(b)(3)(iii) would have excluded from the frequency limits telephone calls that a debt collector places to a person that do not connect to the dialed number (*e.g.,* that result in a busy signal or are placed to an out-of-service number).[457] Proposed comments 14(b)(3)(iii)–1 and –2 provided examples of telephone calls that do and do not connect to the dialed number. For the reasons discussed below, the Bureau is finalizing the exclusion as proposed, but renumbered as § 1006.14(b)(3)(ii) and with certain revisions to the proposed commentary.

Some industry commenters expressed support for the proposed exclusion for telephone calls that do not connect to the dialed number, and no commenters opposed the proposed exclusion. As described above, one industry commenter recommended that the Bureau place limits on the number of telephone calls permitted per day and per week under the § 1006.14(b)(3) exclusions, while another industry commenter opposed such limits. Several industry commenters raised hypothetical questions regarding the operation of the proposed exclusion, such as whether it would cover telephone calls to a full voicemail, dropped telephone calls, telephone calls to a disconnected number, and forwarded telephone calls.

The Bureau determines that a person is unlikely to know about, and is not harassed by, a debt collector's telephone call in response to which the debt collector receives a busy signal or a message indicating that the dialed number is not in service. Similarly, a debt collector who places several telephone calls to a person in response to which the debt collector receives a busy signal or out-of-service notification likely places additional telephone calls to the person in an effort to contact the person and not with the intent to annoy, abuse, or harass the person. For these reasons, the Bureau is finalizing the proposed exclusion for telephone calls that do not connect to the dialed number, without additional limits.

The Bureau is finalizing proposed comment 14(b)(3)(iii)–1, with revisions and renumbered as comment 14(b)(3)(ii)–1, in response to a number of the hypothetical questions raised by commenters regarding the operation of the exclusion. With respect to such questions, the Bureau is addressing only the most likely scenarios, as follows. First, commenters asked about debt collectors placing telephone calls to a disconnected telephone number. As in the proposal, final comment 14(b)(3)(ii)–1 covers such scenarios by explaining that a debt collector's telephone call does not connect to the dialed number if, for example, the debt collector receives a busy signal or an indication that the dialed number is not in service.

Final comment 14(b)(3)(ii)–1 also clarifies a number of situations in which a telephone call connects to the dialed number. First, the comment specifies that a telephone call that is answered, even if it subsequently drops, has connected to the dialed number. The Bureau understands that dropped telephone calls pose unique challenges to debt collectors. Although such calls do not fit under the exclusion for telephone calls not connected to the dialed number, dropped calls may be addressed by other provisions in this final rule. For example, if a debt collector, at the outset of the telephone call, seeks consent to place additional telephone calls to a person if the telephone call disconnects, the telephone call placed by the debt collector following a disconnection would be excluded from the § 1006.14(b)(2)(i) telephone call frequencies pursuant to the prior consent exclusion in final § 1006.14(b)(3)(i). Moreover, if a debt collector does not seek consent, or the telephone call disconnects before a debt collector receives a person's prior consent, a debt collector who places another telephone call to the person shortly after the disconnection may be able to rebut the presumption of a violation under § 1006.14(b)(2)(ii), depending on the facts and circumstances surrounding the follow-up telephone call.[458]

Second, commenters presented variations of the scenario where a debt collector places a telephone call to a consumer and then hears nothing. In this scenario, if the telephone call is connected to the dialed number, even if the debt collector hears only silence, the telephone call does not meet the § 1006.14(b)(3)(ii) exclusion criteria. If a debt collector is unsure whether the telephone call connected to the dialed number, the debt collector should treat the telephone call as connected to the dialed number and count the telephone call toward the § 1006.14(b)(2)(i) frequencies.

Lastly, final comment 14(b)(3)(ii)–1 clarifies that a debt collector's telephone

[456] See comment 100(a)–1 for examples of evidence a debt collector could retain. Comment 100(a)–2 explains that a debt collector 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 set forth in § 1006.100(a). Comment 100(a)–3 explains that records may be retained by any method that reproduces the records accurately (including computer programs) and that ensures that the debt collector can easily access the records (including a contractual right to access records possessed by another entity).

[457] *See* 84 FR 23274, 23318 (May 21, 2019).

[458] As discussed in the section-by-section analysis of § 1006.14(b)(2)(ii), one factor for rebutting the presumption of a violation as described in comment 14(b)(2)(ii)–2.iv is whether a debt collector placed a telephone call to convey information to the consumer that, as shown through evidence, would provide the consumer with an opportunity to avoid a demonstrably negative effect relating to the collection of the particular debt, where the negative effect was not in the debt collector's control, and where time was of the essence.

call connects to the dialed number if the telephone call is connected to a voicemail or other recorded message, even if the debt collector is unable to leave a voicemail. In situations where a debt collector is unable to leave a voicemail, the debt collector's telephone call may have caused the consumer's telephone to ring or may otherwise leave evidence of the telephone call. The same is not true of telephone calls that do not connect to the dialed number. The comment also specifies that a telephone call has connected to the dialed number if the telephone call is connected to a voicemail or other recorded message even if the call did not cause the telephone to ring.

Based on feedback, another likely scenario involves a debt collector placing a telephone call that is forwarded to another telephone number. Although not clarified in commentary, the Bureau believes that, in this situation, the exclusion for unconnected telephone calls in final § 1006.14(b)(3)(ii) would not apply because the forwarded telephone call is handled by the dialed number; thus, the telephone call connects to the dialed number.

14(b)(3)(iii)

Proposed § 1006.14(b)(3)(iv) would have excluded from the frequency limits telephone calls that a debt collector places to the consumer's attorney, a consumer reporting agency, the creditor, the creditor's attorney, or the debt collector's attorney (*i.e.,* the persons described in proposed and final § 1006.6(d)(1)(ii) through (vi)).[459]

As discussed in the proposal, debt collectors may have non-harassing reasons for calling these persons more often than the § 1006.14(b)(2)(i) telephone call frequencies. For example, during litigation, a debt collector may need to speak frequently with its own attorneys, as well as with the creditor's or the consumer's attorneys. Telephone calls to these persons also are highly unlikely to have the natural consequence of harassing, oppressing, or abusing them for purposes of the FDCPA and final rule.

A consumer advocate and industry commenter supported this proposed exclusion. As described above, one industry commenter recommended that the Bureau place limits on the number of telephone calls permitted per day and per week under the § 1006.14(b)(3) exclusions, while another industry commenter opposed such limits. The Bureau concludes that additional limits are not necessary because these telephone calls are not placed by debt collectors with intent to annoy, abuse, or harass a person, and are highly unlikely to have the natural consequence of which is to harass, oppress, or abuse a person for purposes of the FDCPA and final rule. The Bureau therefore is finalizing proposed § 1006.14(b)(3)(iv) with minor grammatical changes and renumbered as § 1006.14(b)(3)(iii).

14(b)(4) Definition

Proposed § 1006.14(b)(5) would have defined the term particular debt for purposes of proposed § 1006.14(b) to mean each of a consumer's debts in collection, except for student loan debts.[460] With respect to student loan debts, the Bureau proposed the term particular debt to mean all debts that a consumer owes or allegedly owes that were serviced under a single account number at the time the debts were obtained by the debt collector. The Bureau also proposed to clarify how the telephone call frequency limits in proposed § 1006.14(b)(2) would apply when a consumer has multiple debts being collected by the same debt collector at the same time.[461] For the reasons discussed below, the Bureau is finalizing proposed § 1006.14(b)(5) with one minor grammatical change and renumbered as § 1006.14(b)(4). The Bureau is also revising the proposed commentary and adding additional examples of the rule.

Per-Debt Versus Per-Person Telephone Call Frequencies

Industry commenters generally supported the proposed per-debt approach to telephone call frequencies. The Bureau received hundreds of comments from the credit and collections industry stating that a per-debt approach is consistent with current debt collection practices and provides flexibility to use account-specific approaches and strategies for different types of debts, different account balances, and debts in different stages of collection. Some industry commenters explained that different clients have different data privacy requirements for the collection of their debts. Industry commenters warned that current system capabilities may not be able to support per-person telephone call frequencies because the systems are not set up to consolidate information about different debts owed by the same consumer, and any system changes would result in extensive reprogramming and training costs. Consumer and consumer advocate commenters argued that debt collectors' systems should be able to consolidate account information for each consumer, and that debt collectors should be able to identify all debts a consumer owes and discuss them at the same time to prevent harassment through excessive telephone calls placed to consumers with multiple debts in collection.

Some industry commenters cautioned that, if the Bureau adopted a per-person approach to telephone call frequencies, debt collectors' calling practices would be too restricted when collecting on multiple debts owed by the same consumer. These industry commenters warned that the market would respond by selling different debts to different debt collectors or staging and prolonging debt collection—both outcomes that, they asserted, would harm consumers.

On the other hand, consumer, consumer advocate, State Attorneys General, State legislator, and local government commenters, among others, generally urged the Bureau to adopt a per-person approach.[462] Some commenters argued that the proposed per-debt approach permits an unreasonably high number of telephone calls and weakens the FDCPA's consumer protections. Citing data from the CFPB Debt Collection Consumer Survey showing that 75 percent of people with one debt in collection have multiple debts in collection,[463] some of these commenters argued that the proposed per-debt approach would allow debt collectors to harass consumers with multiple debts by potentially placing hundreds of telephone calls per week. Some commenters identified the ineffectiveness of repeated telephone calls as another reason to adopt a per-person approach.[464] A State Attorney

[459] *See* 84 FR 23274, 23318 (May 21, 2019).

[460] *See id.* at 23320.

[461] The Bureau proposed this clarification because most consumers with at least one debt in collection have multiple debts in collection. *See* CFPB Debt Collection Consumer Survey, *supra* note 16, at 13, table 1; *see also* Bureau of Consumer Fin. Prot., *Consumer credit reports: A study of medical and non-medical collections,* at 20 (Dec. 2014), *https://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf* (CFPB Medical Debt Report) (reporting that most consumers with one collections tradeline have multiple collections tradelines).

[462] The Bureau also received a large number of comments from consumers advocating for a per-person approach.

[463] *See* CFPB Debt Collection Consumer Survey, *supra* note 16, at 13, table 1.

[464] One commenter supported this assertion by pointing to a pilot program focused on servicing defaulted student loans where the Bureau of the Fiscal Service at the U.S. Department of the Treasury placed more than 21,000 telephone calls in an attempt to initiate a dialogue regarding the borrower's debt. Borrowers answered the telephone calls less than 2 percent of the time. U.S. Dep't of

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General commenter stated that debt collectors in a particular State that limits telephone call frequency to three telephone calls per week per consumer have not been hindered in their ability to collect debt responsibly. A number of commenters also argued that the consumer benefits of the proposed limit of one telephone conversation per week will become illusory with a per-debt approach because consumers with multiple debts in collection will continue to receive telephone calls about other debts from debt collectors.

Some industry commenters believed that consumers would be overwhelmed and confused if, under a per-person approach, debt collectors were forced to discuss multiple debts in a single telephone call with a consumer. Consumer and consumer advocate commenters, among others, rejected this assertion, arguing instead that the proposed per-debt approach would overwhelm consumers financially and emotionally. Specifically, these commenters predicted that the proposed per-debt approach would cause an increased use of mobile telephone minutes and data; result in emotional harms such as chronic stress, shame, and anxiety; and manifest physically in the form of stress to the immune system and elevated blood pressure.

The Bureau understands that, if a consumer has multiple debts in collection, either from one creditor or from multiple creditors, sometimes a single debt collector will attempt to collect some or all of them. Debt collectors in this situation typically make distinct efforts to collect each debt rather than, for example, asking the consumer about all debts during a single telephone call. Although some commenters argued that addressing all debts in one telephone call could be more consumer-protective and decrease telephone call frequency, there are legitimate reasons why debt collectors segregate debts. For example, larger debt collectors often collect multiple debts owed by the same consumer to different creditors, and many creditors require these debt collectors to work each account separately (*e.g.,* a large collection firm may have a dedicated group of collectors exclusively working a particular credit card brand). Creditors impose these requirements, among other reasons, to direct and monitor more closely the activities and legal compliance of debt collectors working their accounts to avoid reputational harm to themselves. A consumer's debts also may enter collection at different times and thus be at different stages of the collections process, such that the different debts may be eligible for different types of settlement offers. The Bureau also recognizes that some consumers may not be able or prepared to discuss more than one debt during a single telephone call or may find it overwhelming, confusing, or simply too time consuming to discuss multiple debts, with different terms and offers, during a single telephone call. Debt collection conversations could become even more complicated if, for example, a consumer wanted to dispute one or some, but not all, of the debts.

As discussed in the proposal, the Bureau considered proposing a per-person approach to the telephone call frequencies, but was concerned that creditors could sidestep a per-person limit by placing debts with debt collectors who collect for only one or a limited number of creditors or by assigning only a single debt to any one debt collector; or that debt collectors could sequence collection of a consumer's debts, thereby prolonging the collections process for some debts. Industry commenters affirmed the likelihood of these outcomes if the Bureau were to adopt a per-person approach. So, while technology that would enable debt collectors to consolidate information about different debts owed by the same consumer, including across different creditor-clients, may exist, a per-person approach may not actually alter the overall telephone call frequency experienced by consumers who have multiple debts in collection and may raise other concerns. For this reason, the Bureau declines to adopt a per-consumer approach and is finalizing the per-debt approach as proposed.

Aggregating Student Loan Debts

As noted, the Bureau proposed the term particular debt to mean, for student loan debts, all debts that a consumer owes or allegedly owes that were serviced under a single account number at the time the debts were obtained by the debt collector.

One industry commenter specifically supported this proposal and also recommended that the Bureau adopt the same rule for all debts that are aggregated by a creditor and serviced under a single account-number before assignment to a debt collector. The Bureau declines to do so because the Bureau understands that debts other than student loan debts are often not serviced under the same account number, and therefore such an approach would provide little consumer benefit.

Other industry commenters generally urged the Bureau to adopt a per-debt rule for all debts, including student loan debts. These commenters argued that all debt types should be treated the same in order to not confuse the consumer and to ensure that the debt collector can adequately provide accurate information to the consumer. They stated that because most debtors have more than one debt in collection, aggregating certain debts but not others will cause confusion, and that during some conversations with a debt collector, a consumer will need to distinguish between multiple debts. The Bureau also declines to adopt this approach. With respect to the collection of multiple student loan debts that were serviced under a single account number at the time the debts were obtained by a debt collector, the debt collector and consumer generally interact as if there were only a single debt. Multiple student loan debts are often serviced under a single account number and billed on a single, combined account statement; have a single total amount due; and require a single payment from the consumer. As a result, many consumers already experience multiple student loan debts as a single debt, and the Bureau concludes that adopting such an approach in the final rule is unlikely to confuse consumers or cause consumers to get inaccurate information.

Some industry commenters also cautioned that the proposal to aggregate student loans could be problematic for a debt collector who is collecting on both Federal and private student loan debt. For example, the commenters noted that current regulations governing loans held by the Department of Education prohibit the sharing of information with any other debt collector database as well as the sharing of information with other debt collectors who may be attempting to contact the borrower. The commenters also explained that it would be unworkable for debt collectors to combine student loans that were originated with different lenders, and have different loan agreements, loan types, origination dates, fees, interest rates, and default dates. The Bureau believes that these commenters may have misunderstood the proposal. Because Federal and private student loans, and loans originated by different lenders, would not be serviced under the same account number at the time the debts were obtained by a debt collector, a debt collector would not be required to treat

Treasury, *Report on Initial Observations from the Fiscal-Federal Student Aid Pilot for Servicing Defaulted Student Loan Debt,* at 3 (July 2016), *https://www.treasury.gov/connect/blog/Documents/student-loan-pilot-report-july-2016.pdf.*

those student loan debts as a single debt.

Some commenters stated that the proposed approach was open to abuse by the industry. These commenters were concerned that lenders and servicers would assign different account numbers to student loan debts to prevent aggregation if the student loan debts were to end up in collection later on. One commenter suggested instead that the Bureau measure telephone call frequency by accounts as that term is described for purposes of the student loan servicing market in § 1090.106 of the Defining Larger Participants of Certain Consumer Financial Product and Service Markets regulation (Larger Participant Rule), rather than by particular debt.[465]

The Bureau believes that it is unlikely that its proposed approach will be exploited in the ways these commenters described. Whether a debt collector is required to aggregate student loan debts depends on whether the servicer serviced the student loans under the same account number at the time they were obtained by a debt collector. Servicers have little incentive to incur the cost of replacing their efficient practice of servicing multiple student loan debts under a single account number and billing such debts on a single, combined account statement that has a single total amount due and requires a single payment from the consumer, with the less efficient practice of billing each student loan debt individually, just so a possible future debt collector could place telephone calls in accordance with the § 1006.14(b)(2)(i) telephone call frequencies with respect to each individual student loan debt. In addition, the Bureau declines to use accounts as that term is described in § 1090.106 of the Larger Participant Rule. In the Larger Participant Rule, an individual account is one for which a financial institution is serving a specific borrower for a specific stream of fees from a creditor. As discussed in the preamble to the Larger Participant Rule, if a servicer is paid one fee by a lender for servicing both Federally insured loans and private education loans for a particular student, there would only be one account for the borrower for purposes of determining whether the servicer is considered a larger participant of the student loan servicing market.[466] If implemented as described in the Larger Participant Rule, such an approach could require certain debt collectors to aggregate Federal and private student loan debt information, which, as commenters noted, may be prohibited by Federal law.

Other commenters suggested that, instead of aggregating one type of debt, the Bureau should lower the telephone call frequencies and apply such frequencies on a per-person basis. As discussed in the section-by-section analysis of § 1006.14(b)(2), the Bureau is not finalizing the proposed telephone call frequency limits. Instead, the Bureau is finalizing a rebuttable-presumption approach to telephone call frequencies. The rebuttable-presumption approach contemplates that there may be circumstances in which telephone call frequencies below the limits proposed in § 1006.14(b)(2) may violate § 1006.14(b)(1) and FDCPA section 806(5).[467]

For all these reasons, the Bureau is finalizing the proposed approach to aggregate student loan debts serviced under a single account number at the time the debts were obtained by a debt collector.

Aggregating Medical Debts

Commenters, including consumer advocate commenters, expressed concern about potential excessive telephone call volume with respect to the collection of medical debts specifically. One commenter explained that it is not uncommon for a single medical appointment to result in bills from multiple providers, each of which could end up in collections if the patient is unable to pay. The commenter stated that the per-debt approach to telephone call frequencies would increase the likelihood that a single medical emergency would result in dozens of telephone calls each week, which the Bureau has recognized has a deleterious effect on consumer well-being. Commenters often cited a fact pattern in which a debt collector places 56 telephone calls to an alleged debtor in a week because the debt collector is collecting on eight medical debts stemming from the same medical incident. However, these commenters generally did not advocate for aggregation of medical debt. Instead, they advocated for a per-person approach to telephone call frequencies for all debt.

Some industry commenters asserted that healthcare providers do not typically maintain a rolling total of charges for a general service and instead individually bill each visit, which is further itemized by each provider, facility, and service performed or good provided. The commenters explained that a consumer's medical debt from one creditor may have numerous unique account numbers. Another industry commenter identified the need to maintain compliance with State and Federal medical privacy laws, although the commenter did not identify specific challenges that the proposal or alternatives would create.

According to the CFPB Debt Collection Consumer Survey, medical debt is the most common type of past-due bill or payment for which consumers reported debt collectors contacted them. More than half of consumers who said they were contacted about a debt in collection noted that it was related to medical debt.[468] The Bureau recognizes that consumers do not have control over how medical debt is billed to them and acknowledges that, under current medical debt billing practices, one medical event can result in multiple debts for a consumer.

However, the Bureau also recognizes that there are significant operational challenges with aggregating medical debt. As discussed above, the Bureau has identified concerns with implementing a per-person approach to the § 1006.14(b)(2)(i) telephone call frequencies generally. In addition, in contrast to some student loans, medical debts from one creditor may have numerous unique account numbers. Therefore, the Bureau declines to aggregate medical debts by account number for purposes of the telephone call frequencies in § 1006.14(b)(2)(i). However, as discussed below, the Bureau is committed to monitoring this issue closely after the final rule is implemented and, if necessary, will reconsider how the § 1006.14(b)(2)(i) telephone call frequencies apply to medical debts.

The Bureau also emphasizes that consumers can control when, how, and even if debt collectors can contact them. Section 1006.6(b)(1) prohibits a debt collector from, among other things, communicating or attempting to communicate with a consumer in connection with the collection of any debt at a time or place that the debt collector knows or should know is inconvenient to the consumer. In addition, § 1006.14(h)(1) provides that, in connection with the collection of any debt, a debt collector must not

[465] Section 1090.106 describes an individual account as one where a financial institution is serving a specific borrower for a specific stream of fees from a creditor.

[466] 78 FR 73383, 73388 (Dec. 6, 2013).

[467] See the section-by-section analysis of § 1006.14(b)(2) for a more thorough discussion of the telephone call frequencies.

[468] *See* CFPB Debt Collection Consumer Survey, *supra* note 16, at 21, figure 2.

communicate or attempt to communicate with a person through a medium of communication, including telephone calls, if the person has requested that the debt collector not use that medium to communicate with the person. A consumer may also notify a debt collector in writing that the consumer wants the debt collector to cease further communication with the consumer with respect to a debt, and pursuant to § 1006.6(c)(1), a debt collector must not communicate or attempt to communicate further with the consumer with respect to that debt.

For the reasons discussed above, the Bureau is renumbering § 1006.14(b)(5) as § 1006.14(b)(4) and finalizing it generally as proposed. The Bureau is making one minor grammatical amendment. Specifically, the Bureau is replacing the article ''the'' preceding the phrase ''debt collector'' with ''a'' to account for circumstances in which a debt collector collecting student loan debts is not the same debt collector that obtained such debts from the entity servicing the student loans. Final § 1006.14(b)(4) thus provides that the term particular debt means each of a consumer's debts in collection, except that, in the case of student loan debts, the term means all student loan debts that a consumer owes or allegedly owes that were serviced under a single account number at the time the debts were obtained by a debt collector. The Bureau expects to monitor the market in response to the final rule. If substantial evidence develops that debt collectors who are placing telephone calls in compliance with the per-debt telephone call frequencies are nonetheless harassing consumers, the Bureau could potentially revisit the per-debt approach to telephone call frequencies for all or certain types of debts, such as medical debts, in a future rulemaking.

The Bureau also is revising commentary to proposed § 1006.14(b)(5) in response to requests for clarification from several industry commenters. Some of these commenters asked whether particular types of calls would count toward the proposed telephone calling limits, while others asked how to aggregate or otherwise count such calls. A number of commenters offered suggestions for resolving such hypotheticals while others did not.

In response to commenters' questions, the Bureau is amending proposed comment 14(b)(5)–1, renumbered as comment 14(b)(4)–1, to include additional examples to illustrate the rule. The Bureau also is adding comments 14(b)(4)–1.i and .ii to explain if a debt collector has placed a telephone call for purposes of counting the telephone call frequency under § 1006.14(b)(2)(i)(A) and if a debt collector has engaged in a telephone conversation for purposes of determining whether subsequent telephone calls meet the telephone call frequency under § 1006.14(b)(2)(i)(B).

As provided in comment 14(b)(4)–1.i, if a debt collector places a telephone call to a person and initiates a conversation or leaves a voicemail about one particular debt, the debt collector counts the telephone call as a telephone call in connection with the collection of the particular debt, subject to the exclusions in § 1006.14(b)(3). If a debt collector places a telephone call to a person and initiates a conversation or leaves a voicemail about more than one particular debt, the debt collector counts the telephone call as a telephone call in connection with the collection of each such particular debt, subject to the exclusions in § 1006.14(b)(3). If a debt collector places a telephone call to a person but neither initiates a conversation about a particular debt nor leaves a voicemail that refers to a particular debt, or if the debt collector's telephone call is unanswered, the debt collector counts the telephone call as a telephone call in connection with the collection of at least one particular debt, unless an exclusion in § 1006.14(b)(3) applies.

As provided in comment 14(b)(4)–1.ii, if a debt collector and a person discuss one particular debt during a telephone conversation, the debt collector has engaged in a telephone conversation in connection with the collection of the particular debt, regardless of which party initiated the discussion about the particular debt, subject to the exclusions in § 1006.14(b)(3). If a debt collector and a person discuss more than one particular debt during a telephone conversation, the debt collector has engaged in a telephone conversation in connection with the collection of each such particular debt, regardless of which party initiated the discussion about the particular debts, subject to the exclusions in § 1006.14(b)(3). If no particular debt is discussed during a telephone conversation between a debt collector and a person, the debt collector counts the conversation as a telephone conversation in connection with the collection of at least one particular debt, unless an exclusion in § 1006.14(b)(3) applies.

Final comment 14(b)(4)–2 provides examples of the rules for counting telephone calls under various scenarios.

14(h) Prohibited Communication Media [469]

14(h)(1) In General

The Bureau proposed § 1006.14(h)(1) to prohibit a debt collector from communicating or attempting to communicate with a consumer through a medium of communication if the consumer has requested that the debt collector not use that medium to communicate with the consumer.[470] Pursuant to its authority under FDCPA section 814(d) to write rules with respect to the collection of debts by debt collectors, the Bureau proposed § 1006.14(h)(1) as an interpretation of FDCPA section 806, which prohibits a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. For the reasons discussed below, the Bureau is adopting this proposed interpretation and finalizing § 1006.14(h)(1) largely as proposed, while revising it to apply to a ''person,'' as defined under § 1006.2(k).

Consumer commenters supported the proposal to permit a consumer to limit the communication media used by a debt collector, and consumer advocate, government, and industry commenters generally supported proposed § 1006.14(h)(1) as offering consumers more control over communications received from debt collectors.

Consumer advocates agreed that a debt collector should be required to stop calling specific telephone numbers and sending email, text messages, or other electronic communications upon the consumer's request. Describing proposed § 1006.14(h)(1) as a critical consumer protection, one consumer advocate stated that clarifying this right under the FDCPA will ensure that consumers are not harassed while also allowing them to communicate with debt collectors without requesting that the debt collector stop all communication, thus preventing unnecessary debt collection lawsuits from being filed. Consumer advocates also stated that the Bureau's interpretation is consistent with FDCPA section 806, specifically FDCPA section 806(5) where some courts have found consumers stated a claim for violations of the FDCPA when debt collectors continued to call after being asked to stop. Other consumer advocates

[469] As noted above, § 1006.14(c) through (g) generally mirror the statute, with minor wording and organizational changes for clarity and therefore are not further discussed in this section-by-section analysis.

[470] 84 FR 23274, 23321–22 (May 21, 2019).

suggested that consumers would benefit greatly from being able to specify contact through various communications media, allowing consumers the ability to stop telephone calls, for example, or other types of communication without stopping all communications.

A group of State Attorneys General agreed that consumers should be able to put any limitations on the use of new technology that they desire, and that, because consumers already have an absolute right to demand that debt collection communications cease, they should have the right to place any lesser limitations on communication, such as limitations on medium or frequency of communication. Additionally, one academic commenter explained that people are sensitive to communication methods and that, even when internet access is reliable, many people may prefer to communicate in person, by telephone, or by letter, including some people with mental illness, who may struggle with electronic communication due to confusion about how to use it or concerns about safety and privacy.

A number of industry commenters generally agreed with proposed § 1006.14(h)(1) on the basis that consumer requests must be respected when it comes to their preferred methods of communication. One industry commenter stated that the proposal would allow a debt collector to communicate with a consumer while also providing adequate consumer safeguards by prohibiting the debt collector from communicating with the consumer through communication media that the consumer requested the debt collector not use. And one trade group commenter supported proposed § 1006.14(h)(1) and agreed it is consistent with FDCPA section 806.

Some industry commenters opposed the proposal in § 1006.14(h)(1) as needlessly restrictive and difficult to implement and stated that it would offer few, if any, countervailing consumer benefits. One industry commenter stated that proposed § 1006.14(h)(1) would limit a debt collector on how best to communicate with consumers who may have a preference of one communication method over another. One trade group commenter suggested that proposed § 1006.14(h)(1) impermissibly expands the scope of the FDCPA.

The Bureau determines that § 1006.14(h)(1) affords various consumer benefits and protections. Since the enactment of the FDCPA, the possible media through which communications generally are conducted has expanded beyond telephone, mail, and in-person conversations to include various mobile and portable technologies that were not contemplated in 1977. For example, with the advent of the mobile telephone, a person may receive a telephone call at any time or place. As the Bureau's Consumer Survey indicated, consumers have varied but strong preferences about the media that debt collectors use to communicate with them.[471] Once a person has requested that a debt collector not use a specific medium of communication to communicate with that person, the Bureau believes that the natural consequence of further communications or attempts to communicate from the debt collector to that person using that same medium likely is harassment, oppression, or abuse of that person. Consistent with this interpretation, the Bureau understands that some debt collectors currently refrain from communicating with a person through a medium that the person has requested the debt collector not use to communicate with that person, including, for example, specific telephone numbers that a person has asked the debt collector not to call.

Accordingly, the Bureau is finalizing § 1006.14(h)(1) as proposed and revising it to apply to a ''person.'' Consistent with its authority under FDCPA section 814(d) to write rules with respect to the collection of debts by debt collectors, and because the Bureau is adopting § 1006.14(h)(1) as an interpretation of FDCPA section 806, which prohibits a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse ''any person'' in connection with the collection of a debt, the Bureau is finalizing § 1006.14(h)(1) to apply to a person, as defined under § 1006.2(k), and not to limit it as proposed to a consumer as defined under § 1006.6(a).

One consumer advocate suggested that the rule should provide that a consumer's demand to stop any one communication medium should stop all communications, unless the consumer affirmatively specifies otherwise, while a group of consumer advocates similarly suggested that one opt-out request (*e.g.,* in response to an email) be applied to all types of communications from the creditor, debt collector, and debt buyer for a given debt. Two industry commenters, on the other hand, requested that the Bureau clarify that a consumer's request to no longer receive communications through one medium is not to be treated as a blanket cease communication request for purposes of § 1006.6(c).

In response to commenters' requests, the Bureau notes that, as discussed in the section-by-section analysis of § 1006.6(c), FDCPA section 805(c), as implemented by § 1006.6(c), provides that, subject to certain exceptions, if a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt.[472] Separately, the Bureau is finalizing § 1006.14(h)(1) as an interpretation of FDCPA section 806, which, in relevant part, prohibits a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.[473] Therefore, whereas § 1006.6(c)(1) would prohibit a debt collector, subject to certain exceptions, from all further communications or attempts to communicate with a consumer regarding a particular debt, § 1006.14(h)(1) would prohibit a debt collector from communications or attempts to communicate with a person through a medium of communication that the person has requested the debt collector not use to communicate with the person for all debts. Although these provisions are distinct in their reliance on separate FDCPA authorities (FDCPA sections 805(c) versus 806), in principle they are similar in that they both afford an individual greater control over the communications received from a debt collector. However, final § 1006.14(h)(1) is narrower than final § 1006.6(c)(1) in that, depending on the request by the person, final § 1006.14(h)(1) prohibits a debt collector from communicating or attempting to communicate with that person only through a specific communication medium or media and does not constitute a broader communication restriction, whereas final § 1006.6(c)(1) prohibits a debt collector from all further communications or attempts to communicate with a consumer.

One industry commenter requested that the Bureau adopt a safe harbor for up to seven days to allow a debt collector's systems reasonable time to update a consumer request pursuant to proposed § 1006.14(h)(1). For reasons similar to those discussed in the section-by-section analysis of

[471] *See* CFPB Debt Collection Consumer Survey, *supra* note 16, at 36–37.

[472] *See* 15 U.S.C. 1692c(c). *See* the section-by-section analysis of § 1006.6(c) for additional discussion.

[473] *See* 15 U.S.C. 1692d.

§ 1006.6(c)(1), this final rule does not specify the period of time afforded a debt collector to update its systems to reflect a person's request under § 1006.14(h)(1). However, depending upon the circumstances, FDCPA section 813(c)'s bona fide error defense to civil liability may apply where, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, a debt collector communicates or attempts to communicate with a person through a medium of communication after the person has requested that the debt collector not use that medium but before the debt collector has implemented the person's request.[474]

A group of consumer advocates stated that the Bureau should require all consumer requests to stop a debt collector's communications through a particular medium be noted in the debt collector's file and transferred to the creditor or a subsequent debt collector, and in turn, should provide that future debt collectors would be obligated to honor the consumer's request. Similarly, one local government commenter requested that the Bureau require a debt collector selling or otherwise transferring a debt to another debt collector to share any instructions by the consumer opting out of any medium of communication. One trade group commenter suggested that, if a consumer requested a previous debt collector not use a particular medium, the subsequent debt collector should be granted a safe harbor until the consumer communicates that preference.

The proposal would not have required a debt collector to transfer such information to a creditor or subsequent debt collector, and neither does this final rule.[475] A debt collector thus would not be bound by a request that a person had submitted to a prior debt collector under § 1006.14(h). While this approach may require a person to again request that a medium of communication not be used if an account is transferred from one debt collector to another, the Bureau believes that, as described in the section-by-section analysis of § 1006.6(e), a person who objects to one debt collector's use of a medium of communication might not object to another debt collector's use of that same medium.

A group of consumer advocates requested that the Bureau address how consumers will learn of their right to ask debt collectors not to use certain communication media, suggesting that the Bureau require debt collectors to orally notify consumers in each debt collection call about the right to opt out of receiving telephone calls. Similarly, one local government commenter stated the Bureau should ensure that debt collectors clearly and conspicuously convey to consumers that they have the option to not only opt out of electronic communications, but that they can choose not to receive any telephone calls or telephone calls to a particular number.

The Bureau determines that consumers, without additional disclosures, currently make such requests of debt collectors and will likely continue to do so. In addition, the procedures in § 1006.6(e) require a debt collector to disclose to a consumer the ability to opt out of electronic communications to a particular email address, telephone number, or other electronic-medium address. Accordingly, the Bureau declines to include an additional disclosure requirement related to § 1006.14(h).

For the reasons discussed above, the Bureau is finalizing § 1006.14(h)(1) to provide that, in connection with the collection of any debt, a debt collector must not communicate or attempt to communicate with a person through a medium of communication if the person has requested that the debt collector not use that medium to communicate with the person.

The Bureau also proposed commentary to § 1006.14(h)(1). Proposed comment 14(h)(1)–1 referred to comment 2(d)–1 for examples of communication media. The Bureau received no comments on proposed comment 14(h)(1)–1 and is finalizing it largely as proposed, with certain revisions to include, similar to comment 6(b)(1)–1, that a debt collector may ask follow-up questions regarding preferred communication media to clarify statements by the person.

Proposed comment 14(h)(1)–2 clarified that, within a medium of communication, a consumer may request that a debt collector not use a specific address or telephone number and provided an example. The Bureau received no comments on proposed comment 14(h)(1)–2 and is finalizing it largely as proposed, with certain revisions consistent with § 1006.14(h)(1).

Commenters requested clarification with respect to how a person may invoke the protections that would be afforded under proposed § 1006.14(h)(1). A number of consumer advocates requested that the Bureau clarify that a request pursuant to § 1006.14(h)(1) may be made using any reasonable method, for example orally, whereas two industry commenters asked the Bureau to require that the request must be made in writing. The Bureau declines to adopt a writing requirement. While FDCPA section 805(c), as implemented by § 1006.6(c), requires a consumer to notify a debt collector in writing, that provision applies only if a consumer wishes a debt collector to cease all communication; the Bureau concludes that a similar writing requirement is not necessary or warranted in the context of § 1006.14(h)(1), which provides a person with the opportunity to make a narrower request regarding communication media. As discussed in the section-by-section analysis of § 1006.6(c)(1), the Bureau declines to extend § 1006.6(c)(1) to oral requests but does clarify that, depending on the facts and circumstances, a consumer's oral request to, for example, ''stop calling'' would constitute a request that the debt collector not use that medium of communication (*e.g.,* telephone calls) to communicate with the consumer, and consistent with § 1006.14(h)(1), the debt collector would thereafter be prohibited from placing telephone calls to the consumer.[476] The Bureau is adopting new comment 14(h)(1)–3.i to provide an example illustrating this aspect of the rule.

Additionally, the Bureau is adopting new comment 14(h)(1)–3.ii to provide an example illustrating a consumer's request to opt out in response to receipt of either the opt-out procedures described in final § 1006.6(d)(4)(ii) or the opt-out notice in final § 1006.6(e). Assuming that, in response to receipt of either the opt-out notice described in § 1006.6(d)(4)(ii) or the opt-out instructions in § 1006.6(e), a consumer requests to opt out of receiving electronic communications from a debt collector at a particular email address or telephone number, comment 14(h)(1)–3.ii clarifies that the consumer has requested that the debt collector not use that email address or telephone number to electronically communicate with the consumer for any debt. Thereafter, § 1006.14(h)(1) prohibits the debt collector from electronically communicating or attempting to communicate with the consumer through that email address or telephone number.

14(h)(2) Exceptions

The Bureau proposed § 1006.14(h)(2) to provide two exceptions to the general

[474] *See* the section-by-section analysis of § 1006.6(c)(1).

[475] *See* the section-by-section analysis of § 1006.6(b)(1).

[476] *See* the section-by-section analysis of § 1006.6(c)(1).

prohibition in proposed § 1006.14(h)(1). Specifically, proposed § 1006.14(h)(2)(i) provided that, notwithstanding the prohibition in § 1006.14(h)(1), if a consumer opts out in writing of receiving electronic communications from a debt collector, a debt collector may reply once to confirm the consumer's request to opt out, provided that the reply contains no information other than a statement confirming the consumer's request. And proposed § 1006.14(h)(2)(ii) provided that, if a consumer initiates contact with a debt collector using an address or a telephone number that the consumer previously requested the debt collector not use, the debt collector may respond once to that consumer-initiated communication. The Bureau proposed § 1006.14(h)(2) because a single communication from a debt collector of the types described likely would not have the natural consequence of harassing, oppressing, or abusing the consumer within the meaning of FDCPA section 806.[477] One industry commenter supported the two proposed exceptions as helpful to both consumers and debt collectors and described them as designed to facilitate communications that are reasonable under the circumstances. For the reasons discussed below, the Bureau is finalizing § 1006.14(h)(2)(i) and (ii) as proposed, with certain clarifications, and, in response to comments, is adopting an additional exception under § 1006.14(h)(2)(iii) for legally required communication media.

14(h)(2)(i)

Proposed § 1006.14(h)(2)(i) provided that, notwithstanding the prohibition in § 1006.14(h)(1), if a consumer opts out in writing of receiving electronic communications from a debt collector, a debt collector may reply once to confirm the consumer's request to opt out, provided that the reply contains no information other than a statement confirming the consumer's request. One industry commenter explained that it is fairly common for businesses to send a consumer who opts out of email communication a confirmation message to indicate that the consumer's request has been honored; the commenter stated that debt collectors should be able to continue this practice. Other industry commenters requested that the Bureau clarify the reference to a consumer's written opt-out request in proposed § 1006.14(h)(1)(i), given that proposed § 1006.14(h)(1) does not contain a writing requirement. A group of consumer advocates requested that, in order to protect consumers who have opted out of a workplace communication medium, the Bureau clarify that the exception under proposed § 1006.14(h)(2)(i) does not apply if a debt collector knows or should know that the written opt-out request came from a workplace-provided communication channel, such as an employer-provided email address.[478]

In response to these comments, the Bureau is finalizing § 1006.14(h)(2)(i) as proposed, with certain clarifications and revisions consistent with final § 1006.14(h)(1). The Bureau is striking the reference to ''in writing'' to clarify that a person's request to opt out of receiving electronic communications from a debt collector need not be in writing.[479] Relatedly, consistent with the permission for a debt collector to reply once, a debt collector may send an electronic confirmation of the person's request to opt out. The Bureau believes that a single electronic communication from a debt collector to confirm a person's request to opt out of receiving electronic communications from a debt collector likely would not have the natural consequence of harassing, oppressing, or abusing the person within the meaning of FDCPA section 806. As finalized, § 1006.14(h)(2)(i) also provides that the electronic confirmation may state that the debt collector will honor the person's request. Accordingly, final § 1006.14(h)(2)(i) provides that, notwithstanding the prohibition in § 1006.14(h)(1), if a person opts out of receiving electronic communications from a debt collector, a debt collector may send an electronic confirmation of the person's request to opt out, provided that the electronic confirmation contains no information other than a statement confirming the person's request and that the debt collector will honor it.

14(h)(2)(ii)

Proposed § 1006.14(h)(2)(ii) provided that, if a consumer initiates contact with a debt collector using an address or a telephone number that the consumer previously requested the debt collector not use, the debt collector may respond once to that consumer-initiated communication. One industry commenter supported this proposed exclusion, explaining that it makes sense to allow a business to respond to a consumer-initiated communication using the same medium used by the consumer, even in circumstances where the consumer had previously chosen to opt out from that communication medium. Two trade group commenters suggested that, if a consumer contacts a debt collector using a medium that the consumer requested the debt collector not use, the consumer should be deemed to have waived the protections under proposed § 1006.14(h)(1). One consumer commenter stated that the proposed exclusion for consumer-initiated communications should be modified to exclude employer-provided communication media, and a group of consumer advocates urged the Bureau to exclude addresses and telephone numbers that a debt collector knows or should know are employer-provided, unless the debt collector confirms with the consumer that it is permissible to use them again.

The Bureau is finalizing § 1006.14(h)(2)(ii) largely as proposed, with certain clarifications in response to comments and revisions consistent with final § 1006.14(h)(1). As suggested by the commenter above, and consistent with new comment 6(b)(1)–2, the Bureau is revising § 1006.14(h)(2)(ii) to permit a debt collector to respond once through the same medium of communication used by the person. The Bureau determines that a single communication from a debt collector in response to a communication initiated by a person using that medium of communication likely would not have the natural consequence of harassing, oppressing, or abusing the person within the meaning of FDCPA section 806. The Bureau concludes this is the case even with respect to employer-provided email addresses because, as explained in the section-by-section analysis of § 1006.6(d)(4)(i), consumers are generally better positioned than debt collectors to determine if third parties have access to a particular email account used by a consumer, whether personal or employer provided.[480] Accordingly, final § 1006.14(h)(2)(ii) provides that, notwithstanding the prohibition in § 1006.14(h)(1), if a person initiates contact with a debt

[477] Proposed § 1006.14(h)(2) also is consistent with the regulations implementing the CAN–SPAM Act, which permit senders to send a reply electronic message. *See* 16 CFR 316.5.

[478] For special rules regarding employer-provided email addresses, see § 1006.22(f)(3) and its associated commentary.

[479] As discussed in the section-by-section analysis of § 1006.6(e), the final rule requires a debt collector to provide, in each electronic communication, a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number. Nothing in § 1006.6(e) prohibits a debt collector from accepting an opt-out request made orally.

[480] *See* the section-by-section analysis of § 1006.6(d)(4)(i).

collector using a medium of communication that the person previously requested the debt collector not use, the debt collector may respond once through the same medium of communication used by the person.

14(h)(2)(iii)

Proposed § 1006.14(h)(2) did not include an exception for legally required communications; however, the Bureau requested comment on whether there are specific laws that require communication with a consumer through a specific medium, and if so, whether additional clarification is needed regarding the delivery of legally required communications through a specific medium of communication required by applicable law if the consumer has requested that the debt collector not use that medium to communicate with the consumer. Two industry commenters explained that court orders as well as certain Federal and State laws, including State laws relating to service of process and contracts, can require communication through a specific medium that could contradict a consumer's request that a debt collector not use that communication medium, including, for example, various notices under State laws that are required to be mailed and in some cases specifically by first-class or certified mail. These commenters requested the Bureau clarify that compliance with a conflicting law and or court order serve as a safe harbor or defense to a claim under the FDCPA. Another industry commenter specifically requested that the Bureau clarify how a debt collector who is also a mortgage servicer could comply with the periodic statement requirement for residential mortgage loans under Regulation Z.

In light of these comments, the Bureau is adopting new § 1006.14(h)(2)(iii), which provides that, notwithstanding the prohibition in § 1006.14(h)(1), if otherwise required by applicable law, a debt collector may communicate or attempt to communicate with a person in connection with the collection of any debt through a medium of communication that the person has requested the debt collector not use to communicate with the person.

The Bureau is also adopting new comment 14(h)(2)–1 to provide an example illustrating the exception adopted under § 1006.14(h)(2)(iii). New comment 14(h)(2)–1 provides that, under § 1006.14(h)(2)(iii), if otherwise required by applicable law, a debt collector may communicate or attempt to communicate with a person in connection with the collection of any debt through a medium of communication that the person has requested the debt collector not use to communicate with the person. For example, assume that a debt collector who is also a mortgage servicer subject to the periodic statement requirement for residential mortgage loans under Regulation Z, 12 CFR 1026.41, is engaging in debt collection communications with a person about the person's residential mortgage loan. The person tells the debt collector to stop mailing letters to the person, and the person has not consented to receive statements electronically in accordance with 12 CFR 1026.41(c). Although the person has requested that the debt collector not use mail to communicate with the person, § 1006.14(h)(2)(iii) permits the debt collector to mail the person periodic statements, because the periodic statements are required by applicable law.

Section 1006.18 False, Deceptive, or Misleading Representations or Means

FDCPA section 807 generally prohibits a debt collector from using any false, deceptive, or misleading representations or means in connection with the collection of any debt and lists 16 non-exhaustive examples of such prohibited conduct.[481] The Bureau proposed § 1006.18 to implement FDCPA section 807.[482] Proposed § 1006.18 generally restated the statute with only minor wording changes for clarity, except for certain organizational changes and interpretations in proposed § 1006.18(e) through (g).

The Bureau proposed to organize § 1006.18 by grouping the 16 non-exhaustive examples of prohibited false or misleading representations in FDCPA section 807 into categories of related conduct. Specifically, the Bureau proposed § 1006.18(a) to implement the general prohibition in FDCPA section 807 against debt collectors using any false, deceptive, or misleading representation or means in connection with the collection of any debt. Proposed § 1006.18(b) restated FDCPA section 807's examples of false, deceptive, or misleading representations.[483] Proposed § 1006.18(c) restated FDCPA section 807's examples of false, deceptive, or misleading collection means.[484] Proposed § 1006.18(d) restated the catch-all prohibition against false representations or deceptive means as described in FDCPA section 807(10). Proposed § 1006.18(e) addressed the disclosures required under FDCPA section 807(11). Finally, proposed § 1006.18(f) addressed the use of assumed names by debt collectors' employees, and proposed § 1006.18(g) addressed misrepresentations of meaningful attorney involvement in debt collection litigation.

A number of individual consumer commenters asked the Bureau to prohibit specific examples of false statements that debt collectors had made to the commenters, such as claims that the consumer would be deported or arrested for failing to pay a debt. While the final rule does not enumerate additional specific false statements, the Bureau notes that § 1006.18's general prohibition on any false, deceptive, or misleading representation or means in connection with the collection of any debt prohibits the false statements described by commenters.

The Bureau also received two overarching comments regarding proposed § 1006.18. One industry commenter asked the Bureau to clarify that a debt collector who makes immaterial false statements orally does not violate § 1006.18.[485] This commenter suggested that the Bureau could develop a warning letter template that consumers could send to a debt collector to clarify any potential misstatements before suing the debt collector for violating the FDCPA's prohibition on false representations. This commenter further suggested that the Bureau provide a list of specific statements that debt collectors could use to inform consumers of the credit reporting status of their debts or of the effect of paying their debts without violating the FDCPA's prohibition on false representations.

The Bureau declines to adopt these suggestions. The FDCPA does not qualify the prohibition on false, deceptive, or misleading representations, and the Bureau did not propose to categorically interpret certain

[481] 15 U.S.C. 1692e.

[482] *See* 84 FR 23274, 23322–24 (May 21, 2019).

[483] Proposed § 1006.18(b)(1)(i) through (viii) would have implemented, respectively, paragraphs (1), (16), (3), (7), (6), (12), (13), and (15) of FDCPA section 807, and proposed § 1006.18(b)(2) would have implemented FDCPA section 807(2). The Bureau explained that restating the statutory language was not intended to suggest any particular interpretation of that language. For example, the omission of the words ''or imply'' from the introductory language to proposed § 1006.18(b)(2) consistent with the statutory language in FDCPA section 807(2) was not intended to suggest that the Bureau would not regard implied false representations as violations of FDCPA section 807 or 807(2) or proposed § 1006.18(b)(2).

[484] Proposed § 1006.18(c)(1) through (4) would have implemented, respectively, paragraphs (5), (8), (9), and (14) of FDCPA section 807.

[485] Other commenters addressed specific provisions within proposed § 1006.18, and these comments are discussed below.

types or methods of statements as compliant with § 1006.18. A consumer's understanding of a statement generally depends both on the statement itself and on the facts and circumstances surrounding the statement. Similarly, although the Bureau encourages communication between consumers and debt collectors, the Bureau did not propose and does not support conditioning a consumer's access to the judicial system on the consumer sending a warning letter to a debt collector. Finally, the Bureau is not creating safe harbor statements regarding credit reporting. The Bureau concludes that safe harbors for general statements about credit reporting are unnecessary for simple statements about a debt collector's actions, and safe harbors may not be accurate or effective for complicated statements about the effects of paying a debt on a consumer's credit report, credit score, creditworthiness, or likelihood of receiving credit because these effects depend on the facts and circumstances of a particular case.[486]

For these reasons, and pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors and to implement and interpret FDCPA section 807, the Bureau is finalizing § 1006.18 largely as proposed, except with respect to the provisions proposed in § 1006.18(d) through (g) as discussed below.

18(d) False Representations or Deceptive Means

FDCPA section 807(10) prohibits debt collectors from using any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. As noted above, proposed § 1006.18(d) restated this catch-all prohibition. The Bureau is finalizing § 1006.18(d) as proposed but, as discussed below, is adding new comment 18(d)–1 to address feedback received regarding the possibility of debt collectors employing deceptive means to collect debts using social media.

The Bureau received a number of comments from government commenters and others expressing concern about the possibility of deception when debt collectors use social media to collect debts. The commenters explained that if, when debt collectors communicate or attempt to communicate with consumers using social media, debt collectors do not clearly indicate their identity and the fact that they are collecting a debt, consumers will not understand that they are communicating with a debt collector and will be vulnerable to deceptive conduct. For example, commenters highlighted concerns with debt collectors submitting a Facebook ''friend request'' or a LinkedIn ''connection'' while omitting information about the debt collector's true purpose, in order to engage in collection communications or to obtain information about consumers. A group of State Attorneys General stated that all debt collection communications sent using social media should be accompanied by a notice that the purpose of the communication is to collect a debt.[487] Similarly, Federal government agency staff indicated in its comment that the agency has initiated enforcement actions against debt collectors for using false pretenses to engage consumers in conversation through social media.

The Bureau recognizes that there are unique consumer concerns presented by social media interactions with debt collectors, whether through direct messaging or connections generally. To clarify the application of the final rule to the type of conduct described by commenters, the Bureau is adding comment 18(d)–1. Comment 18(d)–1 restates the general rule of § 1006.18(d) and provides two examples.

First, given the purpose of social media platforms marketed for social or professional networking purposes, such as Facebook or LinkedIn, a consumer who receives a ''friend'' or ''connection'' request on such a platform would take away from the request that the requester is interested in a social or professional networking relationship. This consumer takeaway would be false if the request is from a debt collector in connection with the collection of a debt, and this false claim may cause the consumer to accept a request that the consumer otherwise would not have accepted. Such deceptive means of engaging with the consumer violate § 1006.18(d). To address this, comment 18(d)–1.i provides an example of a debt collector who sends a private message to a consumer, in connection with the collection of a debt, requesting to be added as one of the consumer's contacts on a social media platform marketed for social or professional networking purposes. The comment explains that a debt collector makes a false representation or implication if the debt collector does not disclose his or her identity as a debt collector when making a friend or connection request on social media.

Second, the Bureau is including an example to clarify that a debt collector using a social media account for the purpose of engaging with third parties to obtain location information about a consumer must use a profile that accurately identifies the debt collector's individual name. Specifically, comment 18(d)–1.ii provides an example of a debt collector who sends a private communication to a friend or coworker of the consumer on a social media platform for the purpose of obtaining location information. The comment states that, pursuant to § 1006.10(b)(1), the debt collector must identify himself or herself individually by name, and that, pursuant to § 1006.18(d), the debt collector must communicate using a profile that accurately identifies the debt collector's individual name. To clarify that this comment is not intended to prohibit the use of an otherwise permissible assumed name, the comment includes a cross-reference to § 1006.18(f). The comment also states that the debt collector must comply with the other applicable requirements of §§ 1006.6(d)(1), 1006.10, and 1006.22(f)(4) when communicating with third parties.

Because the use of social media by debt collectors is a relatively new practice, the Bureau intends to monitor closely developments in this space. The Bureau also emphasizes that the general prohibition on false, deceptive, or misleading conduct with any person may prohibit social media activities that are not specifically discussed in comment 18(d)–1.

18(e) Disclosures Required

The Bureau proposed § 1006.18(e) to implement FDCPA section 807(11), which requires debt collectors to disclose in their initial communications with consumers that they are attempting to collect a debt and that any information obtained will be used for that purpose, and to disclose in their subsequent communications with consumers that the communication is from a debt collector, except in a formal pleading made in connection with a legal action (the ''mini-*Miranda* disclosure'').[488]

[486] *See* Bureau of Consumer Fin. Prot., CFPB Bulletin 2013–08, Fair Debt Collection Practices Act and the Dodd-Frank Act (July 10, 2013), *https://files.consumerfinance.gov/f/201307_cfpb_bulletin_collections-consumer-credit.pdf.*

[487] Some commenters requested that the Bureau restrict debt collectors from sending private direct messages to consumers on social media platforms. Those comments are discussed in the section-by-section analysis of § 1006.22(f)(4).

[488] 15 U.S.C. 1692e(11). Proposed § 1006.18(e)(1) addressed initial communications, proposed § 1006.18(e)(2) addressed subsequent communications, and proposed § 1006.18(e)(3) provided an exception for legal pleadings.

Proposed comment 18(e)(1)–1 described the circumstances in which debt collectors would be required to provide disclosures in initial communications under proposed § 1008.18(e)(1). Proposed comment 18(e)(1)–1 specified that a debt collector must provide the disclosures in the debt collector's initial communication with the consumer, regardless of whether that initial communication is written or oral, and regardless of whether the debt collector or the consumer initiated the communication. Proposed comment 18(e)(1)–1 also provided an example of the rule regarding required disclosures during initial communications. Proposed comment 18(e)–1 provided general commentary to explain how the disclosure requirements in proposed § 1006.18(e) would interact with the proposal's limited-content message, a message that was not a communication under proposed § 1006.2(d).

For the reasons discussed below, the Bureau is finalizing § 1006.18(e) largely as proposed, with minor changes for clarity, and is adopting new § 1006.18(e)(4) regarding translated disclosures.

The Bureau received a few comments on the proposed implementation of the mini-*Miranda* disclosure requirement. A trade group commenter asked the Bureau to allow debt collectors to modify the mini-*Miranda* disclosure in the bankruptcy context to remove the reference to the collection of a debt and to the use of any information for debt collection purposes. This commenter stated that such language could be construed as an attempt to collect the debt in violation of the automatic stay provisions of the bankruptcy code. The Bureau declines to adopt a specialized bankruptcy version of the mini-*Miranda* disclosure. Removing a reference to the collection of a debt and to the use of any information for debt collection purposes would functionally eliminate the mini-*Miranda* that Congress required debt collectors to provide in FDCPA section 807(11).

One industry commenter asked the Bureau to clarify that caller ID that reveals a debt collector's business name does not constitute the initial communication with a consumer under § 1006.18(e)(1). The Bureau believes that disclosure of a debt collector's business name does not automatically convey information regarding a debt such that a communication, as defined in final § 1006.2(d), has occurred. As discussed in the section-by-section analysis of final § 1006.2(j), the final rule defines a message, the limited-content message, that includes a business name for the debt collector that does not indicate that the debt collector is in the debt collection business, but is not a communication. The Bureau does not determine, however, that caller ID can never constitute a communication because caller ID systems might convey information regarding a debt.

This commenter also asked the Bureau to clarify which communications in a series of email or text messages are the ''subsequent communications'' for purposes of § 1006.18(e)(2), such that a debt collector must again disclose that the communication is from a debt collector. The Bureau currently lacks information showing that the meaning of subsequent communication in FDCPA section 807(11) is a source of serious harm to consumers or burden to debt collectors. Moreover, the Bureau believes that a highly prescriptive approach that attempts to define when the ''initial'' communication ends and a ''subsequent'' communication begins for all communication media would be too rigid to accommodate the various forms that communications between debt collectors and consumers might take. On one hand, communications that occur in different media, such as an email message followed by a text message, or communications that have no inherent connection between them, such as two letters, seem to be exactly the kind of ''subsequent communications'' where a new disclosure would further the purposes of the FDCPA section 807(11) and final § 1006.18(e)(2). On the other hand, some communications, such as a webchat session, may be closer to individual telephone calls where new disclosures throughout the conversation would likely be unnecessary.[489] Other communications exist between these examples and might allow for several reasonable interpretations of when a subsequent communication occurs. Given the diversity of communications and the Bureau's lack of information, the Bureau is finalizing § 1006.18(e)(2) as proposed.

Consumer advocates urged the Bureau to require the mini-*Miranda* disclosure for any voicemail message that deviates from the content required or permitted in a limited-content message, as defined in § 1006.2(j). The Bureau declines to adopt such a requirement. As explained in the section-by-section analysis of final § 1006.2(j), the limited-content message identifies a voicemail message that debt collectors can leave for consumers without conveying information about a debt—and therefore communicating—under the final rule. Final § 1006.2(j) does not attempt to define the exclusive means by which debt collectors would not convey information about a debt. Requiring the mini-*Miranda* disclosure in every voicemail other than a limited-content message would conflict with the FDCPA's definition of communication by treating all such messages as communications even if they do not convey information regarding a debt to any person.

Several commenters addressed language access requirements. Most of these comments addressed non-English language translations of the validation notice in proposed § 1006.34. These comments included recommendations that the Bureau include a non-English language mini-*Miranda* disclosure on the validation notice. As discussed in the section-by-section analysis of § 1006.34, the Bureau intends to finalize certain provisions of the proposal in a disclosure-focused final rule addressing the validation notice and will respond to commenters' suggestions regarding accessibility of the mini-*Miranda* disclosures on the validation notice as part of that rulemaking. However, the Bureau is adopting a requirement that debt collectors make the disclosures required by § 1006.18(e)(1) and (2) in the same language or languages used for the rest of the communication in which the disclosures are conveyed.

Consumers who are unable to communicate in English would benefit from receiving translated versions of the mini-*Miranda* disclosure. At the same time, however, the Bureau determines that requiring debt collectors to identify such consumers and provide accurate translations in the myriad languages that consumers speak may impose a significant burden on debt collectors. If a debt collector chooses to communicate with a consumer in a non-English language, however, this burden is reduced. Such a debt collector will have already identified the consumer's language preference and exhibited a willingness to communicate in that language. In those circumstances, requiring a debt collector who communicates in a non-English language to provide the disclosures in that language would decrease the risk of deception and help ensure that the disclosures are effective for more consumers. Accordingly, final § 1006.18(e)(4) provides that a debt

[489] Comment 6(b)(1)–2 states that, if a consumer initiates a communication with a debt collector at a time or from a place that the consumer previously designated as inconvenient, the debt collector may respond once at that time or place through the same medium of communication used by the consumer. Depending on the circumstances, such a reply by a debt collector may not constitute a subsequent communication and therefore new disclosures would be unnecessary.

collector must make the disclosures required by § 1006.18(e)(1) and (2) in the same language or languages used for the rest of the communication in which the debt collector conveyed the disclosures.

Finally, the Bureau requested comment on whether additional clarification regarding false or misleading representations would be helpful in the decedent debt context, or whether to require any affirmative disclosures when debt collectors communicate in connection with the collection of a debt owed by a deceased consumer. Although the Bureau did not propose specific rules regarding deception in the decedent debt context, the Bureau noted that the FTC expressed concern in its Policy Statement on Decedent Debt that, even absent explicit misrepresentations, a debt collector might violate FDCPA section 807 by communicating with such individuals in a manner that conveys the misleading impression that the individual is personally liable for the deceased consumer's debts, or that the debt collector could seek assets outside of the deceased consumer's estate to satisfy the consumer's debt. The FTC's Policy Statement suggested two possible disclosures that debt collectors generally could use to avoid deceiving individuals who are attempting to resolve the financial affairs of an estate about their liability for the decedent's debts.[490]

Several commenters addressed these issues. Two consumer advocates urged the Bureau to require affirmative disclosures of non-liability. Several industry commenters noted that they affirmatively disclose non-liability and recommended that the Bureau adopt similar disclosures. One trade group commenter supported the creation of safe harbor language that debt collectors could use to avoid deceiving consumers. Another trade group commenter requested certain exceptions from any required disclosure, such as for communications with attorneys.

The Bureau declines to adopt any additional clarifications or affirmative disclosures. The need for required disclosures is diminished by the lack of evidence of deception regarding decedent debt, as noted in the proposal, and by the widespread debt collector practice of disclosing non-liability, as noted by commenters. Moreover, as the FTC explained, the information debt collectors would need to disclose to avoid deception depends on the circumstances. Indeed, even in the abstract, commenters suggested slightly different disclosures, with two commenters supporting the FTC's disclosures and several others offering their own alternative language. Accordingly, the Bureau declines to require in the final rule affirmative disclosures in the decedent debt context.

For the reasons discussed above and pursuant to its authority to implement and interpret FDCPA section 807(11), the Bureau is finalizing § 1006.18(e) largely as proposed, with minor revisions for clarity, and is adopting new § 1006.18(e)(4) regarding translated disclosures. Final § 1006.18(e)(4) provides that a debt collector must make the disclosures required by § 1006.18(e) in the same language or languages used for the rest of the communication in which the disclosures are conveyed. Any translation of the disclosures must be complete and accurate. The Bureau is also adopting new comment 18(e)(4)–1, which provides an illustrative example.

18(f) Assumed Names

Proposed § 1006.18(f) stated that nothing in § 1006.18 prohibits a debt collector's employee from using an assumed name when communicating or attempting to communicate with a person, provided that the employee uses the assumed name consistently and that the employer can readily identify the employee even if the employee is using the assumed name. For the reasons discussed below, the Bureau is finalizing § 1006.18(f) as proposed, with additional clarifying commentary.

As the Bureau explained in the proposal, debt collectors may instruct or permit their employees to use assumed names when interacting with consumers for a variety of reasons. For example, some employees may have privacy or safety concerns about revealing their true name and employer to a potentially large number of consumers or to particular consumers. As the Bureau explained, from a consumer's perspective, it may not be relevant whether employees use true names or assumed names, provided that the name used does not mislead the consumer about the debt at issue and who is attempting to collect it. The Bureau also noted that the FTC previously issued guidance stating that a debt collector's employee does not violate the FDCPA by using an assumed name if the employee uses the assumed name consistently and the debt collector can readily ascertain the employee's identity.

The Bureau requested comment on the use of assumed names by debt collectors' employees in general, as well as on whether and how employers can readily identify their employees who are using assumed names. One industry commenter supported the proposal because the use of assumed names would help ensure the safety of the commenter's employees. A trade group commenter asked whether proposed § 1006.18(f) would require an assumed name to be linked to a specific individual, or if it could be used in other ways, such as by linking certain assumed names to certain letters mailed to consumers.

Consumer advocates opposed the use of assumed names by debt collectors' employees. These commenters argued that assumed names are inconsistent with FDCPA section 806(6)'s prohibition on the placement of telephone calls without meaningful disclosure of the caller's identity. These commenters further argued that permitting assumed names would enable debt collectors to escape accountability for abusing consumers by concealing their identities. If the Bureau were to allow assumed names, these commenters stated that the Bureau must develop a Federal database of aliases, with one alias per employee and no duplicate aliases within the same company, among other requirements, so that consumers could look up the names of any debt collector's employees.

The Bureau is finalizing § 1006.18(f) as proposed with additional clarifying commentary. As explained in the proposal, debt collectors' employees may use assumed names for many legitimate reasons, including for safety and efficiency, and the Bureau does not conclude that assumed names are inherently deceptive. The use of assumed names is consistent with accountability for debt collectors, as long as the debt collector can connect any assumed name to an employee's real identity. The Bureau's creation of a register of assumed names used by debt collectors' employees is outside the scope of this rule, and the Bureau does not believe that such a requirement is necessary or warranted.

In response to a trade group commenter's question about whether an assumed name must be linked to a specific employee, the Bureau finds that any system of managing assumed names must ensure that the employee uses the assumed name consistently and that the employer can readily identify the employee even if the employee is using the assumed name. The Bureau is

[490] FTC Policy Statement on Decedent Debt, *supra* note 157, at 44922. The FTC's suggested disclosures were: ''(1) That the debt collector is seeking payment from the assets in the decedent's estate; and (2) [that] the individual could not be required to use the individual's assets or assets the individual owned jointly with the decedent to pay the decedent's debt.'' *Id.*

adding comment 18(f)–1 to clarify that one way of doing so is for an employer to require an employee to use the same assumed name when communicating or attempting to communicate with any person, and to prohibit any other employee from using the same assumed name. But the Bureau does not believe a one-to-one link is the only way for an employer to comply with the final rule. The Bureau anticipates, however, that a debt collector who permits many employees to use the same assumed name, *e.g.,* for a specific letter campaign, would be unable to readily identify any employee communicating or attempting to communicate with any person.

For the reasons discussed above, the Bureau is finalizing § 1006.18(f) largely as proposed. Final § 1006.18(f) provides that § 1006.18 does not prohibit a debt collector's employee from using an assumed name when communicating or attempting to communicate with a person, provided that the employee uses the assumed name consistently and that the debt collector can readily identify any employee using an assumed name. New comment 18(f)–1 clarifies that a debt collector may use any method of managing assumed names that enables the debt collector to determine the true identity of any employee using an assumed name. For example, a debt collector may require an employee to use the same assumed name when communicating or attempting to communicate with any person and may prohibit any other employee from using the same assumed name.

Proposed Provision Not Finalized

FDCPA section 807 contains certain provisions designed to protect consumers from false, deceptive, or misleading representations made by, or means employed by, attorneys in debt collection litigation. FDCPA section 807(3) prohibits the false representation or implication that any individual is an attorney or that any communication is from an attorney. In addition, debt collection communications sent under an attorney's name may violate FDCPA section 807(10) if the attorney was not meaningfully involved in the preparation of the communication.[491] The meaningful attorney involvement case law also has been applied in the specific context of debt collection litigation submissions.[492]

Proposed § 1006.18(g) would have provided a safe harbor for attorneys and law firms against claims asserting lack of meaningful attorney involvement in debt collection litigation materials signed by the attorney and submitted to the court, provided that the attorneys met the requirements in proposed § 1006.18(g). Proposed § 1006.18(g) provided that an attorney has been meaningfully involved in the preparation of debt collection litigation submissions if the attorney: (1) Drafts or reviews the pleading, written motion, or other paper; and (2) personally reviews information supporting the submission and determines, to the best of the attorney's knowledge, information, and belief, that, as applicable: The claims, defenses, and other legal contentions are warranted by existing law; the factual contentions have evidentiary support; and the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or lack of information.

The Bureau received a large number of comments on the proposed meaningful attorney involvement safe harbor from a variety of commenters, almost all of whom opposed the proposal. As discussed below, the Bureau has decided after considering the comments not to finalize the proposed provision regarding meaningful attorney involvement.

While some debt collectors supported proposed § 1006.18(g), other industry commenters—particularly debt collection attorneys and associations thereof—opposed it. These commenters stated that the meaningful attorney involvement case law discussed above is misguided because FDCPA section 807(3) prohibits only the false representation that any communication is from an attorney and, therefore, any communication that is, in fact, from an attorney does not run afoul of that section. These commenters also stated that the FDCPA does not authorize the Bureau to adopt the meaningful attorney involvement standard through rulemaking, because the standard is not found in the FDCPA and is found only in case law.[493] These commenters also stated that the proposed standard would improperly infringe on the practice of law, which, they said, has historically been regulated by the judicial branch and State governments and would undermine the attorney-client privilege and work-product doctrines. A member of Congress also opposed the proposed meaningful attorney involvement standard on these grounds. Finally, debt collection attorneys stated that the proposed standard would not provide clarity but would instead lead to litigation, which would necessarily result in sharing confidential attorney work product. A few of these commenters stated that they had considered alternatives to the Bureau's proposal and found that none of them were workable.

Consumer advocates stated that the proposed meaningful attorney involvement standard was too lenient and would sanction debt collection attorney practices that these commenters believe to be problematic. The commenters expressed the opinion that the proposed standard was more lenient than some meaningful attorney involvement standards set forth in the Bureau's past enforcement work, State enforcement work, and State laws. Some United States Senators also opposed the proposed meaningful attorney involvement standard for these reasons. Consumer advocates additionally stated that the Bureau did not describe a safe harbor for meaningful attorney involvement in its SBREFA Outline and asserted that the proposed provision therefore harmed the integrity of the Bureau's rulemaking process. These commenters recommended that the Bureau propose a meaningful attorney involvement rule, as opposed to safe harbor, incorporating requirements set forth in Bureau enforcement actions.

Having considered all of the comments on the issue that it received, the Bureau declines to finalize the proposed meaningful attorney involvement safe harbor.[494]

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[491] *See, e.g., Nielsen* v. *Dickerson,* 307 F.3d 623, 635 (7th Cir. 2002); *Clomon,* 988 F.2d at 1320. Courts have found violations of other subsections of FDCPA section 807 for similar conduct. *See, e.g., Lesher* v. *Law Offices of Mitchell N. Kay, PC,* 650 F.3d 993, 1002 (3d Cir. 2011); *Avila* v. *Rubin,* 84 F.3d 222, 229 (7th Cir. 1996).

[492] *See Bock* v. *Pressler & Pressler,* 30 F. Supp. 3d 283, 303 (D.N.J. 2014) (''The claimed misrepresentation here does not relate to the ultimate veracity of the numbered factual allegations of the complaint; it concerns the veracity of the implied representation that an attorney was meaningfully involved in the preparation of the complaint. If, in fact, the attorney who signed the complaint is not involved and familiar with the case against the debtor, then the debtor has been unfairly misled and deceived within the meaning of the FDCPA. . . .''), *reaff'd on remand,* 254 F. Supp. 3d 724, 729 (D.N.J. 2017); *Miller* v. *Upton, Cohen & Slamowitz,* 687 F. Supp. 2d 86, 100 (E.D.N.Y. 2009) (applying meaningful involvement liability to, among other actions, filing of complaint in court).

[493] A few of these commenters additionally argued that Dodd-Frank Act section 1027(e)(1) precludes the Bureau from regulating the practice of law by debt collection attorneys.

[494] The Bureau disagrees with commenter assertions that the absence of a meaningful attorney involvement safe harbor from the Bureau's SBREFA Outline represents a shortcoming in the Bureau's rulemaking process. The Bureau thoroughly described the proposed safe harbor and the Bureau's rationale for it in the proposal. The proposed safe harbor therefore raised no concerns from an APA perspective.

As the Bureau noted in the proposal, under existing case law, a debt collection communication sent under an attorney's name may violate FDCPA section 807(10) if the attorney was not meaningfully involved in the preparation of the communication.[495] Further, the meaningful attorney involvement case law has been applied in the specific context of debt collection litigation submissions.[496] The Bureau intended its proposed safe harbor to provide greater clarity for all stakeholders as to the standards law firms and attorneys submitting pleadings, written motions, or other papers to courts in debt collection litigation should meet in order to be in compliance with FDCPA section 807(10). As noted above, however, many industry commenters stated that the proposed safe harbor would not provide the intended clarity, and some of these commenters stated that they had considered various alternatives to the proposed safe harbor and found none to be workable in providing clarity either. And, many consumer advocates felt that the standards proposed were too permissive. Because neither the proposal nor alternatives discussed in comments would provide greater clarity as to the meaning of meaningful attorney involvement, the Bureau has decided not to include a safe harbor in the final rule.

The Bureau anticipates that debt collection attorneys will continue to face lawsuits under this legal theory. As the Bureau described in the proposal, the legal theory underlying these lawsuits is that a debt collection attorney makes an implied false representation, in violation of the prohibition in FDCPA section 807 against misleading representations, when the attorney submits litigation materials without there having been meaningful attorney involvement in the preparation of the materials. As a general matter, the Bureau believes that this legal theory has a valid basis in the text of FDCPA section 807;[497] accordingly, the Bureau expects that the law regarding violations of FDCPA section 807 due to lack of meaningful attorney involvement will continue to evolve case-by-case. The Bureau will monitor these developments and continue to assess whether a future rulemaking in this area to provide clarity and decrease consumer harm would be desirable. In that regard, the Bureau disagrees with commenter assertions that the FDCPA does not authorize the Bureau to adopt a meaningful attorney involvement standard—whether consisting of requirements or a safe harbor or both—through rulemaking.[498] The Bureau believes that the FDCPA provides it with ample authority to adopt a meaningful attorney involvement standard by rule.

Section 1006.22 Unfair or Unconscionable Means

FDCPA section 808 prohibits the use of unfair or unconscionable means in debt collection.[499] The Bureau proposed § 1006.22 to implement FDCPA section 808.[500] Specifically, the Bureau proposed § 1006.22(a) to implement FDCPA section 808's general prohibition against unfairness and § 1006.22(b) through (f)(2) to implement section 808's prohibited conduct examples.[501] These provisions largely restated the statute. The Bureau proposed § 1006.22(f)(3) and (4) to prohibit certain conduct with respect to the use of employer-provided email addresses and social media for debt collection communications and § 1006.22(g) to provide a safe harbor for information contained in certain email messages.

The Bureau did not receive feedback about proposed § 1006.22(a), (c)(2) and (3), (d), or (e). The Bureau therefore does not address them in the section-by-section analysis below and is finalizing them as proposed. After considering feedback, the Bureau is finalizing proposed § 1006.22(b), (c)(1), (f), and (g) as discussed below. Except as otherwise discussed, the Bureau is finalizing § 1006.22 to implement and interpret FDCPA section 808, pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors.

22(b) Collection of Unauthorized Amounts

The Bureau proposed § 1006.22(b) to implement FDCPA section 808(1). The proposed provision generally mirrored the statute, with minor wording and organizational changes for clarity. Specifically, proposed § 1006.22(b) provided that a debt collector ''must not collect any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law,'' where the term any amount includes ''any interest, fee, charge, or expense incidental to the principal obligation.''[502]

One industry commenter expressed concern about litigation risk under § 1006.22(b) in the context of medical collections in which debt collectors are sued due to inadvertent billing errors caused by healthcare providers, or due to failing to identify if a bankruptcy is involved. The commenter advocated for giving debt collectors fifteen days to investigate and resolve disputes before they are sued by consumers, protection from liability based on reliance on information provided by a creditor, and a mechanism by which debt collectors report corrections caused by medical providers to the Bureau.

The Bureau declines to adopt this suggestion. As discussed elsewhere in this Notice, the Bureau appreciates that the complexity of medical collections may result in inadvertent errors. But FDCPA section 808(1) does not contain any pre-litigation dispute resolution or correction-reporting procedures, and the Bureau did not propose such procedures in § 1006.22(b). As such, they are outside the scope of this rulemaking. Accordingly, the Bureau is finalizing § 1006.22(b) as proposed. The Bureau notes that, as discussed elsewhere in this Notice, under FDCPA section 813(c), debt collectors may have a bona fide error defense to civil liability if they can show that a violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Depending on the facts and circumstances of a particular case, this defense might apply in certain scenarios.

22(c) Postdated Payment Instruments

22(c)(1)

The Bureau proposed § 1006.22(c)(1) to implement FDCPA section 808(2), which prohibits debt collectors from accepting from any person a check or other payment instrument postdated by more than five days, unless such person is notified in writing of the debt collector's intent to deposit such check or instrument ''not more than ten nor

[495] *See supra* note 491.

[496] *See supra* note 492.

[497] FDCPA section 807 states that ''[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.''

[498] The Bureau also disagrees with commenter assertions that Dodd-Frank Act section 1027(e)(1) constrains the Bureau's ability to adopt rules regarding meaningful attorney involvement pursuant to its FDCPA authority. *See supra* notes 115 and 116.

[499] 15 U.S.C. 1692f.

[500] 84 FR 23274, 23324–27 (May 21, 2019).

[501] Section 1006.22(b) proposed to implement FDCPA section 808(1), 15 U.S.C. 1692f(1); § 1006.22(c) proposed to implement FDCPA section 808(2) through (4), 15 U.S.C. 1692f(2) through (4); and § 1006.22(d) through (f)(2) proposed to implement FDCPA section 808(5) through (8), 15 U.S.C. 1692f(5) through (8).

[502] 84 FR 23274, 23324, 23403 (May 21, 2019).

less than three business days prior to such deposit.'' Proposed § 1006.22(c)(1) generally mirrored that statute, except that it included the phrase ''days (excluding legal public holidays, Saturdays, and Sundays)'' in lieu of the statutory phrase ''business day.''[503]

In response to proposed § 1006.22(c)(1), one commenter explained that the proposed language would require debt collectors to monitor State holidays, which can vary significantly. The commenter suggested that the language be revised to state ''three days (excluding federally recognized legal public holidays, Saturdays and Sundays).''

The Bureau is finalizing proposed § 1006.22(c)(1) substantially as proposed, with a minor modification in response to this comment. To address potential ambiguity, final § 1006.22(c)(1) contains the phrase ''excluding legal public holidays identified in 5 U.S.C. 6103(a), Saturdays, and Sundays.''

22(f) Restrictions on Use of Certain Media

22(f)(1)

FDCPA section 808(7) prohibits a debt collector from communicating with a consumer regarding a debt by postcard. The Bureau proposed § 1006.22(f)(1) to implement FDCPA section 808(7). The proposed provision generally mirrored the statutory language.[504]

A consumer advocate suggested that the Bureau revise proposed § 1006.22(f)(1) to prohibit not only communications, as defined in § 1006.2(d), but also attempts to communicate, as defined in § 1006.2(b). The commenter observed that, if § 1006.22(f)(1) prohibited only communications, and if the Bureau finalized the definition of limited-content messages as proposed in § 1006.2(j) as only attempts to communicate, then § 1006.22(f)(1) would permit debt collectors to send limited-content messages by postcard. As discussed in the section-by-section analysis of § 1006.2(j), the definition of limited-content message in the final rule is limited to voicemail and cannot contain either the consumer's name or the consumer's address. Under this definition, limited-content messages cannot be sent by postcard. The Bureau accordingly is finalizing § 1006.22(f)(1) as proposed.

22(f)(2)

The Bureau proposed § 1006.22(f)(2) to implement FDCPA section 808(8). The proposed provision generally mirrored the statute. Specifically, as proposed, § 1006.22(f)(2) would have prohibited debt collectors from using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by mail, but would have permitted a debt collector to use the debt collector's business name on an envelope if the name did not indicate that the debt collector was in the debt collection business.[505]

In response to proposed § 1006.22(f)(2), a consumer advocate commenter stated that the Bureau should clarify that the provision prohibits email message ''from'' or ''subject'' lines that indicate that a communication either is about a debt or is from a debt collector. The Bureau declines to prohibit the inclusion of such information in email message ''from'' or ''subject'' lines. Although the Bureau's proposal made a minor change for clarity from the wording of FDCPA section 808(8) by omitting the term ''by telegram,'' the Bureau did not propose to expand the application of FDCPA section 808(8) beyond mail. In addition, the commentary to final § 1006.42 provides that the inclusion of some such information in an email subject line is a factor in determining whether the debt collector has complied with § 1006.42(a)(1)'s requirement to send required disclosures in a manner that is reasonably expected to provide actual notice.

The Bureau is, however, clarifying how § 1006.22(f)(2) applies in the context of mail. In the Seventh Circuit, the Bureau filed an amicus brief arguing that, while there is no benign language exception in FDCPA section 808(8) that would permit debt collectors to include phrases such as ''time sensitive'' on mailed envelopes, the FDCPA permits debt collectors to include language or symbols on an envelope that facilitate making use of mail. Specifically, because FDCPA section 808(8) expressly recognizes that a debt collector may ''communicat[e] with a consumer by use of the mails,'' the FDCPA permits language and symbols that facilitate mailing an envelope.[506] The Seventh Circuit agreed with the Bureau's analysis. In the final rule, the Bureau is adding comment 22(f)(2)–1, which, consistent with the Bureau's amicus brief, clarifies that, for purposes of § 1006.22(f)(2), the phrase ''language or symbol'' does not include language or symbols that facilitate communications by mail, for example: Postage; language such as ''forwarding and address correction requested;'' and the United States Postal Service's Intelligent Mail barcode.

22(f)(3)

The Bureau proposed § 1006.22(f)(3) to provide that a debt collector violates FDCPA section 808's general prohibition against unfairness, as proposed to be implemented in § 1006.22(a), by communicating or attempting to communicate with a consumer using an email address that the debt collector knows or should know is provided to the consumer by the consumer's employer, unless the debt collector received the consumer's prior direct consent to use that email address or the consumer had sent the debt collector an email from that address. The Bureau proposed § 1006.22(f)(3) on the basis that a debt collector who communicates or attempts to communicate by sending an email message to a consumer's employer-provided email address generally would violate FDCPA section 808 because of the likelihood that the consumer's employer could access and read the message and, in turn, that the consumer could suffer reputational or other harm.[507]

The Bureau received many comments regarding proposed § 1006.22(f)(3) from a wide variety of commenters. Many commenters, including several consumers, consumer advocates, a group of State Attorneys General, Federal government agency staff, a local government agency, a commenter from an academic institution, and a number of industry commenters generally supported proposed § 1006.22(f)(3). Some consumer advocates argued, however, that the Bureau should further restrict, or even prohibit, debt collectors' use of employer-provided email addresses.

By contrast, many industry commenters questioned the Bureau's basis for proposed § 1006.22(f)(3), raising concerns that it was overly restrictive in light of the privacy features of email and citing the potential cost of compliance compared to lack of evidence of consumer harm. Some such commenters argued that the Bureau should not include the provision in the final rule. For example, some industry

[503] *Id.*

[504] *Id.*

[505] *Id.*

[506] *See* Brief for Consumer Financial Protection Bureau as Amicus Curiae, *Preston* v. *Midland Credit Mgmt., Inc.,* 948 F.3d 772 (7th Cir. 2020) (No. 1:18–cv–01532), *https://files.consumerfinance.gov/f/documents/cfpb_amicus-brief_preston-v-midland.pdf.*

[507] *See* 84 FR 23274, 23324–26 (May 21, 2019). The proposal used the terms ''work'' and ''non-work'' email addresses. Consistent with other sections of the final rule, final § 1006.22(f)(3) replaces these terms with ''employer-provided'' and ''personal,'' respectively.

commenters argued that employees are well aware that their employer has the right to view emails sent to email addresses within the employer-provided email domain and thus are aware of the risks of being contacted at such addresses. Several industry commenters believed that debt collectors should be permitted to contact consumers at employer-provided email addresses as long as consumers could opt out. Another argued that debt collectors should be permitted to communicate or attempt to communicate using an email address that is not obviously employer provided unless a consumer expressly states a desire not to be contacted at work.[508]

After considering this feedback, the Bureau is finalizing proposed § 1006.22(f)(3) with revisions, as discussed below, because the Bureau concludes that the provision provides important protections for consumers. As discussed in the proposal, employers often have the right to access, and may monitor, email accounts they provide to employees. And the risks of harm to consumers from debt collectors sending messages to an employer-provided email address are particularly high because of the risk of adverse employment consequences, which can cause economic harm and exacerbate a consumer's financial distress, including by making it more difficult to satisfy outstanding financial obligations. The legislative history of the FDCPA indicates an emphasis on preventing such risks to a consumer's employment from debt collection communications. Final § 1006.22(f)(3) provides protections specific to such harms consumers may face with the use of employer-provided email addresses.

Knows-or-Should-Know Standard

Section 1006.22(f)(3) proposed, in relevant part, to prohibit debt collectors from communicating or attempting to communicate with a consumer using an email address that the debt collector knows or should know is provided to the consumer by the consumer's employer. Proposed comment 22(f)(3)–3 described the know or should know standard and set forth three scenarios in which a debt collector would have met it. Proposed comment 22(f)(3)–3 also stated that, absent contrary information, a debt collector would not know (and should not know) that an email address was employer provided if the domain name in the email address was one commonly associated with a provider of personal email addresses (*e.g.,* gmail.com).[509]

Notwithstanding the examples in proposed comment 22(f)(3)–3, a number of commenters, including many industry and some consumer advocate commenters, expressed concern about the ''should know'' standard, stating that, in many cases, debt collectors may be unable to easily or reliably distinguish between employer-provided and personal email addresses. A number of industry commenters, for example, stated that whether an ''.edu'' email address belongs to a student or employee of an educational institution can be ambiguous. Similarly, several consumer advocate commenters questioned whether debt collectors would be able to rely on domain name alone to distinguish personal from employer-provided email addresses because some consumers use free or low-cost email accounts in connection with their employment. Industry commenters explained that there currently are no systems to scrub email addresses to determine whether they are employer provided and that developing and maintaining such systems would cost the industry millions of dollars and entail privacy risks for consumers. Many industry commenters stated that the lack of clarity regarding ''should know'' would impose significant costs on debt collectors and increase litigation risk, and some stated that it would discourage debt collectors from using email altogether, even if email might potentially benefit some consumers.

Industry commenters suggested a number of revisions to proposed § 1006.22(f)(3) to address their concerns regarding the knowledge standard. A variety of industry commenters suggested that the Bureau should include a presumption that email domain names commonly associated with personal accounts (*e.g.,* gmail, hotmail, yahoo, msn, and other similar products) are personal email addresses, unless the debt collector knows or has reason to know that such email addresses are employer provided. Other industry commenters requested that the Bureau limit § 1006.22(f)(3) to situations in which the debt collector knows an email address is employer provided. Other industry commenters asked the Bureau to clarify that debt collectors are not required to impute knowledge that one consumer's email address is employer provided to other consumers who are employees of the same employer. On the other hand, a consumer advocate commenter and a law firm commenter argued that finalizing § 1006.22(f)(3) to include an actual knowledge standard would make it too difficult for consumers to establish a violation.

The Bureau appreciates that, under a ''should know'' standard, debt collectors may have difficulty determining, for example, whether certain email addresses are employer provided and that such uncertainty may cause some debt collectors to refrain from communicating through any email address, even if email might be beneficial and preferable for at least some consumers. As discussed elsewhere in part V, the final rule clarifies the FDCPA's application to electronic communication media and such clarity is intended, in part, to permit those consumers and debt collectors who prefer to use such newer communication technologies to do so while also establishing important consumer protections.

The Bureau also understands concerns raised by consumer advocate commenters about an actual knowledge standard. However, in light of the difficulties identified regarding a ''should know'' standard, and because the Bureau finds that consumers will benefit from a clear prohibition in the final rule against the use of employer-provided email addresses, the Bureau is finalizing § 1006.22(f)(3) to generally prohibit debt collectors from communicating or attempting 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.[510] The standard is consumer-specific; that is, a debt collector does not necessarily know that a consumer's email address is employer provided merely because the domain name for that email address is the same as the domain name for an email address that a different consumer has told the debt collector is employer provided.

Consent and Prior Use Exceptions

Proposed § 1006.22(f)(3) provided that a debt collector could communicate or attempt to communicate with a consumer using an employer-provided email address if the debt collector had received directly from the consumer either prior consent to use that email address or an email from that email address. Proposed comments 22(f)(3)–1 and –2 clarified these exceptions.

[508] As discussed further below, many industry commenters also expressed significant compliance concerns with the ''should know'' aspect of the proposed knowledge standard.

[509] *See* 84 FR 23274, 23325 (May 21, 2019).

[510] The Bureau notes that debt collectors remain subject to the general prohibition on third-party disclosure in § 1006.6(d)(1) and that consumers may set communication limits according to their preferences under §§ 1006.6(b)(1) and 1006.14(h).

Several industry commenters supported the consent provision as proposed, but many requested that debt collectors be able to rely on evidence of consent provided to the creditor, such as an employer-provided email address included in a loan application or an email recently used by a creditor.[511] One industry commenter asked that debt collectors be able to rely on a documented specific request by a consumer to be contacted at an employer-provided email address. Other industry commenters asked the Bureau to clarify how the rule applies if a consumer withdraws consent for the debt collector to use an employer-provided email address after the debt collector has sent an email to that address. Two industry commenters recommended that consumers be required to provide debt collectors an alternative email address if they withdraw their consent to be contacted at their employer-provided address.

Consumer advocate commenters generally argued that the Bureau should limit how a debt collector could obtain a consumer's prior consent. A number of consumer advocate commenters requested that consent be provided in conformity with the requirements of the E–SIGN Act. One consumer advocate commenter requested that the Bureau prohibit debt collectors from soliciting employer-provided email addresses. Another consumer advocate commenter requested that the Bureau narrow the scope of the consent exception by only allowing, in some circumstances, the debt collector to respond by sending a single follow-up email to confirm the consumer's consent.

Regarding industry commenters' suggestion that prior consent cover email addresses the consumer provided to a creditor, the Bureau finds that, as discussed in the section-by-section analysis of § 1006.6(d)(4), consumers might not appreciate the risks of sharing an email address with a creditor at the time of initiating an account relationship, when the prospect of defaulting on a financial obligation is remote. The Bureau also declines to require consumers who are withdrawing their prior consent for debt collectors to use an employer-provided email address to provide an alternative email address to debt collectors. Such a requirement does not have a basis in the FDPCA and is not necessary or warranted for debt collectors to avoid a third-party disclosure violation. As to the request for clarification about what to do if a consumer withdraws consent to communicate using an employer-provided address, the Bureau notes that § 1006.14(h) prohibits debt collectors from using that email address again.[512]

The Bureau finds that it is not necessary to limit the prior consent exception in the ways that consumer advocates suggested in light of other revisions to the final rule addressing consent for and prior use of particular email addresses. As discussed in the section-by-section analysis of § 1006.6(d)(4)(i) and (iii), the procedures described in those sections are tailored to minimize the risk of third-party disclosures, including disclosures to employers. Specifically, § 1006.6(d)(4)(i) outlines procedures based on whether the consumer used the email address to communicate with the debt collector or directly consented to the debt collector's use of the address. These procedures permit the consumer to assess the risk of a third-party disclosure, including to an employer, before deciding whether to communicate by email. Section 1006.6(d)(4)(iii) outlines procedures based on communication by a prior debt collector and limits a debt collector to using email addresses that, among other things, were obtained by a prior debt collector under § 1006.6(d)(4)(i) or (ii).[513]

The Bureau also declines to adopt consumer advocates' recommendation to prohibit debt collectors from soliciting employer-provided email addresses. While the Bureau appreciates the risk that a debt collector could engage in abusive, deceptive, or unfair conduct to obtain a consumer's consent to use an employer-provided email address, a per se prohibition on soliciting a consumer's permission would be overbroad because debt collectors need not engage in such conduct to obtain consumer consent. And, to the extent a debt collector does so, the debt collector will have violated one or more of FDCPA sections 806 through 808 and §§ 1006.14(a), 1006.18(a), and 1006.22(a). For these reasons, the Bureau is finalizing § 1006.22(f)(3) to provide, as proposed, prior consent and consumer use exceptions to the general prohibition. For ease of compliance, however, the Bureau is finalizing the exceptions by replacing them with a cross-reference to § 1006.6(d)(4)(i) and (iii), which, as described above, are generally consistent with the proposed exceptions.

For the reasons discussed above, the Bureau is finalizing § 1006.22(f)(3) to prohibit a debt collector from communicating or attempting 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, unless the email address is one described in § 1006.6(d)(4)(i) or (iii).[514] The Bureau is adopting new comment 22(f)(3)–1 to further clarify that a debt collector who sends an email to an email address described in § 1006.6(d)(4)(i) or (iii) does not violate the prohibition in § 1006.22(f)(3), even if the debt collector knows the email address is employer provided. New comment 22(f)(3)–1 also clarifies that a debt collector who sends an email to an email address described in § 1006.6(d)(4)(ii) complies with § 1006.22(f)(3) because a debt collector who follows § 1006.6(d)(4)(ii) does not, by definition, send an email to an email address that the debt collector knows is provided by a consumer's employer. In effect, therefore, comment 22(f)(3)–1 clarifies that a debt collector who sends an email to an email address described in § 1006.6(d)(4) does not violate § 1006.22(f)(3).

22(f)(4)

The FDCPA does not specifically address newer technologies, including social media. The Bureau proposed to provide that certain communications and communication attempts, when made using social media, represent unfair or unconscionable means to collect a debt in violation of FDCPA section 808, as proposed to be implemented in § 1006.22(a).[515] Specifically, proposed § 1006.22(f)(4) provided that a debt collector must not

[511] The proposal stated that a consumer may consent to receiving emails from a creditor on their work account based on the characteristics of that particular creditor; in contrast, consumers generally have no ability to choose which debt collector attempts to collect their debts. 84 FR 23274, 23326 (May 21, 2019). Some industry commenters disagreed. They stated that most contracts specify that the creditor may hire a third-party debt collector if the consumer fails to uphold the agreement and that, in the commenters' view, the debt collector should therefore be able to use an email address provided by the consumer to the creditor.

[512] The Bureau notes that one commenter asked that debt collectors be able to rely on a documented specific request by a consumer to be contacted at an employer-provided email address. A consumer who specifically requested to be contacted at an employer-provided email address would qualify as prior direct consent under the final rule.

[513] An additional requirement of § 1006.6(d)(4)(iii) is that the consumer did not opt out of the immediately prior debt collector's use of the particular email address. This requirement, when satisfied, suggests that the risk of third-party disclosure is low if the later debt collector uses the email address, even if that debt collector knows the email address is employer provided.

[514] In light of the changes the Bureau is making to § 1006.22(f)(3), proposed comments 22(f)(3)–1 through –3 are no longer necessary, and the Bureau is not finalizing them.

[515] *See* 84 FR 23274, 23326–27 (May 21, 2019).

communicate or attempt to communicate with a consumer in connection with the collection of a debt through a social media platform that is viewable by a person other than the persons described in § 1006.6(d)(1)(i) through (vi) (*i.e.,* the consumer; the consumer's attorney; a consumer reporting agency, if otherwise permitted by law; the creditor; the creditor's attorney; or the debt collector's attorney).[516] Proposed comment 22(f)(4)–1 provided certain clarifications regarding the proposed prohibition. As discussed below, the Bureau is finalizing proposed § 1006.22(f)(4) with revisions in response to feedback and for clarity.

Public-Facing Social Media Communications and Attempts to Communicate

No commenters objected to the general concept of restricting publicly viewable social media communications as an unfair means of debt collection. Several industry commenters supported the proposed concept, as did a Federal government commenter, consumer advocate commenters, and individual consumer commenters.

Some commenters were uncertain whether the proposal would have prohibited communications or attempts to communicate that might be viewable by social media platform providers, given that such providers were persons other than those specified in § 1006.6(d)(1)(i) through (vi). The Bureau clarifies in the final rule that the prohibition applies to communications or attempts to communicate that can be viewed by members of the general public or a person's social media contacts,[517] not to messages that could be accessible in some form by a social media platform provider but that are otherwise not viewable by the general public or a person's social media contacts.[518]

Similarly, one industry commenter believed that the proposal's use of the word ''viewable'' would create compliance risk for messages inadvertently viewed by a third party on a shared device. The Bureau confirms that the prohibition in § 1006.22(f)(4) applies to public-facing communications and attempts to communicate, not to private messages (*i.e.,* social media messages that cannot be viewed by members of the general public or a person's social media contacts) that might be inadvertently accessed by a third party.[519]

One consumer advocate commenter stated that, instead of prohibiting communications or attempts to communicate through a social media platform that is viewable by a person other than the persons described in § 1006.6(d)(1)(i) through (vi), the rule should prohibit social media communications or attempts to communicate that are viewable by anyone other than the consumer as defined in FDCPA section 803(3) (*i.e.,* by anyone other than the person who owes or is alleged to owe the debt). The commenter explained that it was unaware of any social media platform that would allow for communications to be viewable only by the persons described in § 1006.6(d)(1)(i) through (vi) and nobody else. The Bureau agrees that a debt collector's communications or attempts to communicate through a social media platform are unlikely to be limited in that way and is finalizing § 1006.22(f)(4) without that language.

One consumer advocate commenter stated that the scope of proposed § 1006.22(f)(4) should be expanded to include not just public-facing social media communications and communication attempts, but any public-facing electronic communication or attempt to communicate, *e.g.,* comments to a blog post, group text, or chatroom discussions. The Bureau declines to expand the scope of § 1006.22(f)(4) in this way. The Bureau notes that, even if not specifically prohibited by § 1006.22(f)(4), any public-facing communication (whether online or otherwise) may well violate one or more other prohibitions, such as the prohibition against third-party communications in FDCPA section 805(b) (as implemented by § 1006.6(d)(1)); the prohibition against harassing, oppressive, or abusive conduct in FDCPA section 806 (as implemented by § 1006.14(a)); and the prohibition against unfair or unconscionable collection means in FDCPA section 808 (as implemented by § 1006.22(a)).

Private Social Media Communications and Attempts To Communicate

Although proposed § 1006.22(f)(4) would not have prohibited private communications or attempts to communicate by social media, most commenters who addressed proposed § 1006.22(f)(4) addressed this topic.

Some industry commenters noted that communicating privately through social media could benefit both consumers and debt collectors, but some also indicated that they do not currently use social media due to data security and privacy concerns.[520] A few commenters noted that consumers do not provide their social media contact information to creditors and therefore do not expect to be contacted through that channel about financial matters, although one industry commenter noted that consumers might post about their collection experiences in a social media forum and companies might monitor social media for such mentions.[521] One group of consumer advocates stated that some consumers might be advantaged by private social media communications. But this commenter, along with many consumer, consumer advocate, government, and other commenters, expressed concerns about such communications, as discussed further below. One member of Congress expressed particular concern regarding private social media debt collection communications about consumers' medical debts, which, this commenter stated, could include consumers' protected health-care information. In light of those concerns, some of these commenters argued that the Bureau should either expand § 1006.22(f)(4) to also ban private social media communications and attempts to communicate or to require debt collectors to obtain prior consent directly from consumers before communicating privately through social media.[522] The Bureau declines to do so for the reasons discussed below.

[516] These individuals are those with whom a debt collector may communicate about a debt, even in the absence of an exception such as prior consent, without violating the FDCPA's prohibition against third-party communications. *See* the section-by-section analysis of § 1006.6(d)(1).

[517] In this way, § 1006.22(f)(4) is similar to other provisions of the FDCPA and Regulation F that focus on protecting consumers from public disclosure of information regarding their debts. *See* FDCPA sections 806(3) (§ 1006.14(e)) and 808(7) and (8) (§ 1006.22(f)(1) and (2)).

[518] For further discussion of electronic communications and access by providers, see the section-by-section analysis of § 1006.6(d)(4)(ii)(E).

[519] Other commenters argued that the Bureau should prohibit private social media messages because of the risks involved in sending such messages, including the risk that they might be inadvertently accessed by third parties. Those comments are discussed in the section-by-section analysis below regarding private social media communications and attempts to communicate.

[520] A few industry commenters noted the possibility of inbound private social media messages from consumers. In response to a request for clarification, the Bureau notes that nothing in the FDCPA or the final rule requires a debt collector to communicate using a social media platform merely because a consumer sends the debt collector a message using that platform.

[521] The Bureau notes that debt collectors can respond to such posts privately, as discussed below, and that the prohibition in § 1006.22(f)(4) applies only to communications and attempts to communicate in connection with the collection of a debt.

[522] Many commenters in support of a prior consent requirement recommended that consent be

Continued

One common area of concern among commenters regarding private social media messages was the risk of third-party disclosures, which commenters observed could occur if, for example, debt collectors accidentally sent messages to the wrong person (*e.g.,* to a person with a similar name as the consumer) or if social media platform providers accessed private communications for advertising or other purposes. As to sending messages to the wrong person, debt collectors remain subject to § 1006.6(d)(1) when communicating through social media and, accordingly, should exercise caution to avoid violating FDCPA section 805(b) and § 1006.6(d) by communicating with the wrong consumer.[523] For example, a debt collector would violate FDCPA section 805(b) and § 1006.6(d) if, as suggested in one hypothetical, the debt collector communicated by private social media message with the wrong person because the debt collector merely identified a person with the same or similar name as the consumer.[524] As to social media platform providers accessing private communications, the Bureau discusses this concern in § 1006.6(d)(4)(ii)(E). Accordingly, the Bureau declines to prohibit private social media communications and attempts to communicate.

Other commenters expressed concern about consumers' ability to communicate effectively about a debt over social media. Several consumer advocates explained that some consumers would inadvertently miss important information, such as the validation notice, if it were sent using social media, due to difficulty accessing information online or managing a high number of electronic communications. The Bureau notes that, as discussed in the section-by-section analysis of § 1006.42, it is finalizing standards that a debt collector must meet to send required disclosures electronically, including that the disclosure must be sent in a manner that is reasonably expected to provide actual notice to the consumer, and, with respect to the validation notice that is not the initial communication, that the disclosure be sent in accordance with section 101(c) of the E–SIGN Act. The Bureau notes that communications over social media may be less likely to reach consumers and therefore, under the final rule, debt collectors may be less likely to meet these standards by sending validation notices to consumers through private social media messages.

Some commenters worried about the potential for deception from private social media messages. Consumer commenters expressed concern that consumers would have difficulty verifying the identity of a debt collector over social media. Relatedly, a group of State Attorneys General, a Federal government commenter, and a member of Congress identified risks from potentially deceptive acts or practices, such as ''friending'' someone in connection with the collection of the debt in a way that omits material information about the debt collector's identity and motives. One member of Congress expressed particular concern regarding this conduct in connection with collection of medical debts. In response to commenters' concerns, the Bureau notes that the specific conduct described above likely would violate FDCPA section 807 and final § 1006.18's prohibition against false or deceptive representations, as discussed in the section-by-section analysis of § 1006.18(d).

Some commenters observed that consumers might find private social media communications from debt collectors unwelcome or harassing, particularly because consumers do not provide social media contact information to creditors and generally are not accustomed to being contacted about financial matters in this way. While the Bureau recognizes this concern, the Bureau also notes that private messages are subject to all of the provisions of the FDCPA and the final rule, including all of the provisions designed to empower consumers to communicate with debt collectors in the manner that they prefer (*i.e.,* the time and place restrictions in FDCPA section 805(a) and § 1006.6(b)(1),[525] the opt-out instructions for electronic communications in § 1006.6(e), and the limitations on use of certain communications media in § 1006.14(h)). They also are subject to the FDCPA's general prohibitions against unfair, deceptive, and abusive conduct in sections 806 through 808 (final §§ 1006.14, 1006.18, and 1006.22).[526]

Some consumer advocates recommended that consumers be able to opt out of private social media messages, among other types of electronic communications, such as by allowing consumers to reply simply with ''stop.'' Others suggested that consumers should be allowed to opt out of all social media platforms because opting out of individual platforms would be burdensome. The Bureau notes that, under the final rule, debt collectors will be required to include, in any private social media message, a reasonable and simple method by which the consumer can opt out of receiving further messages. Consumers also will have the option to opt out of all social media communications, or communications through a particular platform.[527]

Coverage

As proposed, § 1006.22(f)(4) would have applied only to communications or attempts to communicate with a consumer, as defined in FDCPA section 803(3) and proposed § 1006.2(e) (*i.e.,* the person obligated or allegedly obligated to pay the debt). A consumer advocate commenter stated that the Bureau should broaden § 1006.22(f)(4) to apply to consumers as defined in FDCPA section 805(d) and proposed § 1006.6(a) (*i.e.,* to the person obligated or allegedly obligated to pay the debt and that person's spouse, parent (if the person is a minor), or guardian, or the executor or administrator of the person's estate), as well as to deceased consumers. The commenter explained that debt collectors should not be able to post

express and provided directly to the debt collector or conform with the E–SIGN Act's consumer consent provisions. *See* 15 U.S.C. 7001(c)(1).

[523] For the reasons discussed in the section-by-section analysis of § 1006.6(d)(3), although the Bureau is outlining procedures that, when followed, may provide a debt collector a safe harbor from civil liability for a third-party disclosure when sending emails and text messages, the Bureau is not outlining such procedures for sending private social media messages.

[524] Commenters also expressed concern that third-party disclosures of private social media messages might occur as the result of identity theft or a data breach; inadvertently (*e.g.,* if the consumer shares a device with another person); or if consumers give permission to a third party. The Bureau notes that these types of risks are present in any type of electronic debt collection communication and that debt collectors must take care not to violate the general prohibition against third-party disclosures in FDCPA section 805(b) (§ 1006.6(d)(1)).

[525] One industry commenter requested that the Bureau clarify whether private messages on social media platforms would be subject to time and place restrictions under the FDCPA; the Bureau clarifies that they would be. Section 1006.6, and specifically final comments 6(b)(1)–1 and –2 and 6(b)(1)(i)–1, provide guidance about how the time and place restrictions apply in the case of electronic communications, which include private social media messages.

[526] Several groups of consumer advocate commenters argued that private social media messages should be subject to a frequency limit like the one the Bureau proposed in § 1006.14 with respect to telephone calls. For the reasons discussed in the section-by-section analysis of § 1006.14, electronic communications, including private social media messages, are not subject to the telephone call frequencies in final § 1006.14(b). However, as noted, they are subject to the general prohibition in FDCPA section 806 and final § 1006.14(a) against conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. *See* the section-by-section analysis of § 1006.14(a) and (b).

[527] *See* the section-by-section analyses of §§ 1006.6(e) and 1006.14(h), respectively.

publicly about a deceased consumer's alleged debt on the person's social media account because a debt collector's only reason for doing so would be to pressure surviving relatives to pay the debt, either to protect the deceased consumer's reputation or out of a sense of moral obligation. Other commenters raised concerns about debt collectors contacting persons other than consumers, such as family members, by social media and as discussed above, many commenters supported a broad ban on public-facing social media communications.

The Bureau is finalizing § 1006.22(f)(4) with revisions to the scope of coverage. Specifically, final § 1006.22(f)(4) prohibits a debt collector from communicating or attempting to communicate with a person, in connection with the collection of a debt, through a social media platform if the communication or attempt to communicate is viewable by the general public or the person's social media contacts. The definition of person includes a consumer. FDCPA section 803(3) defines a consumer as any natural person obligated or allegedly obligated to pay any debt. As noted in the section-by-section analysis of § 1006.2(e), the Bureau received a number of comments regarding its proposal to interpret the term consumer to include deceased natural persons. The Bureau plans to address comments received regarding that interpretation, and to determine whether to finalize that interpretation, as part of the Bureau's disclosure-focused final rule.

For the reasons discussed above, the Bureau is finalizing § 1006.22(f)(4) to provide that a debt collector must not communicate or attempt to communicate with a person in connection with the collection of a debt through a social media platform if the communication or attempt to communicate is viewable by the general public or the person's social media contacts.[528] The Bureau is finalizing proposed comment 22(f)(4)–1 with revisions to conform to the text of the final rule.[529]

22(g) Safe Harbor

Proposed § 1006.22(g) provided that a debt collector who communicates with a consumer using an email address, or telephone number for text messages, and follows the procedures described in § 1006.6(d)(3) does not violate § 1006.22(a) by revealing in the email or text message the debt collector's name or other information indicating that the communication relates to the collection of a debt. The procedures in proposed § 1006.6(d)(3) were designed to ensure that a debt collector who uses a particular email address or telephone number to communicate with a consumer by email or text message does not have a reason to anticipate that an unauthorized third-party disclosure may occur. As the Bureau explained in the proposal, if the proposed procedures work as designed, there would not be a reason to anticipate that a third party would see the debt collector's name or other debt-collection-related information included in a communication sent to such an email address or telephone number. Some consumer advocate commenters stated that the Bureau should not finalize the proposed safe harbor for emails and text messages in § 1006.22(g) because the commenter believed the procedures in proposed § 1006.6(d)(3) were inadequate.[530]

The Bureau is finalizing § 1006.22(g) substantially as proposed. For the reasons discussed in the section-by-section analysis of § 1006.6(d)(3) through (5), the Bureau believes the safe harbor procedures at § 1006.6(d)(3) will provide appropriate consumer protections and that debt collectors using those procedures would not have reason to anticipate a third-party disclosure would occur. If a debt collector is using those procedures, the Bureau concludes that a safe harbor for § 1006.22(a) is necessary and warranted. Accordingly, the Bureau is finalizing § 1006.22(g) substantially as proposed, with technical revisions for clarity.

Section 1006.26 Collection of Time-Barred Debts

Proposed § 1006.26(a) and (b) would have defined the terms statute of limitations and time-barred debt and would have interpreted FDCPA section 807 to prohibit debt collectors from suing and threatening to sue consumers to collect time-barred debts.[531] In addition, proposed § 1006.26(c), as set forth in the Bureau's February 2020 proposal,[532] would have required a debt collector collecting a debt that the debt collector knows or should know is time barred to disclose: (1) That the law limits how long the consumer can be sued for a debt and that, because of the age of the debt, the debt collector will not sue the consumer to collect it; and (2) if the debt collector's right to bring a legal action against the consumer to collect the debt can be revived under applicable law, the fact that revival can occur and the circumstances in which it can occur. The February 2020 proposal also included model language and forms that debt collectors could use to comply with the proposed time-barred debt and revival disclosures.

The Bureau is not finalizing proposed § 1006.26 at this time. As noted in part III, the comment period for the February 2020 proposal closed on August 4, 2020, and the Bureau is now completing its review and evaluation of all comments received regarding proposed § 1006.26. As discussed in the section-by-section analysis of § 1006.34, the Bureau intends to issue a disclosure-focused final rule to address the Bureau's proposed validation notice, and the Bureau intends to address § 1006.26 at that time, as well. For this reason, the Bureau is reserving § 1006.26.

Section 1006.30 Other Prohibited Practices

The Bureau proposed in § 1006.30 several measures designed to protect consumers from certain harmful debt collection practices. Specifically, the Bureau proposed in § 1006.30(a) to regulate debt collectors' furnishing practices under certain circumstances; in § 1006.30(b) to limit the transfer of certain debts; and in § 1006.30(c), (d), and (e) to generally restate statutory provisions regarding allocation of payments, venue, and the furnishing of certain deceptive forms, respectively. The Bureau received no comments specifically addressing proposed § 1006.30(e) regarding the furnishing of deceptive forms and is finalizing it as

[528] As proposed, § 1006.22(f)(4) provided, in relevant part, that a debt collector must not communicate or attempt to communicate ''by a social media platform that is viewable'' by the public. The Bureau is finalizing § 1006.22(f)(4) to provide, in relevant part, that a debt collector must not communicate or attempt to communicate ''through a social media platform if the communication or attempt to communicate is viewable'' by the general public, to clarify that the relevant question is whether the communication or attempt to communicate is viewable, not whether the platform itself is viewable.

[529] Among other conforming changes, final comment 22(f)(4)–1 omits references to limited-content messages. As discussed in the section-by-section analysis of § 1006.2(j), final § 1006.2(j) defines a limited-content message to mean a voicemail message for a consumer. Accordingly, under the final rule, it will not be possible for debt collectors to leave limited-content messages using social media. In light of this change, the Bureau does not further address comments received regarding the use of limited-content messages in publicly viewable social media messages.

[530] A few industry commenters stated that the safe harbor in proposed § 1006.22(g) should be expanded to include voicemails. As to voicemails, final § 1006.2(j) defines a limited-content message that debt collectors can leave for consumers without communicating under the FDCPA.

[531] 84 FR 23274, 23327–29 (May 21, 2019).

[532] The Bureau proposed the time-barred debt disclosures in the February 2020 proposal. 85 FR 12672 (Feb. 21, 2020).

proposed.[533] Accordingly, the Bureau does not address § 1006.30(e) further in the section-by-section analysis below.

30(a) Communication Prior To Furnishing Information

Proposed § 1006.30(a) would have prohibited a debt collector from furnishing to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (FCRA),[534] information regarding a debt before communicating with the consumer about the debt.[535] The Bureau is not finalizing proposed § 1006.30(a) at this time. As discussed in the section-by-section analysis of § 1006.34, the Bureau intends to issue a disclosure-focused final rule to address the Bureau's proposed validation notice, and the Bureau intends to address proposed § 1006.30(a) at that time, as well. For this reason, the Bureau is reserving § 1006.30(a).

30(b) Prohibition on the Sale, Transfer for Consideration, or Placement for Collection of Certain Debts

30(b)(1) In General

The Bureau proposed in § 1006.30(b)(1) to prohibit a debt collector from selling, transferring, or placing for collection a debt if the debt collector knows or should know that the debt has been paid or settled, discharged in bankruptcy, or that an identity theft report has been filed with respect to the debt (''transfer ban'').[536] The Bureau proposed § 1006.30(b)(1) pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors, and pursuant to its authority to interpret FDCPA section 808 regarding unfair or unconscionable debt collection practices. The Bureau proposed to prohibit the sale, transfer, or placement of such debts as unfair under FDCPA section 808 on the basis that, because consumers do not owe or cannot lawfully be subject to collections on alleged debts that have been paid or settled or discharged in bankruptcy, and likely do not owe alleged debts that are subject to identity theft reports, the sale, transfer, or placement of such debts is unfair or unconscionable. The Bureau also proposed § 1006.30(b)(1) pursuant to its authority under section 1031(b) of the Dodd-Frank Act to prescribe rules to identify and prevent unfair acts or practices by Dodd-Frank Act covered persons.

The Bureau received numerous substantive comments addressing the proposed transfer ban. Some industry commenters, including creditors and associations thereof, as well as the U.S. SBA Office of Advocacy, expressed concern about the Bureau's proposed adoption of the transfer ban through reliance on its authority under section 1031(b) of the Dodd-Frank Act in addition to its FDCPA authority. These commenters stated that use of authority under section 1031(b) of the Dodd-Frank Act creates uncertainty and legal risk for creditors without increasing consumer protections because a ban might be imputed to creditors even if they are not FDCPA debt collectors. These commenters urged the Bureau to adopt the transfer ban using only its FDCPA authority. These commenters further commented that, if the Bureau retained the use of its authority under section 1031(b) of the Dodd-Frank Act, the Bureau should take other steps to provide clarity, such as explicitly excluding debt sales by creditors from the transfer ban, adding a safe harbor for sale or transfer of accounts by creditors subject to a repurchase agreement, or permitting creditors to invoke the bona fide error defense in FDCPA section 813(c) in the context of the transfer ban.

Some industry commenters stated that the ''should know'' aspect of the proposed ''knows or should know'' standard is unclear and argued that the rule should reflect a ''knows'' standard, or, if ''should know'' is retained, include safe harbors for certain practices. For example, some of these commenters stated that the rule should provide a safe harbor for the bankruptcy prong of the ban to a debt collector who ''scrubs'' a debt against commercially available databases 30 days before the debt's sale, transfer, or placement to ascertain whether the debt has been discharged in bankruptcy.

Industry commenters also suggested changes to the proposed transfer ban's application to a debt for which an identity theft report has been filed. These commenters asserted that the proposed transfer ban would increase consumers' incentives to make false identity theft claims in order to avoid repaying their debts. These commenters requested that the rule permit a debt collector to investigate a consumer's identity-theft claim—within a prescribed time period of, for example, 30 days—and to sell, transfer, or place the debt if, pursuant to its investigation, the debt collector determines that the claim is not valid. Some of these commenters noted that the FCRA prohibits a person from selling, transferring for consideration, or placing for collection a debt after being notified that a consumer reporting agency identified that debt as having resulted from identity theft. They also noted that the FCRA includes provisions designed to ensure that consumer reporting agencies and furnishers are able to conduct reasonable investigations of consumers' identity-theft claims and to prevent consumers and credit repair companies from abusing the FCRA's identity-theft related consumer protections.

Industry commenters also provided comments seeking other modifications and clarifications to the proposed transfer ban. One industry commenter stated that the ban should apply to disputed debts if the debt collector does not have access to original account-level documentation; other industry commenters said that the ban should not encompass any additional debt types beyond those set forth in the proposal. Finally, one industry commenter stated that the Bureau should clarify that the transfer ban does not prohibit the return of an assignment, a file of data being sent for analytics, or a file sent for ''scrubbing.'' Instead, commenters argued the transfer ban should apply only when the transferring entity intends the receiving entity to undertake collection activity for receiving payment from the debtor.

Consumer advocates suggested that the Bureau expand the transfer ban's coverage in proposed § 1006.30(b)(1) to encompass several additional types of debt beyond, as proposed, debts that have been paid or settled, discharged in bankruptcy, or that are subject to an identity theft report. They suggested that the ban also prohibit the sale, transfer, or placement of time-barred debt, disputed debt, debt lacking ownership documentation, debt subject to litigation, and debt that has been extinguished pursuant to State law. They also suggested that the Bureau clarify that the proposed ban of the sale, transfer, or placement of ''debt that has been paid or settled'' would apply if a consumer has entered into an uncompleted settlement agreement, as opposed to being limited to a completed repayment agreement. They also suggested that the rule explicitly prohibit the collection of these types of debt (in addition to banning their transfer, placement, or sale). Further, they suggested that, if an identity-theft

[533] The Bureau proposed § 1006.30(e) to implement FDCPA section 812, 15 U.S.C. 1692j. 84 FR 23274, 23333 (May 21, 2019). FDCPA section 812 addresses the furnishing of deceptive forms and applies to any person, not just to debt collectors. As noted in the proposal, § 1006.30(e), like the rest of the rule, applies only to FDCPA debt collectors. FDCPA section 812 continues to prohibit other persons from furnishing deceptive forms. *Id.* at 23286 n.137.

[534] 15 U.S.C. 1681 *et seq.* FCRA section 603(f) is codified at 15 U.S.C. 1681a.

[535] *See* 84 FR 23274, 23329–30 (May 21, 2019).

[536] *See id.* at 23330–32.

report has been filed regarding a debt, the rule should prohibit a debt collector from reporting the debt to a credit reporting agency (in addition to banning its transfer, placement, or sale).

A comment letter from Federal government agency staff did not address expanding the proposed transfer ban to encompass the above-mentioned types of debt but did recommend that the Bureau prohibit the sale, transfer, or placement of debts that are counterfeit or fictitious. This letter also observed that the FCRA currently prohibits a person from selling, transferring, or placing for collection any debt after being notified that the debt resulted from identity theft.

Consumer advocates suggested that the transfer ban in proposed § 1006.30(b)(1) be modified in several additional respects. Some suggested that the rule prohibit the sale, transfer, or placement of debt unless the prior debt collector represents in writing that the debt has not been paid, settled, or otherwise discharged; is not time barred; and whether the debt is subject to a dispute. Some suggested that the rule clarify that a debt collector may not require a consumer to file an identity-theft report with the police or to complete a specific identity-theft report form required by the debt collector for the prohibition to apply. Instead, they said, the rule should require a debt collector to accept from a consumer the FTC identity-theft report form, thereby furthering the FTC's goal of reducing the need for police reports. They also suggested that the rule require debt collectors to perform a search of PACER or of another commercially available database to screen for bankruptcy discharges prior to a debt's sale, transfer, or placement for collection.

Taking into consideration all the comments regarding the proposed transfer ban in § 1006.30(b)(1), the Bureau is finalizing the ban and its commentary with substantial revisions, as follows.

Subject to the exceptions in § 1006.30(b)(2), final § 1006.30(b)(1) prohibits a debt collector from selling, transferring for consideration, or placing for collection a debt if the debt collector knows or should know that the debt has been paid or settled or discharged in bankruptcy. The Bureau is finalizing § 1006.30(b)(1) pursuant solely to its FDCPA authority. The Bureau has determined that the sale, transfer for consideration, or placement for collection of a debt that a debt collector knows or should know has been paid or settled or discharged in bankruptcy constitutes an unfair or unconscionable means to collect or attempt to collect the debt under FDCPA section 808 because consumers do not owe or cannot legally be subject to collections on alleged debts that have been paid or settled or discharged in bankruptcy, and yet the debt collector receives or expects to receive compensation for the sale, transfer, or placement of such debt.[537]

Because the Bureau is finalizing § 1006.30(b)(1) pursuant solely to its FDCPA authority, the Bureau determines it is clear, as the Bureau intended and stated in the proposal, that § 1006.30(b)(1) of the final rule does not apply to creditors, except to the extent the creditor is an FDCPA debt collector. Accordingly, the Bureau concludes it is not necessary or warranted for final § 1006.30(b)(1) to include a safe harbor or other requested clarifications for accounts that creditors sell or transfer as part of a portfolio subject to a repurchase agreement.

As to concerns about the breadth of the ''know or should know'' language, the Bureau notes that the prohibition in § 1006.30(b)(1) is limited to specific account circumstances. These account circumstances will, in general, be within the debt collector's ability to know or obtain the necessary knowledge. For example, whether a debt has been paid or settled is a fact that a debt collector knows or should know because it should be within the debt collector's account management system. Although bankruptcy may not be within the debt collector's own system in the same manner as paid or settled debts, a debt collector should be able to utilize a commercial database or publicly available records to reasonably assess whether a debt has been discharged in bankruptcy.[538] Because of the limited nature of the transfer ban as finalized, the Bureau believes the ''know or should know'' standard is appropriate but will monitor this issue for any potential consumer harm or compliance concerns and revisit at a later time if needed.

The Bureau declines to apply the prohibition in final § 1006.30(b)(1) to debts for which the consumer has reported identity theft. The Bureau believes that transfer of these debts is a consumer protection concern but recognizes that commenters identified several complexities with respect to the Bureau's incorporation of identity-theft-related debt in proposed § 1006.30(b)(1). Moreover, because FCRA section 615(f) prohibits a person from selling, transferring for consideration, or placing for collection a debt after such person has been notified in accordance with the FCRA that the debt resulted from identity theft, the Bureau believes that these consumer protection concerns can be addressed by adding new comment 30(b)(1)–2, which states that nothing in § 1006.30(b)(1) alters a debt collector's obligation to comply with the prohibition set forth in FCRA section 615(f)(1) (15 U.S.C. 1681m(f)(1)).[539]

The Bureau also declines to expand the prohibition in § 1006.30(b)(1) to encompass other types of debt beyond debt that has been paid or settled or discharged in bankruptcy. The Bureau concludes that the transfer of time-barred debt, disputed debt, debt lacking ownership documentation, debt subject to litigation, debt in which the consumer has an uncompleted settlement agreement, or other types of debt suggested by commenters do not present the same unfairness and unconscionability concerns of the same prevalence and magnitude as the debt types to which the prohibition in § 1006.30(b)(1) applies. The prohibition in § 1006.30(b)(1) applies to debts that are extinguished or uncollectible or that consumers do not owe. For the reasons discussed above, the sale, transfer for consideration, or placement for collection of the debts described in § 1006.30(b)(1) is unfair or unconscionable collection activity under FDCPA section 808 because the consumer does not owe or cannot legally be subject to collection of such debt. While the debt types listed above in this paragraph may present consumer protection concerns, and while their collection remains subject to the FDCPA's general prohibitions on harassment or abuse, false or misleading statements, and unfair or unconscionable practices, the Bureau declines to expand the prohibition in § 1006.30(b)(1) to encompass them.

The Bureau declines to finalize a prohibition regarding the sale, transfer for consideration, or placement for collection of debt that a debt collector

[537] The Bureau has not determined in connection with this final rule whether the sale, transfer for consideration, or placement for collection of such debts constitutes an unfair act or practice under section 1031 of the Dodd-Frank Act.

[538] Depending on the circumstances, FDCPA section 813(c)'s defense against civil liability may also apply where a debt collector utilizes a commercial database to reasonably assess whether a debt has been discharged in bankruptcy.

[539] The Bureau considered the comments it received regarding prohibiting a debt collector from reporting an identity-theft debt to a credit reporting agency and from requiring a consumer to use a specific identity-theft report form. 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.

knows or should know has been extinguished pursuant to State law or is counterfeit or fictitious. It clearly is an unfair or unconscionable practice under FDCPA section 808 for a debt collector to sell, transfer for consideration, or place for collection a debt that the debt collector knows or should know has been extinguished pursuant to State law or is counterfeit or fictitious.

As noted above, some commenters stated that the term ''transfer'' should be clarified. The Bureau agrees, and final § 1006.30(b)(1) therefore states that ''a debt collector must not sell, transfer *for consideration,* or place for collection a debt if the debt collector knows or should know. . . .'' (emphasis added). In addition, the Bureau is adopting new comment 30(b)(1)–1 to clarify that a debt collector transfers a debt for consideration if the debt collector receives or expects to receive compensation for the transfer. A debt collector does not transfer a debt for consideration if the debt collector sends information about the debt, as opposed to the debt account itself, to another party. For example, a debt collector does not transfer a debt for consideration if the debt collector sends a file with data about the debt to another person for analytics, ''scrubbing,'' or archiving. A debt collector also does not transfer a debt for consideration if the debt collector reports to a credit reporting agency information that a debt has been paid or settled or discharged in bankruptcy.

30(b)(2) Exceptions

Proposed § 1006.30(b)(2) set forth four narrow exceptions to proposed § 1006.30(b)(1) to accommodate circumstances in which allowing the sale, transfer, or placement of the debts described in proposed § 1006.30(b)(1) for certain bona fide business purposes other than debt collection may not create a significant risk of unfair collections activity. The Bureau proposed in § 1006.30(b)(2)(i) to allow a debt collector to transfer a debt described in proposed § 1006.30(b)(1) to the debt's owner. The Bureau proposed in § 1006.30(b)(2)(ii) through (iv) three additional exceptions that paralleled the FCRA's exceptions to its prohibition on the sale, transfer for consideration, or placement for collection of debt caused by identity theft.[540] Specifically, (1) the Bureau proposed in § 1006.30(b)(2)(ii) to allow a debt collector to transfer a debt described in proposed § 1006.30(b)(1) to a previous owner if the transfer is authorized under the terms of the original contract between the debt collector and the previous owner; (2) proposed in § 1006.30(b)(2)(iii) to permit a debt collector to securitize such debt, or to pledge a portfolio of such debt as collateral in connection with a borrowing; and (3) proposed in § 1006.30(b)(2)(iv) to allow a debt collector to transfer such debt as a result of a merger, acquisition, purchase and assumption transaction, or a transfer of substantially all of the debt collector's assets.

With respect to the exceptions set forth in proposed § 1006.30(b)(2), industry commenters stated that the proposed ban of the sale, transfer, or placement of a debt that has been discharged in bankruptcy should treat secured debt differently. Specifically, these commenters said, if the discharged debt is a secured debt, including but not limited to a residential mortgage, the transfer ban should not impede a creditor's ability to maintain and exercise its security interest in the collateral that secures the discharged debt. Industry commenters suggested several approaches through which the rule might accomplish this objective, such as by including an exemption from the transfer ban for secured claims for residential mortgage loans and other secured debts.

Consumer advocates also suggested changes to the proposed exceptions set forth in § 1006.30(b)(2). Like industry commenters, consumer advocates suggested that the ban be modified with respect to mortgage debt. They observed that, after a bankruptcy discharge, the owner of the loan (or a debt collector acting on the owner's behalf) may nevertheless conduct a foreclosure sale if the borrower defaults on payments due under the loan obligation. Citing 11 U.S.C. 524(j), consumer advocates also observed that the bankruptcy code includes an exception to the discharge order that allows post-discharge debt collection limited to seeking or obtaining periodic payments due under a mortgage when the creditor seeks the payments as an alternative to exercise of its right to foreclose. Consumer advocates suggested including an additional exception under § 1006.30(b)(2) to address these concerns and requested that the additional exception include a requirement that the transferring debt collector identify the debt as one for which the personal liability of the debtor has been discharged in bankruptcy.

In addition, consumer advocates suggested other changes to the proposed exceptions to the transfer ban set forth in § 1006.30(b)(2). These commenters stated that the exception in proposed § 1006.30(b)(2)(iii), for securitizations or pledges as collateral of portfolios of debts, should be eliminated because the debt types in proposed § 1006.30(b)(1) cannot legally be collected and therefore should not be securitized or pledged as collateral. These commenters also stated that the other proposed exceptions (in § 1006.30(b)(2)(i), (ii), and (iv)) should be limited to transfers of debt, because those exceptions do not involve sales or placements for collection. Finally, these commenters stated that, if a debt collector transfers an account to the owner or to a prior owner, per the exceptions in proposed § 1006.30(b)(2)(i) and (ii), the rule should require the transferring collector to clearly disclose the applicable category of debt being transferred (*e.g.,* discharged, paid, or settled debt).

In light of both industry and consumer advocates' comments, the final rule includes a new exception in § 1006.30(b)(2)(ii) for secured debts. The exception states that a debt collector may sell, transfer for consideration, or place for collection a debt that has been discharged in bankruptcy if the debt is secured by an enforceable lien and the debt collector provides notice to the transferee that the consumer's personal liability for the debt was discharged in bankruptcy. The Bureau determines that the notice requirement will help ensure that the transfer of the discharged, secured debt is not an unfair or unconscionable practice because the compensation that the transferring debt collector receives (or expects to receive) for the transfer will not be related to the consumer's personal liability on the debt. In addition, the notice requirement will help ensure that the transferee debt collector does not engage in a deceptive debt collection practice by trying to collect on the debt as a personal liability of the consumer.

With respect to consumer advocates' other suggested changes to the exceptions set forth in proposed § 1006.30(b)(2), the Bureau notes as follows. Proposed § 1006.30(b)(2)(i), (ii), and (iv) were limited to ''transfers'' and did not encompass sale or placement for collection; final § 1006.30(b)(2)(i) includes a revision to clarify this point. The Bureau declines to eliminate the exception in § 1006.30(b)(2)(iii) for securitizations and pledges of debt because the Bureau concludes, as noted in the proposal,[541] that a debt collector who securitizes or pledges a portfolio of debt may be unable to exclude the debts described in § 1006.30(b)(1) from the portfolio. Finally, the Bureau declines to require a debt collector who transfers for

[540] *See* 15 U.S.C. 1681m(f)(3).

[541] 84 FR 23274, 23332 (May 21, 2019).

consideration a debt to the owner or a previous owner (pursuant to the exceptions in § 1006.30(b)(2)(i)(A) and (B)) to disclose the applicable category of debt being transferred (*i.e.,* paid, settled, or discharged debt). The Bureau concludes that such disclosure is not necessary or warranted to avoid an unfair or unconscionable practice.

The Bureau adopts the prohibition set forth in § 1006.30(b)(1) and the exceptions set forth in § 1006.30(b)(2) pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors. As stated above, the Bureau has determined that the sale, transfer for consideration, or placement for collection of a debt that a debt collector knows or should know has been paid or settled or discharged in bankruptcy constitutes an unfair or unconscionable means to collect or attempt to collect the debt under FDCPA section 808. Therefore, pursuant to FDCPA section 814(d), the Bureau prescribes the rules in § 1006.30(b) with respect to that unfair or unconscionable means of collection of debts by debt collectors.

30(c) Multiple Debts

The Bureau proposed § 1006.30(c) to implement FDCPA section 810[542] regarding multiple debts.[543] The proposed provision generally restated the statutory text, with only minor revisions for clarity. Two industry commenters addressed proposed § 1006.30(c) and asked the Bureau to provide an exception to the prohibition that would permit debt collectors to apply, at the consumer's request, a single payment made with respect to multiple debts to a debt that the consumer had disputed. The Bureau is not aware of confusion or concerns regarding this issue and the minor revisions for clarity are not intended to change the meaning of the statute. The Bureau therefore declines to adopt such an exception.

30(d) Legal Actions by Debt Collectors

The Bureau proposed § 1006.30(d) to implement FDCPA section 810[544] regarding legal actions by debt collectors.[545] The proposed provision generally restated the statutory text, with only minor revisions for clarity. The Bureau received a few comments asking the Bureau to clarify whether specific practices related to the filing of legal actions either are unfair or unconscionable or do not violate the prohibition. The Bureau concludes that it is not advisable to finalize such clarifications, which the Bureau did not propose, without the benefit of public notice and comment on the specific clarifications requested. Accordingly, the Bureau is finalizing § 1006.30(d) as proposed.

Section 1006.34 Notice for Validation of Debts

FDCPA section 809(a) generally requires a debt collector to provide certain information to a consumer either at the time that, or shortly after, the debt collector first communicates with the consumer in connection with the collection of a debt. The required information—*i.e.,* the validation information—includes details about the debt and about consumer protections, such as the consumer's rights to dispute the debt and to request information about the original creditor.[546] The Bureau proposed § 1006.34 to require debt collectors to provide certain validation information to consumers and to specify when and how the information must be provided. In addition, the Bureau proposed Model Form B–3 in appendix B as a model validation notice form that debt collectors could use to comply with certain disclosure requirements in proposed § 1006.34.[547]

The Bureau is not finalizing proposed § 1006.34 at this time. The Bureau is completing its review and evaluation of comments regarding proposed § 1006.34, including the form and content of validation information. The Bureau also is conducting additional, qualitative disclosure testing that may be used to further validate proposed Model Form B–3 and to inform statements about the quality of the validation notice in the final rulemaking.[548] For instance, the Bureau seeks insight through the consumer testing into how consumers would interact with the proposed model form, if finalized. The Bureau plans to address comments received regarding proposed § 1006.34 and proposed appendix B as part of the Bureau's disclosure-focused final rule. The Bureau intends to issue a report about the ongoing qualitative testing in connection with that final rule. For these reasons, the Bureau is reserving § 1006.34 and appendix B.

Section 1006.38 Disputes and Requests for Original-Creditor Information

FDCPA section 809(b) requires debt collectors to take certain actions and to refrain from taking certain actions if a consumer either disputes the debt in writing or requests the name and address of the original creditor in writing during the 30-day period after the consumer receives the written notice described in FDCPA section 809(a). In turn, FDCPA section 809(c) states that a consumer's failure to dispute a debt under FDCPA section 809(b) may not be construed by any court as an admission of liability.[549] The Bureau proposed § 1006.38 to implement and interpret FDCPA section 809(b) and (c), pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors.[550] Pursuant to this same authority, the Bureau is finalizing § 1006.38 as discussed below.

Proposed comment 38–1 would have clarified the applicability of § 1006.38 in the decedent debt context. As described in the section-by-section analysis of § 1006.2(e), the Bureau proposed to interpret the term consumer in FDCPA section 803(3) to include deceased consumers. The Bureau proposed that interpretation, in large part, to facilitate the delivery of validation notices under proposed § 1006.34 when the consumer obligated, or allegedly obligated, on the debt has died. The Bureau plans to address comments received regarding that interpretation, as well as whether and how to finalize proposed comment 38–1, as part of the Bureau's disclosure-focused final rule.[551]

The Bureau proposed comment 38–2 to interpret the applicability of the E–SIGN Act as it relates to FDCPA section 809(b)'s writing requirement for consumers' submission of disputes or requests for original-creditor information. Section 101(a)(1) of the E–SIGN Act generally provides that a record relating to a transaction in or affecting interstate or foreign commerce may not be denied legal effect, validity, or enforceability solely because it is in electronic form. However, section 101(b)(2) of the E–SIGN Act (15 U.S.C. 7001(b)(2)) does not require any person to agree to use or accept electronic records or electronic signatures (other than a governmental agency with respect to a record other than a contract

[542] 15 U.S.C. 1692h.

[543] 84 FR 23274, 23333 (May 21, 2019).

[544] 15 U.S.C. 1692i.

[545] 84 FR 23274, 23333 (May 21, 2019).

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

[547] *See* 84 FR 23274, 23333–52 (May 21, 2019).

[548] Dodd-Frank Act section 1032(b)(1) provides that ''any final rule prescribed by the Bureau under this section requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.'' 12 U.S.C. 5532(b)(1). Dodd-Frank Act section 1032(b)(3) provides that any such model form ''shall be validated through consumer testing.'' 12 U.S.C. 5532(b)(3).

[549] 15 U.S.C. 1692g(b)–(c).

[550] 84 FR 23274, 23352–55 (May 21, 2019).

[551] *See* the section-by-section analysis of § 1006.34.

to which it is a party). The Bureau proposed in comment 38–2 that FDCPA section 809(b)'s writing requirement is satisfied when a consumer submits a dispute or request for original-creditor information using a medium of electronic communication through which a debt collector accepts electronic communications from consumers, such as email or a website portal. Thus, under the proposal, a debt collector was required to give legal effect to an electronic consumer dispute or request for original-creditor information only if the debt collector agreed to accept electronic communications from consumers. The Bureau proposed to codify this E–SIGN Act interpretation in proposed comment 38–3.

The comments the Bureau received on comments 38–2 and –3 expressed support. The Bureau finalizes this commentary as proposed, renumbered as comments 38–1 and –2, respectively. E–SIGN Act section 104(b)(1)(A) (15 U.S.C. 7004(b)(1)(A)) authorizes a Federal agency with rulemaking authority under a statute (here, the FDCPA) to interpret by regulation E–SIGN Act section 101 with respect to such statute. Pursuant to E–SIGN Act section 104(b)(1)(A), the Bureau has determined that the final rule as reflected in final comments 38–1 and –2 does not contravene E–SIGN Act section 101(b)(2) (15 U.S.C. 7001(b)(2)) because the comments do not require a debt collector to agree to use or accept consumers' electronic notices of disputes or requests for original-creditor information if the debt collector does not otherwise accept electronic communications from consumers. Further, if a debt collector agrees to accept these notices or requests electronically from consumers, the comments do not prohibit the debt collector from requesting consumers to send these electronic communications through online portals or to email addresses designated by the debt collector.[552]

38(a) Definitions

38(a)(1) Duplicative Dispute

The Bureau is finalizing the definition of duplicative dispute as proposed. The Bureau's reasoning is discussed below under § 1006.38(d)(2)(ii) in this section-by-section analysis.

38(a)(2) Validation Period

The Bureau's proposed definition of validation period in § 1006.38(a)(2) cross-referenced the definition of that term in proposed § 1006.34(b)(5). The Bureau expects to address comments received on proposed § 1006.34(b)(5) as part of its disclosure-focused final rule. Therefore, at the present time, the Bureau is finalizing the definition in § 1006.38(a)(2) with revised wording to refer to the 30-day period described in FDCPA section 809 (rather than the definition in proposed § 1006.34(b)(5)) as defined by Bureau regulation. The Bureau will consider revising the definition of validation period in § 1006.38(a)(2) to cross-reference any such definition of that term that the Bureau adopts in the disclosure-focused final rule.

38(b) Overshadowing of Rights To Dispute or Request Original-Creditor Information

FDCPA section 809(b) provides that, for 30 days after the consumer receives the validation notice information described in FDCPA section 809(a), a debt collector must not engage in collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's right to dispute the debt or request information about the original creditor.[553] The Bureau proposed in § 1006.38(b) to implement this prohibition and generally restate the statute, with only minor changes for style and clarity.

The Bureau received a few substantive comments addressing proposed § 1006.38(b).[554] Two industry commenters requested that the final rule define the term ''overshadowing.'' These commenters observed that debt collectors' communications of validation notice information almost always expressly advise the consumer of the right to dispute the debt and to request the name and address of the original creditor. These commenters asserted that overshadowing claims are nonetheless some of the most common allegations in FDCPA lawsuits. These commenters also requested clarity as to whether the safe harbor in proposed § 1006.34(d)(2) for debt collectors who use proposed Model Form B–3 in proposed appendix B also precludes suits for violations of the overshadowing prohibition in proposed § 1006.38(b). One industry commenter requested that the final rule clarify that credit reporting during the validation period does not constitute overshadowing.

At this time, the Bureau is finalizing proposed § 1006.38(b) as § 1006.38(b)(1) and is reserving § 1006.38(b)(2). As noted above, proposed § 1006.38(b) generally restated the statute, with only minor changes for style and clarity, and final § 1006.38(b)(1) does the same. The Bureau expects to address the comments it received requesting further clarity about the extent of the safe harbor that would be provided by proposed § 1006.34(d)(2) as part of its disclosure-focused final rule. The Bureau is reserving § 1006.38(b)(2) for the purpose of providing any such safe harbor.

38(c) Requests for Original-Creditor Information

FDCPA section 809(b) provides that, if a consumer requests the name and address of the original creditor in writing within 30 days of receiving the validation notice information described in FDCPA section 809(a), the debt collector must cease collection of the debt until the debt collector obtains and mails that information to the consumer. The Bureau proposed in § 1006.38(c) to implement and interpret this requirement. In general, proposed § 1006.38(c) mirrored the statute, with minor changes for style and clarity. To accommodate electronic media through which a debt collector could send original-creditor information under proposed § 1006.42, proposed § 1006.38(c) interpreted FDCPA section 809(b) to require debt collectors to ''provide,'' rather than to ''mail,'' original-creditor information to consumers in a manner consistent with the delivery provisions in proposed § 1006.42.

The Bureau received a number of comments addressing proposed § 1006.38(c).[555] Three industry

[552] The final rule's prohibitions on harassing, deceptive, and unfair practices in §§ 1006.14, 1006.18, and 1006.22 continue to apply such that a debt collector should not ignore a consumer's dispute or request for original-creditor information received through an online portal or to an email address not designated by the debt collector for receiving such disputes or requests.

[553] This language was added to the FDCPA by the Financial Services Regulatory Relief Act of 2006, Public Law 109–351, sec. 802(c), 120 stat. 1966, 2006 (2006), after an FTC advisory opinion on the same subject. *See* Fed. Trade Comm'n, Advisory Opinion to American Collector's Ass'n (Mar. 31, 2000) (opining that the 30-day period set forth in FDCPA section 809(a) ''is a *dispute* period within which the consumer may insist that the debt collector verify the debt, and not a *grace* period within which collection efforts are prohibited'' but that ''[t]he collection agency must ensure, however, that its collection activity does not overshadow and is not inconsistent with the disclosure of the consumer's right to dispute the debt specified by [s]ection 809(a).'').

[554] In addition, one industry representative stated that it generally agrees with proposed § 1006.38, and a group of consumer advocates that addressed proposed § 1006.38(b) did not object to the proposal.

[555] A few of these comments asked the Bureau to define the term original creditor. These commenters' requests are largely related to clarifications for purposes of the notice required by FDCPA section 809(a), so the Bureau will address

commenters requested that the final rule provide that, if a debt collector's communication of the validation notice information to a consumer identifies the original creditor, the debt collector need not give the consumer the option of requesting original-creditor information from the debt collector. These commenters stated that, if the original creditor has already been identified to a consumer, it would be confusing to the consumer to provide the option to request the name and address of the original creditor. Further, they stated, consumers could use unnecessary requests for original-creditor information as a tactic to delay or avoid collection. One industry commenter requested that the final rule clarify that a debt collector is not required to include original-creditor information in its communication of validation notice information to a consumer. This commenter stated that lawsuits are often filed alleging that the FDCPA is violated if the communication does not identify the original creditor.

A group of consumer advocates who addressed proposed § 1006.38(c) generally noted the importance of original-creditor information to consumers in helping them recognize the debt in question. One commenter stated that the rule should require debt collectors to identify the original creditor in the validation notice information.[556]

The Bureau is finalizing § 1006.38(c) generally as proposed.[557] In the final rule, the Bureau has changed the word ''provides'' to ''sends.'' The reason for this change is discussed in the section-by-section analysis of § 1006.42(a)(1).

The Bureau declines to provide that a debt collector's communication of the validation notice information may omit the option to request original-creditor information if the debt collector has already identified the original creditor to the consumer. The FDCPA expressly provides a consumer the right to request original-creditor information from a debt collector. FDCPA section 809(a)(5) states that the validation notice information must include ''a statement that, upon the consumer's written request within the 30-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.''[558] Further, FDCPA section 809(b) states that ''[a]ny collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of *the consumer's right to* dispute the debt or *request the name and address of the original creditor.*''[559]

However, the Bureau also believes that FDCPA section 809(a)(5) contemplates that a debt collector may respond differently to the consumer's request for original-creditor information when the original creditor is *not* ''different from the current creditor.'' Because the question of how a debt collector may respond to a request for original-creditor information when the original creditor is the same as the current creditor implicates the proposed § 1006.34 provisions regarding disclosure of validation notice information, which are not being finalized at this time, the Bureau is not at the present time providing in § 1006.38(c) an alternative response mechanism for this situation. The Bureau expects to address further the comments received on this topic as part of its disclosure-focused final rule and may provide by regulation for alternative procedures when the original creditor is the same as the current creditor.

For the same reason—that the Bureau is not presently finalizing the proposed § 1006.34 provisions for how validation notice information must be disclosed—the Bureau is not at the present time addressing (in response to comments from both industry commenters and consumer advocates, as noted above) whether a debt collector must include original-creditor information in its communication of validation notice information to a consumer. The Bureau expects to address these comments in its disclosure-focused final rule and may provide by regulation for alternative procedures when the original creditor is the same as the current creditor.

38(d) Disputes

38(d)(1) Failure To Dispute

The Bureau proposed § 1006.38(d)(1) to implement FDCPA section 809(c), which states that the failure of a consumer to dispute the validity of a debt may not be construed by any court as an admission of liability by the consumer. Proposed § 1006.38(d)(1) generally restated the statute, with non-substantive changes for style. The Bureau received one comment generally supporting proposed § 1006.38(d)(1) and one comment arguing that § 1006.38(d)(1) is inconsistent with FDCPA section 809(a)(3), which requires a debt collector to disclose that, unless a consumer disputes the validity of the debt within thirty days of receiving the validation notice, the debt collector will assume the debt is valid.[560] The Bureau disagrees that there is an inconsistency. FDCPA section 809(a)(3) addresses a debt collector's assumption regarding the validity of the debt; § 1006.38(d)(1) addresses whether a consumer's failure to dispute is a legal admission of liability. Accordingly, the Bureau is finalizing § 1006.38(d)(1) as proposed.

38(d)(2) Response to Disputes

FDCPA section 809(b) provides that, if a consumer disputes a debt in writing within 30 days of receiving the information or notice described in FDCPA section 809(a), the debt collector must cease collection of the debt, or any disputed portion of the debt, until the debt collector obtains verification of the debt or a copy of a judgment and mails it to the consumer. Section 1006.38(d)(2) implements and interprets this requirement.

38(d)(2)(i)

The Bureau proposed in § 1006.38(d)(2)(i) to implement FDCPA section 809(b)'s general requirements regarding disputes and verification. Proposed § 1006.38(d)(2)(i) generally mirrored the statute, with minor changes for style and clarity. To accommodate various electronic media through which a debt collector could send a copy of verification or a judgment under proposed § 1006.42, proposed § 1006.38(d)(2)(i) interpreted FDCPA section 809(b) to require debt collectors to provide, rather than to mail, such information to consumers in a manner consistent with the delivery provisions in proposed § 1006.42.

The Bureau received no comments objecting to proposed § 1006.38(d)(2)(i) and is finalizing it generally as proposed.[561] In the final rule, the Bureau has changed the word ''provides'' to ''sends.'' The reason for this change is discussed in the section-by-section analysis of § 1006.42(a)(1).

these comments as part of its disclosure-focused final rule.

[556] Consumer advocates also addressed the proposal's provisions regarding electronic delivery of original-creditor information (and other information) in proposed § 1006.42. These comments regarding electronic delivery are addressed in the section-by-section analysis of § 1006.42.

[557] The Bureau is renumbering § 1006.38(c) as § 1006.38(c)(1) and is reserving § 1006.38(c)(2) for any alternative procedures that the Bureau finalizes in its disclosure-focused final rule.

[558] 15 U.S.C. 1692g(a)(5).

[559] 15 U.S.C. 1692g(b) (emphasis added).

[560] 15 U.S.C. 1692g(3).

[561] The Bureau received numerous comments regarding the proposed electronic delivery requirements in proposed § 1006.42. Those comments are addressed in the section-by-section analysis of § 1006.42.

38(d)(2)(ii)

The Bureau proposed in § 1006.38(d)(2)(ii) to establish an alternative way for debt collectors to respond to disputes that they reasonably conclude are duplicative disputes as that term is defined in § 1006.38(a)(1). The Bureau proposed in § 1006.38(a)(1) to define the term ''duplicative dispute'' to mean a dispute submitted by the consumer in writing within the validation period that satisfies two criteria. The first criterion was that the dispute is substantially the same as a dispute previously submitted by the consumer in writing within the validation period to which the debt collector has already responded in accordance with the requirements of § 1006.38(d)(2)(i). The second criterion was that the dispute does not include new and material supporting information.

Proposed § 1006.38(d)(2)(ii) provided that, upon receipt of a duplicative dispute, a debt collector must cease collection of the debt, or any disputed portion of the debt, until the debt collector either: Notifies the consumer in writing or electronically in a manner permitted by § 1006.42 that the dispute is duplicative, provides a brief statement of the reasons for the determination, and refers the consumer to the debt collector's response to the earlier dispute; or satisfies § 1006.38(d)(2)(i).[562]

The Bureau received numerous substantive comments on the Bureau's proposal regarding duplicative disputes, including the proposed definition of duplicative dispute.

With respect to the definition of duplicative dispute in § 1006.38(a)(1), industry commenters stated that the Bureau should provide more clarity about the meaning of ''substantially the same.'' These commenters stated that the lack of clarity might result in the threat of additional disputes and litigation, which might make it not worthwhile for debt collectors to use the proposed alternative response mechanism for duplicative disputes.

Consumer advocates observed that it is unlikely that a consumer would submit a dispute that meets the proposed duplicative dispute definition, because it is rare that a consumer submits a dispute, a debt collector responds to the dispute, and the consumer resubmits the dispute, all within the 30-day validation period. They also stated that the proposed definition would give too much discretion to debt collectors to determine if a dispute is duplicative. They stated that the Bureau should either limit collector discretion by including additional criteria in the ''duplicative dispute'' definition or eliminate the alternative response to duplicative disputes set forth in § 1006.38(d)(2)(ii). Finally, some consumer advocates stated that the definition of duplicative dispute should include an additional criterion under which a consumer's dispute is duplicative only if the consumer submits the second dispute to the same debt collector who provided a copy of the debt verification or judgment to the consumer in response to the consumer's first dispute.

With respect to the proposed alternative response to duplicative disputes in § 1006.38(d)(2)(ii), industry commenters generally suggested substantial changes to make it easier for debt collectors to address disputes that they determine to be duplicative. Some industry commenters stated that the duplicative dispute provision should permit debt collectors to disregard all disputes submitted by debt-relief companies. Others stated that the provision should permit debt collectors to disregard all disputes that meet the definition of duplicative dispute in § 1006.38(a)(1). Others stated that the provision should permit debt collectors to disregard all disputes (whether or not duplicative) submitted by consumers outside of the 30-day validation period. Finally, others stated that, by defining what it means for a debt collector to ''verify'' a debt—and by also requiring consumers to include specific information when they dispute a debt—the Bureau could reduce burden by making it easier for debt collectors to identify and dispose of disputes that are duplicative.

Some industry commenters suggested more minor changes with respect to how the rule should permit debt collectors to address disputes that they determine to be duplicative. Specifically, some of these commenters suggested that, if a debt collector receives a consumer's dispute electronically, then the rule should permit the debt collector to respond to the dispute electronically, irrespective of whether the debt collector has the consumer's E–SIGN consent. Others suggested that the rule permit debt collectors to respond to duplicative disputes through a telephone call. Finally, in their comments on proposed § 1006.42(b) (discussed below), some industry commenters stated that debt collector responses to consumer disputes as required by § 1006.38(d)(2) are not written ''disclosures'' (but are instead, in these commenters' view, documents substantiating the debt) and, therefore, the rule should not require debt collectors to obtain consumers' E–SIGN consent before providing dispute responses electronically.

Consumer advocates, as noted above, expressed concern that the definition of duplicative dispute in § 1006.38(a)(1) gives too much discretion to debt collectors to determine if a dispute is duplicative. But, they said, taking that definition as given, the alternative response mechanism for a duplicative dispute set forth in proposed § 1006.38(d)(2)(ii) should be eliminated from the final rule, because the proposed treatment of disputes would not reduce the number of duplicative disputes because it would not mandate that debt collectors review and provide copies of original, account-level documentation in response to consumer disputes and would not prohibit debt collectors from responding to disputes by providing summary data found in the debt collector's database.

The Bureau is finalizing as proposed the definition of duplicative dispute in § 1006.38(a)(1). The Bureau also is finalizing largely as proposed the optional alternative response mechanism for a duplicative dispute in § 1006.38(d)(2)(ii), but with one change intended to reduce burden for debt collectors who choose to use the alternative response mechanism. This change will thus also benefit consumers by allowing debt collectors to devote more resources to non-duplicative consumer disputes, as follows.

Regarding the duplicative dispute definition, the Bureau believes that the meaning of ''substantially the same'' is sufficiently clear and is a concept that is already present in other regulations. For example, Regulation V, 12 CFR 1022, § 1022.43(f)(1)(ii) addresses direct disputes to a furnisher that are ''substantially the same as a dispute previously submitted by or on behalf of the consumer.'' And, Regulation X, 12 CFR 1024, § 1024.35(g)(1)(i) addresses consumer-asserted errors to a mortgage servicer that are ''substantially the same as an error previously asserted by the borrower for which the servicer has previously complied with its obligation to respond.'' Similarly, Regulation X § 1024.36(f)(1)(i) addresses a request for information to a mortgage servicer that ''is substantially the same as

[562] The Bureau did not propose to address duplicative requests for original-creditor information. As the Bureau noted in its proposal, some members of the debt collection industry have described being overwhelmed by the number of repeat disputes they receive. Industry members have not described any similar concerns about duplicative requests for original-creditor information. 84 FR 23274, 23354 (May 21, 2019).

information previously requested by the borrower for which the servicer has previously complied with its obligation to respond.'' The Bureau therefore declines to provide examples in the commentary about the meaning of ''substantially the same'' because doing so is unnecessary and unwarranted.

The Bureau acknowledges that it is possible that consumers might infrequently submit disputes that meet the duplicative dispute definition, because it might be unusual for a consumer to submit a dispute, a debt collector to respond, and the consumer to resubmit the dispute all within the 30-day validation period. With respect to both the meaning of ''substantially the same'' and the frequency with which consumers submit duplicative disputes as defined, the Bureau expects to monitor consumers' and debt collectors' responses to and implementations of the duplicative dispute aspect of the Bureau's rule to ensure that the definition is not resulting in consumer harm and to ascertain the extent to which the duplicate dispute provisions allow debt collectors to devote more resources to non-duplicative disputes.

Regarding the alternative response mechanism for a duplicative dispute in § 1006.38(d)(2)(ii), the Bureau declines to adopt the substantial changes to the proposal that industry commenters suggested and declines to eliminate the mechanism from the final rule as consumer advocates suggested. With respect to industry commenters' suggestion that the duplicative dispute provision permit debt collectors to disregard all disputes submitted by debt-relief companies, the Bureau declines to adopt a categorical approach because the Bureau cannot say that every such dispute is duplicative. As to the suggestion that the rule permit debt collectors to disregard all disputes that meet the definition of duplicative dispute, the Bureau determines that a debt collector's notice to a consumer that the debt collector has determined that a dispute is a duplicative dispute, and the reasons for that determination, may nevertheless be informative to the consumer and is consistent with the statutory requirement to provide a response to disputes. Finally, the Bureau's proposal did not define what it means to verify a debt, and the Bureau declines to do so in this final rule. The Bureau concludes that it is not necessary or warranted to provide such a definition because the Bureau generally expects that debt collectors will respond to non-duplicative disputes by providing verifications of debts (or copies of judgments) as they do today.

The Bureau has determined that debt collectors' responses to consumer disputes are disclosures of information relating to a transaction or transactions, as E-SIGN Act section 101(c)(1) uses that phrase.[563] And the Bureau interprets the requirement in FDCPA section 809(b) that ''a copy'' of a verification of the debt or a judgment, or the name and address of the original creditor be ''mailed'' requires a writing. Nonetheless, the FDCPA does not explicitly address debt collectors' responses to duplicative disputes and, as a result, does not specify that responses to such disputes must involve mailing another copy of the verification or judgment. Rather, the statute says that only ''a'' copy of the verification or judgment must be ''mailed.'' Accordingly, the Bureau finds that the statute is ambiguous as to whether responses to duplicative disputes must be mailed if a copy of the verification or judgment previously has been mailed. The Bureau therefore has discretion to determine whether the E-SIGN Act's consumer-consent provisions apply if a debt collector responds electronically to a duplicative dispute. For the policy reasons set forth below, the Bureau has determined to permit debt collectors to respond electronically to disputes that they determine to be duplicative without obtaining the relevant consumers' E-SIGN consent.

In the final rule, the Bureau has effected this change in § 1006.42(b)(1), which, as revised from the proposal, now provides that consumers' E-SIGN consent is necessary only for debt collectors to respond electronically to consumers' initial, non-duplicative disputes (pursuant to § 1006.38(d)(2)(i)). As proposed, § 1006.42(a)(1) applies to debt collectors' responses to all disputes, including to duplicative disputes. Thus, debt collectors' responses to duplicative disputes (and to initial disputes) must be provided in a manner that is reasonably expected to provide actual notice and in a form the consumer may keep and access later, while debt collectors' electronic responses to initial disputes must also comply with § 1006.42(b).

The Bureau believes there may be scenarios in which debt collectors respond to consumers' initial disputes in paper form because the debt collectors do not have consumers' E-SIGN consent, but in which the debt collectors nonetheless can respond to consumers' duplicative disputes electronically, because the debt collectors have consumers' email addresses or mobile telephone numbers for text messages. By adopting the duplicative dispute provision largely as proposed, but modified as described above, the Bureau intends to provide a method of delivery that allows debt collectors the option to respond to duplicative disputes in a less burdensome way, which may permit collectors to apply more resources to responding to non-duplicative disputes, while also appropriately balancing consumer protections, because those electronic communications remain subject to § 1006.42(a)(1). The Bureau will monitor industry implementation of the final rule's duplicative-disputes provision to assess its impact on all stakeholders.

The Bureau declines to permit collectors to respond to duplicative disputes orally. The Bureau concludes that FDCPA section 809(b) requires responses to consumers' disputes in a form that consumers may keep and access later for the reasons discussed in the section-by-section discussion of § 1006.42.[564]

The Bureau is finalizing the alternative procedure in § 1006.38(d)(2)(ii) for responding to duplicative disputes as an interpretation of FDCPA section 809(b) and pursuant to its rulemaking authority provided by FDCPA section 814(d). In particular, § 1006.38(d)(2)(ii) interprets what it means for a debt collector to ''obtain[ ] verification of the debt or any copy of a judgment'' and to provide ''a copy of such verification or judgment'' to the consumer when the debt collector reasonably determines that a dispute is a duplicative dispute. In some cases a consumer might submit a timely written dispute that is duplicative of an earlier dispute for which the debt collector already obtained and mailed to the consumer a copy of verification of the

[563] *See* 15 U.S.C. 7001(c)(1) (stating that ''if a statute, regulation, or other rule of law requires that *information relating to a transaction or transactions* in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if (A) the consumer has affirmatively consented to such use and has not withdrawn such consent. . . .'') (emphasis added). *See also* E-Sign Act sections 106(7) and (13) (15 U.S.C. 7006(7) and (13)), which, respectively, define ''information'' and ''transaction'' quite broadly.

[564] FDCPA section 809(b) states that, when a debt collector receives a consumer's dispute, ''the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment . . . and a copy of such verification or judgment . . . is mailed to the consumer by the debt collector.''

debt or a judgment. In those cases, the Bureau interprets FDCPA section 809(b)'s requirement to provide ''a copy of such verification or judgment'' to the consumer to mean that a debt collector must provide the consumer either with another copy of the materials the debt collector provided in response to the earlier dispute, or with a notice explaining the reasons for the debt collector's determination that the dispute is duplicative and referring the consumer to the materials the debt collector provided in response to the earlier dispute.

The Bureau also is finalizing the notice requirement of § 1006.38(d)(2)(ii) pursuant to the Bureau's authority under Dodd-Frank Act section 1032(a). As discussed above, Dodd-Frank Act section 1032(a) provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

The Bureau is finalizing the notice requirement in § 1006.38(d)(2)(ii) on the basis that a debt collector's decision to treat a dispute as a duplicative dispute under § 1006.38(d)(2)(ii) is a feature of debt collection. A debt collector's notice to a consumer that the debt collector has determined that a dispute is a duplicative dispute, and the reasons for that determination, may help the consumer understand the costs, benefits, and risks associated with filing additional disputes and deciding whether to pay a debt.

Section 1006.42 Sending Required Disclosures

Section 1006.42 sets forth requirements for sending the disclosures required by the FDCPA and Regulation F. Proposed § 1006.42(a)(1) set forth a general standard for providing the required disclosures in writing or electronically. Proposed § 1006.42(b) provided that, to meet that standard when delivering the required disclosures electronically, a debt collector needed to either obtain a consumer's E-SIGN consent directly from the consumer or comply with alternative procedures in proposed § 1006.42(c), and needed to take certain additional steps regarding the format and delivery of the communication.[565] For the reasons discussed below, final § 1006.42 focuses on the general standard and on clarifying that a debt collector who sends the required written disclosures electronically must do so in accordance with the E-SIGN Act. At this time, the Bureau declines to interpret whether, and if so when, the E-SIGN Act requires a debt collector to obtain E-SIGN consent directly from the consumer and declines to finalize the alternative procedures in proposed § 1006.42(c). The Bureau is finalizing § 1006.42 to implement and interpret FDCPA section 809(a) and (b) and pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors. In addition, the Bureau is finalizing the general standard in § 1006.42(a)(1) as an interpretation of FDCPA section 808's prohibition on using unfair or unconscionable means to collect a debt.[566]

42(a) Sending Required Disclosures

42(a)(1) In General

The Bureau proposed § 1006.42(a)(1) to require a debt collector who provides disclosures required by Regulation F in writing or electronically to do so: (1) In a manner that is reasonably expected to provide actual notice to the consumer; and (2) in a form that the consumer may keep and access later. Commenters generally supported this standard, and the Bureau is finalizing it largely as proposed, with minor edits for clarity.

Specifically, final § 1006.42(a)(1) uses the term sends, rather than the proposed term provides, to clarify that a debt collector's obligation under the rule—and as the Bureau intended under the proposal—is to send required disclosures in a manner reasonably expected to provide actual notice.[567] Final § 1006.42(a)(1) also clarifies that the general standard applies when debt collectors send disclosures required either by the FDCPA or Regulation F.[568] With these revisions, final § 1006.42(a)(1) provides that a debt collector who sends disclosures required by the FDCPA and Regulation F in writing or electronically must do so in a manner that is reasonably expected to provide actual notice, and in a form that the consumer may keep and access later.

In response to feedback, the Bureau is revising the proposed commentary for § 1006.42(a)(1) in several ways, including by renumbering proposed comment 42(a)(1)–1 as new comment 42(a)(1)–2 and by adding three new comments (final comments 42(a)(1)–1, –3, and –4) to incorporate text from proposed § 1006.42(b)(2) and (3), (e)(1), and comment 42(c)(1)–1. The Bureau is not otherwise finalizing proposed § 1006.42(b)(2) or (3), (e)(1), or comment 42(c)(1)–1 and, therefore, addresses comments received in response to those provisions in this section-by-section analysis.

Final Comment 42(a)(1)–1

Proposed § 1006.42(b)(2) would have required the debt collector to identify the purpose of an electronic communication transmitting a required disclosure by including in the email subject line or the first line of a text message the name of the creditor to whom the debt is owed and one additional piece of information identifying the debt, other than the amount.[569] Consumer advocates expressed concern that proposed § 1006.42(b)(2) would be unlikely to lead many consumers to open or read emails or text messages from debt collectors and could lead some consumers or their email providers to mark the messages as spam. Consumer advocates suggested that the Bureau eliminate proposed § 1006.42(b)(2) and replace it with more robust monitoring to ensure consumers' actual receipt of electronic communications containing required disclosures.

Proposed § 1006.42(b)(3) would have required a debt collector sending required disclosures electronically to permit receipt of notifications of undeliverability from communications providers, monitor for any such notifications, and treat any such notifications as precluding a reasonable expectation of actual notice for that delivery attempt. Some industry commenters stated that the general standard in § 1006.42(a)(1) should be deemed to be satisfied if a debt collector emails required disclosures to the consumer email address that the creditor provided to the debt collector and the debt collector does not receive a notice that the email was returned as undeliverable. Consumer advocates

[565] *See* 84 FR 23274, 23355–67 (May 21, 2019).

[566] The proposal explained the Bureau's basis for citing to FDCPA section 808. *See id.* at 23356. The Bureau addresses feedback about this basis at the end of the section-by-section analysis of § 1006.42.

[567] For simplicity, the Bureau uses ''send'' throughout this section-by-section analysis, including when describing what proposed provisions would have required.

[568] Proposed § 1006.42 referred in certain places to the disclosures required by proposed § 1006.34. Final § 1006.42 instead refers in those places to the disclosures required by the FDCPA, as implemented by Bureau regulation, because the Bureau is not finalizing § 1006.34 at this time. The Bureau expects that, in the Bureau's disclosure-focused final rule, these references will be updated to refer to § 1006.34.

[569] Proposed comment 42(b)(2)–1 provided examples of the types of information that a debt collector might include.

stated that proposed § 1006.42(b)(3) would be inadequate to provide debt collectors with a reasonable expectation of actual notice. These commenters stated that the rule should provide that a debt collector does not have a reasonable expectation of actual notice if the debt collector's records do not indicate that the electronic message was opened by the consumer.

The Bureau determines that the actions described in proposed § 1006.42(b)(2) and (3) are relevant to the analysis regarding whether a debt collector has a reasonable expectation of actual notice but that these factors may be viewed in light of any other relevant facts and circumstances. The Bureau therefore finalizes the text of proposed § 1006.42(b)(2) and (3) as new comments 42(a)(1)–1.i and .ii, respectively, to instead set forth relevant factors in determining whether a debt collector has complied with the § 1006.42(a)(1) general standard. The Bureau also is finalizing new comment 42(a)(1)–1.iii to provide an additional factor.

Specifically, final comment 42(a)(1)–1.i incorporates the text of proposed § 1006.42(b)(2) and comment 42(b)(2)–1 to provide that a relevant factor in determining whether the debt collector has met the general standard in § 1006.42(a)(1) is whether the debt collector identified the purpose of an electronic communication transmitting a required disclosure by including in the subject line the name of the creditor and one additional piece of information identifying the debt, such as a truncated account number; the name of the original creditor; the name of any store brand—that is, the merchant—associated with the debt; the date of sale of a product or service giving rise to the debt; the physical address of service; and the billing or mailing address on the account.

Final comment 42(a)(1)–1.ii incorporates the text of proposed § 1006.42(b)(3) to provide that a relevant factor in determining whether the debt collector has met the general standard in § 1006.42(a)(1) is whether the debt collector permitted receipt of and monitored for notifications of undeliverability from communications providers and treated any such notifications as precluding a reasonable expectation of actual notice for that delivery attempt.

Final comment 42(a)(1)–1.iii provides that a relevant factor is whether the debt collector identified itself as the sender of the communication by including a business name that the consumer would be likely to recognize, such as the name included in the notice described in § 1006.6(d)(4)(ii)(C) or in a prior limited-content message left for the consumer or in an email message sent to the consumer. The Bureau adds this comment because the consumer's ability to recognize the sender as a legitimate business is a factor in whether the debt collector has a reasonable expectation of actual notice. Particularly if the consumer has been alerted that a specific debt collector may be sending a communication to the consumer, as in the case of the notice described in § 1006.6(d)(4)(ii)(C), then the debt collector is unlikely to satisfy § 1006.42(a)(1) unless the debt collector uses the same name that was included in the notice.

Final Comment 42(a)(1)–2

The Bureau is finalizing proposed comment 42(a)(1)–1 as new comment 42(a)(1)–2 and, apart from renumbering it, is finalizing it largely as proposed with minor wording changes for consistency with the text of final § 1006.42(a)(1). Final comment 42(a)(1)–2 thus states that a debt collector who sends a required disclosure in writing or electronically and who receives a notice that the disclosure was not delivered has not sent the disclosure in a manner that is reasonably expected to provide actual notice under § 1006.42(a)(1). One industry commenter stated that, when a debt collector attempts to deliver a required disclosure electronically and the attempt is returned as undeliverable, the debt collector should be able to rely on the previously sent delivery attempt. The Bureau believes this commenter was primarily concerned with whether a debt collector violates the five-day validation notice timing requirement set forth in FDCPA section 809(a) and proposed § 1006.34(a)(1)(i)(B)—*i.e.,* that the notice be sent within five days of the initial communication—if the debt collector's first attempt to deliver the notice is returned as undeliverable. The Bureau expects to address this issue as part of its disclosure-focused final rule. The Bureau also expects that rulemaking to address how a debt collector should redeliver the validation notice if it is returned as undeliverable. *See* proposed comment 34(b)(5)–1.

Final Comment 42(a)(1)–3

Proposed § 1006.42(e)(1) described a safe harbor for required disclosures sent by mail. Specifically, proposed § 1006.42(e)(1) provided that a debt collector satisfied the general standard in § 1006.42(a)(1) if the debt collector mailed a printed copy of a required disclosure to the consumer's residential address, unless the debt collector received notification from the entity or person responsible for delivery that the disclosure was not delivered.[570] Proposed comment 42(e)(1)–2 specified that a debt collector did not mail a disclosure to a consumer's residential address if the debt collector knew or should have known at the time of mailing that the consumer did not reside at that location. The Bureau is finalizing proposed § 1006.42(e)(1) and its accompanying commentary as new comment 42(a)(1)–3, for the reasons and with the revisions discussed below.

Some industry commenters stated the safe harbor for mail set forth in proposed § 1006.42(e)(1) should be revised to encompass mail to a post office box or a consumer's ''last known address.'' These commenters observed that a consumer might move without advising the creditor or debt collector of the consumer's new address. They also observed that some consumers use post office boxes or commercial addresses to receive mail (*e.g.,* if a consumer is a small business owner).

Some consumer advocates recommended that the Bureau withdraw the safe harbor for mail delivery set forth in proposed § 1006.42(e)(1). These commenters stated that a debt collector may have multiple mail addresses for a consumer and stated that the Bureau's proposed safe harbor did not provide sufficient guidance on how the debt collector should determine the consumer's residential address. They further stated that the proposed safe harbor was arbitrary and that a debt collector could use it to claim compliance with § 1006.42(a)(1) without doing any due diligence to ensure that a consumer was likely to receive the disclosure at the residential address to which the debt collector mailed it.

After considering these comments, and because the safe harbor illustrates how a debt collector may comply with § 1006.42(a)(1), the Bureau is finalizing the proposed safe harbor with revisions in new comment 42(a)(1)–3.

Regarding industry's concerns about the proposed requirement that mail be sent to a consumer's residential address, the Bureau does not believe that consumer harm will result from including post office boxes in the safe harbor because post office boxes are generally secure and private. Further, some consumers may benefit from

[570] Proposed § 1006.42(e) set forth two safe harbors, the first, § 1006.42(e)(1), covering provision of disclosures by mail and the second, § 1006.42(e)(2), covering provision of the validation notice within the body of an email that is a debt collector's initial communication with the consumer. The Bureau addresses proposed § 1006.42(e)(2) in the section-by-section analysis regarding proposed provisions not finalized, below.

providing post office box addresses to creditors and debt collectors because a consumer can maintain a post office box address for receiving mail even as the consumer moves and thereby changes his or her residential address. The final safe harbor set forth in comment 42(a)(1)–3 therefore encompasses a consumer address that is a post office box, unless the debt collector knows or should know that the consumer does not currently receive mail at that post office box. However, the safe harbor does not encompass an address that is a commercial address (*e.g.,* if a consumer is a small business owner) because the Bureau is concerned that including such addresses in the safe harbor could result in consumers inappropriately receiving debt collection mail at their places of employment. Nonetheless, while a commercial address is not covered by the final safe harbor, mail sent to such an address could satisfy the requirements of § 1006.42(a)(1) and be otherwise compliant with the FDCPA and Regulation F, depending on the facts and circumstances.

The Bureau determines that it is unnecessary for the final safe harbor to clarify how debt collectors should ascertain the address at which a consumer actually receives mail. Debt collectors already should have methods to ascertain correct addresses for consumers since mailing disclosures is not free and debt collectors generally may want consumers to receive such disclosures. In addition, the safe harbor only applies to a debt collector who mails a disclosure to the consumer's last known address, and it does not cover a debt collector who knows or should know that the consumer does not currently reside at, or receive mail at, that location at the time of mailing.

For these reasons, final comment 42(a)(1)–3 states that, subject to comment 42(a)(1)–2 regarding receipt of a notice of undeliverability, a debt collector satisfies § 1006.42(a)(1) if the debt collector mails a printed copy of a disclosure to the consumer's last known address, unless the debt collector, at the time of mailing, knows or should know that the consumer does not currently reside at, or receive mail at, that location.

Final Comment 42(a)(1)–4

The Bureau is finalizing proposed comment 42(c)(1)–1 as new comment 42(a)(1)–4. Proposed comment 42(c)(1)–1 clarified that a debt collector could not deliver a required disclosure to an email address or telephone number if a consumer had opted out of receiving communications to that address or telephone number. The Bureau received no comments objecting to proposed comment 42(c)(1)–1 [571] and, apart from renumbering it, is finalizing it as proposed, with wording changes only to reconcile its text to the Bureau's overall approach in final § 1006.42. Final comment 42(a)(1)–4 thus states that, if a consumer has opted out of debt collection communications to a particular email address or telephone number by, for example, following the instructions provided pursuant to § 1006.6(e), then a debt collector cannot use that email address or telephone number to send required disclosures.

42(a)(2) Exceptions

Proposed § 1006.42(a)(2) excepted the disclosures that would have been required by proposed §§ 1006.6(e) and 1006.18(e) from the requirements of proposed § 1006.42(a)(1), unless the disclosure was included on a notice required by FDCPA section 809(a) or § 1006.38(c) or (d)(2). The Bureau proposed to except these disclosures because they do not arise under FDCPA section 809 and generally do not implicate FDCPA section 808's prohibition on using unfair or unconscionable means to collect or attempt to collect any debt. The Bureau received no comments objecting to § 1006.42(a)(2) and is finalizing it as proposed, with revisions only to conform its text to the Bureau's overall approach in final § 1006.42.

One industry commenter who addressed proposed § 1006.42(a)(2) requested that the final rule provide that the intent-to-deposit letter described in proposed § 1006.22(c)(1) (implementing FDCPA section 808(2)) is not subject to the E-SIGN Act's consumer-consent requirements. Under the proposal, the Bureau did not take a position on E-SIGN coverage of the intent-to-deposit letter and, accordingly, the Bureau does not take a position on E-SIGN's applicability to the letter in this final rule. The Bureau is not aware that these notices are currently being delivered electronically or, if they are, that there are concerns or questions about compliance with the E-SIGN Act when sending them. The Bureau notes, however, that the intent-to-deposit letter is subject to the notice and form requirements of § 1006.42(a)(1).

[571] Consumer advocates objected to proposed § 1006.42(c) overall and stated that the consumer's opt-out right referred to in proposed comment 42(c)(1)–1 was insufficient to resolve their objections.

42(b) Requirements for Certain Disclosures Sent Electronically

In its proposal, the Bureau preliminarily determined that the E-SIGN Act's consumer-consent requirements apply to certain FDCPA-required disclosures. The proposal would have provided debt collectors with a choice between two general delivery options for providing required disclosures electronically. The first option, set forth in proposed § 1006.42(b)(1), was to, among other requirements, comply with the E-SIGN Act after the consumer provided affirmative consent directly to the debt collector. The second option was to, among other requirements, comply with the alternative procedures described in proposed § 1006.42(c)(1). The Bureau responds to comments regarding the proposed alternative procedures in the section-by-section analysis regarding proposed provisions that the agency is not finalizing, below. In this section-by-section analysis, the Bureau addresses comments regarding whether and how the E-SIGN Act's consumer-consent requirements apply to certain FDCPA-required disclosures.

Some industry commenters argued that the E-SIGN Act's consumer-consent requirements do not apply to the disclosures that the FDCPA and Regulation F require. Some of these commenters based this argument on an assertion that debt collection disclosures are not disclosures regarding a ''transaction'' as the E-SIGN Act defines that term. Others based it on an assertion that the FDCPA does not require the validation notice to be provided in writing, because the FDCPA permits the notice to be provided orally when it is contained in the initial communication.

Consumer advocates stated that the rule should require a debt collector to obtain a consumer's E-SIGN consent before using any method of communication with the consumer other than mail or a telephone call. These commenters observed that many consumers whose debts enter collection are lower-income or elderly consumers who may not be familiar with internet-based financial transactions. Further, these commenters said, even if these consumers have and can use an email address or smartphone, they may not have reliable, high-bandwidth home internet service, such that they might prefer to receive important financial information through the mail. These commenters stated that the E-SIGN Act's consumer-consent requirements were purposefully designed to ensure that consumers, including lower-income and elderly consumers, have access to a computer and the internet such that they can access written disclosures electronically.

Within the E-SIGN Act's consumer-consent requirements, E-SIGN Act section 101(c)(1) states that, if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if (A) the consumer has affirmatively consented to such use and has not withdrawn such consent . . . .[572] In turn, E-SIGN Act section 106(13) defines the term ''transaction'' quite broadly.[573] The Bureau concludes that transaction—as E-SIGN Act section 101(c)(1) uses that term and as E-SIGN Act section 106(13) defines it—includes the collection of debts by debt collectors.

Further, FDCPA section 809(a) states that ''a debt collector shall . . . send the consumer a written [validation] notice'' unless it is contained in the initial communication. Under the above terms of E-SIGN Act section 101(c)(1), the E-SIGN Act consumer-consent requirements apply when a law requires a written disclosure to a consumer. And the Bureau has determined that FDCPA section 809(a) sets forth a requirement that a debt collector provide a written disclosure of information to a consumer; *i.e.,* the Bureau has determined that the validation notice required by FDCPA section 809(a) is a disclosure of information to a consumer and that FDCPA section 809(a) requires the validation notice to be in writing when it is not contained in the initial communication. Accordingly, when a debt collector provides the required, written validation notice electronically and does so other than within the initial communication, the E-SIGN Act's consumer-consent requirements apply to the debt collector's electronic provision of the notice. The same conclusion applies to the disclosures that FDCPA section 809(b) requires to be mailed, which are debt collectors' responses to consumers' requests for original-creditor information (see the section-by-section analysis of § 1006.38(c)) and debt collectors' responses to consumers' disputes (see the section-by-section analysis of § 1006.38(d)(2)(i)). The Bureau thus is finalizing proposed § 1006.42(b)(1) as § 1006.42(b) to provide that a debt collector who sends the required, written validation notice, or the disclosures required by § 1006.38(c) or (d)(2)(i),[574] electronically, must do so in accordance with the consumer-consent requirements in E-SIGN Act section 101(c).[575]

As noted above, proposed § 1006.42(b)(1) would have required a debt collector to obtain E-SIGN consent directly from consumers when the debt collector provided electronically the validation notice or the disclosures required by § 1006.38(c) and (d)(2). Some industry commenters recommended that the Bureau take a different approach and interpret E-SIGN Act section 101(c) to permit a consumer's E-SIGN consent obtained by a creditor to pass from the creditor (or a prior debt collector) to the debt collector. Consumer advocates, by contrast, supported the Bureau's proposed approach. In these commenters' view, a consumer's E-SIGN consent applies only ''during the course of the parties' relationship'' per E-SIGN Act section 101(c)(1)(B)(ii). Further, these commenters stated, collection activity by third-party debt collectors to which the FDCPA applies is not within the relationship between the consumer and the original creditor.

The Bureau is not finalizing in § 1006.42(b) the proposed E-SIGN Act interpretation that a debt collector who provides electronically the written disclosures required by the FDCPA and Regulation F must obtain a consumer's affirmative consent directly from the consumer. That is to say, the Bureau is not taking a position in this rulemaking on whether a consumer's E-SIGN consent provided to a creditor (or to a prior debt collector) transfers to a debt collector, and, as a result, is not addressing feedback received regarding the Bureau's proposed interpretation. The Bureau intends to monitor debt collectors' practices for sending required debt collection disclosures in accordance with the consumer-consent requirements in E-SIGN Act section 101(c), including debt collectors' practices for obtaining that consent.

Proposed Provisions Not Finalized

Proposed § 1006.42(b)(4) and (c) through (e) would have set forth additional requirements, alternative procedures, notice-and-opt-out processes, and a safe harbor for a debt collector providing a validation notice electronically. Collectively, these provisions, along with proposed § 1006.42(b) in general, prescribed various methods for a debt collector to deliver a validation notice either in the body of an email or through a hyperlink, in the initial communication with the consumer or within five days of the initial communication.

The Bureau received thousands of comments concerning both the overall approach and details of these provisions. While many industry commenters supported the Bureau's attempt to provide clarity, such commenters were also concerned about what they considered to be the prescriptive and burdensome nature of the proposal. These commenters suggested that, if finalized, the proposed procedures would not lead to the clarity or increased use of electronic delivery that the Bureau expected. Consumer and consumer advocate commenters objected to the Bureau's proposal, arguing that, even with prescriptive procedures, the Bureau's proposal failed to adequately safeguard consumers from threats present in electronic communications and to ensure that consumers would have a reasonable likelihood of receiving such communications.

For the reasons discussed below, the Bureau is not finalizing the following specific procedures and safe harbors. The Bureau emphasizes, however, that it concludes that consumers may benefit from electronic communications in debt collection, including the delivery of required notices, as consumers may be able to exert greater control over such communications than over non-electronic communications and those communications may be more easily retained and referenced by consumers. The Bureau also concludes that debt collectors may find electronic delivery of required notices to be a more effective

[572] As discussed elsewhere in part V, E-SIGN Act section 104(b)(1) grants Federal agencies authority to interpret E-SIGN Act section 101, including section 101(c).

[573] E-SIGN Act section 106(13) defines transaction as ''an action or set of actions relating to the conduct of business, consumer, or commercial affairs between two or more persons, including any of the following types of conduct—(A) the sale, lease, exchange, licensing, or other disposition of (i) personal property, including goods and intangibles, (ii) services, and (iii) any combination thereof; and (B) the sale, lease, exchange, or other disposition of any interest in real property, or any combination thereof.'' *See* 15 U.S.C. 7006(13).

[574] As discussed in the section-by-section analysis of § 1006.38(d)(2), the Bureau has determined not to apply the E-SIGN Act's consumer-consent requirements when a debt collector responds electronically to a dispute that the debt collector has determined is duplicative. Thus, final § 1006.42(b) refers to the disclosures required by ''§ 1006.38(c) or (d)(2)(i)'' rather than ''§ 1006.38(c) or (d)(2)'' as proposed.

[575] As discussed elsewhere in the section-by-section analysis of § 1006.42, the Bureau is moving proposed § 1006.42(b)(2) and (3) into commentary to final § 1006.42(a)(1) and is not finalizing proposed § 1006.42(b)(4). The Bureau therefore is finalizing proposed § 1006.42(b)(1) as § 1006.42(b).

and efficient means of communicating with consumers.

Nevertheless, because debt collectors do not presently engage in widespread use of electronic communications, as discussed in the section-by-section analysis of § 1006.6(d)(3) through (5), and in light of commenters' concerns, the Bureau concludes that it does not, at this time, have sufficient information to properly weigh the risks to consumers and benefits to debt collectors to finalize specific procedures for electronic delivery of required disclosures. The Bureau determines that finalizing other communications provisions will encourage both debt collectors and consumers to communicate electronically when they prefer to do so. The Bureau intends to actively monitor the market and gather information on these electronic communications in general so that it may, in the future, revisit specific procedures for electronic delivery of required disclosures.

Responsive format for validation notices sent electronically. Proposed § 1006.42(b)(4) would have required a debt collector who provides a validation notice electronically to do so in a responsive format that is reasonably expected to be accessible on a screen of any commercially available size and via commercially available screen readers.

Those industry commenters who addressed the proposed responsive format requirement in proposed § 1006.42(b)(4) generally stated that it would be too burdensome and prescriptive. A few industry commenters supported the proposed requirement.

Consumer advocates generally supported proposed § 1006.42(b)(4). They stated that responsive formats for required disclosures serve an important goal of readability on mobile devices. These commenters encouraged the Bureau to follow through on its proposal to release source code that collectors could use to provide electronically sent validation notices in a responsive format. While a group of State Attorneys General supported the responsive-format requirement, they stated that, if a responsive disclosure is magnified on a small screen, a consumer can read only one small section of the disclosure at a time, which can result in information being overlooked or taken out of context notwithstanding that the disclosure includes the requisite information.

As discussed above, the Bureau is not finalizing many of the proposed requirements or safe harbors related to electronic delivery of required disclosures because the Bureau currently lacks sufficient information to properly balance the risks and benefits of rules for electronic delivery of required disclosures. Accordingly, the Bureau is declining at this time to finalize the proposal to require that the validation notice be provided in a responsive format.

Alternative procedures to the E-SIGN Act for providing certain disclosures electronically. As noted in the section by-section analysis of § 1006.42(b), proposed § 1006.42(c) provided alternative procedures that debt collectors sending certain required disclosures electronically could have used in lieu of sending the disclosures in accordance with E-SIGN Act section 101 and obtaining affirmative consent directly from the consumer, as proposed § 1006.42(b)(1) otherwise would have required. In the context of those alternative procedures, proposed § 1006.42(c)(2) provided two methods from which debt collectors could choose for placing a required disclosure in an electronic communication. The first method, as described in proposed § 1006.42(c)(2)(i), was to place the disclosure in the body of an email. The second method, described in proposed § 1006.42(c)(2)(ii), was to place the disclosure on a secure website that is accessible by clicking on a hyperlink included within an electronic communication, provided certain other conditions were met. Among those conditions was that the consumer receive notice and an opportunity to opt out of hyperlinked delivery as set forth in proposed § 1006.42(d).

Proposed § 1006.42(d) described two processes for providing consumers with notice and an opportunity to opt out of hyperlinked delivery of required disclosures. Proposed § 1006.42(d)(1) required a debt collector to inform the consumer, in a communication with the consumer before providing the required disclosure, of certain information which included requiring the debt collector to inform the consumer of the consumer's ability to opt out of hyperlinked delivery of disclosures and to provide instructions for doing so within a reasonable period of time.[576] Under proposed § 1006.42(d)(2), the notice-and-opt-out process would have relied on a communication between the creditor and the consumer.[577]

As noted above, some industry commenters argued that the E-SIGN Act's consumer-consent requirements should not apply to the written disclosures required under the FDCPA and Regulation F. Some industry commenters suggested that, if the Bureau were to determine that the E-SIGN Act's consumer-consent requirements do apply, then the Bureau should use its exemption authority, provided by E-SIGN Act section 104(d)(1), to exempt from the E-SIGN Act's consumer-consent requirements the disclosures that the FDCPA requires to be in writing. E-SIGN Act section 104(d)(1) states that a Federal agency may exempt required written disclosures from the E-SIGN Act's consumer-consent requirements if the agency determines that ''such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.'' Industry commenters stated that the E-SIGN Act's consumer-consent requirements impose a substantial burden on electronic commerce in the debt collection industry because it is infeasible for a debt collector to obtain a consumer's E-SIGN consent prior to electronically delivering the validation notice to the consumer.

Industry commenters generally based this position on the same rationale that underpinned the Bureau's proposal to exempt from the E-SIGN Act's consumer-consent requirements required disclosures sent pursuant to the alternative procedures in proposed § 1006.42(c). Specifically, these commenters stated, it is not practicable to obtain a consumer's E-SIGN consent

[576] Proposed comment 42(d)(1)–3 would have clarified how the proposed requirement to communicate with the consumer before providing a hyperlinked disclosure worked together with the proposed requirement to provide the consumer a reasonable period within which to opt out. The proposed comment explained that, in an oral communication with the consumer, such as a telephone or in-person conversation, the debt collector may require the consumer to make an opt-out decision during that same communication. However, in a written or electronic communication, a debt collector would have had to allow a consumer more than five days to make an opt-out decision in order to grant sufficient time for the consumer to see and respond to the opt-out notice. And because, under FDCPA section 809(a), no more than five days may elapse between an initial debt collection communication and when the debt collector sends the validation notice, under proposed comment 42(d)(1)–3, a debt collector who wished to obtain consumer consent in an initial communication to hyperlinked delivery of the validation notice would have been required to obtain the consumer's consent to such delivery orally.

[577] Under proposed § 1006.42(d)(2), a debt collector would have been required, no more than 30 days before the debt collector's electronic communication containing the hyperlink to the disclosure, to confirm that the creditor: (1) Communicated with the consumer using the email address or, in the case of a text message, the telephone number to which the debt collector intends to send the electronic communication, and (2) informed the consumer of the information set forth in proposed § 1006.42(d)(2).

through the mail or during a telephone call, which are the primary methods by which debt collectors make initial communications to consumers. Further, these commenters stated, it is difficult or impossible to obtain consumers' E-SIGN consent in the five days between when the debt collector makes an initial communication in a telephone call and when FDCPA section 809(a) provides that the debt collector must provide the validation notice (unless the validation notice is contained in the initial communication). Finally, these commenters stated, debt collectors generally do not have ongoing customer relationships with the consumers from whom the debt collectors seek debt repayment, such that it is difficult or impossible for debt collectors to use the practices for obtaining E-SIGN consent that creditors typically use.

While some industry commenters argued that the Bureau should use its exemption authority, some also expressed concern with the specifics of the Bureau's proposed exemption, arguing that the proposal in § 1006.42(c) to permit debt collectors to use email addresses or telephone numbers that the creditor could have used in accordance with section 101(c) of the E-SIGN Act was not sufficient. These commenters stated that, in many cases, a creditor would not have a consumer's E-SIGN consent but would have the consumer's email address or telephone number (for text messages). For example, these commenters said, the creditor might use the email address or telephone number to provide non-required messages and notifications to consumers, for which the consumers' E-SIGN consent is not required. To enable debt collectors to interact efficiently with consumers in these situations, these commenters said, the Bureau should provide an E-SIGN Act exemption and revise the alternative procedures in proposed § 1006.42(c) to permit a debt collector to send required disclosures electronically to the consumer's email address or telephone number (for text messages) that the creditor provided to the debt collector, irrespective of whether the creditor or the debt collector obtained the consumer's E-SIGN consent.

Industry commenters also stated that the requirements in proposed § 1006.42(c)(2)(ii) and (d) regarding provision of required disclosures through hyperlinks in emails or text messages were far too prescriptive and burdensome and would not be used. They generally did not, however, suggest alternatives to those procedures because, as noted above, their main argument was that the E-SIGN Act's consumer-consent requirements do not apply or that the Bureau should establish a blanket exemption from those requirements.

Consumer advocates objected to the E-SIGN Act exemption in proposed § 1006.42(c). These commenters stated that the proposal failed to satisfy the two conditions that E-SIGN Act section 104(d)(1) requires an agency to meet when establishing an exemption from the E-SIGN Act's consumer-consent provisions. Specifically, consumer advocates stated that the proposal failed to show that (i) electronic commerce is substantially burdened by requiring debt collectors to obtain E-SIGN consent and that (ii) the proposed exemption would not materially increase the risk of harm to consumers.

Regarding hyperlinks, consumer advocates observed that Federal agencies have advised consumers against clicking on hyperlinks in electronic communications from unrecognized senders. They stated that the proposed procedures for hyperlinked delivery of required disclosures failed to provide reasonable assurance that an electronic debt collection communication with a hyperlink would not be sent to spam or that the consumer would recognize the communication and be comfortable clicking on a hyperlink within it. They stated that the Bureau's rule should not permit required debt collection disclosures to be sent through hyperlinks in emails or text messages. For all of these reasons, consumer advocates recommended that the Bureau withdraw proposed § 1006.42(c).

After considering feedback, the Bureau believes that it currently lacks sufficient information to properly assess the risks and benefits of the alternative procedures in proposed § 1006.42(c) vis-à-vis the exemption criteria in E-SIGN Act section 104(d)(1), which, as noted above, are that ''such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.'' For the reasons the Bureau set forth in its proposal,[578] the Bureau concludes that the E-SIGN Act's consumer-consent requirements do pose a substantial burden on electronic commerce in the debt collection context. The Bureau also concludes, however, that it does not have sufficient evidence to establish that the proposed exemption and alternative procedures would not increase the material risk of harm to consumers.[579] The Bureau also lacks evidence to assess and finalize other possible alternative procedures. Accordingly, the Bureau is not finalizing proposed § 1006.42(c) or otherwise establishing an exemption from the E-SIGN Act's consumer-consent requirements at the present time. As discussed above, the final rule—as reflected in § 1006.42(b)—thus requires a debt collector who provides electronically the written disclosures required by the FDCPA and Regulation F to do so in accordance with the E-SIGN Act's consumer-consent requirements.

The Bureau also declines to finalize at the present time the requirements for hyperlinked delivery of required disclosures that were proposed as part of the alternative procedures. The Bureau believes that the consumer risks from clicking on hyperlinks in electronic communications from senders that consumers might not recognize warrant additional consideration by the Bureau[580] and the Bureau intends to continue to monitor and gather information on electronic communications use in debt collection and, if applicable, use of hyperlinks in debt collection communications. In the absence of the proposed requirements, the final rule does not prohibit a debt collector from sending required disclosures electronically through hyperlinks (or with accompanying hyperlinks), provided that the debt collector complies with the requirements of the FDCPA and Regulation F and other applicable law. However, the final rule also does not provide a safe harbor for a debt collector to use hyperlinks to provide required disclosures electronically.[581] As noted above, § 1006.42(a)(1) provides, in part, that a debt collector who sends disclosures required by the FDCPA or

[578] 84 FR 23274, 23361 (May 21, 2019).

[579] Moreover, quantitative testing completed by the Bureau after publication of the proposal shows consumer preference for receiving validation notices through the mail and less consumer willingness to receive validation notices by email or text message. *See* CFPB Quantitative Testing Report, *supra* note 33, at 32–33.

[580] As the Bureau noted in the proposal, the FTC advises consumers not to clink on links or attachments in unsolicited electronic communications from senders they do not recognize, in order to prevent phishing and malware. *See* 84 FR 23274, 23363 (May 21, 2019); Fed. Trade Comm'n, *How to Recognize and Avoid Phishing Scams* (July 2017), *https://www.consumer.ftc.gov/articles/how-recognize-and-avoid-phishing-scams;* Fed. Trade Comm'n, Malware (Nov. 2015), *https://www.consumer.ftc.gov/articles/0011-malware.* The FDIC offers consumers similar guidance. *See* Fed. Deposit Ins. Corp., *Beware of Malware: Think Before You Click, https://www.fdic.gov/consumers/consumer/news/cnwin16/malware.html* (last updated Mar. 8, 2016).

[581] In this regard, see the discussion of *Lavallee v. Med-1 Solutions* in the section-by-section analysis below addressing the Bureau's decision not to finalize a safe harbor for validation notices sent in the body of an electronic initial communication.

Regulation F in writing or electronically must, among other things, do so in a manner that is reasonably expected to provide actual notice. Final comment 42(a)(1)–1 provides relevant factors for determining whether a debt collector has met this requirement.

Safe harbor for validation notices sent in the body of an electronic initial-communication. Proposed § 1006.42(e)(2) provided that a debt collector satisfied the notice and retainability requirements of § 1006.42(a) if the debt collector delivered a validation notice in the body of an email that was the debt collector's initial communication with the consumer and satisfied certain other conditions. The debt collector could either (i) satisfy the requirements of proposed § 1006.42(b) for delivering validation notices electronically, which included obtaining the consumer's E-SIGN consent; or (ii) satisfy the requirements of the proposed alternative procedures in § 1006.42(c) discussed above (except that proposed § 1006.42(e)(2) would have permitted debt collectors to send the validation notice to a potentially broader set of email addresses than proposed § 1006.42(c) would have permitted).

Some industry commenters suggested that the safe harbor set forth in proposed § 1006.42(e)(2) be expanded in certain ways, while others criticized it as being overly complicated and burdensome.[582] Industry commenters generally stated that the safe harbor should be expanded through changes to the procedures for selecting an email address in proposed § 1006.6(d)(3). For example, these commenters stated that the safe harbor should include any email address or telephone number that the consumer has provided to, or confirmed with, the creditor, debt collector, or other person for purposes of receiving communication about the account, including a consumer's employer-provided email address if that is the email address that the consumer provided to the creditor.[583]

With respect to the form of the communication, some industry commenters stated that the safe harbor should include delivery of the validation notice in the initial communication through a text message. Others stated that the safe harbor should include initial communication emails that have the validation notice as a portable document format (PDF) attachment. And others stated that the safe harbor should expressly permit the body of initial communication emails to include both the validation notice and hyperlinks to debt collector websites.

Consumer advocates recommended that the Bureau withdraw the email safe harbor set forth in proposed § 1006.42(e)(2). These commenters stated that the proposed procedures for obtaining consumers' email addresses set forth in proposed § 1006.6(d)(3) would not reliably result in the validation notice information, contained within the emailed initial communication, actually reaching the consumer and could result in disclosure of sensitive information to third parties. These commenters stated that the proposal failed to provide a rational explanation of whether consumers would reliably receive the emailed initial communication.

Having considered the comments, the Bureau declines to finalize the safe harbor for email delivery of the validation notice information within the initial communication. The Bureau has determined that the FDCPA does not require the validation notice information to be provided in writing when it is contained in the initial communication.[584] The Bureau has therefore also determined that the E-SIGN Act's consumer-consent requirements do not apply to a debt collector's electronic delivery of the validation notice information within the debt collector's initial communication to a consumer.[585] Accordingly, a debt collector may electronically deliver the validation notice information within the debt collector's initial communication to a consumer without obtaining the consumer's E-SIGN consent.[586]

The Bureau also has determined that the validation notice information (whether or not contained in the initial communication) is a disclosure required by the FDCPA. Accordingly, the general standard in final § 1006.42(a)(1)—that a required disclosure be sent in a manner that is reasonably expected to provide actual notice and in a form that the consumer may keep and access later—applies when a debt collector sends the validation notice information electronically within the initial communication. The commentary discussed in the section-by-section analysis of § 1006.42(a)(1) clarifies the general standard.

However, because email communications in general are not widely used in debt collection currently, the Bureau lacks evidence to show that a debt collector sending an email pursuant to the proposed safe harbor would have a reasonable expectation of actual notice to the consumer. The Bureau is thus declining to finalize the proposed safe harbor.

The absence of the proposed safe harbor from the final rule does not preclude debt collectors from using email to deliver the validation notice information electronically within the initial communication if the debt collector is able to satisfy the requirements of the FDCPA and Regulation F, in particular the requirement that the communication be

[582] Some industry commenters did object to the safe harbor, but these commenters misunderstood the proposal as requiring a debt collector to obtain a consumer's E-SIGN consent when the debt collector delivers the validation notice in the body of an email that was the debt collector's initial communication with the consumer. Instead, as noted above, the proposed safe harbor included delivery without E-SIGN consent (per the alternative procedures set forth in proposed § 1006.42(c)) of an email to an email address that the debt collector selected through the procedures described in proposed § 1006.6(d)(3)).

[583] As also discussed in the section-by-section analysis of § 1006.22(f)(3), these commenters stated that, while it may be true that a consumer's employer can access emails sent to the consumer's employer-provided email addresses, consumers understand that they do not have an expectation of privacy from their employers for their employer-provided email account when they provide employer-provided email addresses to creditors.

[584] FDCPA section 809(a) permits the validation notice information to be contained in the initial communication. In turn, FDCPA section 807(11) indicates that the initial communication with the consumer may be oral. Accordingly, the Bureau interprets the FDCPA as not requiring that the validation notice information be provided in writing when it is contained in the initial communication.

[585] The E-SIGN Act's consumer-consent requirements apply only when a ''statute, regulation, or other rule of law'' requires that a disclosure be provided in writing. *See* E-SIGN Act section 101(c)(1) (15 U.S.C. 7001(c)(1)). Because the Bureau has determined that the FDCPA does not require that the validation notice information be provided in writing when it is contained in the initial communication (*see* previous footnote) and the Bureau is not imposing such a requirement through Regulation F, the Bureau has also determined that the E-SIGN Act's consumer-consent requirements do not apply to electronic delivery of the validation notice information when it is contained in the initial communication.

[586] In *Lavallee* v. *Med-1 Solutions,* the United States Court of Appeals for the Seventh Circuit held that the emails sent by Med-1 Solutions to Lavallee did not meet the FDCPA's requirements for electronic delivery of the validation notice information within an initial communication because the emails did not ''contain'' the validation notice information. *Lavallee* v. *Med-1 Solutions, LLC,* 932 F.3d 1049 at 1055 (7th Cir. 2019). The court observed that, to access the validation notice information, the consumers receiving the emails had to complete multiple, discrete tasks and ''[a]t best, the emails provided a digital pathway to access the information.'' *Id.* at 1055–56. Under the specific facts of that case, the Bureau agrees with the Seventh Circuit that the electronic delivery procedures used by Med-1 Solutions did not satisfy the requirement in FDCPA section 809(a) that the initial communication ''contain'' the validation notice information. Nonetheless, the Bureau believes that a debt collector may properly provide the validation notice information to a consumer within the debt collector's electronic initial communication with the consumer, provided that the communication ''contains'' the validation notice information.

sent in a manner that is reasonably expected to provide actual notice and in a form that the consumer may keep and access later. The Bureau will monitor whether debt collectors who electronically provide validation notice information within initial communications do so in a manner that does not violate these requirements.

As noted above, the Bureau is finalizing § 1006.42, including § 1006.42(a)(1), to implement and interpret FDCPA section 809(a) and (b) and pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors.

The Bureau is also finalizing § 1006.42(a)(1) to implement and interpret FDCPA section 808's prohibition on using unfair or unconscionable means to collect a debt. A few industry commenters objected to the proposal's initial conclusion that it may be unfair or unconscionable under FDCPA section 808 for a debt collector to deliver a disclosure using a method that is not reasonably expected to provide actual notice to the consumer or that does not allow the consumer to retain the disclosure and access it later.[587] These commenters argued that it is not unfair or unconscionable to send an electronic notice to a consumer that the debt collector has no reason to believe is addressed incorrectly or will be returned.

The Bureau concludes that the proposal's analysis under FDCPA section 808 is consistent with these commenters' position. Whether a debt collector has a reasonable expectation of actual notice depends upon the specific facts and circumstances, which may include the debt collector's knowledge concerning the accuracy of the electronic address used or knowledge regarding the likelihood that the electronic communication will be returned. As proposed, therefore, the Bureau is finalizing § 1006.42(a)(1) as, among other things, an interpretation of FDCPA section 808's prohibition on using unfair or unconscionable means to collect a debt.

Subpart C—Reserved

Subpart D—Miscellaneous

Section 1006.100 Record Retention

For the purpose of promoting the effective and efficient enforcement and supervision of Regulation F, the Bureau proposed in § 1006.100 to require a debt collector to retain evidence of compliance with Regulation F. Specifically, the Bureau proposed in § 1006.100(a) to require a debt collector to retain evidence of compliance with Regulation F starting on the date that the debt collector begins collection activity on a debt and ending three years after: (1) The debt collector's last communication or attempted communication in connection with the collection of the debt; or (2) the debt is settled, discharged, or transferred to the debt owner or to another debt collector. The proposed commentary would have clarified certain details, including that nothing in the proposed record retention provision required a debt collector to record telephone calls, but that, if a debt collector recorded telephone calls, the debt collector needed to retain the recordings if the recordings were evidence of compliance with Regulation F.[588] To address feedback received, the Bureau is finalizing § 1006.100(a) with revisions and is adding new § 1006.100(b) to create a special rule regarding retention of telephone call recordings.

100(a)

Industry commenters expressed concern regarding the potential burden of a retention requirement, especially for smaller debt collectors. Both industry and consumer advocate commenters offered suggestions on how the proposed requirement should be modified, as follows.

Trigger To Begin Retaining Records

As proposed, the final rule's record retention provision would have required a debt collector to begin retaining records ''on the date that the debt collector begins collection activity on a debt.'' Most commenters who addressed the issue stated that that requirement provides sufficient clarity. Some consumer advocate commenters suggested that the retention period begin as soon as a debt collector obtains a debt from a creditor (or prior debt collector)—as opposed to, as proposed, when collection activity begins—so that the debt collector retains evidence relevant to disparate impacts in who the debt collector targets for collection or for particular types of collection. The Bureau declines to start the record retention requirement at the time the debt collector obtains the debt.[589] The Bureau therefore is finalizing § 1006.100(a) to provide, as proposed, that a debt collector must begin to retain records on the date that collection activity begins on a debt.

Running of Retention Period

Industry commenters suggested a number of alternatives to, or requested clarity regarding, the Bureau's proposal to tie the running of the retention period to (at the debt collector's option) either the date of the debt collector's last communication or attempted communication regarding the debt or the date that the account was settled, transferred, discharged or otherwise closed.[590] First, some industry commenters suggested that the proposed retention period should run from the debt collector's last communication or attempted communication with the consumer rather than, as proposed, with anyone. These commenters asserted that the purpose of the FDCPA is to protect consumers from unfair, deceptive, and abusive debt collection practices by debt collectors and that a record retention requirement based on a debt collector's last communication or attempted communication with a consumer would be more consistent with this statutory purpose than the proposed approach of the last communication with anyone. Other industry commenters stated that the definitions of ''communication'' and ''attempted communication'' should be clarified for purposes of the rule's record retention requirement.

Second, industry commenters stated that, with respect to many accounts, a debt collector will undertake initial collection activity soon after receiving the account, but the account might then sit dormant for months or years before being settled, transferred, discharged, or otherwise closed on the debt collector's books.[591] These commenters stated that, as proposed, there would be uncertainty and burden associated with maintaining records for dormant accounts for time periods potentially well beyond three years from the last collection activity on the accounts because the accounts have not been closed. To alleviate this problem, some industry commenters suggested that the final rule's record retention requirement should require debt collectors to retain records for three years from the *earlier* of the date of the last communication or the date on which the account is closed.

Third, some industry commenters, as well as the U.S. SBA Office of

[587] *See* 84 FR 23274, 23356 (May 21, 2019).

[588] *See* 84 FR 23274, 23367–68 (May 21, 2019).

[589] Regulation B, 12 CFR 1002, which implements the Equal Credit Opportunity Act, imposes its own record retention requirements.

[590] In addition to the comments discussed in this section-by-section analysis, commenters raised concerns about the unique record retention burdens associated with telephone call recordings. The Bureau discusses those comments in the section-by-section analysis of § 1006.100(b) below, and addresses retention of all other types of records here.

[591] Some commenters suggested that the record retention provision in the regulation refer to the date on which an account is ''closed'' rather than ''transferred.''

Advocacy, requested more clarity as to when the three-year retention clock would start to run. Some of these commenters noted that, for discharged debts, it was not clear from the proposal whether the retention requirement would run from the date of the discharge or of some later terminal event. Others stated that the proposal was unclear whether, if there is a judgment, the three-year period runs from the final court order, the date that the judgment is paid, or the date the account is closed. Separately, some industry commenters stated that the date of initiating collection activity sufficiently set forth the expectation for when debt collectors should start retaining records with respect to an account.

Some consumer advocates likewise requested that the date on which the three-year retention clock starts to run be more definitive. These commenters suggested that the three-year period run from the time at which a debt collector sends a notice to the consumer stating that the debt has been fully paid or settled, or extinguished, or that the debt collector has ceased all collection activities related to the debt. These commenters stated their belief that most debt collectors do not currently provide such final notices today and suggested that the Bureau require such notices to provide clarity to consumers and to trigger the start of the three-year record retention clock.

The Bureau agrees that, as proposed, the record retention requirement could have imposed an unintended burden as a result of the variability of the length of the life cycles of various debt collection accounts and the long dormancy of many accounts after the first communication (and related initial activity). The Bureau, however, declines to address these concerns by taking the suggested approach of making the three-year retention period run from the *earlier* of the last communication or the closure of the debt file. If debt file closure occurred prior to the last communication, such an approach could result in the debt collector not being required to retain the record of the last communication for a sufficient time to permit effective supervision and enforcement, because the three-year retention period would have begun to run upon closure of the debt file. The Bureau also declines to require, as suggested by some consumer advocate commenters, a debt collector to provide a notice to a consumer that the debt collector has ceased all collection activity with respect to a debt. The Bureau did not propose such a requirement and therefore did not receive comments on the benefit or burden of such a requirement. For these reasons, the Bureau is finalizing § 1006.100(a) to provide that, except for telephone call recordings (as discussed in the section-by-section analysis of § 1006.100(b)), the retention period begins to run on the date of the last collection activity on the account. Final comment 100(a)–4 provides clarity regarding when the last collection activity on an account occurs and, thus, when the three-year record retention clock starts to run. The Bureau determines that having the retention period begin to run with the last collection activity on the account strikes the right balance between encompassing the activities and documents necessary to adequately supervise and enforce the requirements of the FDCPA and Regulation F, providing sufficient clarity for compliance, and not being overly burdensome.

The Bureau declines to base the running of the retention period, as suggested by industry commenters, on the debt collector's last communication with the consumer. Nothing in the statute's statement of its purposes in FDCPA section 802(e) suggests that the statute's protections are limited to debt collectors' communications with consumers. Further, the FDCPA's protections against harassment or abuse (FDCPA section 806), false or misleading representations (section 807), and unfair practices (section 808) are *not* limited to communications or activities directed to the consumer alleged to owe a debt. For example, FDCPA section 806 states that a debt collector may not harass, oppress, or abuse ''any person'' in connection with the collection of a debt. Finally, the FDCPA's limitations on acquisition of location information (FDCPA section 804) and communication with third parties (section 805(b)) are specifically targeted at communications with persons other than the consumer.

Length of Retention Period

Industry commenters expressed differing views as to the proposed three-year record retention period. Some commenters stated that the proposed period strikes the right balance between cost and burden on the one hand and the need to ensure adequate supervision and enforcement on the other. Some stated that the period should be one year, consistent with the FDCPA's one-year statute of limitations. Other industry commenters recommended that the retention period be two years, consistent with Regulation X, 12 CFR 1024, and Regulation Z, 12 CFR 1026. Others suggested that the proposed three-year period should be amended to be ''at least'' or ''no less than'' three years to clarify that maintaining records for more than three years would not be a violation.

Many consumer advocates stated that the record retention period should be longer than three years. Some consumer advocates stated that the retention period should last at least as long as a debt collector might continue collection attempts. Others said that it should be seven years, paralleling the length of time that information generally may stay in consumer credit reports under the FCRA and the time periods for actions under certain State laws. Others recommended that the rule clarify that debt collectors who furnish information to consumer reporting agencies pursuant to the FCRA also must comply with the recordkeeping requirements of the FCRA.

For the reasons discussed below, the Bureau has decided to finalize a three-year record retention period, as proposed. First, as to comments about the FDCPA's ''one-year statute of limitations,'' the Bureau notes that that timeframe refers to FDCPA section 813(d), which applies only to private actions brought under the FDCPA. FDCPA section 814(b) and (c) set forth the basis for Federal agencies, including the Bureau, to bring administrative enforcement actions for violations of the FDCPA. The Bureau also declines to make the Regulation F retention period match the period set forth in Regulations X and Z (two years), because those regulations implement statutes (respectively, RESPA and the Truth in Lending Act [592]) that serve different purposes than the FDCPA. The Bureau also declines to adopt a record retention time period longer than three years because retention for such a time period is unnecessary for effective supervision and enforcement and is not typical under the consumer financial services laws.

A three-year retention period will provide the Bureau and other Federal and State enforcement agencies with a sufficient but limited amount of time to examine and conduct enforcement investigations. In addition, it will facilitate effective supervisory examinations, which depend critically on having access to the information necessary to assess operations, activities, practices, and legal compliance. If the record retention period were reduced, it could be considerably more difficult to ensure that the necessary information and records would remain routinely

[592] 15 U.S.C. 1601 *et seq.*

available for proper supervisory oversight of debt collectors. The Bureau is in a position to evaluate such issues from its near-decade of experience exercising supervision and enforcement authority over the debt collection industry.[593] That experience supports the conclusion that a three-year record retention period is necessary and warranted.

The Bureau also concludes that a three-year retention period will not impose an undue cost or burden on debt collectors, particularly when viewed in light of the marginal difference in cost or burden between, for example, a two-year period and a three-year period. Based on the comments received and its own experience in supervision and law enforcement, the Bureau concludes that many debt collectors have already incorporated record retention policies and procedures into their budgets and daily operations and already maintain records for a sufficient length of time to comply with the time period in the final rule. The Bureau also determines that a three-year retention period is unlikely to impose undue burden on debt collectors because it is increasingly common, even for smaller entities, to maintain records electronically either on their own computers or using ever cheaper cloud storage options.

The Bureau agrees with consumer advocate commenters that debt collectors who are furnishers under the FCRA must also, in addition to complying with the Regulation F record retention requirement, comply with the recordkeeping requirements of the FCRA. In particular, Regulation V, 12 CFR part 1022, requires furnishers to incorporate its guideline to ''maintain[ ] records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute.'' [594] Records reasonably substantiating a debt collector's claims that a consumer owes a debt are records that are evidence of the debt collector's compliance or noncompliance with the FDCPA's prohibition against unfair or deceptive debt collection practices, as discussed in more detail below. Accordingly, if a debt collector is also a furnisher under Regulation V, a three-year Regulation F record retention requirement would be the minimum amount of time for purposes of the Regulation V record retention guideline, since that guideline specifically incorporates ''any applicable recordkeeping requirement.'' Under the final rule, there are no consumer debts or record types associated with those debts for which the rule requires record retention for more than three years beyond the last collection activity. The final rule therefore does not preclude debt collectors from adopting policies and procedures under which records are deleted three years after the last collection activity on an account. However, if a debt collector deletes an account's records (other than call recordings, which are discussed below) at that time, then a violation of the record retention provision would occur if the debt collector undertook any further collection activity with respect to that account.[595] Moreover, the Bureau concludes it is clear that a debt collector must have (or have access to) records reasonably substantiating its claim that a consumer owes a debt in order to avoid engaging in deceptive or unfair collection practices in violation of the FDCPA when it attempts to collect the debt.[596] Thus, records reasonably substantiating a debt collector's claim that a consumer owes a debt are records that are evidence of compliance or non-compliance with the FDCPA and Regulation F. As a result, although the record retention requirement does not mandate retention of any records beyond three years after the debt collector's last collection activity on the debt, restarting debt collection activity at any time would mean that the last collection activity on the debt had not yet occurred.

Records To Be Retained

Consumer advocates generally recommended that, rather than require that debt collectors retain ''evidence of compliance,'' the record retention provision should require debt collectors to retain more types of documents. Specifically, these commenters said, the provision should reflect the types of documents described in the record retention provision of the Bureau's SBREFA Outline, which would have ''encompass[ed] all records the debt collector relied upon for the information in the validation notice and to support claims of indebtedness, for example, the information the debt collector obtained before beginning to collect, the representations the debt collector received from the creditor before beginning to collect, and the records the debt collector relied upon in responding to a dispute.'' [597]

As the Bureau intended with its proposal to require a debt collector to retain ''evidence of compliance,'' the final rule clarifies that a debt collector must retain records that are evidence of compliance or noncompliance with the FDCPA and Regulation F, which includes records that evidence that the debt collector refrained from conduct prohibited by the FDCPA and Regulation F. *See* final comment 100(a)–1. The Bureau declines, however, to go further and to apply the final rule's record retention requirement to all of the types of records that were described in the Bureau's 2016 SBREFA Outline. At that time, the Bureau was considering a broader set of possible regulatory provisions, pursuant to legal authorities including the Bureau's Dodd-Frank Act section 1031 unfair, deceptive, or abusive or acts or practices (UDAAP) authority, which could have applied to parties including creditors, and which could have resulted in creditors being required to ensure that they pass complete and accurate information about consumer debts to debt collectors. In contrast, the Bureau is now adopting a final rule, pursuant primarily to its FDCPA authority,[598] that is narrower in scope and that applies only to FDCPA debt collectors. Accordingly, the Bureau determines that the record retention requirement that was described in the Bureau's SBREFA Outline is neither necessary nor warranted to accomplish the requirement's purpose, which is to promote effective and efficient enforcement and supervision of the requirements of the FDCPA and Regulation F, thereby promoting compliance with the law which is beneficial to consumers.

Burden for Smaller Debt Collectors

Several industry commenters, as well as the U.S. SBA Office of Advocacy expressed concern about the potential burden of the proposed requirement on

[593] To facilitate Bureau supervision of nonbank covered persons active in the consumer debt collection market, the Bureau published in 2012 a rule defining larger participants in that market. 77 FR 65775 (Oct. 31, 2012).

[594] 12 CFR 1022, app. E, para. III(c).

[595] This is because further collection activity on the account after deletion of some of the account's records would necessarily mean that the debt collector had failed to retain records, per § 1006.100(a), ''starting on the date that the debt collector begins collection activity on a debt until not less than three years after the debt collector's last collection activity on the debt.''

[596] FDCPA section 807 states that ''[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.'' Section 808 states that ''[a] debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.''

[597] Small Business Review Panel Outline, *supra* note 36, at 35.

[598] Although the final rule uses certain authorities provided to the Bureau by the Dodd-Frank Act, the rule relies primarily on the Bureau's FDCPA authority and does not rely at all on the Bureau's Dodd-Frank Act UDAAP authority.

small debt collectors. These commenters noted that the cost of retaining electronic debt collection records, including telephone call recordings and scanned images, can be significant. Some of these commenters observed that most debt collectors have incorporated record retention procedures and costs into their daily operations, but that any additional requirements to retain records beyond three years could impose significant expense. Others stated their belief that a recorded telephone call would almost always constitute ''evidence of compliance'' and that, to reduce burden, the Bureau should consider imposing a tiered recordkeeping requirement for call recordings that takes into account the costs of maintaining recorded calls for small debt collectors.

As discussed above, the Bureau concludes that its revisions to § 1006.100(a) (and its addition of § 1006.100(b) for a special rule regarding telephone calls, as discussed below) address the concerns of commenters, including small businesses, regarding the burdens of a record retention requirement, including for small businesses. In addition, the Bureau in the final rule has added comment 100(a)–2 to make clear that a debt collector need not create and maintain, for the sole purpose of evidencing compliance, additional records that the debt collector would not have created in the ordinary course of its business in the absence of the record retention requirement in § 1006.100(a). For these reasons, the Bureau determines that most debt collectors of all sizes will be able to comply with the final rule's record retention requirement without making significant changes to their existing record retention policies and procedures.[599] Accordingly, the Bureau concludes that the final record retention requirement will not impose a significant burden on debt collectors.

For all of the reasons discussed above, the Bureau is finalizing § 1006.100(a) to provide that, except as provided in § 1006.100(b), a debt collector must retain records that are evidence of compliance or noncompliance with the FDCPA and Regulation F starting on the date that the debt collector begins collection activity on a debt until three years after the debt collector's last collection activity on the debt. Comment 100–1 states that nothing in § 1006.100 prohibits a debt collector from retaining records that are evidence of compliance or noncompliance with the FDCPA and Regulation F for more than three years after the applicable date.

Comment 100(a)–1 clarifies that, if a record is of a type that could evidence compliance or noncompliance depending on the conduct of the debt collector that is revealed within the record, then the record is one that is evidence of compliance or noncompliance and the debt collector must retain it. The comment also provides examples.[600] As noted above, comment 100(a)–2 clarifies that a debt collector need not create and maintain, for the sole purpose of evidencing compliance, additional records that the debt collector would not have created in the ordinary course of its business in the absence of the record retention requirement in § 1006.100(a). Comment 100(a)–3 states, as was proposed, that § 1006.100(a) does not require retaining actual paper copies of documents and that records may be retained by any method that reproduces them accurately and ensures the debt collector can easily access them (including the debt collector having a contractual or other legal right to access records possessed by another entity). And final comment 100(a)–4 provides clarity regarding when the last collection activity on an account occurs and, thus, when the retention clock starts to run.

100(b)

As noted in the section-by-section analysis of § 1006.100(a), the Bureau received a number of comments regarding the unique concerns associated with retaining telephone call recordings. Industry commenters stated that the lifespan of debt collection accounts can vary significantly, with some remaining open only for months and others remaining open for many years. These commenters further stated that many debt collectors' systems store telephone call recordings in large batch files based on date (*e.g.,* a debt collector creates and stores one batch file each day that contains all of the call recordings for that day) and that, under the Bureau's proposal, a debt collector would need to retain a given date's call recordings for at least three years beyond the lifespan of the longest-lifespan account for which a call was recorded on that date. These commenters expressed concern that, as a result, there could be significant burden associated with retaining many call recordings for well beyond three years.

To alleviate this problem, some industry commenters suggested that the final rule take an approach to record retention under which debt collectors would be required to retain a record, including a call recording, for three years from the unique or discrete event—such as a telephone call or letter, report to a credit bureau, or a payment or credit—that generated the record. These commenters also noted that the suggested event-specific approach would help reduce burden in the area of healthcare debt collection, because healthcare debts are usually packaged by patient rather than by account or debt.

The Bureau agrees that the potential unique burdens associated with retaining telephone call recordings (for debt collectors who record telephone calls) merits a special rule regarding their retention. The Bureau therefore is finalizing § 1006.100(b) to set forth a separate retention time period for telephone call recordings. Section 1006.100(b) states that, if a debt collector records telephone calls made in connection with the collection of a debt, the debt collector must retain the recording of each such telephone call for three years after the date of the call.[601] Thus, in contrast to other record types, a debt collector could delete a call recording after three years and yet collection activity on the relevant account could continue after that time.[602] The Bureau concludes that this approach to call recordings addresses industry commenters' concerns regarding potentially having to retain some call recordings for much longer than three years, due to debt collectors' batch file call recording systems.

The Bureau declines to adopt this event-specific approach for retention of

[599] As in the proposal, the final recordkeeping requirement does not require a debt collector to record telephone calls. However, as discussed below, if a debt collector's practice is to record telephone calls, then the such records are evidence of compliance or noncompliance and the debt collector must retain them.

[600] Final comment 100(a)–1 includes an example that refers, in part, to disclosures required by the FDCPA, as implemented by Bureau regulation. The Bureau expects that, in the Bureau's disclosure-focused final rule, this reference will be updated to refer to disclosures required by § 1006.34.

[601] Final comment 100(b)–1 clarifies that, while nothing in § 1006.100 requires a debt collector to make call recordings, if a debt collector records telephone calls, the recordings are evidence of compliance or noncompliance with the FDCPA and Regulation F and the debt collector must retain the recording of each such telephone call for three years after the date of the call.

[602] For example, if a call recording occurred at month six in the life of an account, the call recording could be deleted three years later; and, collection activity on that account could continue past the account's three-and-a-half-year mark, notwithstanding that the call recording had been deleted. Further, as noted above, comment 100–1 provides that nothing in § 1006.100 prohibits a debt collector from retaining records that are evidence of compliance or noncompliance with the FDCPA and Regulation F for more than three years after the applicable date.

record types other than call recordings, as suggested by some commenters. This is because the Bureau determines, based on comments received and its own experience, that the burden of retaining call recordings can be significant, such that it is appropriate to give debt collectors a date certain on which call recordings may be deleted—three years after the date of the telephone call—notwithstanding that collection activity on the relevant account might continue after that time. As discussed above, however, the Bureau concludes that it is generally inappropriate for a debt collector to continue collection activity on an account after the debt collector has begun to delete its records related to that account. Further, the Bureau believes based on feedback received that the burden of retaining other record types for the record retention period is not as significant as that of retaining call recordings. The Bureau therefore believes that an event-specific approach to record retention is neither necessary nor warranted for records other than call recordings.[603]

For the reasons described above, the Bureau is finalizing § 1006.100 to facilitate supervision of, and to assess and detect risks to consumers posed by debt collectors, including debt collectors who are larger participants of the consumer debt collection market, as defined in 12 CFR part 1090, and to enable the Bureau to conduct enforcement investigations to identify and help prevent and deter abusive, unfair, and deceptive debt collection practices.

The Bureau is finalizing § 1006.100 pursuant to its authority under title X of the Dodd-Frank Act. Specifically, the Bureau is finalizing § 1006.100 pursuant to Dodd-Frank Act section 1022(b)(1), which, among other things, provides that the Bureau's director may prescribe rules and issue orders and guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws and to prevent evasions thereof. The Bureau also is finalizing § 1006.100 pursuant to Dodd-Frank Act section 1024(b)(7)(A), which authorizes the Bureau to prescribe rules to facilitate supervision of a person described in Dodd-Frank Act section 1024(a)(1) including a person identified as a larger participant of a market for a consumer financial product or service as defined by rule in accordance with section 1024(a)(1)(B) of the Dodd-Frank Act;[604] and Dodd-Frank Act section 1024(b)(7)(B), which authorizes the Bureau to require a person described in Dodd-Frank Act section 1024(a)(1) to retain records for the purpose of facilitating supervision of such a person and assessing and detecting risks to consumers.

Title X of the Dodd-Frank Act does not provide a private right of action. Accordingly, the Bureau has determined that § 1006.100 does not provide a private right of action if a debt collector were to fail to comply with the requirements of § 1006.100.

Section 1006.104 Relation to State Laws

FDCPA section 816 provides that the FDCPA does not annul, alter, or affect, or exempt any person subject to the provisions of the FDCPA from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of the FDCPA, and then only to the extent of the inconsistency. FDCPA section 816 also provides that, for purposes of that section, a State law is not inconsistent with the FDCPA if the protection such law affords any consumer is greater than the protection provided by the FDCPA.[605] The Bureau proposed § 1006.104 to implement FDCPA section 816.[606] Proposed § 1006.104 mirrored the statute, except that proposed § 1006.104 referred to both the provisions of the FDCPA and the corresponding provisions of Regulation F. Proposed comment 104–1 would have clarified that a disclosure required by applicable State law that describes additional protections under State law does not contradict the requirements of the FDCPA or the corresponding provisions of Regulation F.

Several industry and consumer advocate commenters expressed overall support for proposed § 1006.104 and its related commentary and did not request changes. For instance, at least one commenter stated that the proposal appropriately recognized the ability of States to enact laws that offer greater protections than those the FDCPA provides.

A State Attorney General commenter expressed concern about how the proposal would interact with State unfair or deceptive acts or practices laws that exempt from liability acts or transactions permitted or affirmatively authorized by Federal law. The commenter was particularly concerned that debt collectors might argue that compliance with the proposal's safe harbor provisions constitutes a defense to liability under State consumer protection laws. To mitigate this possibility, the commenter asked the Bureau to clarify that it does not intend to exempt debt collectors from State law requirements that afford equal or greater protection to consumers. Further, the commenter asked the Bureau to clarify that an act or transaction that satisfies the proposal's safe harbor provisions is not affirmatively authorized or permitted with regard to any other law, such that the act or transaction would be exempt from liability under State law pursuant to an exemption for federally permitted transactions.

Some commenters asked the Bureau to clarify how proposed § 1006.104 and its related commentary would impact State law disclosure requirements. According to these commenters, proposed comment 104–1 did not track FDCPA section 816's statutory language and therefore would be susceptible to competing interpretations. These commenters expressed concern that proposed comment 104–1 could be interpreted to mean that proposed § 1006.104 would preempt State law disclosure requirements that afford the same protections as the FDCPA and the corresponding provisions of Regulation F. These commenters opposed such an interpretation as being inconsistent with FDCPA section 816.

The Bureau notes that the final rule implements the FDCPA, a Federal law. The final rule does not interpret State law. Regarding the effect of the final rule on State law, the Bureau will apply the standard Congress set forth in FDCPA section 816. Under FDCPA section 816, debt collectors are only relieved of an obligation to comply with State law if that law is inconsistent with the FDCPA or the corresponding provisions of Regulation F, and then only to the extent of that inconsistency (and, as noted above, a State law that affords consumers greater protection than the FDCPA and Regulation F would not be inconsistent). For example, a State law that affords greater protection to consumers by imposing a call frequency limit is not preempted by § 1006.14(b), which sets a presumption of compliance or violation as to call frequency only with respect to the FDCPA and Regulation F. Thus, this final rule does not affirmatively permit debt collectors to comply with the presumption regarding call frequency in § 1006.14 instead of an applicable State-law frequency limit that affords greater protection to consumers. Further, the

[603] The Bureau has considered comments received regarding the different structure of medical debt accounts and records relative to other debt types. The Bureau declines to adopt a record retention provision specific to medical debt.

[604] 12 CFR 1090.105 defines larger participants of the consumer debt collection market.

[605] 15 U.S.C. 1692n.

[606] *See* 84 FR 23274, 23368 (May 21, 2019).

Bureau emphasizes that any safe harbor provided by Regulation F is a safe harbor only for purposes of compliance with the FDCPA and Regulation F and is not a safe harbor with regard to State laws, unless States choose to incorporate those Federal standards into their State legal frameworks. Moreover, as discussed in their respective section-by-section analyses, the Bureau is not finalizing the safe harbors that were set forth in proposed §§ 1006.18(g) and 1006.42(e)(2), which were specifically cited by commenters as being potentially problematic vis-a-vis State laws. As a result, the final rule contains fewer safe harbors that could interrelate with States' laws prohibiting unfair, deceptive, or abusive acts and practices.

After considering the comments, and pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors, the Bureau is finalizing § 1006.104 as proposed to implement FDCPA section 816. Because § 1006.104 largely restates the FDCPA, the provision appropriately accommodates State debt collection laws, including those laws that afford consumers greater protections than the FDCPA and the corresponding provisions of Regulation F.

The Bureau is not finalizing proposed comment 104–1 at this time. Because proposed comment 104–1 specifically addressed how State law disclosure requirements might interact with the FDCPA and Regulation F, the Bureau expects to determine whether and how to finalize proposed comment 104–1 as part of its disclosure-focused final rule.

Section 1006.108 Exemption for State Regulation and Appendix A Procedures for State Application for Exemption From the Provisions of the Act

FDCPA section 817 provides that the Bureau shall by regulation exempt from the requirements of the FDCPA any class of debt collection practices within any State if the Bureau determines that, under the law of that State, that class of debt collection practices is subject to requirements substantially similar to those imposed by the FDCPA, and that there is adequate provision for enforcement.[607] Sections 1006.1 through 1006.8 of existing Regulation F implement FDCPA section 817 and set forth procedures and criteria whereby States may apply to the Bureau for exemption of debt collection practices within the applying State from the provisions of the Act.[608] The Bureau proposed to retain these procedures and criteria, reorganized as § 1006.108 and appendix A, and with minor changes for clarity.[609]

Consistent with existing § 1006.2, proposed § 1006.108(a) provided that any State may apply to the Bureau for a determination that, under the laws of that State, any class of debt collection practices within that State is subject to requirements that are substantially similar to, or provide greater protection for consumers than, those imposed under FDCPA sections 803 through 812 and the corresponding provisions of Regulation F, and that there is adequate provision for State enforcement of such requirements. Proposed § 1006.108(b) stated that the procedures and criteria whereby States may apply for such an exemption are set forth in appendix A.

Proposed appendix A set forth the procedures and criteria whereby States may apply to the Bureau for the exemption described in proposed § 1006.108. Proposed appendix A largely mirrored existing §§ 1006.1 through 1006.8, with certain revisions, including clarifying in proposed paragraph IV(a)(1)(i) that the ''substantially similar'' standard in FDCPA section 817 applies to the Bureau's consideration of all aspects of the State law for which the exemption is sought, including defined terms and rules of construction.[610] Accordingly, proposed paragraph IV(a)(1)(iv) used the phrase ''substantially similar'' rather than ''the same'' as in existing Regulation F.

Some commenters expressed general support for proposed § 1006.108 and proposed appendix A. However, some commenters raised various concerns about incorporating the existing language of § 1006.2 and urged the Bureau to change the proposed language. For instance, an individual commenter argued that the term substantially similar is ambiguous and should be removed from both § 1006.108 and appendix A. Under this approach, § 1006.108 would permit exemptions only for State laws that provide greater protection for consumers than those imposed under FDCPA sections 803 through 812 and the corresponding provisions of Regulation F. Conversely, at least one industry commenter stated that the proposal (and existing Regulation F) deviated from the statutory language of FDCPA section 817 by allowing States to receive an exemption for State laws that ''provide greater protection for consumers'' than the FDCPA and Regulation F. According to this commenter, this language could permit States to supplant the requirements of the FDCPA and Regulation F and expose debt collectors to a patchwork of inconsistent State laws. This commenter urged the Bureau to revise proposed § 1006.108 and proposed appendix A consistent with FDCPA section 817 to permit exemptions only for State laws whose requirements are substantially similar to the FDCPA and the corresponding provisions of Regulation F.

The Bureau declines to adopt the recommendation to remove the phrase ''substantially similar'' from § 1006.108 and appendix A. FDCPA section 817 uses ''substantially similar,'' so removing that phrase from proposed § 1006.108 and proposed appendix A would deviate from the FDCPA. Further, the Bureau disagrees that the phrase is ambiguous. As discussed in the section-by-section analysis of § 1006.38(d)(2)(ii), the concept of ''substantially the same,'' which is analogous to ''substantially similar,'' is sufficiently clear and is a concept that is present in other regulations.

However, the Bureau agrees with commenters that proposed § 1006.108 and proposed appendix A should be modified to refer only to State laws with substantially similar requirements as the FDCPA and the corresponding provisions of Regulation F. The Bureau recognizes the prerogative of States to establish debt collection laws within their jurisdictions. The Bureau notes that FDCPA section 816, which is implemented by § 1006.104, accommodates State laws that afford greater protections to consumers than the FDCPA as long as they are not inconsistent with the Act. The Bureau is also skeptical that the proposed language, which is consistent with existing § 1006.2, would have resulted in an irreconcilable patchwork of inconsistent State laws since only one State has applied for and received an exemption pursuant to FDCPA section 817 since 1995.[611] Nevertheless, FDCPA section 817 refers only to exempting State laws with requirements that are substantially similar to those imposed by the Act and does not mention exempting State laws that afford greater protections to consumers. Accordingly,

[607] 15 U.S.C. 1692o.

[608] 12 CFR part 1006.

[609] *See* 84 FR 23274, 23368 (May 21, 2019).

[610] The Bureau also proposed several additional changes to existing Regulation F. The Bureau proposed to define the terms ''applicant State law'' and ''relevant Federal law'' in proposed paragraph I(b). Proposed appendix A would have stricken existing § 1006.3(c) as redundant of proposed paragraph III(a) as revised. Proposed paragraph III(d) of appendix A would have repeated existing § 1006.3(e) with certain clarifications. Proposed paragraph VI(b) would have repeated existing § 1006.6(b) with certain clarifications.

[611] *See* 60 FR 66972 (Dec. 27, 1995).

the Bureau is modifying § 1006.108(a) to remove the reference to State requirements that ''provide greater protection for consumers than'' FDCPA sections 803 through 812 and the corresponding provisions of Regulation F. At the same time, the Bureau is not modifying paragraph IV(a)(2). Paragraph IV(a)(2) states that, when assessing whether an applicant State law is substantially similar to relevant Federal law, the Bureau will not consider adversely any additional requirements of State law that are not inconsistent with the purpose of the Act or the requirements imposed under relevant Federal law. Thus, while the Bureau's exemption standard is whether the State law has ''substantially similar'' requirements, exemptions may be available for State laws that are both substantially similar to the FDCPA and afford greater consumer protections. The Bureau also is finalizing conforming changes to appendix A.

Commenters also provided feedback specific to proposed appendix A. An industry commenter objected to proposed paragraph IV(a)(1)(i)'s use of the phrase ''substantially similar'' rather than ''the same,'' which appears in existing § 1006.4(a)(1)(i). According to the commenter, the Bureau's proposal to permit variation from FDCPA-defined definitions and rules of construction would create uncertainty. The commenter therefore suggested that the Bureau finalize paragraph IV(a)(1)(i) using the language in existing Regulation F.

The Bureau declines to adopt this recommendation. As discussed above, FDCPA section 817 and final § 1006.108(a) expressly permit exemptions for State regulation when, under the laws of that State, any class of debt collection practices within that State is subject to requirements that are substantially similar to those imposed under FDCPA sections 803 through 812 and the corresponding provisions of this final rule. To best reflect FDCPA section 817's statutory language and to ensure consistency throughout Regulation F, the Bureau uses the phrase ''substantially similar'' in § 1006.108 and appendix A. Thus, the Bureau is finalizing paragraph IV(a)(1)(i) of appendix A as proposed.

Trade associations asked the Bureau to mandate a timeframe for when the Bureau would act on State exemption applications. According to these commenters, such a timeframe would benefit States by reducing the likelihood that their requests would become outdated and would provide certainty to consumers and debt collectors. The Bureau declines to adopt this recommendation. The Bureau cannot, in advance, anticipate the questions raised by a given State exemption application. While the Bureau intends to act expeditiously on applications, it is not feasible to commit to a mandatory timeframe for responses, particularly as only one State has obtained an exemption since the FDCPA was passed.[612] Notably, other Federal consumer financial laws that involve Bureau determinations regarding State law do not impose response timeframes.[613] In addition, the Bureau notes that State government commenters, which commenters stated would benefit from a mandatory timeframe, did not request one. Pursuant to paragraph VI(a) of appendix A, a final rule granting an exemption under this provision becomes effective 90 days after the date of the publication of such rule in the **Federal Register**. This 90-day grace period provides sufficient time for debt collectors and consumers to adjust to an exemption, which will bolster certainty in the market. Thus, the Bureau concludes that a mandatory timeframe is unnecessary.

A consumer advocate recommended that the Bureau expressly require that, when a State informs the Bureau about a change in applicable State laws pursuant to paragraph (VI)(b)(i) of appendix A,[614] or the Bureau informs a State about an amendment to the FDCPA or Regulation F pursuant to paragraph (VI)(c) of appendix A, the State must provide a report outlining its continued eligibility for the exemption and that the Bureau conduct a review in light of these changes. The Bureau declines to adopt this recommendation. The purpose of paragraphs (VI)(b) and (c) of appendix A is to help the Bureau monitor whether an exemption granted pursuant to FDCPA section 817 and the corresponding provisions of Regulation F continues to be appropriate. That the Bureau would review reports and information provided pursuant to these paragraphs is implicit in the framework of § 1006.108 and appendix A. Thus, no additional clarification or modification is necessary.

Trade associations stated that the proposal did not specify what steps a State would need to take if, after applying, a State withdraws and resubmits its exemption application. The Bureau declines to address this comment as part of the rulemaking but notes that, if such a scenario occurred, it would work with the State to ensure that the State's application received appropriate consideration. These commenters also asked whether a State that currently has an exemption under FDCPA section 817 and existing Regulation F will need to reapply or whether the Bureau would grandfather such an exemption. No modification to the proposed appendix text is necessary in response to this comment. Appendix A sections VI and VIII, respectively, provide frameworks for evaluating and revoking existing exemptions. As noted above, to date, only one State has been granted an exemption. Pursuant to the procedures established in sections VI and VIII, the Bureau intends to review in due course whether that exemption remains appropriate in light of this final rule and the upcoming disclosure-focused final rule.

A consumer advocate commenter asked the Bureau to clarify in proposed paragraph VI(d) of appendix A that, if an exemption is granted, the State law provisions that parallel the FDCPA and the corresponding provisions of Regulation F constitute Federal law. The Bureau declines to adopt this recommendation. As noted in the proposal, the Bureau did not propose to change existing § 1006.2 language in proposed appendix A because it did not seek to make substantive changes to the requirements for State requests for exemptions.[615] Because the commenter did not explain what purpose this clarification would serve, the Bureau adopts paragraph VI(d) of appendix A as proposed.

For the reasons described above, the Bureau is finalizing § 1006.108 and appendix A largely as proposed, but with modifications to mirror the statutory language. Accordingly, pursuant to § 1006.108 and appendix A, a State may apply to the Bureau for a determination that, under the laws of that State, any class of debt collection practices within that State is subject to requirements that are substantially similar to those imposed under FDCPA sections 803 through 812 and the corresponding provisions of Regulation F.

The Bureau is finalizing § 1006.108 and appendix A to implement and interpret FDCPA section 817 and pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors.

[612] The FTC granted Maine the exemption in 1995. *See* 60 FR 66972 (Dec. 27, 1995).

[613] *See, e.g.,* 12 CFR 1024.5(c)(3).

[614] Paragraph (VI)(b)(i) of proposed appendix A would have required a State to provide a report to the Bureau within 30 days of any change in the applicant State law.

[615] *See* 84 FR 23274, 23369 (May 21, 2019).

Appendix C to Part 1006—Issuance of Advisory Opinions

FDCPA section 813(e) provides that provisions in the FDCPA that impose liability do not apply to any act done or omitted in good faith in conformity with any advisory opinion of the Bureau, notwithstanding that, after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.[616]

The Bureau proposed to add appendix C to Regulation F to publish a list of any advisory opinions that the Bureau issues pursuant to FDCPA section 813(e).[617] Proposed appendix C also would have clarified that any act done or omitted in good faith in conformity with any advisory opinion issued by the Bureau, including those referenced in appendix C, provides the protection from liability for FDCPA-based violations afforded under FDCPA section 813(e). Proposed appendix C also included instructions for requesting an advisory opinion.

The Bureau received several comments regarding appendix C from industry trade groups and a group of consumer advocates. The comments uniformly supported including appendix C, and a list of advisory opinions, in the regulation.

Industry commenters suggested adopting a timeline component that would require the Bureau to respond to requests for advisory opinions within a certain period of time and publish draft opinions for notice and comment before finalizing. The group of consumer advocates suggested that the Bureau clarify that advisory opinions issued by the FTC prior to the Bureau's creation no longer have any validity. They also suggested that the Bureau engage in notice and comment rulemaking to amend the regulation or its commentary instead of relying on advisory opinions, or, if the Bureau continues to issue advisory opinions, to do so only in extremely limited circumstances that includes publishing the draft opinion for notice and comment with a minimum review period of 60 days, as well as publishing any denials of requests for advisory opinions.

With respect to the commenter's request to clarify that FTC advisory opinions no longer have any validity, the Bureau declines to do so. As explained in the Bureau's 2011 Identification of Enforceable Rules and Orders,

for laws with respect to which rulemaking authority will transfer to the CFPB, the official commentary, guidance, and policy statements issued prior to July 21, 2011, by a transferor agency with exclusive rulemaking authority for the law in question (or similar documents that were jointly agreed to by all relevant agencies in the case of shared rulemaking authority) will be applied by the CFPB pending further CFPB action. The CFPB will give due consideration to the application of other written guidance, interpretations, and policy statements issued prior to July 21, 2011, by a transferor agency in light of all relevant factors, including: Whether the agency had rulemaking authority for the law in question; the formality of the document in question and the weight afforded it by the issuing agency; the persuasiveness of the document; and whether the document conflicts with guidance or interpretations issued by another agency.[618]

The Bureau is the first Federal agency to possess authority to issue substantive rules for debt collection under the FDCPA. However, the Bureau considers FTC advisory opinions issued before July 21, 2011, to be ''other written guidance, interpretations, and policy statements.'' Thus, to the extent that this rulemaking does not supersede any such interpretations, the Bureau will continue to give due consideration in light of all relevant factors.

The Bureau is finalizing appendix C with revisions to update the process for submitting a request for an advisory opinion. In June 2020, the Bureau launched a new pilot advisory opinion program and, at the same time, proposed a procedural rule for a permanent advisory opinion program.[619] The pilot advisory program allows entities seeking to comply with any of the Bureau's regulations, including this final rule, to submit a request if uncertainty exists.[620]

Final appendix C reflects this new process. It states that a request for an advisory opinion may be submitted in accordance with the instructions regarding submission and content of requests applicable to any relevant advisory opinion program that the Bureau offers. The Bureau will review requests for advisory opinions and will make advisory opinions public consistent with the process outlined in such a program.

The Bureau is finalizing appendix C pursuant to its authority under FDCPA sections 813(e) and 814(d). Final appendix C will facilitate compliance with Regulation F by ensuring that participants who have questions know how to request clarification and any interested party can easily locate each advisory opinion addressing questions relating to Regulation F.

Supplement I to Part 1006—Official Interpretations

The Bureau proposed to add Supplement I to Regulation F to publish official interpretations of the regulation (*i.e.,* commentary).[621] Proposed comment I–1 explained that the commentary is the Bureau's vehicle for supplementing Regulation F and has been issued pursuant to the Bureau's authority to prescribe rules under 15 U.S.C. 1692*l*(d) and in accordance with the notice-and-comment procedures for informal rulemaking under the APA. Proposed comment I–2 set forth the procedure for requesting that an official interpretation be added to Supplement I, and proposed comment I–3 described how the commentary is organized and numbered.[622] The Bureau is finalizing comment I–3 with certain technical corrections and, as discussed below, is revising comments I–1 and –2 in response to feedback.

The Bureau is revising comment I–1 to clarify that the provisions of the commentary are issued under the same authorities as the corresponding provisions of Regulation F. In particular, this amendment has the effect of clarifying that some provisions of the commentary are issued under sections 1022 and 1032 of the Dodd-Frank Act, instead of or in addition to authorities under the FDCPA. The Bureau is also revising comment I–1 for clarity to expressly reference the notice-and-comment procedures of section 553 of the APA,[623] rather than referring to such requirements as ''the notice-and-comment procedures for informal rulemaking.''

The Bureau is revising comment I–2 to clarify that only revisions to the commentary, rather than all Bureau interpretations of the regulation, will be incorporated into the commentary. The Bureau is making this revision to reserve the possibility that the Bureau may interpret the regulation without necessarily adopting such interpretations into the commentary. The Bureau is also revising comment I–2 to clarify that revisions to the commentary made in accordance with the rulemaking procedures of section 553 of the APA (5 U.S.C. 553) will be incorporated in the commentary after

[616] 15 U.S.C. 1692k(e).

[617] 84 FR 23274, 23370 (May 21, 2019).

[618] *Identification of Enforceable Rules and Orders,* 76 FR 43569, 43570 (July 21, 2011).

[619] 85 FR 37331 (June 22, 2020).

[620] The proposed permanent advisory opinion program contemplates expanding the program to allow other individuals and entities to request guidance.

[621] 84 FR 23274, 23370 (May 21, 2019).

[622] Proposed commentary relating to specific sections of the regulation is addressed in the section-by-section analyses of those sections, above.

publication in the **Federal Register**. As proposed, the comment referenced publication in the **Federal Register**, but not the other requirements of the APA.

VI. Effective Date

The Bureau proposed that the final rule take effect one year after publication in the **Federal Register**. The Bureau received several comments on this aspect of the proposal. A few industry commenters supported the proposed effective date, stating that a one-year implementation period would provide debt collectors with enough time to comply with the rule. An industry commenter supported an 18-month implementation period, stating that the rule, as proposed, would require updated policies and procedures and significant employee training and programming changes that will take time to identify, program, and test. Another industry commenter requested a 24-month implementation period. A government commenter encouraged the Bureau to provide small entities with more than one year to comply, if such entities were not exempted from the rule altogether. Several industry commenters asked the Bureau to clarify that a debt collector is permitted to comply with all or part of the final rule before the effective date.

The Bureau has considered these comments and has determined that, as proposed, the final rule will become effective one year after publication in the **Federal Register**. The Bureau determines that the revisions made to the proposal and discussed in detail in part V will permit debt collectors to meet this effective date period.

As discussed in part V, the Bureau intends to issue a disclosure-focused final rule to address all aspects of proposed §§ 1006.26 and 1006.34 and certain related topics, as noted in part V. The Bureau recognizes that all stakeholders may benefit if the effective dates for both rules are harmonized; accordingly, the Bureau will assess the effective date of the disclosure-focused final rule and, if necessary, will consider adjusting the effective date for this final rule.

The Bureau notes that debt collectors may, but are not required to, comply with the final rule's requirements and prohibitions before the effective date. Until that date, the FDCPA and other applicable law continue to govern the conduct of FDCPA debt collectors. Similarly, to the extent the final rule establishes a safe harbor from liability for certain conduct or a presumption that certain conduct complies with or violates the rule, those safe harbors and presumptions are not effective until the final rule's effective date.

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

A. Overview

In developing the rule, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act.[624]

Debt collectors play a critical role in markets for consumer financial products and services. Credit markets function because lenders expect that borrowers will pay them back. In consumer credit markets, if borrowers fail to repay what they owe per the terms of their loan agreement, creditors often engage debt collectors to attempt to recover amounts owed, whether through the court system or through less formal demands for repayment.

In general, third-party debt collection creates the potential for market failures. Consumers do not choose their debt collectors, and, as a result, debt collectors do not have the same incentives that creditors have to treat consumers fairly.[625] Certain provisions of the FDCPA may help mitigate such market failures in debt collection, for example by prohibiting unfair, deceptive, or abusive debt collection practices by third-party debt collectors.

Any restriction on debt collection may reduce repayment of debts, providing a benefit to some consumers who owe debts and an offsetting cost to creditors and debt collectors. A decrease in repayment will in turn lower the expected return to lending. This can lead lenders to increase interest rates and other borrowing costs and to restrict availability of credit, particularly to higher-risk borrowers.[626] Because of this, policies that increase protections for consumers with debts in collection involve a tradeoff between the benefits of protections for those consumers and the possibility of increased costs of credit and reduced availability of credit for all consumers. Whether there is a net benefit from such protections depends on whether consumers value the protections enough to outweigh any associated increase in the cost of credit or reduction in availability of credit.

The final rule will further the FDCPA's goals of eliminating abusive debt collection practices and ensuring that debt collectors who refrain from such practices are not competitively disadvantaged.[627] However, as discussed below, it is not clear based on the information available to the Bureau whether the net effect of the final rule will be to make it more costly or less costly for debt collectors to recover unpaid amounts, and therefore not clear whether the rule will tend to increase or decrease the supply of credit. The final rule will benefit both consumers and debt collectors by increasing clarity and certainty about what the FDCPA prohibits and requires. When a law is unclear, it is more likely that parties will disagree about what the law requires, that legal disputes will arise, and that litigation will be required to resolve disputes. Since 2010, consumers have filed approximately 8,000 to 12,000 lawsuits under the FDCPA each year, some of which involve issues on which the law is unclear.[628] The

[624] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act (12 U.S.C. 5512(b)(2)(A)) requires the Bureau to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact of the rule on insured depository institutions and insured credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act (12 U.S.C. 5516); and the impact on consumers in rural areas.

[625] Consumers do choose their lenders, and, in principle, consumer loan contracts could specify which debt collector would be used or what debt collection practices would be in the event a loan is not repaid. Some economists have identified potential market failures that prevent loan contracts from including such terms even when they could make both borrowers and lenders better off. For example, terms related to debt collection may not be salient to consumers at the time a loan is made. Alternatively, if such terms are salient, a contract that provides for more lenient collection practices may lead to adverse selection, attracting a disproportionate share of borrowers who know they are more likely to default. *See* Thomas A. Durkin *et al., Consumer Credit and the American Economy* 521–25 (Oxford U. Press 2014) (discussing potential sources of market failure and potential problems with some of those arguments). *See also* Erik Durbin & Charles Romeo, *The Economics of Debt Collection: With attention to the issue of salience of collections at the time credit is granted* (Sept. 4, 2020), Journal of Credit Risk (discussing how rules that limit debt collection affect consumer welfare when debt collection is not salient to consumers when they borrow).

[626] *See* Thomas A. Durkin *et al., Consumer Credit and the American Economy* 521–25 (Oxford U. Press 2014) (discussing theory and evidence on how restrictions on creditor remedies affect the supply of credit). Empirical evidence on the impact of State laws restricting debt collection is discussed in section G below. The provisions in this final rule could also affect consumer demand for credit, to the extent that consumers contemplate collection practices when making borrowing decisions. However, there is evidence suggesting that consumer demand for credit is generally not responsive to differences in creditor remedies. *See* James Barth *et al., Benefits and Costs of Legal Restrictions on Personal Loan Markets,* Journal of Law & Economics, 29(2) (1986).

See 15 U.S.C. 1692(e).

[627] *See id.*

[628] *See* WebRecon LLC, *WebRecon Stats for Dec 2019 & Year in Review, https://webrecon.com/webrecon-stats-for-dec-2019-and-year-in-review-how-did-your-favorite-statutes-fare/* (last visited Oct. 4, 2020). Greater clarity about legal requirements could reduce unintentional violations

Continued

number of disputes settled without litigation has likely been much greater.[629] Perhaps more important than the costs of resolving legal disputes are the steps that debt collectors take to prevent legal disputes from arising in the first place. This includes direct costs of legal compliance, such as auditing and legal advice, as well as indirect costs from avoiding collection practices that might be both effective and legal but that raise potential legal risks. In some cases, debt collectors seeking to follow the law and avoid litigation have adopted practices that appear to be economically inefficient, with costs that exceed the benefits to consumers or even impose net costs on consumers.[630]

Several provisions of the final rule will likely change the way debt collectors communicate with consumers, and these provisions are likely to interact with each other in ways that make their net impact difficult for the Bureau to predict. Most significant of these are the provisions related to telephone call frequencies, limited-content messages, and electronic disclosures, although other provisions might fall into this category as well. The communication provisions collectively are likely to reduce the number of telephone calls from debt collectors. Currently many, though by no means all, debt collectors communicate with consumers strictly through live telephone calls and mail, with limited or no communication by voicemail message, email, text message, or other electronic media such as website portals.

It is possible that the net effect of the communication provisions will be to make debt collection more effective. Debt collectors who currently communicate by live telephone calls in excess of the rule's presumption of compliance for telephone call frequencies could substitute for some of the excessive telephone call volume by leaving limited-content messages (which are voicemail messages) and sending email or text messages. Consumers could respond to this change in communication media by engaging with such debt collectors as much as or more than they currently do by telephone. If this occurs, consumers could benefit from a reduction in telephone calls that may annoy, abuse, or harass them, as well as from resolving their outstanding debts in a more timely fashion. At the same time, debt collectors could benefit from reduced time spent making telephone calls and from increased revenue. There is some reason to believe this may occur—as noted below, a substantial fraction of consumers prefer to communicate by email, and consumers may well be more likely to return a voicemail message from an identified caller than to answer their telephones in response to a call from an unknown caller.

Alternatively, the provisions of the final rule might make debt collection less effective. Debt collectors could comply with the telephone call frequency provisions, reducing outbound calling for some debt collectors, but not increase contact with consumers by using other communication media. This might occur if debt collectors still fear some legal risk from using other media, or if they find the new communication media are not effective in reaching consumers. In this case, although the number of telephone calls would be reduced, it would come at the cost of making it more difficult for debt collectors to reach some consumers, reducing revenue and potentially imposing costs on both consumers and debt collectors from increased litigation to recover debts.

The effect of the final rule on debt collectors would likely lie somewhere in between these two extremes, and the Bureau finds these effects will likely vary by debt collector and type of debt. Some firms will likely adopt or expand use of newer communication media due to the reduced legal risk and find less need for telephone calls, while other firms may not do so or may not experience the same effect. Still other firms may be largely unaffected by the communication-related provisions. As discussed below, some debt collectors currently place only one or two telephone calls per week to any consumer. Such debt collectors are unlikely to change their calling practices and may not find it cost-effective to develop the information-technology infrastructure necessary to communicate by email or text message. Relatedly, the Bureau is aware of at least one mid-sized collection firm that primarily uses email for communication currently, and such firms also will be unlikely to alter their practices, although they may benefit from reduced litigation costs.

In short, the provisions related to communications will likely reduce the overall number of telephone calls per consumer, while at the same time potentially reducing the number of calls required to reach each consumer. Although the Bureau believes it is likely that consumers will benefit directly from a reduction in telephone calls that annoy, abuse, or harass them, the Bureau cannot predict the net effect of these provisions on debt collectors' costs and revenues or the net change in indirect costs to consumers if debt collectors cannot reach them from, for example, litigation.

In developing the final rule, the Bureau has consulted, or offered to consult with, the appropriate prudential regulators and other Federal agencies, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

B. Provisions To Be Analyzed

The analysis below considers the potential benefits, costs, and impacts to consumers and covered persons of key provisions of the final rule (provisions), which include:

1. Prohibited communications with consumers.

2. Telephone call frequencies3

3. Limited-content messages.

4. Prohibition on the sale or transfer of certain debts.

5. Electronic disclosures and communications.

In addition to the provisions listed above, the rule restates nearly all of the FDCPA's substantive provisions and adds certain clarifying commentary.

C. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion in this part VII relies on publicly available information as well as other information the Bureau has obtained. To better understand consumer experiences with debt collection, the Bureau developed its 2015 Debt Collection Consumer Survey, which provides the first comprehensive and nationally representative data on consumers' experiences and preferences related to debt collection.[631] The Bureau

and could also reduce lawsuits because, when parties can better predict the outcome of a lawsuit, they may be more likely to settle claims out of court.

[629] Some debt collectors have reported that they receive approximately 10 demand letters from attorneys asserting a violation of the FDCPA for each lawsuit filed. *See* Small Business Review Panel Outline, *supra* note 36, at 69 n.105.

[630] For example, as discussed further below, many debt collectors currently avoid leaving voicemail messages for consumers or communicating with consumers by email because sending voicemail messages or emails may create legal risks, notwithstanding that consumers may prefer such messages to receiving multiple telephone calls in which no message is left.

[631] The Bureau's survey was conducted between December 2014 and March 2015. Consumers with and without debts in collection were asked to complete this survey in order to provide the Bureau with data necessary to understand the experience and demographics of consumers who have been contacted by debt collectors. Consumers were selected using the Bureau's Consumer Credit Panel, a de-identified 1-in-48 sample of Americans with consumer reports at one of the nationwide CRAs. *See* CFPB Debt Collection Consumer Survey, *supra* note 16, at 7–10.

also relies on its consumer complaint data, its Consumer Credit Panel, the Credit Card Database,[632] and other sources to understand potential benefits and costs to consumers of the rule.[633] To better understand potential effects of the rule on industry, the Bureau has engaged in significant outreach to industry, including through the Operations Study.[634] In July 2016, the Bureau consulted with small entities as part of the SBREFA process and obtained important information on the potential impacts of proposals that the Bureau was considering at the time, many of which are included in the final rule.[635]

The sources described above, together with other sources of information and the Bureau's market knowledge, form the basis for the Bureau's consideration of the likely impacts of the rule. The Bureau makes every attempt to provide reasonable estimates of the potential benefits and costs to consumers and covered persons of the rule. While the Debt Collection Consumer Survey provides representative data on consumer experiences with debt collection, the survey responses generally do not permit the Bureau to quantify, in dollar terms, how particular provisions will affect consumers. With respect to industry impacts, much of the Bureau's existing data come from qualitative input from debt collectors and other entities that operate in the debt collection market rather than representative sampling that would allow the Bureau to estimate total benefits and costs.

General economic principles and the Bureau's expertise in consumer financial markets, together with the data and findings that are available, provide insight into the potential benefits, costs, and impacts of the final rule. Where possible, the Bureau has made quantitative estimates based on these principles and the data available. Some benefits and costs, however, are not amenable to quantification, or are not quantifiable given the data available to the Bureau. The Bureau provides a qualitative discussion of those benefits, costs, and impacts. In the proposed rule, the Bureau requested additional data or studies that could help quantify the benefits and costs of the rule to consumers and covered persons. The Bureau summarizes comments on this subject below, but few comments explicitly addressed quantifying the costs and benefits of the rule or provided additional data or studies. Comments on the benefits and costs of the rule are also discussed in part V above.

D. Baseline for Analysis

In evaluating the potential benefits, costs, and impacts of the final rule, the Bureau takes as a baseline the current legal framework governing debt collection. This includes the requirements of the FDCPA as currently interpreted by courts and law enforcement agencies, other Federal laws, and the rules and statutory requirements promulgated by the States. In the consideration of benefits and costs below, the Bureau discusses its understanding of practices in the debt collection market under this baseline and how those practices are likely to change under the final rule.

Until the creation of the Bureau, no Federal agency was given the authority to write substantive regulations implementing the FDCPA, meaning that many of the FDCPA's requirements are subject to interpretations in court decisions that are not always consistent or do not always definitely resolve an issue, such as a single district court opinion on an issue. Debt collectors' practices reflect their interpretations of the FDCPA and their decisions about how to balance effective collection practices against litigation risk. Many of the impacts of the final rule relative to the baseline would arise from changes that debt collectors would make in response to additional clarity about the most appropriate interpretation of what conduct is permissible and not permissible under the FDCPA's provisions.

The Bureau received no comments regarding this choice of baseline for its section 1022(b) analysis.

E. Goals of the Rule

The final rule is intended to further the FDCPA's goals of eliminating abusive debt collection practices and ensuring that debt collectors who refrain from such practices are not competitively disadvantaged. To these ends, an important goal of the rule is to benefit both consumers and debt collectors by increasing clarity and certainty about what the FDCPA prohibits and requires, which could improve compliance with the FDCPA while reducing unnecessary litigation regarding the FDCPA's requirements.

As discussed in part V and in this part VII, the goals of the rule's provisions regarding telephone call frequency include reducing consumer annoyance, abuse, or harassment attributable to repeated or continuous debt collection telephone calls, while minimizing inadvertent negative impacts on debt collectors' ability to collect, by establishing presumptions that, with certain exceptions, debt collectors who place telephone calls at or below specified frequency levels comply with the FDCPA, and debt collectors who place telephone calls exceeding specified frequency levels violate the FDCPA. The provisions regarding limited-content messages are intended to reduce debt collectors' need to rely on repeated telephone calls to establish contact with consumers by clarifying how a debt collector may leave a voicemail message while minimizing the risk of third-party disclosure.

The rule is also intended to protect consumers from the risks associated with electronic communications while also facilitating the use of such communications in debt collection, including by: (1) Clarifying how the FDCPA's communication restrictions apply to technologies that have developed since the statute was passed, such as mobile telephones, email, text messaging, and social media; (2) enabling consumers who do not wish to engage in electronic communications to opt out of such communications easily; and (3) clarifying how debt collectors can engage in email or text message communications in a way that limits the risk of third-party disclosures. The rule also sets a general standard for sending required disclosures that is intended to provide consumers with the same protection whether the debt collector sends the disclosure in writing or electronically.

F. Coverage of the Rule

The final rule will apply to debt collectors as defined in the FDCPA. This definition encompasses a number of types of businesses, which can be generally categorized as: Collection agencies, which collect payments owed to their clients, often for a contingency fee; debt buyers, which collect debts that they purchase and own and either regularly collect or attempt to collect debts owned by others or have as their principal purpose the collection of consumer debt; collection law firms that either have as their principal purpose the collection of consumer debt or

[632] The Credit Card Database is a compilation of de-identified loan-level information from the credit card portfolios of large banks. *See* Bureau of Consumer Fin. Prot., *Credit Card Agreement Database, https://www.consumerfinance.gov/credit-cards/agreements/* (last visited Oct. 15, 2020).

[633] For more information about Bureau data sources, *see Sources and Uses of Data at the Bureau of Consumer Financial Protection* (Sept. 26, 2018), *https://www.consumerfinance.gov/data-research/research-reports/sources-and-uses-data-bureau-consumer-financial-protection/.*

[634] *See* CFPB Debt Collection Operations Study, *supra* note 34.

[635] *See* Small Business Review Panel Report, *supra* note 37.

regularly collect or attempt to collect consumer debt owed to others; and loan servicers when they acquire servicing of loans already in default.

Although creditors that collect on debts they own generally will not be affected directly by the rule, they may experience indirect effects. Creditors that hire or sell debts to FDCPA-covered debt collectors may experience higher costs if debt collectors' costs increase and if those costs are passed on to creditors. As described below, the Bureau believes that many compliance costs on FDCPA-covered debt collectors will be one-time costs to come into compliance rather than ongoing costs to stay in compliance. To the extent compliance costs are incurred only once to adjust existing debt collectors' systems and do not increase costs for new entrants, they are unlikely to be passed on to creditors because they will not affect either marginal costs or the number of firms in the market.

G. Potential Benefits and Costs to Consumers and Covered Persons

The Bureau discusses the benefits and costs of the rule to consumers and covered persons (generally FDCPA-covered debt collectors) in detail below.[636] The Bureau believes that an important benefit of many of the provisions to both consumers and covered persons—compared to the baseline of the FDCPA as currently interpreted by courts and law enforcement agencies—is an increase in clarity and precision of the law governing debt collection. Greater certainty about legal requirements can benefit both consumers and debt collectors, making it easier for consumers to understand and assert their rights and easier for firms to ensure they are in compliance. The Bureau discusses these benefits in more detail with respect to certain provisions below but believes that they generally apply, in varying degrees, to all of the provisions discussed below.

Some commenters urged the Bureau to consider other particular costs and benefits to consumers of restrictions on debt collection beyond those discussed explicitly below. One commenter encouraged the Bureau to consider the effect of aggressive debt collection practices on marital stability and on consumer privacy. A law firm commenter representing low-income and underserved individuals and families noted that stress resulting from debt collection efforts can have detrimental effects on consumer health. The Bureau acknowledges that, to the extent that the final rule reduces aggressive debt collection, consumers may receive benefits such as those discussed by these commenters. The Bureau does not discuss these benefits explicitly below, as these benefits are not readily quantified, but the qualitative discussion below should be understood to include all consumer benefits.

1. Prohibited Communications With Consumers

Section 1006.6(b) generally implements FDCPA section 805(a)'s prohibition on a debt collector communicating with a consumer at unusual or inconvenient times and places, with a consumer represented by an attorney, and at a consumer's place of employment. This section also expressly prohibits attempts to make such communications, which debt collectors already must avoid given that a successful attempt would be an FDCPA violation. Section 1006.14(h)(1) interprets FDCPA section 806's prohibition on a debt collector engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt to prohibit debt collectors from communicating or attempting to communicate with a person through a medium of communication if the person has requested that the debt collector not use that medium to communicate with the person.

Debt collectors are already prohibited from communicating with consumers at a time or place that is known or should be known to be inconvenient to the consumer. The Bureau therefore expects that debt collectors already keep track of what consumers tell them about the times and places that they find inconvenient and avoid communicating or attempting to communicate with consumers at those times or places. Similarly, the provisions regarding communication with attorneys and at the consumer's place of employment track requirements that debt collectors are already required to comply with under the FDCPA. The Bureau understands that many debt collectors currently employ systems and business processes designed to limit communication attempts to consumers at inconvenient times and places and that many debt collectors also use these systems and processes to prevent communications with consumers through media that consumers have told them not to use. The provisions may benefit consumers and debt collectors by further clarifying the requirements of FDCPA sections 805(a) and 806, but the Bureau does not expect that the provisions will cause significant changes to debt collectors' existing practices.

2. Telephone Call Frequencies

Section 1006.14(b)(1) prohibits a debt collector from, in connection with the collection of a debt, placing telephone calls or engaging in telephone conversations repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number. Section 1006.14(b)(2)(i) provides for a rebuttable presumption of compliance for a debt collector who places a telephone call to a particular person in connection with the collection of a particular debt neither: (A) More than seven times within seven consecutive days; nor (B) within a period of seven consecutive days after having had a telephone conversation with the person in connection with the collection of such debt, subject to the exclusions in § 1006.14(b)(3). Section 1006.14(b)(2)(ii) sets forth a rebuttable presumption of a violation for a debt collector who places a telephone call to a particular person in connection with the collection of a particular debt: (A) More than seven times within seven consecutive days; or (B) within a period of seven consecutive days after having had a telephone conversation with the person in connection with the collection of such debt.

By establishing in the final rule a rebuttable presumption of compliance or of a violation, the Bureau provides additional flexibility relative to the proposal to debt collectors in cases where there may be a good reason to call, or to have a live communication with, a person, more frequently than the bright-line limits in the proposed rule. Debt collectors will also need to determine whether, under the circumstances, their calling might violate the FDCPA and the rule despite a telephone call frequency within the presumption of compliance. The Bureau anticipates that debt collectors will generally choose to call no more often than the specified telephone call frequencies in order to reduce legal risks. Therefore, the discussion below generally assumes that the practical effect of the final rule will be to cause debt collectors to reduce telephone calling frequency, in most cases, to at most the placement of seven telephone calls in a seven-day period and one live

[636] For purposes of the section 1022(b)(2) analysis, the Bureau considers any consequences that consumers perceive as harmful to be a cost to consumers. In considering whether consumers might perceive certain activities as harmful, the Bureau is not analyzing whether those activities would be unlawful under the FDCPA or the Dodd-Frank Act.

telephone conversation in a seven-day period. Thus, many of the benefits and costs of the provision are similar to those under the bright-line rule that was included in the proposal. At the same time, the final rule provides additional flexibility to debt collectors but reduces the legal certainty compared to the proposed bright-line telephone call frequency limits, which will affect the benefits and costs of the call frequency provisions as discussed further below.

As discussed above in part V, commenters who addressed the telephone call frequency limits in the proposal strongly opposed the seven-telephone call weekly frequency limit. Consumer advocates, some State Attorneys General, and multiple other commenters argued that the limit was too high, while industry commenters and other commenters believed that the limit was too low. Several commenters argued that a bright-line cap conceptually was a good idea for clarity, but that a cap of seven telephone calls was variously too low, too high, not supported by rigorous evidence, or not supportable under the FDCPA. Some industry commenters argued that bright lines are not helpful and that the proposed limits were too low in part because of the need to try multiple telephone numbers. Supporters of a lower limit often also argued that the limits on calling should be per-person. One commenter argued that the proposed limit was a reasonable compromise between preventing consumer harm and minimizing industry burden. Commenters were generally more supportive of the proposed limit of one live conversation per seven-day period, although some industry commenters argued that this limit should be higher, or that the proposed exceptions to the limit were unclear or should be expanded to include circumstances specified by the commenters, such as where there was active litigation or as required by applicable law.

Many commenters said that the Bureau did not have evidence to support the specific proposed call limit of seven call attempts in a seven-day period. The Bureau requested data from industry that could provide further evidence on the effects of particular frequency limits but did not receive data that would permit it to quantify the costs and benefits of different frequency limits. The Bureau believes that providing for a rebuttable presumption of compliance or of a violation, rather than a bright-line limit, will reduce the cost to consumers or to industry of selecting a limit that is too high or too low. In addition, other provisions, such as those that address limited-content messages and electronic communications, provide industry with additional tools for reaching consumers.

Potential Benefits to Consumers

Telephone calls debt collectors make with intent to annoy, abuse, or harass consumers are likely to cause consumers harm, and the Bureau has evidence, discussed below and in part V above, that many consumers perceive harm from debt collectors' repeated telephone calls.[637] The Bureau expects the provision to limit this harm by reducing the frequency of telephone calls and telephone conversations.[638] FDCPA section 806 already generally prohibits conduct the natural consequence of which is to harass, oppress, or abuse any person. FDCPA section 806(5) also specifically prohibits repeated or continuous calling and telephone conversations with ''intent to annoy, abuse, or harass any person at the called number.'' These prohibitions have been interpreted differently by different courts, and, while some debt collectors call consumers less frequently than seven times in a given seven-day period, many debt collectors place telephone calls to consumers or engage consumers in telephone conversations more frequently than this.

To quantify consumer benefits from the provision, the Bureau would need information regarding both how much the provision would reduce the number of calls debt collectors place to consumers and the benefit (or harm) each consumer would receive as a result of this reduction. Although the Bureau's data do not permit it to reliably quantify either the reduction in call frequency or how much consumers would value this reduction in dollar terms, the discussion below summarizes the data available to the Bureau on these two points.

Data from the Bureau's Debt Collection Consumer Survey indicate that debt collectors often may attempt to contact consumers more frequently than seven times per week. In the survey, 35 percent of consumers who had been contacted by a debt collector said the debt collector had contacted or attempted to contact them four or more times per week, including 14 percent who said the debt collector had contacted or attempted to contact them eight or more times per week.[639] Another 29 percent said that the debt collector had attempted to contact them one to three times per week.[640] The survey question did not ask respondents to distinguish between actual contacts and contact attempts, and consumers are likely not aware of all unsuccessful contact attempts.[641] Still, the survey responses suggest that it is not uncommon for debt collectors to place telephone calls to consumers more than seven times per week, and the responses would be consistent with many debt collectors having live telephone conversations with consumers more frequently than one time per week, which would be presumed to be a violation under the final rule.[642] Based on this, it is reasonable to estimate that at least 6.9 million consumers[643] are

[637] The FDCPA's standard of liability for repeated calling is not perceived harm by consumers, but rather depends on the debt collector's intent or the ''natural consequence'' of the conduct. *See* FDCPA section 806(5) and 806, 15 U.S.C. 1692d(5) and 1692d. Nonetheless, section 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and costs of its regulation to consumers and covered persons, which may include potential benefits or costs that were not contemplated or intended by the FDCPA.

[638] By leading some debt collectors to further limit telephone calls, the rule could have the ancillary effect of preventing some calls that are not intended to annoy, abuse, or harass consumers and could in fact prevent some calls that consumers would find beneficial, as discussed below under ''Potential costs to consumers.'' This ancillary effect may be ameliorated by the provision being structured as a rebuttable presumption of violation. Telephone calls that consumers would find beneficial are more likely to have facts that would overcome the presumption of a violation. *See* comment 14(b)(2)(ii)–2.

[639] CFPB Debt Collection Consumer Survey, *supra* note 16 at 44 n.5.

[640] *Id.*

[641] The survey also did not ask respondents to distinguish between calls about a single debt and calls about multiple debts.

[642] The survey questions did not distinguish among different types of contact, and survey responses may have included contacts such as letters or email that would not be subject to the provision. The survey suggests that contact attempts from debt collectors other than by telephone or letter are relatively uncommon. CFPB Debt Collection Consumer Survey, *supra* note 16. at 42, table 22. The Bureau understands that debt collectors seldom send letters more than once per week, so a large majority of contact attempts likely were by telephone. Information from industry also confirms that debt collectors sometimes place telephone calls to consumers more than seven times per week. *See* discussion under ''Costs to covered persons'' below.

[643] This is calculated as 14 percent of an estimated 49 million consumers contacted by debt collectors each year. The Bureau estimates that about 32 percent of consumers with a credit file, or about 67 million, are contacted each year by a creditor or debt collector attempting to collect a debt. Of those, 23 percent were most recently contacted by a creditor, 63 percent by a debt collector, and 15 percent did not know whether the contact was from a creditor or debt collector. Based on this, the Bureau estimates that 73 percent of consumers were contacted by a debt collector, assuming that the share of consumers contacted by a debt collector is the same in this group as it is among consumers who did know whether the most recent contact was from a debt collector. *See* CFPB Debt Collection Consumer Survey, *supra* note 16 at 13, 40–41.

called by debt collectors more than seven times in a week during a year.

The Bureau's Debt Collection Consumer Survey supports an inference that many consumers would benefit if they received fewer calls from debt collectors, although it does not provide evidence with which to estimate the dollar value of those benefits. Most respondents who had been contacted by a debt collector at least once per week said they had been contacted too often. As shown in Table 1, 95 percent of respondents who said debt collectors had contacted or attempted to contact them four or more times per week and 76 percent of those reporting contact or attempted contact one to three times per week said that they had been contacted too often by the debt collector, whereas 22 percent of those contacted less than once a week said they had been contacted too often.

TABLE 1—CONSUMERS INDICATING THEY HAD BEEN CONTACTED TOO OFTEN, BY CONTACT FREQUENCY

[Percent]

Contact frequency	Consumers who said they were contacted too often
Less than once per week	22
One to three times per week	76
Four or more times per week	95

A State Attorney General commenter and another commenter interpreted the statistic that many consumers contacted at least once per week reported being contacted too often as evidence that the Bureau's proposed telephone call frequency limits were too high and allowed too much calling. The Bureau notes again that the survey did not distinguish between contact attempts and live conversations. And, given that many debt collectors do not currently leave voicemails, many survey respondents may not have been aware of (and therefore the survey results may not reflect consumers' views about) contact attempts that did not result in a conversation. The survey also did not explicitly ask whether the consumers who say they were contacted too often felt harassed. That said, the Bureau agrees that some consumers may consider some telephone call frequencies that would have been permitted under the proposal to be too frequent, but notes that, as discussed elsewhere in this part, restrictions on call frequency can also have negative consequences for consumers.

Multiple consumer advocate and other commenters noted that, because the proposed frequency limits were per debt rather than per person, consumers with multiple debts in collection could be called significantly more than seven times in each seven-day period and may be harmed as a result. The Bureau acknowledges that many consumers have multiple debts, and in some cases multiple debts may be collected by the same debt collector, although the Bureau does not have data to show how frequently consumers are called when they have multiple debts being collected by the same debt collector.

An industry trade group commenter criticized the Debt Collection Consumer Survey and argued that the Bureau should not rely on the survey's results. Specifically, the commenter asserted that the survey's sample size was too small to be reliable and that the estimates of the survey were not statistically significant. The commenter also objected to some of the subsample comparisons made by the Bureau in the study or in the proposed rule. The commenter also argued that the fact that the survey did not distinguish between attempted contacts and actual live contacts made the data unreliable. Finally, the commenter argued that consumer surveys are inherently unreliable.

With respect to the size of the survey sample, the Bureau notes that, for binary or categorical outcomes such as those in the survey, a sample size of a few hundred to a thousand is generally sufficient to obtain results that are within a few percentage points of what one would find in the general population, so long as the sampling procedure is random and designed to ensure a representative sample.[644] The survey included around 1,000 consumers who had experience with debt collection,[645] meaning the sample was large enough for the Bureau to make reasonable statistical inferences based upon it, including for subsamples of that group, such as consumers who reported being contacted one to three times per week.

With respect to statistical significance, the commenter is incorrect in stating that the results of the survey were statistically insignificant. The Bureau did not explicitly report measures of statistical precision in the survey report, as the report was intended for a general audience. However, the Bureau calculated measures of statistical significance for all of its estimates and took care in the report to discuss only comparisons that were statistically significant at a 95 percent confidence level or higher.[646] Moreover, in general, the 95 percent confidence interval for the statistics cited above is on the order of between three and 10 percentage points, with smaller subsamples having a wider margin.[647] For the statistics relied on by the Bureau and discussed above, a difference of plus or minus three to 10 percentage points would not meaningfully change the Bureau's conclusions. For instance, the survey found that, among consumers who reported being contacted between one and three times per week by debt collectors, 76 percent said they were contacted too often. If the true percentage in the population were 66 percent, or 86 percent, the basic conclusion would be the same. Finally, with respect to the commenter's assertion that the limitations of the survey make it inherently unreliable, the Bureau disagrees. Although the phrasing of the question about contact frequency does not specifically track the structure of the rule's telephone call frequency provisions, the Bureau nonetheless believes the survey provides useful information about consumers' experience with debt collection and about the benefits consumers may receive from the final

[644] Indeed, the Bureau's use of its Consumer Credit Panel as a sampling frame for the survey allowed the Bureau to make the sample more representative of the U.S. population than is usually possible in a survey. *See* CFPB Debt Collection Consumer Survey, *supra* note 16, for more details.

[645] As noted in the survey report, the Bureau oversampled consumers that it expected to be more likely to have experience with debt collection. Oversampling is a standard procedure in survey methodology that is used when the researcher is interested in analyzing a particular sub-population but also wants to analyze the population as a whole. Groups that are oversampled are assigned a lower weight when analyzing the whole sample but can be treated as individuals with equal weight when analyzing the subsample. Thus, although based upon the survey weights the Bureau estimated that 32 percent of all consumers had experience with debt collection, the survey data included over 1,000 consumers who reported having experience with debt collection in the past year. The commenter mistakenly quotes the size of the subsample as 632 individuals. While incorrect, this is largely beside the point—as long as the sampling was done correctly, even a sample of 600 individuals can be used to make inferences about the whole population, albeit with a larger confidence interval or margin of error.

[646] The Bureau followed the same approach in its recent report on its disclosure testing, where it disclosed the approach more explicitly. *See* CFPB Quantitative Testing Report, *supra* note 33.

[647] While these statistics were not explicitly reported in the survey report, the Bureau notes that the margin of error on a survey of this nature is largely a function of the sample size of the survey, and that margins of error on surveys with sample sizes in the range of 600–1,000 will be familiar to many lay readers. For instance, political polls with sample sizes of 600–1,000 respondents are often reported in the news and have margins of error that are generally in the range of 3 to 5 percentage points.

rule's presumptions regarding telephone call frequencies.

The Bureau's consumer complaint data also indicate that consumers find frequent or repeated calls harmful. Communication tactics ranked third in debt collection complaints submitted to the Bureau during 2018 and fourth in 2019, and the majority of complaints in this category—55 percent in both years, or about 6,000 complaints across both years—were about frequent or repeated telephone calls.[648]

Several industry and other commenters disputed the reliability and representativeness of the Bureau's complaint data. Some of these commenters pointed to reports of inaccuracies in the complaint data themselves, while others argued that complaints only represent a tiny fraction of all consumers contacted by debt collectors. The Bureau acknowledges that, as in most industries, a relatively small percentage of consumers in collection file formal complaints. The Bureau also notes that not all consumers who have problems with a debt collector file complaints with the Bureau—many may not formally complain at all, and others may file complaints with another source, such as the Federal Trade Commission or their State Attorney General's office. Nonetheless, the Bureau believes that the rate of consumer complaints provides a useful benchmark as to the importance of the problem of frequent or repeated calls. That is, among the consumers who complain to the Bureau about debt collection communication tactics (one of the most complained-about categories), more than half complain about repeated calls, indicating that frequent or repeated telephone calls represent a large share of debt collection problems.[649]

Although the Bureau does not have evidence that could be used to estimate the monetary value consumers attach to a reduction in telephone call frequency, there is indirect evidence of costs consumers are willing to bear to avoid unwanted calls. One leading service that offers to block inbound ''robocalls'' to a consumer's mobile telephone charges $1.99 per month for the service.[650] Such services are an imperfect analogy to the rule's telephone call frequencies for at least two different reasons: First, they are intended to completely block calls rather than limit their frequency; and second, such services block telemarketing calls in addition to debt collection calls, while not blocking all debt collection calls. Given these differences, the price of this service does not provide a precise analog for the value to consumers of the telephone call frequencies. Nonetheless, the example does provide evidence that many consumers are willing to pay prices in the range of $24 per year to avoid unwanted telephone calls.[651]

Some of the benefits from the final rule's telephone call frequency provisions could be obtained if consumers used protections they already have under the FDCPA to help them avoid too-frequent debt collection calls. Debt collectors must cease most communications in response to a written request from the consumer to do so. Furthermore, because section 805(a)(1) of the FDCPA prohibits debt collectors from communicating about a debt at any time or place that the debt collector knows or should know is inconvenient to the consumer, debt collectors risk violating section 805(a)(1) if they do not take heed when consumers say they do not want to communicate at certain times or places. However, many consumers may not want to completely cease communication about a debt because, for example, debt collectors who cannot recover through such communications may initiate litigation to recover on the debt. Additionally, consumers who tell debt collectors to cease communication orally may not benefit because some debt collectors may not honor consumers' requests to cease communications unless they are made in writing. In the Debt Collection Consumer Survey, 42 percent of respondents who had been contacted about a debt in collection reported having requested that a creditor or debt collector stop contacting them.[652] These respondents generally did not make the request in writing.[653] Of these consumers, approximately 75 percent reported that the creditor or debt collector did not stop attempting to contact them.[654]

As discussed above, technological solutions are also increasingly available to consumers who want to avoid certain telephone calls and may be used to screen out calls from some debt collectors. However, such solutions may be under-inclusive (in that they do not screen out telephone calls from all debt collectors) or over-inclusive (in that a consumer may want to maintain some telephone contact with a debt collector rather than eliminating all calls from that debt collector).

Potential Costs to Consumers

Consumers may benefit from communicating with debt collectors about their debts. For consumers being contacted about a debt they in fact owe, communicating with the debt collector may help consumers resolve the debt, which could help avoid further fees and interest, adverse credit reporting, or lawsuits. A few commenters made these points, saying that the proposed bright-line limits on telephone call frequency would affect access to and the cost of credit and would lead to more negative credit reporting and litigation. For consumers being contacted about a debt they do not owe, communications from debt collectors may alert consumers to errors in their credit reports or that they are victims of identity theft. During the meeting of the Small Business Review Panel, some debt collectors said that the frequency limits that were then under consideration could extend the period needed to establish contact with a consumer, as further discussed below under ''Potential costs to covered persons.'' If the telephone call frequencies in the final rule mean that debt collectors are less able to reach some consumers, or that communication with some consumers is delayed, those consumers may be harmed by missing

[648] *See* Bureau of Consumer Fin. Prot., *Consumer Complaint Database, https://www.consumerfinance.gov/data-research/consumer-complaints/search/?dataNormalization=None&date_received_max=2019-12-30&date_received_min=2018-01-01&issue=Communication%20tactics%E2%80%A2Frequent%20or%20repeated%20calls&product=Debt%20collection&searchField=all&tab=Map* (last visited Oct. 23, 2020). Consumers can identify only one issue to categorize their complaints, so these numbers do not include cases in which a consumer chose a different issue (such as ''I don't owe the debt'') but also complained about call frequency. Note that consumers who complain about frequent or repeated telephone calls may not be receiving a frequency of calls that would violate the Rule.

[649] Note that not all of the consumers making these complaints would be helped by the rule, as they may have received a frequency of telephone calls that would not violate the rule.

[650] Nomorobo, *http://www.nomorobo.com* (last visited Oct. 22, 2020).

[651] Another source of indirect evidence of the value to consumers of reduced telephone call frequency is the Bureau's consumer complaints. Based on the Bureau's records, the average time for a consumer to file a complaint with the Bureau by telephone or through the web portal is approximately 15 minutes, although this varies over time and across complaint categories. Valuing consumers' time using the average U.S. private sector wage of approximately $27 per hour suggests that some consumers are willing to give up approximately $6.75 worth of their time in hopes of reducing call frequency from one debt collector. *See* Bureau of Labor Statistics, U.S. Dep't of Labor, *Economic News Release: Employment Situation,* table B–3 (Feb. 1, 2019), *https://www.bls.gov/news.release/empsit.t19.htm.*

[652] CFPB Debt Collection Consumer Survey, *supra* note 16, at 35, table 17.

[653] Of consumers who asked not to be contacted, 87 percent said they made the request by telephone or in person only. *Id.* at 34–35.

[654] *Id.*

an opportunity to resolve a debt or to resolve a debt sooner.

To quantify any such harm, the Bureau would need data to estimate how the telephone call frequencies in the final rule will affect whether and when debt collectors communicate with consumers as well as the harm consumers experience if they do not communicate with debt collectors. In its discussion below of costs to covered persons, the Bureau discusses the available evidence about how the telephone call frequencies in the final rule will affect whether debt collectors communicate with consumers. As discussed there, the data are limited, but evidence the Bureau does have suggests that, if debt collectors limit their calling to the frequency levels specified in final § 1006.14(b)(2), it might somewhat reduce the number of consumers reached by telephone within a few months after a debt collector starts attempting contact, but that the reduction is likely to be limited to a relatively small fraction of debts.

The Bureau does not have representative data that can be used to quantify the harm consumers experience when they do not communicate with debt collectors, or when those communications are delayed. If consumers do not communicate with debt collectors about debts, they could suffer additional harm from debt collection in some cases, particularly if the debt collector or creditor initiates a lawsuit. A suit could lead to increased fees, legal costs, and the possibility of a judgment that could lead to garnishment of wages or other legal steps to recover the debt.

One large debt buyer's comment included an analysis of its own data, which found that delaying contacting a consumer by two, four, or 12 months increased the probability of litigation by 15, 19, and 35 percent, respectively. This commenter did not state how much the proposed bright-line limits on telephone call frequencies would delay consumer contact but did state that raising the proposed seven telephone call weekly frequency limit to 15 calls per week would reduce its number of referrals to litigation by 2,459 consumers per year. These data confirm the general principle above, that some consumers may face litigation costs as a consequence of the telephone call frequency levels, but they do not provide enough information for the Bureau to assess the size of the effect. To assess this, the Bureau would need to know how much the rule would be expected to delay consumer contact. For instance, as discussed below, the Bureau estimated in the proposal based on one debt collector's calling data that the proposed bright-line telephone call frequency limits would increase the time to first contact by an average of about one week. Even taking the commenter's analysis as given, if the average delay is approximately a week, this would have very different implications for litigation overall compared to an average delay of approximately six months. In addition, both the Bureau's calling data and the commenter's litigation likelihood data are each from a single firm and thus unlikely to be representative of the market as a whole. The Bureau expects the delay in making contact, and any resulting increase in litigation, to vary by the age of debt, the type of debt, and firm-specific practices.

To the extent that some debt collectors currently call less than the final rule's telephone call frequencies to avoid legal risks, such debt collectors could perceive a reduction in legal risk that leads them to increase their calling frequency as a result of the final rule. This would result in costs to some consumers if they find the increase in call frequency harmful. Some consumer advocate commenters echoed this point but did not provide any data to help quantify potential increases in telephone call frequency or the effects of such increases on consumers. Because consumers can rebut the presumption that telephone call frequencies below those in final § 1006.14(b)(2) comply with FDCPA section 806(5), any increase in harassment as a result of the provision may also be limited, compared to the bright-line limit in the proposal that the commenters expressed concern about.

Potential Benefits to Covered Persons

As with several other provisions of the rule, the rebuttable presumptions of compliance and violation with § 1006.14(b)(1) and FDCPA section 806(5) based on the frequencies with which debt collectors placed telephone calls may reduce legal uncertainty about the interpretation of existing FDCPA language. Frequent telephone calls are a consistent source of consumer-initiated litigation and consumer complaints to Federal and State law enforcement agencies. By establishing a standard for call frequency, this provision makes it easier for debt collectors to know what calling patterns are permitted and reduce the costs of litigation and threats of litigation. To the extent that some debt collectors currently call less than the telephone call frequencies to avoid legal risks, they may call more frequently if they see the provision as reducing those legal risks, potentially increasing collection revenue.

Some debt collectors might also benefit from a reduction in calls made by other debt collectors. The Bureau understands that many consumers have multiple debts being collected by different debt collectors.[655] In seeking payments from consumers, multiple debt collectors compete with each other to obtain consumers' attention and seek payment, which can lead to a large aggregate number of debt collection calls, potentially overwhelming some consumers and making them less likely to answer calls or otherwise engage with debt collectors.[656] This in turn could make it harder for each debt collector to recover outstanding debt.[657] Thus, one potential benefit to debt collectors of the provision's telephone call frequencies is a lower frequency of telephone calls by other debt collectors, which could make consumers more likely to engage and repay.

In addition, some debt collectors specialize in approaches to collection that do not rely on frequent call attempts, and these debt collectors may benefit from the telephone call frequency provision. In particular, debt collectors who focus on litigation and those who communicate with consumers primarily by media not covered by the provision, such as letters and email, may be more effective in communicating with consumers relative to debt collectors who focus on communicating by telephone. This, in turn, may increase their market share at the expense of debt collectors who are more dependent on frequent calls.

Potential Costs to Covered Persons

This provision imposes at least two categories of costs on debt collectors. First, it means that debt collectors must track the frequency of outbound telephone calls, which will require many debt collectors to bear one-time costs to update their systems and train staff, and which will create ongoing costs for some debt collectors. Second, for some debt collectors, the provision may lead to a reduction in the frequency with which they place telephone calls to consumers, which could make it harder

[655] The Bureau's survey indicates that 72 percent of consumers with a debt in collection were contacted about two or more debts in collection, and 16 percent were contacted about five or more debts. *Id.* at 13, table 1.

[656] For example, borrowers could simply ignore telephone calls or could adopt call screening or blocking technology.

[657] In other words, debt collectors may face a ''prisoner's dilemma,'' in which each debt collector has incentives to call more frequently even though debt collectors might collectively benefit from a mutual reduction in call frequency.

to reach consumers and delay or reduce collections revenue.

With respect to one-time implementation costs, many debt collectors will incur costs to revise their systems to track telephone call frequencies. Such revisions could range from small updates to existing systems to the introduction of completely new systems and processes. The Bureau understands that larger debt collectors generally already implement system limits on call frequency to comply with client contractual requirements, debt collector internal policies, and State and local laws.[658] Such debt collectors might need only to revise existing calling restrictions to ensure that existing systems track telephone calls in a manner consistent with the new provision. Larger collection agencies might also need to respond to client requests for additional reports and audit items to verify that they comply with the provision, which could require these agencies to make systems changes to alter the reports and data they currently produce for their clients to review.

Smaller debt collectors and collection law firms are less likely to have existing systems that track or limit calling frequency and may therefore face larger costs to establish systems to do so. However, many smaller debt collectors report that they generally attempt to reach each consumer by telephone only one or two times per week and generally do not speak to a consumer more than one time per week, which suggests that their practices would afford them a presumption of compliance (and actual compliance, depending on the circumstances) with respect to telephone call frequencies under the final rule.[659] For such debt collectors, existing policies may be sufficient to ensure compliance with the provision, although they may incur one-time costs to establish systems for documenting compliance.

With respect to ongoing costs of compliance, the Bureau expects that the telephone call frequencies specified in § 1006.14(b)(2)(i)(A) could reduce some debt collectors' ability to reach consumers, particularly when the debt collector has not yet established contact with a consumer. These impacts are discussed below. The Bureau's understanding, based on feedback from small entity representatives and other industry outreach, is that the frequency of one telephone conversation per week in final § 1006.14(b)(2)(i)(B) is unlikely to affect debt collectors' ability to communicate with consumers in most cases.[660]

Several industry commenters noted ambiguities regarding how the proposed telephone call frequency limits would work if a consumer has multiple debts or if there are multiple consumers on an account. These commenters argued that managing these ambiguities would lead to additional ongoing costs of compliance. As discussed in part V, in the final rule the Bureau has clarified in the official commentary how debt collectors should count calls in various circumstances. This should reduce the ongoing costs of compliance with these provisions compared to the proposal.

The final telephone call frequency provisions may cause many debt collectors to place telephone calls less frequently than they currently do. This decrease in telephone calls may impose ongoing costs on debt collectors by increasing the time it takes to establish contact with consumers, all else equal. Most debt collectors currently rely heavily on telephone calls as a means of establishing contact with consumers, although other provisions of this final rule are intended to facilitate debt collectors' use of electronic communications. While debt collectors generally send letters in addition to calling,[661] the Bureau understands that response rates to letters can be quite low. If contact with consumers is delayed, it will delay collection revenue and may reduce revenue if consumers who are reached later are less willing or able to repay the debt. In addition, if the debt collector is unable to reach the consumer during the period that the owner of the debt permits the debt collector to attempt to collect the debt, then reducing call frequency in accordance with the provision might prevent a debt collector from reaching the consumer entirely.[662]

A creditor trade association commenter provided some data that helps to characterize the delays in collection that result from reduced calls made by creditors. The commenter cited two unrelated randomized controlled trials conducted by two of its members, both automotive lenders. The trials estimated the impact on the likelihood of accounts becoming more severely delinquent (*i.e.,* roll rates) by randomly reducing calls to consumers at risk of becoming 31, 61, or 85 days past due on their accounts.[663] The first trial reduced calling from an average of 1.06 call attempts per day to an average of 0.76 call attempts per day. The figures presented showed substantial increases in roll rates, but no confidence intervals were presented. The second trial reduced calling from three calls per telephone number per day to three calls per consumer per day then to two calls per consumer per day. The reduction in calls generally increased roll rates, but the differences were often not statistically significant.

One debt collection industry commenter stated that it requires an average of 16 calls to reach each consumer. This commenter argued for a limit of 16 calls per week on the basis that most consumers have multiple numbers that have to be tried before a right-party contact (RPC) is achieved, but the commenter did not provide any information as to the expected impact of the proposed frequency limits. Another industry commenter, a large debt buyer, stated that, when searching for a consumer, it places between 50 and 75 calls per debt before achieving RPC. This commenter argued for 15 calls per week, again noting that consumers having multiple telephone numbers increases the number of calls needed to achieve an RPC. The commenter reported that, if the proposed limits were increased to 15 per week, 9,629 more of their consumers would enter a repayment plan and 2,459 fewer would have their account forwarded for litigation. The commenter, however, did

[658] *See* CFPB Debt Collection Operations Study, *supra* note 34, at 28–29.

[659] *See id.* at 29.

[660] The impact might be greater if consumers could not consent to more frequent contact. For example, if a debt collector reached a consumer on the telephone and the consumer said it was not a good time to speak, then the rule would permit the debt collector and consumer to agree to speak again at a specified time within less than one week. *See* the section-by-section analysis of § 1006.14(b)(3)(i); *see also* comment 14(b)(2)(ii)–2.iii, which clarifies that a factor that may rebut the presumption of a violation is whether, if the exclusion in § 1006.14(b)(3)(i) does not apply, the debt collector placed a telephone call in response to the consumer's request for information. Similarly, the Bureau expects that debt collectors will be largely unaffected by the application of the telephone call frequencies to location contacts with third parties because the Bureau understands that, while location calls may be made to several numbers, they do not generally involve frequently calling each number.

[661] In the Bureau's survey, 85 percent of respondents who had been contacted by a debt collector said that they had been contacted by telephone and 71 percent said that they had been contacted by letter. Respondents were asked to select all ways in which they had been contacted. CFPB Debt Collection Consumer Survey, *supra* note 16, at 29–30, table 14.

[662] If the provision were to cause some debt collectors to lose revenue for this reason, the amounts not collected would generally be transferred to another party: either to consumers (if the amounts were never collected) or to another debt collector (if the amounts were collected through further collection efforts, including through a lawsuit).

[663] Because these trials were conducted by first-party creditors seeking to collect on accounts in relatively early stages of delinquency, their results may not apply to accounts subject to third-party debt collection.

not provide any insights into its methodology or the statistical precision of its estimated effects.

Some debt collectors do not place telephone calls frequently enough to be affected by the telephone call frequencies that establish a presumption of a violation. While the Bureau understands that some debt collectors regularly call consumers two to three times per day or more, other debt collectors have told the Bureau that they seldom call more than once or twice per week. These differences may reflect different debt types and collection strategies. For example, smaller debt collectors frequently retain debts indefinitely, and they may face less pressure to reach consumers quickly than debt collectors who collect debts for a limited period. Debt collectors who focus on litigation may also place less emphasis on establishing telephone communication with consumers.

Some debt collectors have indicated that frequent calling is especially important if the debt collector has multiple potential telephone numbers and does not know the best way to reach the consumer.[664] Additionally, some debt collectors specialize in attempting to collect debts for which the creditor has lost contact with the consumer, and frequent call attempts to establish contact with the consumer may be especially important for such debt collectors.

For debt collectors who currently call consumers more frequently than the presumptive cap but who will choose to limit their calling such that they receive a presumption of compliance, the telephone call frequencies could affect when and if they establish communication with consumers. The Bureau does not have representative data that permit it to quantify how the telephone call frequencies would impact how long it takes to establish contact or whether contact is established at all. However, the Bureau has analyzed microdata on outbound calling from one large collection agency (''Calling Data'') that helps illustrate the potential impact of the telephone call frequencies. While the data from this agency may not be representative of the market as a whole, the results of the Bureau's analysis of the data are generally consistent with summary information shared by other large collection agencies.[665]

The Calling Data show that, in the first eight weeks of collections, the overall frequency of call attempts to consumers who have not yet spoken with the debt collector declines slowly. Roughly 40 percent of consumers receive more than seven calls per week in the first four weeks, but this drops to 27 percent by week eight. Although the overall distribution of contact attempts changes slowly from week to week, the data show that, over time, some consumers get called more, while others get called less. Consumers with whom an RPC has been established and who made no payment and consumers for whom RPC has not been achieved tend to receive the most collection calls. Consumers who have engaged but made a partial payment receive fewer calls. Moreover, the debt collector who provided the Calling Data engages in ''call sloping,'' meaning that it places fewer total calls each week that it works a portfolio of debts.

The Calling Data show that, for the debts included in that data set, consumers who take longer to reach are not less likely to pay. Although the probability that each call results in an RPC declines with successive calls, the rate at which RPCs are translated into payments increases steadily through at least the first 50 calls. As a result, an RPC that is achieved in any of the first 50 calls is approximately equal in value to the debt collector as an RPC that is achieved with fewer calls, suggesting that call attempts remain important to debt collection even after many calls have been attempted.

Summary data provided by some other large debt collectors indicate that the number of calls needed to reach consumers can vary considerably, but that the majority of debts would not be affected or would be affected very little by reducing current telephone call frequencies to levels that would afford the debt collector a presumption of compliance under the final rule. These data indicate that 50 percent or more of consumers who are ultimately reached by these debt collectors are reached within the first seven calls overall (not per week), though other debt collectors have indicated that it takes 15 to 21 calls to reach 50 percent of such consumers. These data also indicate that reaching 95 percent of consumers may take between 50 and 60 calls, meaning that 5 percent of consumers reached are contacted only after more than 50 or 60 calls have been placed.

There are limitations to using the data discussed above to make inferences about how the telephone call frequencies in the final rule may affect debt collectors' ability to reach consumers. This is in part because establishing contact depends on factors other than the number of calls made (*e.g.,* the time of day called) and in part because debt collectors who wish to operate within the presumption of compliance might change their contact behavior in ways that permit them to reach a given number of consumers with fewer calls, as discussed further below. In addition, other aspects of the rule, including the provision that clarifies the legal status of limited-content messages, could make it easier for debt collectors to reach consumers with fewer calls.

The data discussed above may not be representative, meaning that some debt collectors might need more or fewer calls to reach similar numbers of consumers. Overall, however, the available data suggest that reducing telephone call frequencies to levels that afford a debt collector a presumption of compliance would somewhat reduce the ability of debt collectors to reach consumers by telephone within a few months, but that the reduction is likely to be limited to a relatively small fraction of debts. This could affect primarily debt collectors who receive placements of debts for four to six months and do not engage in litigation. Such debt collectors could lose revenue if they are unable to establish contact with consumers or if collections based on telephone calls become less effective and, as a result, creditors place more debts with debt collectors specializing in litigation.

To illustrate potential effects of the provision on debt collector revenue, the Bureau used the Calling Data to simulate the effect of the provision under an assumption that the debt collector limits telephone call frequency such that it would receive a presumption of compliance under the rule, under specific assumptions about how limiting calls would affect collections. That is, the Bureau created a ''but-for'' version of the Calling Data in which calls that would exceed those limits were assumed to have been either delayed or eliminated, and the Bureau compared RPCs and payments in this ''but-for'' data with the actual outcomes achieved by the debt collector. This is at best a rough approximation of the effects of the provision, both because it relies heavily on the assumptions made and because it is based on the data of one particular debt collector, and may

[664] *See, e.g.,* Small Business Review Panel Report, letter from FMA Alliance Ltd., *supra* note 37, at appendix A–6. Multiple industry and trade association commenters on the proposal echoed this sentiment.

[665] The summary information was shared with Bureau staff during industry outreach meetings that are part of the Bureau's routine market-monitoring efforts. Although most debt collectors are small firms, evidence suggests that a majority of debt collected is collected by collection agencies with 100 or more employees. *See* CFPB Debt Collection Operations Study, *supra* note 34, at 7.

not be representative of other firms in the industry.

The Bureau created two versions of its simulation analysis, one of which uses more conservative assumptions as to the impact of limiting telephone calls on successful contacts and collections. However, the Bureau believes that even the more conservative version of this analysis likely overstates the potential effects of reducing call frequency because it cannot reflect any changes the debt collector would make to its calling strategy in response to the reduced frequency. That is, one would expect a rational collection firm to strategically choose which calls to eliminate or delay in order to reduce call frequency, while the Bureau's analysis must to some extent select calls arbitrarily. In particular, at least for the debt collector who provided data to the Bureau, debts with multiple telephone numbers would be most likely to be affected by a decision to limit call frequency. The Bureau is not able to identify telephone type (such as mobile vs. landline, or work vs. home) in the data, but debt collectors are often able to do so. The Bureau would expect debt collectors in similar situations to omit calls to less promising telephone numbers, rather than to call the same numbers, and to cease calling earlier in the process.

In the first, more conservative version of the simulation (Version 1), the Bureau assumed that all calls the debt collector did not make each week were simply shifted to the next week.[666] The Bureau assumed that any successful RPCs that occurred after the 25th simulated week would never occur because in reality the debt collector was only contracted to collect on the debts in the data for up to 25 weeks. Version 1 implicitly assumes that the probability that a call results in an RPC does not depend on how much time has passed since collection began, only on the number of calls that have been made.

In a second, more aggressive version of the simulation (Version 2), the Bureau assumed that any calls that would not be made because they exceed seven calls per week are eliminated, rather than shifted forward. When a consumer's first RPC would have occurred on a call that would not be made in a given week, the Bureau treats the data for that debt as censored as of that week.[667]

The Bureau made additional assumptions that were common to both versions of the simulation. For inbound calls, that is, calls from consumers to the debt collector, the Bureau assumed that the calls were not delayed or eliminated. Thus, the Bureau is implicitly assuming that inbound calls are prompted by letters from the debt collector or other external factors, rather than by a number of calls.[668] The Bureau made additional assumptions to simulate the effect on payments. The Calling Data indicate if the consumer ever paid and how much, but they do not always indicate when payment was received—the Bureau observes the timing of payments only if the consumer made payment over the telephone. About half of all consumers in the data who make at least a partial payment do so without ever having an RPC. For the simulation, the Bureau assumed that, if the debt collector achieved at least one RPC in the simulation, then the amount of any payments made by the consumer is unchanged. If the consumer received an RPC in the original data but did not receive any RPC in the simulation, the Bureau assumed that any payments recorded in the original data did not occur for purposes of the simulation.

Table 2 shows the results of the simulation analysis described above. Under Version 1, the reduced call frequency would reduce first RPCs by 2.76 percent of the first RPCs and dollars collected by 1 percent.[669] The average first RPC would be delayed by less than one week. These effects are not evenly distributed across consumers, however. In the simulation, the debt collector is much more likely to miss an RPC or payment if it calls multiple telephone numbers for a consumer.[670] For consumers where the debt collector calls only one telephone number, hardly any miss an RPC in the simulation, and the average delay is almost zero. This is because the debt collector rarely calls a particular telephone more than seven times per week. In contrast, for consumers where the debt collector calls five or more telephone numbers, the simulation predicts that the reduced call frequency will eliminate more than 7 percent of RPCs and delay the remaining RPCs by almost two weeks.

The assumptions of Version 2 suggest a more substantial effect on RPCs and collections, although the Bureau notes again that even Version 1 likely overstates the potential effect of the provision. The simulation predicts that RPCs would decline by 15.7 percent, and dollars collected would decline by 7.7 percent.

TABLE 2—RESULTS OF SIMULATION ANALYSIS

Version	Assumed effect of call frequency provision	Percent change in RPCs within 25 weeks	Average delay in remaining RPCs (in weeks)	Percent change in dollars collected within 25 weeks
Version 1	Calls above seven roll to next week	−2.76	0.85	−1.04
Version 2	Calls above seven eliminated	−15.7	0	−7.7

Overall, there is reason to expect that the simulation analysis overstates the potential effect of the final rule's telephone call frequencies because the simulation ignores any changes debt collectors would make to mitigate the

[666] For example, if the debt collector called a particular consumer 10 times in the first week, eight times in the second week, and five times in the third week, in the Bureau's simulation, the last three calls in the first week would become the first three calls in the second week. The second week would then have a total of 11 calls, and the last four calls would become the first four calls in the third week. The third week would then have eight calls, so the last call would become the first call of the fourth week, and so on.

[667] That is, the Bureau assumes that it does not know when or whether that consumer would ever have a successful RPC, only that there was no RPC up until that week. The Bureau then calculates the percentage of debts with an RPC by the 25th week of collections using the Kaplan-Meier product limit estimator for the survival function, a standard tool for measuring rates of an outcome when some observations are censored. It is necessary to assume that such consumers are censored because in reality after an initial RPC, the debt collector generally changes its calling behavior, particularly if it obtains a promise to pay.

[668] The debt collector who provided the data does not leave voicemails, but it is possible that consumers eventually return a call in response to repeated missed calls on their telephones.

[669] The change in payments is less than the change in RPCs both because some consumers pay without an RPC (and the Bureau assumed this did not change in the simulation) and because consumers in the data who had an earlier first RPC, and thus were less likely to be affected by the frequency limits, were also more likely to pay in full.

[670] The Bureau does not observe in the data how many telephone numbers the consumer has, only how many the debt collector chooses to call.

effects of reduced call frequency. The simulation also assumes that debt collectors will not take advantage of the flexibility afforded by the rebuttable-presumption approach to call more frequently in certain circumstances. Nevertheless, certain assumptions that the Bureau makes for simplicity likely reduce the predicted impact of the provision. In particular, in Version 1 the Bureau assumes that a call with an RPC that is shifted later due to reduced call frequency will remain an RPC. This may not be true in practice. Empirically, the probability that a call results in an RPC declines over time—this is evident in the data examined by the Bureau and is consistent with input from industry stakeholders. If consumers are less likely to answer the telephone as time passes, irrespective of the number of calls debt collectors have made, reducing call frequency could reduce payments and revenue by a larger fraction than the simulation suggests (assuming no re-optimization by debt collectors).[671]

A trade group commenter argued that the Bureau's analysis of the Calling Data was unreliable for several reasons. The commenter asserted that the Bureau's analysis was invalid because it did not describe the sample size, because it did not present ''methodology'' or ''algorithms,'' and because it did not list assumptions. The Bureau believes the analysis does provide information relevant to understanding potential costs of the rule. The Calling Data contains proprietary information of the submitter that includes confidential commercial information and that is protected by the Bureau's regulations on the protection of confidential information.[672] The Bureau's confidentiality regulations permit disclosure of materials derived from or created using confidential information to the extent that such materials do not identify, either directly or indirectly, any person to whom the confidential information pertains.[673] As such, it would not be appropriate to identify the debt collector explicitly. In addition, disclosing the total number of calls likewise would be inappropriate because, for large debt collectors such as the one who provided the calling data, the total number of calls placed in a six-month period is likely sufficient to identify the debt collector. The Bureau fully described the methods used to calculate its simulation analysis in the proposal and has repeated that description above. Finally, the discussion of the analysis in the proposal, repeated above, not only described the Bureau's assumptions but also discusses the effect that each assumption has on the outcome of the analysis in some detail. The Bureau acknowledges the limitations of the Calling Data, particularly for extrapolating to the market as a whole, but finds that these data provide useful information to at least characterize the scale of the probable effects of the final rule.

A State Attorney General commenter argued that the Bureau had no evidence that a frequency limit of seven call attempts per seven-day period would yield more consumer engagement and payments than a lower limit such as three call attempts per week. The Bureau acknowledges that it does not have sufficient evidence to quantify the differences in consumer engagement or payments from different telephone call frequencies. However, the Bureau notes that, in its analysis of the Calling Data, a limit of seven calls in a seven-day period led to measurable reductions in RPCs and payments, and that changing the assumptions in the simulation analysis of the calling data had a measurable effect on RPCs and payments even with the same weekly limits. This provides some basis for finding that limiting calls further would reduce payments further for debt collectors who are similar to the debt collector who provided the Calling Data.

Debt collectors could take steps to reduce the number of calls necessary to establish contact and mitigate any lost revenue from limiting call frequency so that they maintain a presumption of compliance. As indicated, if multiple telephone numbers are available, debt collectors might reduce their calls to numbers that they can identify as being less likely to yield a successful contact. In addition, the Bureau understands that debt collectors can reduce the number of calls needed to establish an RPC by purchasing higher-quality contact information from data vendors. Such purchases will be worthwhile if their cost is less than the additional revenue expected from higher contact rates.

In addition, and as discussed below, the Bureau's final rule also includes provisions that could reduce the legal risks associated with other means of communication, such as voicemail messages, text messages, or email, which could enable debt collectors to reach consumers more effectively with fewer calls. This could mitigate the impact of limiting telephone call frequencies to establish a presumption of compliance and might mean that the net effect of the rule would be to increase the likelihood that debt collectors are able to reach consumers. In addition, debt collectors who are unable to reach consumers because they wish to operate within the presumption of compliance might still pursue such debts through litigation. To the extent that frequent call attempts play a more important role in collecting certain types of debt relative to others, some debt collectors might shift their business toward collecting those types for which frequent calls are less important.

Alternative Approaches To Limiting the Frequency of Telephone Calls and Telephone Conversations

The Bureau considered alternatives to the final rule's rebuttable-presumption approach to telephone call frequencies on debt collector telephone calls and telephone conversations. The potential benefits and costs of those alternatives to consumers and covered persons relative to the final rule are discussed briefly below.

The proposal would have established a bright-line limit on telephone call frequency rather than a rebuttable presumption. Specifically, proposed § 1006.14(b)(1) set forth the general prohibition, § 1006.14(b)(2) described bright-line frequency limits for telephone calls and telephone conversations during a seven-day period, and proposed § 1006.14(b)(3), (4), and (5) described telephone calls excluded from the frequency limits, the effect of complying with the frequency limits, and a definition, respectively. A bright-line limit on telephone call frequency would provide greater clarity to consumers and debt collectors about whether calling practices comply with the FDCPA. For example, under the proposal, a debt collector who did not place telephone calls to consumers more than seven times in a seven-day period would know that it was complying with

[671] Another assumption that might reduce the predicted effect of reduced call frequency in both versions is the assumption that payment is tied to whether or not the first RPC occurs. For instance, in Version 1, the Bureau assumed that a consumer would not pay only if the first RPC would have occurred after the 25th week in the simulation. Yet about a quarter of consumers in the data who eventually pay some portion of their debt had at least two RPCs. It may be that the subsequent RPCs were necessary for the payment to occur, but the Bureau's analysis did not track whether subsequent RPCs occurred after the 25th week under the simulated frequency reductions. The Bureau also notes that there is an implicit assumption in both versions of the simulation that could lead to overstating the effect of the call frequency reduction. The simulation assumes that, if all RPCs for a consumer were eliminated, then the consumer would never pay. Given that, as noted above, a substantial number of consumers in the original data pay despite having no RPCs, it is possible that some consumers whose RPCs were eliminated by the reduced call frequencies would nonetheless pay eventually.

[672] *See* 12 CFR part 1070.

[673] *See* 12 CFR 1070.41.

the provision, whereas, under the final rule, a debt collector following the same practice would also need to consider whether the presumption of compliance might be rebutted in the case of particular consumers or accounts. This could result in greater compliance costs and greater risk of litigation for debt collectors compared with the proposal. On the other hand, the final rule may provide greater flexibility to debt collectors and additional benefits to consumers compared with the proposal. For consumers, the final rule may provide additional benefits in cases where seven or fewer telephone call attempts per week would be harassing, such as rapid succession calling. For debt collectors, the final rule may make it more possible to reach consumers if they are unable to make contact within seven call attempts in a week and additional calls would not be harassing.

The Bureau also considered a broader version of § 1006.14(b)(1) that would have set a numerical prohibition on repeated or continuous attempts to contact a person by other media, such as by sending letters, emails, or text messages to a person in connection with the collection of a debt. Such an approach could provide additional benefits to consumers if they are harassed or abused by frequent communication from debt collectors through such media.

However, during the SBREFA process, some small entity representatives suggested that compliance with a rule that limited the frequency of communications by media other than telephone calls would be more costly than compliance with a rule that applied only to calls. These small entity representatives indicated that, while many existing debt collection systems already track the frequency of telephone calls, modifying systems to track communication by other media would be significantly more expensive.

As discussed in part V, because debt collectors do not presently engage in widespread use of electronic communications, the Bureau concludes that it does not have sufficient information to warrant applying numeric limitations to electronic communications.[674] Debt collectors will still need to ensure that their communications other than telephone calls do not violate the FDCPA section 806's general prohibition on harassment, oppression, and abuse, but the final rule will not require them to develop systems that treat telephone calls and other communications equivalently for purposes of tracking contact frequency.

The Bureau also considered a proposal that would have limited the number of calls permitted to any particular telephone number (*e.g.,* at most two calls to each of a consumer's landline, mobile, and work telephone numbers). The Bureau considered such a limit either instead of or in addition to an overall limit on the frequency of telephone calls to one consumer. Such an alternative could potentially reduce the effect of frequency limits on debt collector calls if it permitted more total calls when consumers have multiple telephone numbers. Such an approach could impose smaller costs on debt collectors in some cases compared to the final rule by making it easier to contact consumers for whom debt collectors have multiple telephone numbers. At the same time, such an approach might provide smaller consumer benefits compared to the final rule by potentially permitting a high frequency of calls in some cases. Some consumers could receive (and some debt collectors could place) more telephone calls simply based on the number of telephone numbers that certain consumers happened to have (and that debt collectors happened to know about). Such an approach also could create incentives for debt collectors, for example, to place telephone calls to less convenient telephone numbers after exhausting their telephone calls to consumers' preferred numbers.

3. Limited-Content Messages

Section 1006.2(j) defines limited-content message as a voicemail message for a consumer that includes all of the content described in § 1006.2(j)(1), that may include any of the content described in § 1006.2(j)(2), and that includes no other content. In particular, § 1006.2(j)(1) provides that a limited-content message must include all of the following: A business name for the debt collector that does not indicate that the debt collector is in the debt collection business, a request that the consumer reply to the message, the name or names of one or more natural persons whom the consumer can contact to reply to the debt collector, and a telephone number that the consumer can use to reply to the debt collector. Section 1006.2(j)(2) provides that a limited-content message also may include one or more of the following: A salutation, the date and time of the message, suggested dates and times for the consumer to reply to the message, and a statement that if the consumer replies, the consumer may speak to any of the company's representatives or associates. Section 1006.2(b) and (d), which define the terms attempt to communicate and communication, respectively, provide that a limited-content message is an attempt to communicate but is not a communication.

Potential Benefits and Costs to Consumers

As discussed below under ''potential benefits and costs to covered persons,'' many debt collectors currently do not leave voicemail messages for consumers because of the risk of litigation. The Bureau expects that, by clarifying that ''communication'' for purposes of the FDCPA does not include the limited-content message, the rule will make debt collectors more likely to leave voicemail messages if they are unable to reach consumers by telephone.

In general, an increased use of voicemail messages should make it more convenient for consumers to communicate with debt collectors because consumers will be better able to arrange a discussion at a time that is convenient for them rather than at a time when the debt collector happens to reach them. Related to this, some consumers express annoyance at receiving repeated calls from callers who do not leave messages. To the extent that debt collectors respond to the rule by leaving messages when a consumer does not answer the telephone, the provision might help address that problem.

If more debt collectors are willing to leave messages, it may lead to an indirect benefit to consumers by reducing the number of unwanted call attempts without reducing the likelihood that consumers communicate with debt collectors. Although some debt collectors may leave frequent messages or continue to call frequently despite having left messages, an industry trade publication recommends a best practice of waiting three to seven days after leaving a message to give the consumer an opportunity to return the call.[675] During the meeting of the Small Business Review Panel, small entity representatives indicated that limited-content messages would reduce the need for frequent calling.[676] One commenter on the proposal, a large debt buyer, indicated the same. Thus, some consumers may experience reduced numbers of calls if more debt collectors

[674] The Bureau received no comments advocating that any frequency limits be applied to mailed communications, and the Bureau is unaware of other evidence suggesting that would support such a limit.

[675] insideARM, *Operations Guide: Call Volume* 10 (Nov. 14, 2014).

[676] Small Business Review Panel Report, *supra* note 37, at 25.

leave messages and wait for a return call.

Debt collectors cannot be certain that a voicemail message will be heard only by the consumer for whom it was left. Some consumers could be harmed by an increase in limited-content messages, either because they are harassed by frequent messages or because the messages increase the risk of third-party disclosure. Although the message itself would not convey any information about the debt, the message will include a business name for the debt collector that does not indicate that the debt collector is in the debt collection business and some third parties who hear the message may assume or discover that the caller is a debt collector attempting to collect a debt from the recipient. On the other hand, the provision might lead debt collectors who currently leave more detailed messages that pose greater risk of revealing the purpose of the call to third parties to switch to messages that pose less risk. In such instances, the impact of the provision may be to reduce the likelihood of third-party disclosures.

Multiple consumer advocate and other commenters argued that the proposed limited-content message would quickly become associated with debt collectors, such that a third party overhearing a limited-content message would immediately recognize it as a message from a debt collector. These commenters asserted that as a result, consumers would suffer privacy harms from the use of limited-content messages. Whether or not the commenters are correct in their argument, the changes the Bureau has made to the required content of the limited-content message in the final rule should, on balance, reduce the privacy risks to consumers. By including the name of the company (that does not indicate that the debt collector is in the debt collection business) but not the consumer, the limited-content message will both sound less unique (the commenters noted that few legitimate businesses currently leave messages without leaving their business name) and will not identify the call as being intended for a particular consumer. In addition, the Bureau notes that the potential scope of harm from third parties overhearing voicemail messages is smaller than it may have been in past years and is shrinking. As more consumers transition away from landline telephones to personal mobile phones, the possibility of a third party overhearing a voicemail message becomes less likely, as voicemails on mobile devices generally are not played in a way that allows bystanders to overhear. A voicemail on a mobile device may have no more risk of third-party disclosure than other forms of communication, and in some circumstances may have less risk.

Survey results indicate that consumers are concerned about third parties overhearing voicemail messages left by debt collectors, with nearly two-thirds of consumers saying it is very important that others do not hear or see a message from a creditor or debt collector, as shown in Table 3 below. However, most respondents also said that they would prefer that a voicemail message from a debt collector indicate that the caller is attempting to collect a debt. Even among consumers who said it was ''very important'' that others not see or hear messages about debt collection, 63 percent said they preferred that the purpose of the call be included in a message from a creditor or debt collector attempting to collect the debt. This suggests that many consumers either do not expect third parties to overhear voicemail messages left for them or attach greater importance to knowing what the call is about than to the risk a third party will overhear the message.

TABLE 3—PREFERENCES REGARDING OTHERS SEEING OR HEARING DEBT COLLECTOR MESSAGE

[Percent]

Importance of others not seeing or hearing a message	All consumers	Consumers contacted about a debt in collection
Very important	64	65
Somewhat important	23	24
Not at all important	14	10

Potential Benefits and Costs to Covered Persons

The Bureau understands that many debt collectors avoid leaving voicemail messages, or leave them only under limited circumstances, because of the legal risk associated with doing so. Currently, debt collectors leaving a voicemail message for a consumer either do not include the statement that the call is from a debt collector (the so-called ''mini–*Miranda*'' warning) and risk being deemed in violation of FDCPA section 807(11) or include that statement and risk that the existence of a debt will be disclosed to a third party hearing the message and that they will be deemed in violation of FDCPA section 805(b). The provision in the final rule will reduce both direct and indirect costs to some debt collectors by interpreting the FDCPA not to require the mini–*Miranda* warning in a limited-content message, which will reduce legal risks associated with such messages.

Debt collectors may indirectly benefit from clarification of the type of messages that may be left because messages may make it easier to establish contact with consumers. Currently, many debt collectors limit or avoid leaving voicemail messages for fear of FDCPA liability.[677] Leaving voicemail messages may be a more efficient way of reaching consumers than repeated call attempts without leaving such messages. For example, consumers who do not answer calls from callers they do not recognize might return a voicemail message. If so, the provision could permit debt collectors to reach such consumers with fewer contact attempts.

Commenters were divided on whether the proposed limited-content message would increase the ability of debt collectors to reach consumers. An industry trade group commenter and a State Attorney General commenter argued that consumers would not respond to the proposed limited-content messages and would treat them as spam calls. A different industry trade group commenter argued that the proposed limited-content message would in fact increase consumer engagement and reduce the need for repeated telephone

[677] In the Bureau's Debt Collection Operations Study, 42 of 58 respondents reported sometimes leaving voice messages. Of those that do leave voice messages, many reported leaving them only under certain specific circumstances. *See* CFPB Debt Collection Operations Study, *supra* note 34, at 29–30.

calls. As discussed above, the Bureau has revised the requirements for the limited-content message in ways that should decrease the likelihood that consumers treat the messages as spam, such as by requiring debt collectors to include the name of the collection firm that does not indicate that the debt collector is in the debt collection business. As such, the Bureau believes that it is more likely than not that the provision will make it easier for debt collectors to establish contact with consumers.

The provision may also reduce the direct costs of voicemail-related litigation, which can be large.[678] While the Bureau does not have data on the costs to debt collectors of defending such litigation, some debt collectors have suggested that resolving an individual lawsuit typically costs $5,000 to $10,000, and resolving a class action could cost much more. Moreover, debt collectors report that the large majority of threatened lawsuits are settled before a suit is filed, so the frequency of filed lawsuits substantially understates how often debt collectors bear costs from claimed FDCPA violations.[679] The Bureau anticipates that the clarification of the definition of communication will significantly reduce the legal risk to debt collectors of leaving voicemail messages.

The provision generally does not require debt collectors to incur new costs because it does not require any debt collectors to change their policies regarding messages. However, in order to obtain benefits from the provision, debt collectors who plan to adopt the practice of leaving limited-content messages will incur one-time costs to develop policies and procedures to implement limited-content messages under the rule and to train employees on these policies and procedures.

4. Prohibition on the Sale or Transfer of Certain Debts

Section 1006.30(b)(1) prohibits a debt collector from selling, transferring for consideration, or placing for collection a debt if the debt collector knows or should know that the debt was paid or settled or discharged in bankruptcy. Section 1006.30(b)(2) creates some exceptions to this prohibition.

The Bureau understands, based on its market knowledge and outreach to debt collectors, that debt collectors generally do not sell, transfer, or place for collections debts (other than in circumstances covered in the exceptions) if they have reason to believe the debts cannot be validly collected because they have been paid or settled or discharged in bankruptcy. The final rule provides an exception for transfer of secured debt that has been discharged in bankruptcy, provided that the debt collector provides notice to the transferee that the debt has been discharged. The Bureau understands that, if debt collectors transfer such secured debt, they generally already provide such notice in the ordinary course of business. Therefore, the Bureau expects the benefits and costs of this provision to be minimal.

5. Electronic Disclosures and Communications

The final rule includes provisions that clarify how debt collectors can communicate with consumers by email and text message in compliance with the FDCPA and the final rule. With respect to the validation notice, which most debt collectors currently provide by mail, § 1006.42 sets forth standards that debt collectors must meet if they send notices electronically. With respect to any communications about a debt, § 1006.6(d)(3) through (5) specifies procedures that debt collectors may use to send an email or text message to a consumer about a debt such that the debt collector may obtain a safe harbor from civil liability under the FDCPA for an unintentional disclosure of the debt to a third party.

Potential Benefits and Costs to Consumers

Today, most debt collectors generally communicate with consumers by letter and telephone. If the rule leads debt collectors to increase their use of email and text messages, it will benefit consumers who prefer electronic communications to letters or telephone calls.

Many consumers appear to prefer to receive certain disclosures about financial products by electronic means rather than mail. In 2016, of a sample of 203 million active general purpose credit card accounts, approximately 141 million accounts (69 percent of all accounts) were enrolled in online servicing, of which approximately 80 million (39 percent of all accounts) opted into delivery of periodic statements by electronic means only.[680] Because consumers who experience debt collection differ from consumers who do not,[681] these estimates would be more accurate if the Bureau knew how many consumers who experience debt collection have opted into receiving electronic-only (paperless) disclosures from their creditors. It is not clear whether consumers who experience debt collection would be more or less digitally engaged with disclosures than their counterparts without debt collection experience.[682]

Other data from the Debt Collection Consumer Survey show that about 15 percent of consumers indicate that email is their most preferred method of being contacted about a debt in collection, with almost half of consumers indicating that a letter is their most preferred method, and about a quarter identifying a telephone as their most preferred method.[683] At the time of the survey very few debt collectors communicated by email, whereas many debt collectors communicated by telephone and letter, so survey respondents may have found it more difficult to evaluate their preferences for receiving debt collection communications by email. That said, the lower percentage for email may suggest that consumers are more likely to prefer electronic communications for periodic statements and similar disclosures than for debt collection communications. Taken together, these data suggest that a minority of consumers—between 15 and 39 percent—might prefer electronic validation notices, while a majority—as many as 69 percent—might prefer to receive electronic communications (other than the validation notice)

[678] There were at least 162 voicemail-related lawsuits filed in 2015 under section 805(b) of the FDCPA, which prohibits third-party disclosures; of these, 11 cases were class actions. In addition, at least 125 voicemail-related lawsuits were pursued under section 807(11), which prohibits communicating with a consumer without providing the mini–*Miranda* disclosure; of these 49 cases were class actions. *See* Small Business Review Panel Outline, *supra* note 36 at 69 n.104 (citing data provided by WebRecon, LLC).

[679] Some debt collectors have reported that they receive approximately 10 demand letters for every lawsuit filed and that FDCPA claims are typically settled for $1,000 to $3,000. *See id.* at 69 n.105.

[680] These estimates are based on data reported in Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market,* at 164–66 (Dec. 2017), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2017.pdf.* This rate has increased every year since at least 2013. These rates were lower for private label and retail co-brand cards, suggesting that the product's use case, acquisition channel, and consumer base composition may all affect both provider practices and consumer behavior.

[681] *See* CFPB Debt Collection Consumer Survey, *supra* note 16, at 15–17. Consumers who have experienced debt collection tend to have lower incomes, be under age 62, and be non-white.

[682] An FDIC survey that addressed access to banking services found that the share of respondents accessing bank accounts through online or mobile methods generally increased with income and was lower for respondents aged 65 or more. *See* Fed. Deposit Ins. Corp., *2017 FDIC National Survey of Unbanked & Underbanked Households* at 27 & table 4.4 (Oct. 2018), *https://www.fdic.gov/householdsurvey/.*

[683] CFPB Debt Collection Consumer Survey, *supra* note 16, at 23.

instead of or in addition to paper communications or telephone calls.

As discussed above with respect to the rule's provisions regarding call frequency, most consumers experiencing debt collection report that debt collectors call too often. The provisions regarding electronic communications may have the indirect effect of reducing call frequency. These provisions may cause debt collectors to substitute email or text messages for telephone calls, and email or text messages may provide an easier channel for consumers to ask debt collectors to call less often. The benefits to consumers of reduced call frequency generally are discussed above. While some consumers prefer not to receive electronic communications from debt collectors, the final rule's provisions requiring opt-out notices and specifying that consumers can limit the method of communication should reduce any harm to such consumers by making it relatively easy to stop or restrict attempts at electronic communication.

Consumer advocates argued that some specific groups may be adversely impacted by specifying how validation notices may be sent by email, including by hyperlink. In particular, these commenters noted that older consumers and poorer consumers are generally less likely to have readily available access to the internet. The commenters expressed concern that these consumers, who may be vulnerable in other ways as well, might not receive required notices and be harmed as a result. The Bureau agrees that some consumers may be less likely than others to receive notices sent electronically. In addition, in quantitative testing completed by the Bureau after publication of the proposal, the Bureau found a strong preference among consumers for receiving validation notices through the mail and much less willingness by consumers to receive validation notices by email or text message.[684]

As discussed in part V, the Bureau is not finalizing the proposed exemption to the E–SIGN Act and the alternative procedures under which debt collectors could send required disclosures electronically, including through a hyperlink, and is not finalizing the specific safe harbor for sending a validation notice electronically in an initial communication with a consumer. When the validation notice is not part of the initial communication, debt collectors will not be permitted to send it electronically without having obtained the consumer's E–SIGN consent. The Bureau does not believe that consumers will generally provide E–SIGN consent if they do not have ready access to email and the internet. In addition, under the final rule (and consistent with the proposal), all required disclosures sent in writing or electronically (including the validation notice sent as an initial communication) must be sent in a manner that is reasonably expected to provide actual notice to the consumer, and in a form that the consumer may keep and access later. This requirement reduces the risk that debt collectors will send validation notices electronically unless they are able to show that the electronic method used to send the validation notice is reasonably expected to provide actual notice to the consumer.

The risk of third-party disclosure may be different for electronic debt collection communications than for letters or telephone calls, although the Bureau is not aware of evidence that would indicate whether such risk is higher or lower. Bureau data suggests that almost two-thirds of consumers consider it very important that third parties do not hear or see a message from a creditor or debt collector.[685] To the extent that information in an electronic disclosure is less likely or more likely to be seen or heard by third parties than communications by mail or telephone, consumers receiving validation notices electronically are likely to experience a benefit or a cost, respectively.

Receiving disclosures electronically rather than in the mail may affect the likelihood that consumers notice and read the disclosures, which could lead to benefits or costs for consumers if they become more or less likely to inadvertently ignore or miss important information. The Bureau does not have information about how frequently consumers currently read validation notices sent by mail or how often they would read disclosures sent electronically.[686]

Multiple commenters, including individual commenters, a State Attorney General commenter, and consumer advocate commenters, identified other potential costs to consumers of the proposed electronic communications provisions. Several commenters noted that sending validation notices through a hyperlink would be problematic because of the security risks of clicking on links in emails from unknown senders. In these commenters' view, consumers would either decline to click on the links and so would not receive important disclosures, or they would click and be more likely to click on dangerous links in the future. Multiple commenters raised the concern that debt collectors would make it difficult to opt out of electronic communications.

Under the final rule, for validation notices that are not provided in the initial communication, the requirement to comply with the E–SIGN Act will mean that consumers have consented to receive electronic communications before the validation notice is sent electronically, which should help to address these commenters' concerns. In addition, under the final rule (and consistent with the proposal), all required disclosures sent in writing or electronically must be sent in a manner reasonably expected to provide actual notice, and in a form that the consumer may keep and access later. This should reduce the risk that debt collectors will send required communications in a manner that consumers are unlikely to read or are unable to keep and access later. In addition, the final rule requires debt collectors that use electronic communications to provide consumers with a reasonable and simple method to opt out of such communications.

Potential Benefits and Costs to Covered Persons

Debt collectors who send required disclosures electronically rather than sending letters could benefit because they would no longer have to print and mail disclosures. The Bureau estimates that the marginal cost of mailing a validation notice is approximately $0.50 to $0.80, whereas the marginal cost of sending the same communication by email would be approximately zero. The Bureau estimates that approximately 140 million validation notices are mailed each year.[687] Assuming average

[684] *See* CFPB Quantitative Testing Report, *supra* note 33, at 33.

[685] *See* CFPB Debt Collection Consumer Survey, *supra* note 16, at 38.

[686] One debt collector who currently communicates with consumers by email reports that 60 percent of consumers open at least one email and 25 percent click a link to review their options. *See* Small Business Review Panel Report, *supra* note 37, at 7. As of 2015, about one-tenth of all mass-market credit card consumers accessed their online PDF periodic account statements in the final quarter of the year, which implies that fewer than one-half of consumers who receive only electronic statements viewed those statements. *See* Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market,* at 134 figure 8 (Dec. 2015), *https://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf.* However, the Bureau does not have data about the frequency with which consumers open or otherwise access paper periodic statements. In addition, notices of debts in collection may seem more serious or important than periodic statements and may be more likely to be opened.

[687] The assumption of 140 million validation notices per year is based on an estimated 49 million consumers contacted by debt collectors each year

mailing costs of $0.65, this would result in annual validation notice mailing costs of approximately $91 million per year. If the rule leads a significant percentage of validation notices to be sent electronically rather than by postal mail, it could reduce mailing costs for debt collectors by millions or tens of millions of dollars per year.

Debt collectors who use electronic communications may also benefit to the extent that some consumers are more likely to engage with debt collectors electronically than by telephone or letter. During the SBREFA process, several small entity representatives said that communication by email or text was preferred by some consumers and would be a more effective way to engage with them about their debts.[688] One debt collector who currently uses email to contact consumers reports that its collection rates are greater than those of traditional debt collectors. While collection rates are likely to vary according to debt collector, type of debt, and related factors, clarifying the legality of electronic communications and disclosures will make it easier for debt collectors to test the efficacy of electronic communication and use it if they find it effective, potentially lowering costs and increasing the overall effectiveness of collections.

Some commenters, including consumer advocates and individual commenters, disagreed with the principle of saving debt collectors money by explicitly providing alternative procedures and safe harbors for electronic communication at, according to these commenters, the expense of consumers. As discussed above, the Bureau believes that some consumers will benefit from electronic communications, and that it can be appropriate to reduce regulatory burden even in cases where there may be countervailing costs to some consumers.

The Bureau understands that few debt collectors currently communicate with consumers using electronic means. For debt collectors who do communicate with consumers electronically, the rule requires them to provide a method for opting out of such communications. The Bureau understands that such methods are common features of services that provide the ability to send electronic communications to consumers. The Bureau therefore does not anticipate that these requirements will impose significant costs on debt collectors that choose to communicate with consumers electronically.

H. Potential Reduction of Access by Consumers to Consumer Financial Products and Services

This rule contains a mix of provisions that will either restrict or encourage certain debt collection activities, the net impact of which is uncertain. Economic theory indicates that it is possible for changes in debt collection rules, such as those contained in this final rule, to affect consumers' access to credit positively or negatively. Theory says that creditors should decide to extend credit based on the discounted expected value of the revenue stream from that extension of credit. This entails considering the possibility that the consumer will ultimately default. Specifically, the discounted expected value of an extension of credit will be the discounted present value of the stream of interest payments under the terms of the credit agreement, multiplied by the probability that the consumer pays, plus the discounted expected value of the creditor's recovery should the consumer default, times the probability of default. A profit-maximizing creditor will only extend credit to a given consumer if this expected value is positive.[689] Anything that reduces the expected value of a creditor's recovery in the event of default, in general, will lower the discounted expected value of the extension of credit as a whole. This, in turn, may make potential extensions of credit with a discounted expected value only slightly above zero to become negative, such that a creditor will be less willing to extend credit. Likewise, anything that increases the expected value of a creditor's recovery increases the discounted expected value of the credit extension and may change the sign of the expected value of potential credit extensions that had negative expected values, such that a profit-maximizing creditor will be more willing to extend credit.

There are a few ways that the rule might increase or decrease the expected value of creditors' recovery in the event of a consumer's default, although theory alone gives no indication whether any of these actual effects on recovery would be large enough to have practical significance. The additional clarity provided by the final rule regarding limited-content messages and the use of electronic communications should facilitate some communications and thereby tend to increase the expected value of recovery, while the call frequency presumption may reduce the expected value of recovery. First, to the extent that the rule raises costs for debt collectors, debt collectors in theory could pass these costs on to creditors, whether by charging higher contingency fees to creditors or by paying lower prices to creditors when buying debt.[690] Second, the rule may reduce the amount of expected recovery, either by making it less likely that consumers ultimately pay, or by reducing the amount that consumers pay in the event of a settlement. Finally, the rule could increase the time it takes for debt collectors to recover. A rational creditor would discount future income more the further in the future it occurs, and so later payment of the same amount of money would reduce the discounted expected value of the payment. Alternatively, the rule might lower costs for debt collectors, increase expected recovery and decrease the time it takes for debt collectors to recover amounts owed.[691]

If the rule reduces the expected value of extending credit, creditors might respond in three ways: (1) Increase their standards for lending, with an aim of reducing the probability of default; (2) reduce the amount of credit offered, thus reducing their losses in the event of a default; or (3) increase interest rates or other costs of credit such as fees, thus increasing their revenue from consumers who do not default. Which of these mechanisms any given creditor would pursue with respect to any given credit transaction depends on the specifics of the particular credit market.

and an assumption that each receives an average of approximately 2.8 notices during the year.

[688] *See, e.g.,* Small Business Review Panel Report, *supra* note 37, at appendix A.

[689] For purposes of this discussion, the Bureau ignores risk preferences and assumes that creditors are risk neutral. That is, while a risk-averse decision maker would prefer a certain payment of $100 to an uncertain investment with expected value of $100, the discussion in this section assumes creditors are indifferent between these options. Creditors may be risk averse to some degree, such that they would prefer the certain investment to the gamble, or even risk seeking, such that they prefer a gamble with the prospect of a higher return. The theoretical argument described here does not hinge on creditors' risk preferences—the Bureau makes this assumption solely for ease of exposition.

[690] The Bureau notes that the degree of this pass-through depends on the relative degree of market power held by debt collectors and creditors. If creditors have more market power, debt collectors will have limited ability to demand higher fees or lower wholesale prices. Many comments on the Small Business Review Panel Outline indicated that debt collectors have little market power in their interactions with creditors, which is consistent with little pass-through of additional costs. *See, e.g.,* Small Business Review Panel Report, *supra* note 37, at 16–17.

[691] Because creditors are generally not subject to the FDCPA, creditors could also respond to changes to debt collection rules by changing their decisions about whether to use third-party debt collectors or to collect debts themselves. The option to move debt collection activities ''in house'' could reduce any impact of the final rule on the costs of recovering unpaid debts.

A number of industry and other commenters agreed with the general principle that debt collection restrictions may reduce access to credit, although these comments generally did not specifically address the analysis above. One commenter argued that access to credit is not always a good thing and asserted that debts under collection are more likely to be the result of high-interest, predatory lending.

The Bureau is aware of three empirical, academic studies using modern data and methods that estimate the magnitude of the effect of debt collection restrictions on access to credit,[692] one by a researcher affiliated with the Federal Reserve Bank of Philadelphia (Fedaseyeu Study),[693] another by researchers at the Federal Reserve Bank of New York (Fonseca Study),[694] and a third by researchers at the Bureau (Romeo-Sandler Study).[695] All three empirical studies use changes in State or local debt collection laws and regulations to examine the effect of those laws on measures of credit access.

The Fedaseyeu Study used aggregate data on new credit card accounts combined with credit union call report data to examine the effect of various State law changes between 1999 and 2012 on the number of new revolving lines of credit opened each year in each State. This study finds that an additional restriction on debt collectors decreases the number of new accounts by about two accounts per quarter per 1000 consumers residing in a State. For comparison, the data used for the Fedaseyeu Study showed an average of 120 new accounts per quarter per 1000 consumers. The Fedaseyeu Study finds no effect of debt collection laws on the average credit card interest rate.[696] However, the Fedaseyeu Study has some important limitations, particularly regarding extrapolating its results to the effects of the rule. Most importantly, it considers a wide variety of types of debt collection laws, including provisions with limited consumer protection aspects. Specifically, a majority of the debt collection law changes included in the Fedaseyeu Study largely involve changes to licensing fees, bonds, or levels of statutory penalties for violations, rather than prohibiting or requiring specific conduct, and each such change is given the same weight as a law governing conduct.[697] Leaving aside the question of whether monetary adjustments under State law are of a comparable magnitude to the final rule under Federal law, the final rule focuses on conduct, rather than State licensing fees, bonds, or penalty amounts. As such, the results of the Fedaseyeu Study are less informative as to the effects of the final rule than they would be if the legal changes at issue were more comparable to those in the final rule. The data analysis in the Fedaseyeu Study is also somewhat limited by the data that were available. The aggregate data used make it difficult to control for confounding factors, such as differences in credit scores among consumers.

The Fonseca Study follows a similar design as the Fedaseyeu Study and examines the same set of State law changes, but it employs microdata from the Federal Reserve Bank of New York's Consumer Credit Panel, a nationally representative sample of credit records from Equifax. The main results of the Fonseca Study focus on the initial loan amounts or limits for automobile loans, credit cards, and non-traditional finance loans.[698] The study finds a moderate effect on automobile loan amounts, and a small effect on initial credit card limits. Like the Fedaseyeu Study, a major limitation of the Fonseca Study is its focus on licensing requirements, which are not directly comparable to the provisions in the rule. That the Fonseca Study finds larger effects on automobile loans than credit cards also raises questions. Although third-party debt collectors are sometimes involved in collecting on automobile loans when the loan balance exceeds the value of the car, most delinquent automobile debt is resolved through repossession. The fact that the Fonseca Study nonetheless found a moderately large effect on automobile balances suggests that possibly the study's methodology was not successful in isolating the causal effect of the debt collection laws, but instead was picking up other, unrelated, factors.

The Romeo-Sandler Study uses microdata from two large administrative datasets: The Bureau's Consumer Credit Panel (CCP)[699] and Credit Card Database (CCDB).[700] This study focuses on four recent major changes in State or local laws and regulations that imposed additional conduct requirements on either debt buyers or on all debt collectors.[701] By focusing on the effect of changes to laws that regulate debt collector conduct, the results of the Romeo-Sandler Study are arguably more applicable to understanding effects of the rule, although the specific changes to State or local laws studied differ considerably from the provisions of the rule.

The Romeo-Sandler Study assesses three main outcomes: The probability that a credit inquiry results in an open credit card account, the credit limit on newly opened credit card accounts, and initial interest rates on credit card accounts. As discussed above, creditors might limit any of these factors to adjust for the effects of a regulation such as the final rule. The Romeo-Sandler Study

692 In addition, earlier empirical research examined the relationship between restrictions on creditor remedies and the supply of credit. *See* Thomas A. Durkin *et al., Consumer Credit and the American Economy* 521–525 (Oxford U. Press 2014) (summarizing this empirical literature).

693 Viktar Fedaseyeu, *Debt Collection Agencies and the Supply of Consumer Credit,* Journal of Financial Economics, 138 (2020).

694 Julia Fonseca *et al., Access to Credit and Financial Health: Evaluating the Impact of Debt Collection* (Fed. Reserve Bank of N.Y. Staff Report No. 814, 2017).

695 Charles Romeo & Ryan Sandler, *The Effect of Debt Collection Laws on Access to Credit,* Journal of Public Economics, (Forthcoming).

696 In addition to the results described here, the Fedaseyeu Study also examines the effect of debt collection laws on the number of debt collection firms per capita and a measure of the recovery rate from debt collection. The Bureau omits discussion of these results here because they are not directly relevant to the question of consumer access—the Bureau discusses potential effects on debt collection firms above.

697 Specifically, Fedaseyeu created an index of debt collection regulation, with one point added for a tightening in any one of six categories of regulation, including licensing requirements, bonding requirements, and the creation of a board to regulate third-party debt collectors.

698 The Fonseca Study defines non-traditional finance loans as ''retail cards, personal loans and a residual loan category.'' Like the Fedaseyeu Study, the Fonseca Study also examines the effect of the debt collection laws studied on the number of debt collectors present in each State; again, the Bureau omits discussion of those results in this section.

699 Although similar in nature, the Bureau's CCP is not the same as the Federal Reserve Bank of New York's Consumer Credit Panel, discussed above. The Bureau's CCP is an anonymized sample of credit records from one of the three nationwide CRAs, containing a 1-in-48 representative sample of all adults with a credit record. The data contain all credit accounts (trade lines) and hard inquiries on a consumer's credit report, with a unique, anonymous identifier linking records belonging to the same consumer. This CCP does not contain any personally identifying information on individual consumers.

700 The CCDB is a monthly panel describing balances, payments, and interest rates on all credit card accounts issued by a set of major banks, representing roughly 90 percent of the credit card market. As with the CCP, accounts are identified by an anonymous identifier, and the CCDB does not contain any personally identifying information.

701 New laws were put into effect in North Carolina in October 2009 and California in January 2014; both of these laws focused exclusively on debt buyers. In addition, New York City, in April 2010, and New York State, in December 2014, introduced new debt collection restrictions through administrative regulations. These updated restrictions generally require debt collectors to take additional steps before collecting, including requiring additional documents to substantiate debts before collections can begin, requiring disclosures or additional documentation before lawsuits can be filed to enforce a debt, and requiring disclosures once the State's statute of limitations has run.

controls for individual consumers' credit scores and census tract demographic information and flexibly adjusts for State-level trends over time that might otherwise bias the estimates of an analysis. As with the Fedaseyeu Study and Fonseca Study, the Romeo-Sandler Study found effects of debt collection laws that are in the direction predicted by theory (*i.e.,* increased regulation increases the cost or decreases the availability of credit), but the effects are quite small in magnitude. Using the CCP, this study found that additional regulations on debt collectors' conduct caused the success rate of a credit inquiry to decline by less than 0.02 percentage points off a base rate of about 43 percent. The study concludes that one can statistically reject that the effect was as large as 0.7 percentage points. The study provides some context for these effects by comparing them to the effect of changing consumers' credit scores. The study found that each credit score point increases the probability of a successful credit inquiry for subprime borrowers by about 0.2 percentage points. Thus, the estimated effect of a debt collection law is equivalent to lowering consumers' credit scores by less than one point.[702] The Romeo-Sandler Study finds similarly small effects on credit limits, which are again equivalent to a very small change in credit score. The magnitude of the credit limit effect in the Romeo-Sandler Study is smaller than that found in the Fonseca Study.

The Romeo-Sandler Study also analyzes the effect of debt collection laws on credit card interest rates using the CCDB. The study finds that initial interest rates increase slightly following a State or local debt collection law or regulation, but that this entirely takes the form of a reduced frequency of accounts with an introductory APR of 0 percent—the level of positive initial interest rates are essentially unchanged.

The Romeo-Sandler Study is also able to shed light on potential areas of heterogeneity in the effects of State debt collection laws because of its access to rich microdata. The Romeo-Sandler Study explores the effects separately for consumers with high and low credit scores and finds somewhat larger (although still small) effects on consumers with sub-prime credit scores. This is consistent with theory. Even within the sub-sample of consumers with sub-prime credit scores, the effect of the laws is equivalent to a three-point decrease in sub-prime borrowers' credit scores.

The studies discussed above provide evidence that regulation of debt collection can affect consumer access to credit in ways consistent with economic theory. However, these studies do not speak directly to the likely effects of the final rule on consumer credit markets. The State or local laws analyzed in these studies implement a different set of consumer protections than those in the final rule. The final rule includes some provisions likely to increase debt collector costs, but also includes other provisions, such as those related to limited-content messages and email and text messages, which could lower costs for some debt collectors. In addition, creditors and debt collectors might react differently to changes in State or local collection standards than the standards in the Bureau's rules, which could affect all U.S. consumers. For instance, a nationwide creditor might choose not to adjust its credit standards in response to a change in only one State's debt collection laws, but might find it optimal to change its standards if similar laws applied nationwide or to a large share of its potential borrowers.

The Bureau received several comments from industry and trade association commenters generally asserting that restrictions on debt collection would have negative effects on access to credit and cited one or more of the studies above as support for this contention. None of these commenters addressed the Bureau's interpretation of the studies as showing that past restrictions had a quantitatively small effect on credit access, and none disagreed with the Bureau's observations about the limitations of the Fedaseyeu Study and the Fonseca Study.

I. Potential Specific Impacts of the Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Dodd-Frank Act Section 1026

Depository institutions and credit unions are generally not debt collectors under the FDCPA and therefore are generally not covered by the rule. However, as noted above, creditors could experience indirect effects from the rule to the extent they hire FDCPA-covered debt collectors or sell debt in default to such debt collectors. Such creditors could experience higher costs if debt collectors' costs increase and if debt collectors are able to pass those costs on to creditors. The Bureau understands that many depository institutions and credit unions with $10 billion or less in total assets rely on FDCPA-covered debt collectors to collect debts, but the Bureau does not have data indicating whether such institutions are more or less likely than other creditors to do so. The Bureau did not receive any comments on this issue with respect to the final rule.

2. Impact of the Rule on Consumers in Rural Areas

Consumers in rural areas may experience benefits from the rule that are different in certain respects from the benefits experienced by consumers in general. For example, consumers in rural areas may be more likely to borrow from small local banks and credit unions that may be less likely to outsource debt collection to FDCPA-covered debt collectors. Debts owed by consumers in rural areas may also be more likely to be collected by smaller debt collectors, which the Bureau understands are less likely to place telephone calls to consumers in excess of the call frequencies in the final rule. The telephone call frequencies may therefore have less of an impact on consumers in rural areas. The Bureau requested interested parties to provide data, research results, and other factual information on how the proposed rule, if finalized, would affect consumers in rural areas, but the Bureau did not receive any comments on this subject.

VIII. Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an Initial Regulatory Flexibility Analysis (IRFA) and a Final Regulatory Flexibility Analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements.[703] Section 604(a) of the RFA sets forth the required elements of the FRFA. Section 604(a)(1) requires a statement of the need for, and objectives of, the rule.[704] Section 604(a)(2) requires a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments. Section 604(a)(3) requires the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule and a

[702] The study notes, as a point of comparison, that this effect is considerably smaller than that of routine errors in credit reports. *See* Fed. Trade Comm'n, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003,* at 43 (Dec. 2012), *https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211facta report.pdf.*

[703] 5 U.S.C. 604(a).

[704] 5 U.S.C. 604(a)(1).

detailed statement of any change made to the proposed rule in the final rule as a result of the comments. Section 604(a)(4) requires a description of and, where feasible, an estimate of the number of small entities to which the rule will apply.[705] Section 604(a)(5) requires a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for the preparation of the report or record.[706] Section 604(a)(6) requires a description of any significant alternatives to the rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the rule on small entities.[707] Finally, section 604(a)(7) requires a description of the steps the agency has taken to minimize any additional cost of credit for small entities.[708]

A. Statement of the Need for, and Objectives of, the Final Rule

The Bureau issues this rule primarily pursuant to its authority under the FDCPA and the Dodd-Frank Act.[709] The objectives of the rule are to answer certain interpretive questions that have arisen since the FDCPA's passage and to further the FDCPA's goals of eliminating abusive debt collection practices and ensuring that debt collectors who refrain from abusive debt collection practices are not competitively disadvantaged.[710] As the first Federal agency with authority under the FDCPA to prescribe substantive rules with respect to the collection of debts by debt collectors, the Bureau issues this rule to clarify how debt collectors may appropriately employ newer communication technologies in compliance with the FDCPA and to address other communications-related practices that currently pose a risk of harm to consumers, legal uncertainty to industry, or both. The Bureau intends that these clarifications will help to eliminate abusive debt collection practices and ensure that debt collectors who refrain from abusive debt collection practices are not competitively disadvantaged.[711]

As amended by the Dodd-Frank Act, FDCPA section 814(d) provides that the Bureau may ''prescribe rules with respect to the collection of debts by debt collectors,'' as that term is defined in the FDCPA.[712] Section 1022(a) of the Dodd-Frank Act provides that ''[t]he Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.''[713] ''Federal consumer financial law'' includes title X of the Dodd-Frank Act and the FDCPA. The legal basis for the rule is discussed in detail in the legal authority analysis in part IV and in the section-by-section analysis in part V.

B. Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

The Bureau received comments on the IRFA from the Acting Chief Counsel for Advocacy of the Small Business Administration, which are discussed in the next section. The Bureau did not receive other comments that referenced the IRFA specifically; however, several commenters did raise issues about the burdens of the proposed rule's provisions, and the Bureau's response to these issues is discussed in parts V and VI above and in this part below.

C. Response to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration

The Acting Chief Counsel for Advocacy of the Small Business Administration filed a public comment letter on the proposed rule that discusses both the IRFA and certain of the proposed requirements (the ''SBA letter''). This section first responds to comments on the IRFA and then responds to the substantive comments on the proposed rule's provisions.

The SBA letter notes that the IRFA did not estimate the cost to small entities of establishing systems to comply with the proposed telephone call frequency limits. As discussed below and in the section 1022(b)(2) analysis, the Bureau does not have representative data that can be used to reliably measure the one-time costs of revising systems to comply with the telephone frequency provisions, but does discuss the qualitative information it has. The SBA letter notes that some small entity representatives said that one-time costs to revise systems could range from $35,000 to $200,000 and argues that these estimates should be included in the analysis. These estimates refer to costs for system improvements that would have been required to comply with information transfer requirements that were in the proposals under consideration during the SBREFA process but that were not included in the proposed rule.[714] While some small entity representatives said that it could be costly to modify their systems to comply with the contact limits then under consideration, they emphasized that those costs could be high in part because of the need to design limits that apply to forms of communication other than telephone calls, such as mail. The frequency limits in the proposed rule were limited to telephone calls, as are the telephone call frequency provisions in the final rule. The fact that these provisions apply only to the placement of telephone calls and to telephone conversations should limit the system investments that are required to track call frequency, because call frequency is something that many debt collectors already track in light of the FDCPA's existing prohibition on ''causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.''

The SBA letter also notes that the proposed rule could impose costs to read, understand, and train employees in new practices. The Bureau discussed these costs in the IRFA in the context of some specific provisions of the proposal; the Bureau has added a more general discussion of these costs in section E of the FRFA, below.

The SBA letter also notes that the Bureau claims some provisions will cause no significant impact because those provisions are already part of debt collectors' business practices and argues that the Bureau should clarify what the benefit of such provisions is to consumers if they will not change debt collector practices. As discussed in part V and the section 1022(b)(2) analysis, the Bureau believes that, by clarifying the FDCPA's requirements, the rule will benefit both consumers and debt collectors, including small entities. Many market participants have identified a need for greater clarity in interpreting many of the FDCPA's provisions. For example, an industry comment letter emphasized that ambiguities in the FDCPA lead to unnecessary and costly litigation. The Bureau believes that there is a benefit to clarifying the FDCPA's requirements even if the vast majority of debt collectors follow practices that meet those requirements. The additional clarity helps those debt collectors to avoid unnecessary litigation and to have

[705] 5 U.S.C. 604(a)(4).

[706] 5 U.S.C. 604(a)(5).

[707] 5 U.S.C. 604(a)(6).

[708] *Id.*

[709] *See* part IV, *supra.*

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

[711] *See id.*

[712] 15 U.S.C. 1692*l*(d).

[713] 12 U.S.C. 5512(a).

[714] Small Business Review Panel Report, *supra* note 37, at 21.

confidence in what practices do and do not violate the law. The additional clarity also makes it easier to establish whether less scrupulous debt collectors have violated the statute and to hold them accountable, which benefits debt collectors who do comply with the law as well as consumers.

The SBA letter points out that the proposed rule's PRA section estimated 1,029,500 burden hours and argues that this could translate into millions of dollars in recordkeeping and reporting costs. Most of this burden is not attributable to the rule itself but rather to the requirements of the FDCPA. As discussed in the supporting statement accompanying the Bureau's information collection request, the PRA estimates include the burden not only of complying with the new requirements introduced by the final rule but also of complying with the FDCPA itself. These burdens had not previously been accounted for under the PRA. Thus, the large majority of the estimated burden hours represent the burden of complying with FDCPA requirements that exist independent of the rule, in particular the requirement to provide a validation notice under section 809(a) of the FDCPA and the requirement to respond to consumer disputes under section 809(b) of the FDCPA. There are, of course, burdens associated with other information collections that are being introduced or clarified by the final rule, and those burdens are discussed in this FRFA as well as in the supporting statement.

The SBA letter also expressed several concerns about specific provisions of the proposed rule and recommended changes to those provisions. These concerns and recommendations, and the Bureau's response, are discussed in the section-by-section analysis of the relevant provisions in part V.

D. Description and, Where Feasible, Provision of an Estimate of the Number of Small Entities to Which the Final Rule Will Apply

As discussed in the Small Business Review Panel Report, for the purposes of assessing the impacts of the rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small nonprofit organizations, and small government jurisdictions.[715] A ''small business'' is determined by application of SBA regulations in reference to the North American Industry Classification System (NAICS) classifications and size standards.[716] Under such standards, the Small Business Review Panel (Panel) identified four categories of small entities that may be subject to the provisions: Collection agencies (NAICS 561440) with $16.5 million or less in annual receipts, debt buyers (NAICS 522298) with $41.5 million or less in annual revenues, collection law firms (NAICS 541110) with $12.0 million or less in annual receipts, and servicers who acquire accounts in default. These servicers include depository institutions (NAICS 522110, 522120, and 522130) with $600 million or less in annual receipts or non-depository institutions (NAICS 522390) with $22.0 million or less in annual receipts. The Panel did not meet with small nonprofit organizations or small government jurisdictions.[717]

The following table provides the Bureau's estimate of the number and types of entities that may be affected by the final rule:

TABLE 4—ESTIMATED NUMBER OF AFFECTED ENTITIES AND SMALL ENTITIES BY CATEGORY

Category	NAICS	Small-entity threshold	Estimated total number of debt collectors within category	Estimated number of small-entity debt collectors within category
Collection agencies	561440	$16.5 million in annual receipts	9,000	8,800
Debt buyers	522298	$41.5 million in annual receipts	330	300
Collection law firms	541110	$12.0 million in annual receipts	1,000	950
Loan servicers	522110, 522120, and 522130 (depositories); 522390 (non-depositories).	$600 million in annual receipts for depository institutions; $22.0 million or less for non-depositories.	700	200

Descriptions of the four categories:

Collection agencies. The Census Bureau defines ''collection agencies'' (NAICS code 561440) as ''establishments primarily engaged in collecting payments for claims and remitting payments collected to their clients.'' [718] In 2012, according to the Census Bureau, there were approximately 4,000 collection agencies with paid employees in the United States. Of these, the Bureau estimates that 3,800 collection agencies have $16.5 million or less in annual receipts and are therefore small entities.[719] Census Bureau estimates indicate that in 2012 there were also more than 5,000 collection agencies without employees, all of which are presumably small entities.

Debt buyers. Debt buyers purchase delinquent accounts and attempt to collect amounts owed, either themselves or through agents. The Bureau estimates that there are approximately 330 debt buyers in the United States, and that a substantial majority of these are small entities.[720] Many debt buyers—particularly those that are small entities—also collect debt on behalf of other debt owners.[721]

Collection law firms. The Bureau estimates that there are 1,000 law firms in the United States that either have as their principal purpose the collection of consumer debt or regularly collect consumer debt owed to others, so that the rule would apply to them. The

[715] 5 U.S.C. 601(6).

[716] The current SBA size standards are found on SBA's website, *http://www.sba.gov/content/table-small-business-size-standards.*

[717] Small Business Review Panel Report, *supra* note 37, at 29.

[718] As defined by the U.S. Census Bureau, collection agencies include entities that collect only commercial debt, and the rule applies only to debt collectors of consumer debt. However, the Bureau understands that relatively few collection agencies collect only commercial debt.

[719] The U.S. Census Bureau estimates average annual receipts of $95,000 per employee for collection agencies. Given this, the Bureau assumes that all firms with fewer than 100 employees and approximately one-half of the firms with 100 to 499 employees are small entities, which implies approximately 3,800 firms.

[720] The Receivables Management Association, the largest trade group for this industry segment, states that it has approximately 300 debt buyer members and believes that 90 percent of debt buyers are current members.

[721] The Bureau understands that debt buyers are generally nondepositories that specialize in debt buying and, in some cases, debt collection. The Bureau understands that debt buyers that are not collection agencies would be classified by the Census Bureau under ''all other nondepository credit intermediation'' (NAICS Code 522298).

Bureau estimates that 95 percent of such law firms are small entities.[722]

Loan servicers. Loan servicers would be covered by the rule if they acquire servicing of loans already in default.[723] The Bureau believes that this is most likely to occur with regard to companies that service mortgage loans or student loans. The Bureau estimates that approximately 200 such mortgage servicers may be small entities and that few, if any, student loan servicers that would be covered by the rule are small.[724]

E. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report or Record

The final rule will not impose new reporting requirements, but it will impose new recordkeeping and compliance requirements on small entities subject to the rule. The requirements and the costs associated with them are discussed below. In addition to the specific costs discussed below, all small entities will incur costs to read the rule and incorporate its provisions into their policies and procedures, and small entities with employees will need to train employees in new policies and procedures. The extent of training required will depend on debt collectors' existing practices and on the roles performed by individual employees. Debt collectors employ an estimated 123,000 workers.[725] If, on average, the rule required an additional hour of training for each of these employees, at an average cost of $22 per hour, the total training cost would be approximately $2,700,000.[726]

1. Recordkeeping Requirements

Section 1006.100 generally will require FDCPA-covered debt collectors to retain evidence of compliance or noncompliance with the FDCPA and Regulation F starting on the date that the debt collector begins collection activity on a debt and ending three years after the debt collector's last collection activity on the debt. For recordings of telephone calls, § 1006.100(b) establishes a different retention period, under which the debt collector must retain the recordings for three years after the dates of the telephone calls. Thus, in contrast to other record types, a debt collector could delete a call recording after three years and yet collection activity on the relevant account could continue after that time.

The Bureau believes that most debt collectors are already maintaining records for three or more years for legal purposes and therefore will not incur significant costs as a result of the record retention requirement. During the SBREFA process, nearly all small entity representatives stated that their current practices are already consistent with a three-year record retention requirement, and some said that they retain records for longer periods ranging from five to ten years.[727] Some participants said, however, that they retain some information for a shorter period of time such as one year. Such small entities would incur additional costs for data storage and to update systems to reflect the longer storage period.

2. Compliance Requirements

The rule contains a number of compliance requirements that will apply to FDCPA-covered debt collectors who are small entities. The anticipated costs of compliance for small entities of these requirements are discussed below.

In evaluating the potential impacts of the rule on small entities, the Bureau takes as a baseline conduct in the debt collection markets under the current legal framework governing debt collection. This includes debt collector practices as they currently exist, responding to the requirements of the FDCPA as currently interpreted and other Federal laws as well as State statutes and rules. This baseline represents the status quo from which the impacts of this rule will be evaluated.

The Bureau requested that interested parties provide data and quantitative analysis of the benefits, costs, or impacts of the proposed rule on small entities but did not receive any comments on this subject.

The discussion here is limited to the direct costs to small entities of complying with the requirements of the final rule. Other impacts, such as the impacts of reduced call frequency on debt collectors' ability to contact consumers, are discussed at length in part VII. The Bureau believes that, except where otherwise noted, the impacts discussed in part VII apply to small entities.

(a) Prohibited Communications With Consumers

Section 1006.6(b) generally implements FDCPA section 805(a)'s prohibition on a debt collector communicating with a consumer at unusual or inconvenient times and places, with a consumer represented by an attorney, and at a consumer's place of employment. This section also expressly prohibits attempts to make such communications, which debt collectors already must avoid given that a successful attempt would be an FDCPA violation. Section 1006.14(h)(1) interprets FDCPA section 806's prohibition on a debt collector engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt to prohibit debt collectors from communicating or attempting to communicate with a person through a medium of communication if the person has requested that the debt collector not use that medium to communicate with the person.

Debt collectors are already prohibited from communicating with consumers at a time or place that is known or should be known to be inconvenient to the consumer. The Bureau therefore expects that debt collectors already keep track of what consumers tell them about the times and places that they find inconvenient and avoid communicating or attempting to communicate with consumers at those times or places. Similarly, the provisions regarding communication with attorneys and at the consumer's place of employment track requirements that debt collectors are already required to comply with under the FDCPA. The Bureau understands that many debt collectors

[722] The primary trade association for collection attorneys, the National Creditors Bar Association (NARCA), states that it has approximately 600 law firm members, 95 percent of which are small entities. The Bureau estimates that approximately 60 percent of law firms that collect debt are NARCA members and that a similar fraction of non-member law firms are small entities.

[723] The Bureau understands that loan servicers are generally classified under NAICS code 522390, ''Other Activities Related to Credit Intermediation.'' Some depository institutions (NAICS codes 522110, 522120, and 522130) also service loans for others and may be covered by the rule.

[724] Based on the December 2015 Call Report data as compiled by SNL Financial (with respect to insured depositories) and December 2015 data from the Nationwide Mortgage Licensing System and Registry (with respect to non-depositories), the Bureau estimates that there are approximately 9,000 small entities engaged in mortgage servicing, of which approximately 100 service more than 5,000 loans. *See* 81 FR 72160, 72363 (Oct. 19, 2016). The Bureau's estimate is based on the assumption that all those servicing more than 5,000 loans may acquire servicing of loans when loans are in default and that at most 100 of those servicing 5,000 loans or fewer acquire servicing of loans when loans are in default.

[725] 2020 FDCPA Annual Report, *supra* note 9, at 7.

[726] The estimated hourly cost is based on an estimated wage of $15 per hour and taxes, benefits, and incentives of $7 per hour. *See* CFPB Debt Collection Operations Study, *supra* note 34, at 17 (describing estimated debt collector wages ranging from $10 to $20 per hour).

[727] Small Business Review Panel Report, *supra* note 37, at 28.

currently employ systems and business processes designed to limit communication attempts to consumers at inconvenient times and places and that many debt collectors also use these systems and processes to prevent communications with consumers through media that consumers have told them not to use. For these reasons, the Bureau does not expect that the provisions will significantly impact small entities subject to the final rule.

(b) Telephone Call Frequencies

Section 1006.14(b)(1) prohibits a debt collector from, in connection with the collection of a debt, placing telephone calls or engaging in telephone conversations repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number. Section 1006.14(b)(2)(i) provides for a rebuttable presumption of compliance for a debt collector who places a telephone call to a particular person in connection with the collection of a particular debt neither: (A) More than seven times within seven-consecutive-days; nor (B) within a period of seven-consecutive-days after having had a telephone conversation with the person in connection with the collection of such debt, subject to the exclusions in § 1006.14(b)(3). Section 1006.14(b)(2)(ii) sets forth a rebuttable presumption of a violation for a debt collector who places a telephone call to a particular person in connection with the collection of a particular debt: (A) More than seven times within seven-consecutive-days; or (B) within a period of seven-consecutive-days after having had a telephone conversation with the person in connection with the collection of such debt.

The provision imposes at least two categories of costs on small entities subject to the final rule. First, it means that debt collectors must track the frequency of outbound telephone calls, which will require many debt collectors to bear one-time costs to update their systems and train staff, and which will create ongoing costs for some debt collectors. Second, for some debt collectors, the provision will require a reduction in the frequency with which they place telephone calls to consumers, which could make it harder to reach consumers and delay or reduce collections revenue.

With respect to one-time implementation costs, many debt collectors will incur costs to revise their systems to track telephone call frequencies. Such revisions could range from small updates to existing systems to the introduction of completely new systems and processes. The Bureau understands that larger debt collectors (including those that are small entities) generally already implement system limits on call frequency to comply with client contractual requirements, debt collector internal policies, and State and local laws.[728] Such debt collectors might need only to revise existing calling restrictions to ensure that existing systems track telephone calls in a manner consistent with the new provision. Larger collection agencies might also need to respond to client requests for additional reports and audit items to verify that they comply with the provision, which could require these agencies to make systems changes to alter the reports and data they currently produce for their clients to review.

Smaller debt collectors and collection law firms are less likely to have existing systems that track or limit communication frequency and may therefore face larger costs to establish systems to do so. However, many smaller debt collectors report that they generally attempt to reach each consumer by telephone only one or two times per week and generally do not speak to a consumer more than one time per week, which suggests that their practices would afford them a presumption of compliance with respect to telephone call frequencies under the final rule.[729] For such debt collectors, existing policies may be sufficient to ensure compliance with the provision, although they may incur one-time costs to establish systems for documenting compliance.

(c) Prohibition on the Sale or Transfer of Certain Debts

Section 1006.30(b)(1) prohibits a debt collector from selling, transferring for consideration, or placing for collection a debt if the debt collector knows or should know that the debt was paid or settled or discharged in bankruptcy. Section 1006.30(b)(2) creates several exceptions to this prohibition.

The Bureau understands, based on its market knowledge and outreach to debt collectors, that debt collectors generally do not sell, transfer, or place for collection debts (other than in circumstances covered in the exceptions) if they have reason to believe the debts cannot be validly collected because they have been paid or settled or discharged in bankruptcy. The final rule provides an exception for transfer of secured debt that has been discharged in bankruptcy, provided that the debt collector provides notice to the transferee that the debt has been discharged. The Bureau understands that, if debt collectors transfer such secured debt, they generally already provide such notice in the ordinary course of business. Therefore, the Bureau does not expect this provision to create significant compliance costs for small entities.

(d) Electronic Disclosures and Communications

The final rule includes provisions that clarify how debt collectors can communicate with consumers by email and text message in compliance with the FDCPA and the final rule. With respect to the validation notice, which most debt collectors currently provide by mail, § 1006.42 sets forth general standards for debt collectors to send notices electronically in a way that complies with the FDCPA's validation notice requirements. With respect to any communications about a debt, § 1006.6(d)(3) through (5) specifies procedures that debt collectors may use to send an email or text message to a consumer about a debt such that the debt collector may obtain a safe harbor from civil liability under the FDCPA for an unintentional disclosure of the debt to a third party.

The Bureau understands that few debt collectors currently communicate with consumers using electronic means. For debt collectors who do communicate with consumers electronically, the rule requires them to provide a method for opting out of such communications. The Bureau understands that such methods are common features of services that provide the ability to send electronic communications to consumers. The Bureau therefore does not anticipate that these requirements will impose significant costs on small entities that choose to communicate with consumers electronically.

F. Description of Any Significant Alternatives to the Final Rule That Accomplish the Stated Objectives of the Applicable Statutes and Minimize Any Significant Economic Impact of the Rule on Small Entities

Section 604(a)(6) of the RFA requires the Bureau to describe in the FRFA any significant alternatives to the rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the rule on small entities.[730] In developing the rule, the Bureau has considered alternative provisions and believes that none of the alternatives considered would be as effective at accomplishing

[728] *Id.* at 26.

[729] CFPB Debt Collection Operations Study, *supra* note 34, at 29.

[730] 5 U.S.C. 604(a)(6).

the stated objectives of the FDCPA and the applicable provisions of title X of the Dodd-Frank Act while minimizing the impact of the rule on small entities.

In developing the rule, the Bureau considered a number of alternatives, including those considered as part of the SBREFA process and certain alternative provisions that were part of the proposal. Many of the alternatives considered would have resulted in greater costs to small entities than would the rule. For example, the Bureau considered limiting the frequency of contacts or contact attempts by any media, rather than by telephone calls only. Because such alternatives would result in a greater economic impact on small entities than the rule, they are not discussed here. The Bureau also considered alternatives that might have resulted in a smaller economic impact on small entities than the rule. Certain of these alternatives are briefly described and their impacts relative to the rule provisions are discussed below.

Limitations on call frequency. The Bureau considered a proposal that would have limited the number of calls permitted to any particular telephone number (*e.g.,* at most two calls to each of a consumer's landline, mobile, and work telephone numbers). The Bureau considered such a limit either instead of or in addition to an overall limit on the frequency of telephone calls to one consumer. Such an alternative could potentially reduce the effect on debt collector calls if it permitted more calls when consumers have multiple telephone numbers. The Bureau decided to propose an aggregate approach because of concerns that a more prescriptive, per-telephone number approach could less effectively carry out the consumer protection purposes of the FDCPA—some consumers could receive (and some debt collectors could place) more telephone calls simply based on the number of telephone numbers that certain consumers happened to have (and that debt collectors happened to know about). Such an approach also could create incentives for debt collectors to, for example, place telephone calls to less convenient telephone numbers after exhausting their telephone calls to consumers' preferred numbers.

The proposed rule would have established a bright-line limit on telephone call frequency rather than a rebuttable presumption. Specifically, proposed § 1006.14(b)(1) set forth the general prohibition, § 1006.14(b)(2) described bright-line frequency limits for telephone calls and telephone conversations during a seven-day period, and proposed § 1006.14(b)(3), (4), and (5) described telephone calls excluded from the frequency limits, the effect of complying with the frequency limits, and a definition, respectively. The proposed rule's bright-line limit would impose lower costs on debt collectors than the final rule in some ways, although it would impose greater costs in other ways. Specifically, a bright-line limit on telephone call frequency would provide greater clarity to debt collectors about whether calling practices comply with the FDCPA. For example, under the proposal, a debt collector who did not place telephone calls to consumers more than seven times in a seven-day period would know that it was complying with the provision, whereas, under the final rule, a debt collector following the same practice would also need to consider whether the presumption of compliance might be rebutted in the case of particular consumers or accounts. This could result in greater compliance costs and greater risk of litigation for debt collectors compared with the proposal. On the other hand, the final rule may provide greater flexibility to debt collectors and additional benefits to consumers compared with the proposal. For debt collectors, the final rule may make it more possible to reach consumers if they are unable to make contact within seven call attempts in a week and additional calls would not be harassing.

G. Discussion of Impact on Cost of Credit for Small Entities

Section 604(a)(6) of the RFA requires the Bureau to a description of the steps the agency has taken to minimize any additional cost of credit for small entities.[731] The Bureau provided notification to the Chief Counsel for Advocacy of the Small Business Administration (Chief Counsel) that the Bureau would collect the advice and recommendations of the same small entity representatives identified in consultation with the Chief Counsel through the SBREFA process concerning any projected impact and the rule on the cost of credit for small entities. The Bureau sought to collect the advice and recommendations of the small entity representatives during the Small Business Review Panel meeting regarding the potential impact on the cost of business credit because, as small debt collectors with credit needs, the small entity representatives could provide valuable input on any such impact related to the rule.

The Bureau's Small Business Review Panel Outline asked small entity representatives to comment on how proposed provisions will affect cost of credit to small entities. The Bureau believes that the rule will have little impact on the cost of credit. However, it does recognize that consumer credit may become more expensive and less available as a result of some of these provisions, although the Romeo-Sandler Study indicates that the magnitude of the cost and availability of consumer credit from recent changes to State debt collection laws is small. Many small entities affected by the rule use consumer credit as a source of credit and may, therefore, see costs rise if consumer credit availability decreases. The Bureau does not expect this to be a large effect and does not anticipate measurable impact.[732]

During the SBREFA process, several small entity representatives said that the proposals under consideration at that time could have an impact on the cost of credit for them and for their small business clients. Some small entity representatives said that they use lines of credit in their business and that regulations that raise their costs or reduce their revenue could mean they are unable to meet covenants in their loan agreements, causing lenders to reduce access to capital or increase their borrowing costs. The final rule's provisions are more limited than those that were under consideration during the SBREFA process and should not raise costs or reduce revenue to the same degree. The Bureau did not receive public comments on the effect of the proposed rule on the cost of credit for small entities.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[733] 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.

As part of its continuing effort to reduce paperwork and respondent burden, the Bureau conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on the information collection

[731] *Id.*

[732] Charles Romeo & Ryan Sandler, *The Effect of Debt Collection Laws on Access to Credit* (Off. of Research, Bureau of Consumer Fin. Prot., Working Paper No. 2018–01, 2018).

[733] 44 U.S.C. 3501 *et seq.*

requirements in accordance with the PRA. This helps ensure that the public understands the Bureau's requirements or instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Bureau can properly assess the impact of collection requirements on respondents.

The final rule amends 12 CFR part 1006 (Regulation F), which implements the FDCPA. The Bureau's OMB control number for Regulation F is 3170–0056. This rule revises the information collection requirements contained in Regulation F that OMB has approved under that OMB control number.

Under the final rule, the Bureau requires six information collection requirements in Regulation F:

1. State application for exemption (current § 1006.2, final rule § 1006.108).
2. Opt-out notice for electronic communications or attempts to communicate (final rule § 1006.6(e)).
3. Providing notice to transferee that secured debt was discharged in bankruptcy (final rule § 1006.30(b)(2)(ii)).
4. Responses to requests for original-creditor information (final rule § 1006.38(c)).
5. Responses to disputes (final rule § 1006.38(d)(2)).
6. Record retention (final rule § 1006.100).

The first collection, the State application for an exemption, is required to obtain a benefit and its respondents are exclusively State governments. The information collected under this collection regards State law, and so no issue of confidentiality arises. The remaining collections provide protection for consumers and will be mandatory. Because the Bureau does not collect any information in these remaining collections, no issue of confidentiality arises. The likely respondents are for-profit businesses that are FDCPA-covered debt collectors, including contingency debt collection agencies, debt buyers, law firms, and loan servicers, or State governments in the case of applications under § 1006.2 (final § 1006.108).

The collections of information contained in this rule, and identified as such, have been submitted to OMB for review under section 3507(d) of the PRA. A complete description of the information collection requirements, including the burden estimate methods, is provided in the information collection request (ICR) that the Bureau has submitted to OMB under the requirements of the PRA. The Bureau will publish a separate notice in the **Federal Register** when these information collections have been approved by OMB.

Please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Bureau of Consumer Financial Protection. Send these comments by email to *oira_submission@omb.eop.gov* or by fax to 202–395–6974. If you wish to share your comments with the Bureau, please send a copy of these comments as described in the Addresses section above. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at *www.regulations.gov* as well as on OMB's public-facing docket at *www.reginfo.gov.*

Title of Collection: Regulation F: Fair Debt Collection Practices Act.

OMB Control Number: 3170–0056.

Type of Review: Revision of a currently approved collection.

Affected Public: Private Sector; State Governments.

Estimated Number of Respondents: 12,027.

Estimated Total Annual Burden Hours: 860,500.

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.*

Where applicable, the Bureau will display the control number assigned by OMB to any documents associated with any information collection requirements adopted in this rule.

X. Congressional Review Act

Pursuant to the Congressional Review Act,[734] the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States at least 60 days prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this rule as a ''major rule'' as defined by 5 U.S.C. 804(2).

XI. Signing Authority

The Director of the Bureau, Kathleen L. Kraninger, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

[734] 5 U.S.C. 801 *et seq.*

List of Subjects in 12 CFR Part 1006

Administrative practice and procedure, Consumer protection, Credit, Debt collection, Intergovernmental relations.

Authority and Issuance

■ For the reasons set forth above, the Bureau revises Regulation F, 12 CFR part 1006, to read as follows:

PART 1006—DEBT COLLECTION PRACTICES (REGULATION F)

Authority: 12 U.S.C. 5512, 5514(b), 5532; 15 U.S.C. 1692*l*(d), 1692o, 7004.

Subpart A—General

§ 1006.1 Authority, purpose, and coverage.

(a) *Authority.* This part, known as Regulation F, is issued by the Bureau of Consumer Financial Protection pursuant to sections 814(d) and 817 of the Fair Debt Collection Practices Act (FDCPA or Act), 15 U.S.C. 1692*l*(d), 1692o; title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), 12 U.S.C. 5481 *et seq.;* and paragraph (b)(1) of section 104 of the Electronic Signatures in Global and National Commerce Act (E–SIGN Act), 15 U.S.C. 7004.

(b) *Purpose.* This part carries out the purposes of the FDCPA, which include eliminating abusive debt collection practices by debt collectors, ensuring that debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and promoting consistent State action to protect consumers against debt collection abuses. This part also prescribes requirements to ensure that certain features of debt collection are disclosed fully, accurately, and effectively to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with debt collection, in light of the facts and circumstances. Finally, this part imposes record retention requirements to enable the Bureau to administer and carry out the purposes of the FDCPA, the Dodd-Frank Act, and this part, as well as to prevent evasions thereof. The record retention requirements also will facilitate supervision of debt collectors and the assessment and detection of risks to consumers.

(c) *Coverage.* (1) Except as provided in § 1006.108 and appendix A of this part regarding applications for State exemptions from the FDCPA, this part applies to debt collectors, as defined in § 1006.2(i), other than a person excluded from coverage by section 1029(a) of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Act (12 U.S.C. 5519(a)).

(2) [Reserved]

§ 1006.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Act* or *FDCPA* means the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*).

(b) *Attempt to communicate* means any act to initiate a communication or other contact about a debt with any person through any medium, including by soliciting a response from such person. An attempt to communicate includes leaving a limited-content message, as defined in paragraph (j) of this section.

(c) *Bureau* means the Bureau of Consumer Financial Protection.

(d) *Communicate* or *communication* means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(e) *Consumer* means any natural person obligated or allegedly obligated to pay any debt. For purposes of § 1006.6, the term *consumer* includes the persons described in § 1006.6(a). The Bureau may further define this term by regulation to clarify its application when the consumer is deceased.

(f) [Reserved]

(g) *Creditor* means any person who offers or extends credit creating a debt or to whom a debt is owed. The term creditor does not, however, include any person to the extent that such person receives an assignment or transfer of a debt in default solely to facilitate collection of the debt for another.

(h) *Debt* means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services that are the subject of the transaction are primarily for personal, family, or household purposes, whether or not the obligation has been reduced to judgment.

(i)(1) *Debt collector* means any person who uses any instrumentality of interstate commerce or mail in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, to another. Notwithstanding paragraph (i)(2)(vi) of this section, the term debt collector includes any creditor that, in the process of collecting its own debts, uses any name other than its own that would indicate that a third person is collecting or attempting to collect such debts. For purposes of § 1006.22(e), the term also includes any person who uses any instrumentality of interstate commerce or mail in any business the principal purpose of which is the enforcement of security interests.

(2) The term debt collector excludes:

(i) Any officer or employee of a creditor while the officer or employee is collecting debts for the creditor in the creditor's name;

(ii) Any person while acting as a debt collector for another person if:

(A) The person acting as a debt collector does so only for persons with whom the person acting as a debt collector is related by common ownership or affiliated by corporate control; and

(B) The principal business of the person acting as a debt collector is not the collection of debts;

(iii) Any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of the officer's or employee's official duties;

(iv) Any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(v) Any nonprofit organization that, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in liquidating their debts by receiving payment from such consumers and distributing such amounts to creditors;

(vi) Any person collecting or attempting to collect any debt owed or due, or asserted to be owed or due to another, to the extent such debt collection activity:

(A) Is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(B) Concerns a debt that such person originated;

(C) Concerns a debt that was not in default at the time such person obtained it; or

(D) Concerns a debt that such person obtained as a secured party in a commercial credit transaction involving the creditor; and

(vii) A private entity, to the extent such private entity is operating a bad check enforcement program that complies with section 818 of the Act.

(j) *Limited-content message* means a voicemail message for a consumer that includes all of the content described in paragraph (j)(1) of this section, that may include any of the content described in paragraph (j)(2) of this section, and that includes no other content.

(1) *Required content.* A limited-content message is a voicemail message for a consumer that includes:

(i) A business name for the debt collector that does not indicate that the debt collector is in the debt collection business;

(ii) A request that the consumer reply to the message;

(iii) The name or names of one or more natural persons whom the consumer can contact to reply to the debt collector; and

(iv) A telephone number or numbers that the consumer can use to reply to the debt collector.

(2) *Optional content.* In addition to the content described in paragraph (j)(1) of this section, a limited-content message may include one or more of the following:

(i) A salutation;

(ii) The date and time of the message;

(iii) Suggested dates and times for the consumer to reply to the message; and

(iv) A statement that if the consumer replies, the consumer may speak to any of the company's representatives or associates.

(k) *Person* includes natural persons, corporations, companies, associations, firms, partnerships, societies, and joint stock companies.

(l) *State* means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

Subpart B—Rules for FDCPA Debt Collectors

§ 1006.6 Communications in connection with debt collection.

(a) *Definition.* For purposes of this section, the term *consumer* includes:

(1) The consumer's spouse;

(2) The consumer's parent, if the consumer is a minor;

(3) The consumer's legal guardian;

(4) The executor or administrator of the consumer's estate, if the consumer is deceased; and

(5) A confirmed successor in interest, as defined in Regulation X, 12 CFR 1024.31, or Regulation Z, 12 CFR 1026.2(a)(27)(ii).

(b) *Communications with a consumer*—(1) *Prohibitions regarding unusual or inconvenient times or places.* Except as provided in paragraph (b)(4) of this section, a debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of any debt:

(i) At any unusual time, or at a time that the debt collector knows or should know is inconvenient to the consumer. In the absence of the debt collector's knowledge of circumstances to the contrary, a time before 8:00 a.m. and after 9:00 p.m. local time at the consumer's location is inconvenient; or

(ii) At any unusual place, or at a place that the debt collector knows or should know is inconvenient to the consumer.

(2) *Prohibitions regarding consumer represented by an attorney.* Except as provided in paragraph (b)(4) of this section, a debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of any debt if the debt collector knows the consumer is represented by an attorney with respect to such debt and knows, or can readily ascertain, the attorney's name and address, unless the attorney:

(i) Fails to respond within a reasonable period of time to a communication from the debt collector; or

(ii) Consents to the debt collector's direct communication with the consumer.

(3) *Prohibitions regarding consumer's place of employment.* Except as provided in paragraph (b)(4) of this section, a debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of any debt at the consumer's place of employment, if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(4) *Exceptions.* The prohibitions in paragraphs (b)(1) through (3) of this section do not apply when a debt collector communicates or attempts to communicate with a consumer in connection with the collection of any debt with:

(i) The prior consent of the consumer, given directly to the debt collector during a communication that does not violate paragraphs (b)(1) through (3) of this section; or

(ii) The express permission of a court of competent jurisdiction.

(c) *Communications with a consumer—after refusal to pay or cease communication notice*—(1) *Prohibition.* Except as provided in paragraph (c)(2) of this section, if a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wants the debt collector to cease further communication with the consumer, the debt collector must not communicate or attempt to communicate further with the consumer with respect to such debt.

(2) *Exceptions.* The prohibition in paragraph (c)(1) of this section does not apply when a debt collector communicates or attempts to communicate further with a consumer with respect to such debt:

(i) To advise the consumer that the debt collector's further efforts are being terminated;

(ii) To notify the consumer that the debt collector or creditor may invoke specified remedies that the debt collector or creditor ordinarily invokes; or

(iii) Where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

(d) *Communications with third parties*—(1) *Prohibitions.* Except as provided in paragraph (d)(2) of this section, a debt collector must not communicate, in connection with the collection of any debt, with any person other than:

(i) The consumer;

(ii) The consumer's attorney;

(iii) A consumer reporting agency, if otherwise permitted by law;

(iv) The creditor;

(v) The creditor's attorney; or

(vi) The debt collector's attorney.

(2) *Exceptions.* The prohibition in paragraph (d)(1) of this section does not apply when a debt collector communicates, in connection with the collection of any debt, with a person:

(i) For the purpose of acquiring location information, as provided in § 1006.10;

(ii) With the prior consent of the consumer given directly to the debt collector;

(iii) With the express permission of a court of competent jurisdiction; or

(iv) As reasonably necessary to effectuate a postjudgment judicial remedy.

(3) *Reasonable procedures for email and text message communications.* A debt collector maintains procedures that are reasonably adapted, for purposes of FDCPA section 813(c), to avoid a bona fide error in sending an email or text message communication that would result in a violation of paragraph (d)(1) of this section if those procedures include steps to reasonably confirm and document that:

(i) The debt collector communicated with the consumer by sending an email to an email address described in paragraph (d)(4) of this section or a text message to a telephone number described in paragraph (d)(5) of this section; and

(ii) The debt collector did not communicate with the consumer by sending an email to an email address or a text message to a telephone number that the debt collector knows has led to a disclosure prohibited by paragraph (d)(1) of this section.

(4) *Procedures for email addresses.* For purposes of paragraph (d)(3)(i) of this section, a debt collector may send an email to an email address if:

(i) *Procedures based on communication between the consumer and the debt collector.* (A) The consumer used the email address to communicate with the debt collector about the debt and the consumer has not since opted out of communications to that email address; or

(B) The debt collector has received directly from the consumer prior consent to use the email address to communicate with the consumer about the debt and the consumer has not withdrawn that consent; or

(ii) *Procedures based on communication by the creditor.* (A) A creditor obtained the email address from the consumer;

(B) The creditor used the email address to communicate with the consumer about the account and the consumer did not ask the creditor to stop using it;

(C) Before the debt collector used the email address to communicate with the consumer about the debt, the creditor sent the consumer a written or electronic notice, to an address the creditor obtained from the consumer and used to communicate with the consumer about the account, that clearly and conspicuously disclosed:

(*1*) That the debt has been or will be transferred to the debt collector;

(*2*) The email address and the fact that the debt collector might use the email address to communicate with the consumer about the debt;

(*3*) That, if others have access to the email address, then it is possible they may see the emails;

(*4*) Instructions for a reasonable and simple method by which the consumer could opt out of such communications; and

(*5*) The date by which the debt collector or the creditor must receive the consumer's request to opt out, which must be at least 35 days after the date the notice is sent;

(D) The opt-out period provided under paragraph (d)(4)(ii)(C)(*5*) of this section has expired and the consumer has not opted out; and

(E) 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.

(iii) *Procedures based on communication by the prior debt collector.* (A) Any prior debt collector obtained the email address in accordance with paragraph (d)(4)(i) or (ii) of this section;

(B) The immediately prior debt collector used the email address to communicate with the consumer about the debt; and

(C) The consumer did not opt out of such communications.

(5) *Procedures for telephone numbers for text messages.* For purposes of paragraph (d)(3)(i) of this section, a debt collector may send a text message to a telephone number if:

(i) The consumer used the telephone number to communicate with the debt collector about the debt by text message, the consumer has not since opted out of text message communications to that telephone number, and within the past 60 days either:

(A) The consumer sent the text message described in paragraph (d)(5)(i) of this section or a new text message to the debt collector from that telephone number; or

(B) The debt collector confirmed, using a complete and accurate database, that the telephone number has not been reassigned from the consumer to another user since the date of the consumer's most recent text message to the debt collector from that telephone number; or

(ii) The debt collector received directly from the consumer prior consent to use the telephone number to communicate with the consumer about the debt by text message, the consumer has not since withdrawn that consent, and within the past 60 days the debt collector either:

(A) Obtained the prior consent described in paragraph (d)(5)(ii) of this section or renewed consent from the consumer; or

(B) Confirmed, using a complete and accurate database, that the telephone number has not been reassigned from the consumer to another user since the date of the consumer's most recent consent to use that telephone number to communicate about the debt by text message.

(e) *Opt-out notice for electronic communications or attempts to communicate.* A debt collector who communicates or attempts to communicate with a consumer electronically in connection with the collection of a debt using a specific email address, telephone number for text messages, or other electronic-medium address must include in such communication or attempt to communicate a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number. The debt collector may not require, directly or indirectly, that the consumer, in order to opt out, pay any fee to the debt collector or provide any information other than the consumer's opt-out preferences and the email address, telephone number for text messages, or other electronic-medium address subject to the opt-out request.

§ 1006.10 Acquisition of location information.

(a) *Definition.* The term *location information* means a consumer's:

(1) Place of abode and telephone number at such place; or

(2) Place of employment.

(b) *Form and content of location communications.* A debt collector communicating with a person other than the consumer for the purpose of acquiring location information must:

(1) Identify himself or herself individually by name, state that he or she is confirming or correcting the consumer's location information, and, only if expressly requested, identify his or her employer;

(2) Not state that the consumer owes any debt;

(3) Not communicate by postcard;

(4) Not use any language or symbol on any envelope or in the contents of any communication by mail indicating that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(5) After the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond to the debt collector's communication within a reasonable period of time.

(c) *Frequency of location communications.* In addition to complying with § 1006.14(b)(1), a debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer must not communicate more than once with such person unless requested to do so by such person, or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information.

§ 1006.14 Harassing, oppressive, or abusive conduct.

(a) *In general.* A debt collector must not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt, including, but not limited to, the conduct described in paragraphs (b) through (h) of this section.

(b) *Repeated or continuous telephone calls or telephone conversations*—(1) *In general.* In connection with the collection of a debt, a debt collector must not place telephone calls or engage any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(2) *Telephone call frequencies; presumptions of compliance and violation.* (i) Subject to the exclusions in paragraph (b)(3) of this section, a debt collector is presumed to comply with paragraph (b)(1) of this section and FDCPA section 806(5) (15 U.S.C. 1692d(5)) if the debt collector places a telephone call to a particular person in connection with the collection of a particular debt neither:

(A) More than seven times within seven consecutive days; nor

(B) Within a period of seven consecutive days after having had a telephone conversation with the person in connection with the collection of such debt. The date of the telephone conversation is the first day of the seven-consecutive-day period.

(ii) Subject to the exclusions in paragraph (b)(3) of this section, a debt collector is presumed to violate paragraph (b)(1) of this section and FDCPA section 806(5) if the debt collector places a telephone call to a particular person in connection with the collection of a particular debt in excess of either of the telephone call frequencies described in paragraph (b)(2)(i) of this section.

(3) *Certain telephone calls excluded from the telephone call frequencies.* Telephone calls placed to a person do not count toward the telephone call frequencies described in paragraph (b)(2)(i) of this section if they are:

(i) Placed with such person's prior consent given directly to the debt collector and within a period no longer than seven consecutive days after receiving the prior consent, with the date the debt collector receives prior consent counting as the first day of the seven-consecutive-day period;

(ii) Not connected to the dialed number; or

(iii) Placed to the persons described in § 1006.6(d)(1)(ii) through (vi).

(4) *Definition.* For purposes of this paragraph (b), particular debt means each of a consumer's debts in collection. However, in the case of student loan debts, the term particular debt means all student loan debts that a consumer owes or allegedly owes that were serviced under a single account number at the time the debts were obtained by a debt collector.

(c) *Violence or other criminal means.* In connection with the collection of a debt, a debt collector must not use or threaten to use violence or other criminal means to harm the physical person, reputation, or property of any person.

(d) *Obscene or profane language.* In connection with the collection of a debt, a debt collector must not use obscene or profane language, or language the natural consequence of which is to abuse the hearer or reader.

(e) *Debtor's list.* In connection with the collection of a debt, a debt collector must not publish a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of sections 603(f) or 604(a)(3) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or 1681b(a)(3)).

(f) *Coercive advertisements.* In connection with the collection of a debt, a debt collector must not advertise for sale any debt to coerce payment of the debt.

(g) *Meaningful disclosure of identity.* In connection with the collection of a debt, a debt collector must not place telephone calls without meaningfully disclosing the caller's identity, except as provided in § 1006.10.

(h) *Prohibited communication media*—(1) *In general.* In connection with the collection of any debt, a debt collector must not communicate or attempt to communicate with a person through a medium of communication if the person has requested that the debt collector not use that medium to communicate with the person.

(2) *Exceptions.* Notwithstanding the prohibition in paragraph (h)(1) of this section:

(i) If a person opts out of receiving electronic communications from a debt collector, a debt collector may send an electronic confirmation of the person's request to opt out, provided that the electronic confirmation contains no information other than a statement confirming the person's request and that the debt collector will honor it;

(ii) If a person initiates contact with a debt collector using a medium of communication that the person previously requested the debt collector not use, the debt collector may respond once through the same medium of communication used by the person; or

(iii) If otherwise required by applicable law, a debt collector may communicate or attempt to communicate with a person in connection with the collection of any debt through a medium of communication that the person has requested the debt collector not use to communicate with the person.

§ 1006.18 False, deceptive, or misleading representations or means.

(a) *In general.* A debt collector must not use any false, deceptive, or misleading representation or means in connection with the collection of any debt, including, but not limited to, the conduct described in paragraphs (b) through (d) of this section.

(b) *False, deceptive, or misleading representations.* (1) A debt collector must not falsely represent or imply that:

(i) The debt collector is vouched for, bonded by, or affiliated with the United States or any State, including through the use of any badge, uniform, or facsimile thereof.

(ii) The debt collector operates or is employed by a consumer reporting agency, as defined by section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(iii) Any individual is an attorney or that any communication is from an attorney.

(iv) The consumer committed any crime or other conduct in order to disgrace the consumer.

(v) A sale, referral, or other transfer of any interest in a debt causes or will cause the consumer to:

(A) Lose any claim or defense to payment of the debt; or

(B) Become subject to any practice prohibited by this part.

(vi) Accounts have been turned over to innocent purchasers for value.

(vii) Documents are legal process.

(viii) Documents are not legal process forms or do not require action by the consumer.

(2) A debt collector must not falsely represent:

(i) The character, amount, or legal status of any debt.

(ii) Any services rendered, or compensation that may be lawfully received, by any debt collector for the collection of a debt.

(3) A debt collector must not represent or imply that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(c) *False, deceptive, or misleading collection means.* A debt collector must not:

(1) Threaten to take any action that cannot legally be taken or that is not intended to be taken.

(2) Communicate or threaten to communicate to any person credit information that the debt collector knows or should know is false, including the failure to communicate that a disputed debt is disputed.

(3) Use or distribute any written communication that simulates or that the debt collector falsely represents to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or that creates a false impression about its source, authorization, or approval.

(4) Use any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(d) *False representations or deceptive means.* A debt collector must not use any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(e) *Disclosures required*—(1) *Initial communications.* A debt collector must disclose in its initial communication with a consumer that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. If the debt collector's initial communication with the consumer is oral, the debt collector must make the disclosure required by this paragraph again in its initial written communication with the consumer.

(2) *Subsequent communications.* In each communication with the consumer subsequent to the communications described in paragraph (e)(1) of this section, the debt collector must disclose that the communication is from a debt collector.

(3) *Exception.* Disclosures under paragraphs (e)(1) and (2) of this section are not required in a formal pleading made in connection with a legal action.

(4) *Translated disclosures.* A debt collector must make the disclosures required by paragraphs (e)(1) and (2) of this section in the same language or languages used for the rest of the communication in which the debt collector conveyed the disclosures. Any translation of the disclosures a debt collector uses must be complete and accurate.

(f) *Assumed names.* This section does not prohibit a debt collector's employee from using an assumed name when communicating or attempting to communicate with a person, provided that the employee uses the assumed name consistently and that the debt collector can readily identify any employee using an assumed name.

§ 1006.22 Unfair or unconscionable means.

(a) *In general.* A debt collector must not use unfair or unconscionable means to collect or attempt to collect any debt, including, but not limited to, the conduct described in paragraphs (b) through (f) of this section.

(b) *Collection of unauthorized amounts.* A debt collector must not collect any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law. For purposes of this paragraph, the term ''any amount'' includes any interest, fee, charge, or expense incidental to the principal obligation.

(c) *Postdated payment instruments.* A debt collector must not:

(1) Accept from any person a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten, nor less than three, days (excluding legal public holidays identified in 5 U.S.C. 6103(a), Saturdays, and Sundays) prior to such deposit.

(2) Solicit any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(3) Deposit or threaten to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(d) *Charges resulting from concealment of purpose.* A debt collector must not cause charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(e) *Nonjudicial action regarding property.* A debt collector must not take or threaten to take any nonjudicial action to effect dispossession or disablement of property if:

(1) There is no present right to possession of the property claimed as collateral through an enforceable security interest;

(2) There is no present intention to take possession of the property; or

(3) The property is exempt by law from such dispossession or disablement.

(f) *Restrictions on use of certain media.* A debt collector must not:

(1) Communicate with a consumer regarding a debt by postcard.

(2) Use any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by mail, except that a debt collector may use the debt collector's business name on an envelope if such name does not indicate that the debt collector is in the debt collection business.

(3) Communicate 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, unless the email address is one described in § 1006.6(d)(4)(i) or (iii).

(4) Communicate or attempt to communicate with a person in connection with the collection of a debt through a social media platform if the communication or attempt to communicate is viewable by the general public or the person's social media contacts.

(g) *Safe harbor for certain emails and text messages relating to the collection of a debt.* A debt collector who communicates with a consumer by sending an email or text message in accordance with the procedures described in § 1006.6(d)(3) does not violate paragraph (a) of this section by revealing in the email or text message the debt collector's name or other information indicating that the communication relates to the collection of a debt.

§ 1006.26 [Reserved]

§ 1006.30 Other prohibited practices.

(a) [Reserved]

(b) *Prohibition on the sale, transfer for consideration, or placement for collection of certain debts*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, a debt collector must not sell, transfer for consideration, or place for collection a debt if the debt collector knows or should know that the debt has been paid or settled or discharged in bankruptcy.

(2) *Exceptions*—(i) *In general.* A debt collector may transfer for consideration a debt described in paragraph (b)(1) of this section if the debt collector:

(A) Transfers the debt to the debt's owner;

(B) Transfers the debt to a previous owner of the debt, if the transfer is authorized under the terms of the original contract between the debt collector and the previous owner; or

(C) Transfers the debt as a result of a merger, acquisition, purchase and assumption transaction, or a transfer of substantially all of the debt collector's assets.

(ii) *Secured claims in bankruptcy.* A debt collector may sell, transfer for consideration, or place for collection a debt that has been discharged in bankruptcy if the debt is secured by an enforceable lien and the debt collector notifies the transferee that the consumer's personal liability for the debt was discharged in bankruptcy.

(iii) *Securitizations and pledges of debt.* Paragraph (b)(1) of this section does not prohibit the securitization of a debt or the pledging of a portfolio of debt as collateral in connection with a borrowing.

(c) *Multiple debts.* If a consumer makes any single payment to a debt collector with respect to multiple debts owed by the consumer to the debt collector, the debt collector:

(1) Must not apply the payment to any debt that is disputed by the consumer; and

(2) If applicable, must apply the payment in accordance with the consumer's directions.

(d) *Legal actions by debt collectors*—(1) *Action to enforce interest in real property.* A debt collector who brings a legal action against a consumer to enforce an interest in real property securing the consumer's debt must bring the action only in a judicial district or similar legal entity in which such real property is located.

(2) *Other legal actions.* A debt collector who brings a legal action against a consumer other than to enforce an interest in real property securing the consumer's debt must bring such action only in the judicial district or similar legal entity in which the consumer:

(i) Signed the contract sued upon; or

(ii) Resides at the commencement of the action.

(3) *Authorization of actions.* Nothing in this part authorizes debt collectors to bring legal actions.

(e) *Furnishing certain deceptive forms.* A debt collector must not design, compile, and furnish any form that the debt collector knows would be used to cause a consumer falsely to believe that a person other than the consumer's creditor is participating in collecting or attempting to collect a debt that the consumer allegedly owes to the creditor.

§ 1006.34 [Reserved]

§ 1006.38 Disputes and requests for original-creditor information.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Duplicative dispute* means a dispute submitted by the consumer in writing within the validation period that:

(i) Is substantially the same as a dispute previously submitted by the consumer in writing within the validation period for which the debt collector already has satisfied the requirements of paragraph (d)(2)(i) of this section; and

(ii) Does not include new and material information to support the dispute.

(2) *Validation period* means the thirty-day period after a consumer's receipt of the written notice of debt described in FDCPA section 809 (15 U.S.C. 1692g) as defined by this part.

(b)(1) *Overshadowing of rights to dispute or request original-creditor information.* During the validation period, a debt collector must not engage in any collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's rights to dispute the debt and to request the name and address of the original creditor. The Bureau may provide by regulation a safe harbor for debt collectors when they use certain Bureau-approved disclosures.

(2) [Reserved]

(c) *Requests for original-creditor information.* (1) Upon receipt of a request for the name and address of the original creditor submitted by the consumer in writing within the validation period, a debt collector must cease collection of the debt until the debt collector sends the name and address of the original creditor to the consumer in writing or electronically in the manner required by § 1006.42. The Bureau may provide by regulation for alternative procedures when the original creditor is the same as the current creditor.

(2) [Reserved]

(d) *Disputes*—(1) *Failure to dispute.* The failure of a consumer to dispute the validity of a debt does not constitute a legal admission of liability by the consumer.

(2) *Response to disputes.* Upon receipt of a dispute submitted by the consumer in writing within the validation period, a debt collector must cease collection of the debt, or any disputed portion of the debt, until the debt collector:

(i) Sends a copy either of verification of the debt or of a judgment to the consumer in writing or electronically in the manner required by § 1006.42; or

(ii) In the case of a dispute that the debt collector reasonably determines is a duplicative dispute, either:

(A) Notifies the consumer in writing or electronically in the manner required by § 1006.42(a)(1) that the dispute is duplicative, provides a brief statement of the reasons for the determination, and refers the consumer to the debt collector's response to the earlier dispute; or

(B) Satisfies paragraph (d)(2)(i) of this section.

§ 1006.42 Sending required disclosures.

(a) *Sending required disclosures*—(1) *In general.* A debt collector who sends disclosures required by the Act and this part in writing or electronically must do so in a manner that is reasonably expected to provide actual notice, and in a form that the consumer may keep and access later.

(2) *Exceptions.* A debt collector need not comply with paragraph (a)(1) of this section when sending the disclosure required by § 1006.6(e) or § 1006.18(e) in writing or electronically, unless the disclosure is included on a notice required by FDCPA section 809(a) (15 U.S.C. 1692g(a)), as implemented by this part, or § 1006.38(c) or (d)(2).

(b) *Requirements for certain disclosures sent electronically.* To comply with paragraph (a) of this section, a debt collector who sends the notice required by FDCPA section 809(a), as implemented by this part, or the disclosures described in § 1006.38(c) or (d)(2)(i), electronically must do so in accordance with section 101(c) of the Electronic Signatures in Global and National Commerce Act (E–SIGN Act) (15 U.S.C. 7001(c)).

Subpart C—[Reserved]

Subpart D—Miscellaneous

§ 1006.100 Record retention.

(a) *In general.* Except as provided in paragraph (b) of this section, a debt collector must retain records that are evidence of compliance or noncompliance with the FDCPA and this part starting on the date that the debt collector begins collection activity on a debt until three years after the debt collector's last collection activity on the debt.

(b) *Special rule for telephone call recordings.* If a debt collector records telephone calls made in connection with the collection of a debt, the debt collector must retain the recording of each such telephone call for three years after the date of the call.

§ 1006.104 Relation to State laws.

Neither the Act nor the corresponding provisions of this part annul, alter, affect, or exempt any person subject to the provisions of the Act or the corresponding provisions of this part from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of the Act or the corresponding provisions of this part, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with the Act or the corresponding provisions of this part if the protection such law affords any consumer is greater than the protection provided by the Act or the corresponding provisions of this part.

§ 1006.108 Exemption for State regulation.

(a) *Exemption for State regulation.* Any State may apply to the Bureau for a determination that, under the laws of that State, any class of debt collection practices within that State is subject to requirements that are substantially similar to those imposed under sections 803 through 812 of the Act (15 U.S.C. 1692a through 1692j) and the corresponding provisions of this part, and that there is adequate provision for State enforcement of such requirements.

(b) *Procedures and criteria.* The procedures and criteria whereby States may apply to the Bureau for exemption of a class of debt collection practices within the applying State from the provisions of the Act and the corresponding provisions of this part as provided in section 817 of the Act (15 U.S.C. 1692o) are set forth in appendix A of this part.

Appendix A to Part 1006—Procedures for State Application for Exemption From the Provisions of the Act

I. Purpose and Definitions

(a) This appendix establishes procedures and criteria whereby States may apply to the Bureau for exemption of a class of debt collection practices within the applying State from the provisions of the Act and the corresponding provisions of this part as provided in section 817 of the Act (15 U.S.C. 1692o).

(b) For purposes of this appendix:

(1) *Applicant State law* means the State law that, for a class of debt collection practices within that State, is claimed to contain requirements that are substantially similar to the requirements that relevant Federal law imposes on that class of debt collection practices, and that contains adequate provision for State enforcement.

(2) *Class of debt collection practices* includes one or more such classes of debt collection practices referred to in paragraph I(b)(1) of this appendix.

(3) *Relevant Federal law* means sections 803 through 812 of the Act (15 U.S.C. 1692a through 1692j) and the corresponding provisions of this part.

(4) *State law* includes State statutes, any regulations that implement State statutes, and formal interpretations of State statutes or regulations by a court of competent jurisdiction or duly authorized State agency.

II. Application

Any State may apply to the Bureau pursuant to the terms of this appendix for a determination that the applicant State law contains requirements that, for a class of debt collection practices within that State, are substantially similar to the requirements that relevant Federal law imposes on that class of debt collection practices, and that the applicant State law contains adequate provision for State enforcement. The application must be in writing, addressed to the Assistant Director, Office of Regulations, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552, signed by the Governor, Attorney General, or State official having primary enforcement responsibility under the State law that applies to the class of debt collection practices, and must be supported by the documents specified in this appendix.

III. Supporting Documents

The application must be accompanied by the following, which may be submitted in paper or electronic form:

(a) A copy of the applicant State law.

(b) A comparison of each provision of relevant Federal law with the corresponding provisions of the applicant State law, together with reasons supporting the claim that the corresponding provisions of the applicant State law are substantially similar to the provisions of relevant Federal law, and an explanation as to why any differences between the State statute or regulation and Federal law are not inconsistent with the provisions of relevant Federal law and do not result in a diminution in the protection otherwise afforded consumers; and a statement that no other State laws (including administrative or judicial interpretations) are related to, or would have an effect upon, the State law that is being considered by the Bureau in making its determination.

(c) A comparison of the provisions of the State law that provide for enforcement with the provisions of section 814 of the Act (15 U.S.C. 1692*l*), together with reasons supporting the claim that the applicant State law provides for adequate administrative enforcement.

(d) A statement identifying the office designated or to be designated to enforce the applicant State law. The statement must show how the office provides for adequate enforcement of the applicant State law, including by showing that the office has necessary facilities, personnel, and funding. The statement must include, for example, complete information regarding the fiscal arrangements for administrative enforcement (including the amount of funds available or to be provided), the number and qualifications of personnel engaged or to be engaged in enforcement, and a description of the procedures under which the applicant State law is to be enforced by the State.

IV. Criteria for Determination

The Bureau will consider the criteria set forth below, and any other relevant information, in determining whether the applicant State law is substantially similar to relevant Federal law and whether there is adequate provision for enforcement of the applicant State law. In making that determination, the Bureau primarily will consider each provision of the applicant State law in comparison with each corresponding provision in relevant Federal law, and not the State law as a whole in comparison with the Act as a whole.

(a)(1) In order for the applicant State law to be substantially similar to relevant Federal law, the applicant State law at least must provide that:

(i) Definitions and rules of construction, as applicable, import a meaning and have an application that are substantially similar to those prescribed by relevant Federal law.

(ii) Debt collectors provide all of the applicable notices required by relevant Federal law, with the content and in the terminology, form, and time periods prescribed pursuant to relevant Federal law. The Bureau may determine whether additional notice requirements under the applicant State law affect a determination that the applicant State law is substantially similar to relevant Federal law.

(iii) Debt collectors take all affirmative actions and abide by obligations substantially similar to those prescribed by relevant Federal law under substantially similar conditions and within substantially similar time periods as are prescribed under relevant Federal law;

(iv) Debt collectors abide by prohibitions that are substantially similar to those prescribed by relevant Federal law;

(v) Consumers' obligations or responsibilities are no more costly, lengthy, or burdensome than consumers' corresponding obligations or responsibilities under relevant Federal law; and

(vi) Consumers' rights and protections are substantially similar to those provided by relevant Federal law under conditions or within time periods that are substantially similar to those prescribed by relevant Federal law.

(2) In applying the criteria set forth in paragraph IV(a)(1) of this appendix, the Bureau will not consider adversely any additional requirements of State law that are not inconsistent with the purpose of the Act or the requirements imposed under relevant Federal law.

(b) In determining whether provisions for enforcement of the applicant State law are adequate, consideration will be given to the extent to which, under the applicant State law, provision is made for administrative enforcement, including necessary facilities, personnel, and funding.

V. Public Comment

In connection with any application that has been filed in accordance with the requirements of parts II and III of this appendix and following initial review of the application, a proposed rule concerning the application for exemption will be published by the Bureau in the **Federal Register**, and a copy of such application will be made available for examination by interested persons during business hours at the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. A comment period will be allowed from the date of such publication for interested parties to submit written comments to the Bureau regarding that application.

VI. Exemption From Requirements

If the Bureau determines on the basis of the information before it that, under the applicant State law, a class of debt collection practices is subject to requirements substantially similar to those imposed under relevant Federal law and that there is adequate provision for State enforcement, the Bureau will exempt the class of debt collection practices in that State from the requirements of relevant Federal law and section 814 of the Act in the following manner and subject to the following conditions:

(a) A final rule granting the exemption will be published in the **Federal Register**, and the Bureau will furnish a copy of such rule to the State official who made application for such exemption, to each Federal authority responsible for administrative enforcement of the requirements of relevant Federal law, and to the Attorney General of the United States. Any exemption granted will be effective 90 days after the date of publication of such rule in the **Federal Register**.

(b) Any State that receives an exemption must, through its appropriate official, take the following steps:

(i) Inform the Assistant Director, Office of Regulations, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552 in writing within 30 days of any change in the applicant State law. The report of any such change must contain copies of the full text of that change, together with statements setting forth the information and opinions regarding that change that are specified in paragraph III.

(ii) Provide, not later than two years after the date the exemption is granted, and every two years thereafter, a report to the Bureau in writing concerning the manner in which the State has enforced the applicant State law in the preceding two years and an update of the information required under paragraph III(d) of this appendix.

(c) The Bureau will inform any State that receives such an exemption, through its appropriate official, of any subsequent amendments of the Act or this part that might necessitate the amendment of State law for the exemption to continue.

(d) After an exemption is granted, the requirements of the applicable State law constitute the requirements of relevant Federal law, except to the extent such State law imposes requirements not imposed by the Act or this part.

VII. Adverse Determination

(a) If, after publication of a proposed rule in the **Federal Register** as provided under part V of this appendix, the Bureau finds on the basis of the information before it that it cannot make a favorable determination in connection with the application, the Bureau will notify the appropriate State official of the facts upon which such findings are based and will afford that State authority a reasonable opportunity to submit additional materials that demonstrate the basis for granting an exemption.

(b) If, after having afforded the State authority such opportunity to demonstrate the basis for granting an exemption, the Bureau finds on the basis of the information before it that it still cannot make a favorable determination in connection with the application, the Bureau will publish in the **Federal Register** a final rule containing its determination regarding the application and will furnish a copy of such rule to the State official who made application for such exemption.

VIII. Revocation of Exemption

(a) The Bureau reserves the right to revoke any exemption granted under the provisions of the Act or this part, if at any time it determines that the State law does not, in fact, impose requirements that are substantially similar to relevant Federal law or that there is not, in fact, adequate provision for State enforcement.

(b) Before revoking any such exemption, the Bureau will notify the State of the facts or conduct that, in the Bureau's opinion, warrant such revocation, and will afford that State such opportunity as the Bureau deems appropriate in the circumstances to demonstrate continued eligibility for an exemption.

(c) If, after having been afforded the opportunity to demonstrate or achieve compliance, the Bureau determines that the State has not done so, a proposed rule to revoke such exemption will be published in the **Federal Register**. A comment period will be allowed from the date of such publication for interested persons to submit written comments to the Bureau regarding the intention to revoke.

(d) If such exemption is revoked, a final rule revoking the exemption will be published by the Bureau in the **Federal Register**, and a copy of such rule will be furnished to the State, to the Federal authorities responsible for enforcement of the requirements of the Act, and to the Attorney General of the United States. The revocation becomes effective, and the class of debt collection practices affected within that State become subject to the requirements of sections 803 through 812 of the Act and the corresponding provisions of this part, 90 days after the date of publication of the final rule in the **Federal Register**.

Appendix B to Part 1006—[Reserved]

Appendix C to Part 1006—Issuance of Advisory Opinions

1. *Advisory opinions.* Any act done or omitted in good faith in conformity with any advisory opinion issued by the Bureau, including advisory opinions referenced in this appendix, provides the protection afforded under section 813(e) of the Act. The Bureau will amend this appendix periodically to incorporate references to advisory opinions that the Bureau issues.

2. *Requests for issuance of advisory opinions.* A request for an advisory opinion may be submitted in accordance with the instructions regarding submission and content of requests applicable to any relevant advisory opinion program that the Bureau offers. Requests for advisory opinions will be reviewed consistent with the process outlined in any such program, and any resulting advisory opinions will be published in the **Federal Register** and on *consumerfinance.gov.*

3. *Bureau-issued advisory opinions.* The Bureau has issued the following advisory opinions:

a. *Safe Harbors from Liability under the Fair Debt Collection Practices Act for Certain Actions Taken in Compliance with Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z),* 81 FR 71977 (Oct. 19, 2016).

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, 15 U.S.C. 1692 *et seq.* No commentary is expected to be issued other than by means of this Supplement I.

2. *Procedure for requesting interpretations.* Anyone may request that an official interpretation of the regulation be added to this commentary. A request for such an official interpretation must be in writing and addressed to the Associate Director, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. The request must contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents. Revisions to this commentary that are adopted in accordance with the rulemaking procedures of section 553 of the Administrative Procedure Act (5 U.S.C. 553) will be incorporated in the commentary following publication in the **Federal Register**.

3. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, comments to § 1006.6(d)(4) are further divided by subparagraph, such as comment 6(d)(4)(i)–1 and comment 6(d)(4)(ii)–1. Comments that have more general application are designated, for example, as comments 38–1 and 38–2. This introduction may be cited as comments I–1, I–2, and I–3.

Subpart A—General

Section 1006.2—Definitions

2(b) Attempt To Communicate

1. *Examples.* Section 1006.2(b) defines an attempt to communicate as any act to initiate a communication or other contact about a debt with any person through any medium, including by soliciting a response from such person. An act to initiate a communication or other contact about a debt is an attempt to communicate regardless of whether the attempt, if successful, would be a communication that conveys information regarding a debt directly or indirectly to any person. For example:

i. Assume that a debt collector places a telephone call to a person about a debt. Regardless of whether the debt collector reaches the person, the debt collector has attempted to communicate with the person.

ii. Assume that a debt collector places a telephone call to a person about a debt and leaves a voicemail message. Regardless of whether the voicemail message consists solely of a limited-content message or includes content that conveys, directly or indirectly, information about a debt, the debt collector has attempted to communicate with the person.

2(d) Communicate or Communication

1. *Any medium.* Section 1006.2(d) provides, in relevant part, that a communication can occur through any medium. ''Any medium'' includes any oral, written, electronic, or other medium. For example, a communication may occur in person or by telephone, audio recording, paper document, mail, email, text message, social media, or other electronic media.

2. *Information regarding a debt.* Section 1006.2(d) provides, in relevant part, that a communication means conveying information regarding a debt. A debt collector does not convey information regarding a debt directly or indirectly to any person if the debt collector leaves only a limited-content message, as defined in § 1006.2(j). A debt collector who provides marketing or advertising that does not contain information about a specific debt or debts has not communicated under § 1006.2(d), even if the debt collector transmits the marketing or advertising message to a consumer, because the debt collector has not conveyed information regarding a debt.

2(h) Debt

1. *Consumer.* Section 1006.2(h) defines debt to mean, in part, any obligation or alleged obligation of a consumer to pay money arising out of a transaction. Section 1006.2(e), in turn, defines consumer to mean any natural person obligated or allegedly obligated to pay any debt. Only natural persons, therefore, can incur debts as defined in § 1006.2(h).

2(i) Debt Collector

1. *In general.* Section 1006.2(i) provides, in part, that a debt collector is any person who uses any instrumentality of interstate commerce or mail in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, to another. A person who collects or attempts to collect defaulted debts that the person has purchased, but who does not collect or attempt to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, to another, and who does not have a business the principal purpose of which is the collection of debts, is not a debt collector as defined in § 1006.2(i).

2(j) Limited-Content Message

1. *In general.* Section 1006.2(j) provides that a limited-content message is a voicemail message for a consumer that includes all of the content described in § 1006.2(j)(1), that may include any of the content described in § 1006.2(j)(2), and that includes no other content. Any other message is not a limited-content message. If a voicemail message includes content other than the specific items described in § 1006.2(j)(1) and (2), and such other content directly or indirectly conveys any information about a debt, the message is a communication, as defined in § 1006.2(d). For example, a voicemail message that includes a statement that the message is from a debt collector and a request to speak to a particular consumer is not a limited-content message because it includes more than the required or permitted content.

2. *Message for a consumer.* Section 1006.2(j) provides, in part, that a limited-content message is a voicemail message for a consumer. A message knowingly left for a third party is not a limited-content message because it is not for a consumer. For example, assume that a debt collector has a telephone number that the debt collector knows belongs to the consumer's friend. A voicemail message left after calling that number is not a limited-content message, even if the message includes no more than the content described in § 1006.2(j)(1) and (2) because the debt collector knowingly left the message for someone other than the consumer. Other provisions of this part may, in certain circumstances, restrict a debt collector from leaving a limited-content message or otherwise attempting to communicate with a consumer. See §§ 1006.6(b) and (c) and 1006.22(f) and their related commentary for further guidance regarding when a debt collector is prohibited from attempting to communicate with a consumer.

3. *Meaningful disclosure of identity.* A debt collector who leaves only a limited-content message for a consumer does not violate § 1006.14(g)'s requirement to meaningfully disclose the caller's identity with respect to that voicemail message.

2(j)(1) Required Content

1. *Example.* The following example illustrates a limited-content message that includes only the content described in § 1006.2(j)(1): ''This is Robin Smith calling from ABC Inc. Please contact me or Jim Johnson at 1–800–555–1212.''

2(j)(2) Optional Content

1. *In general.* Section 1006.2(j)(2)(iv) provides that a limited-content message may include a statement that, if the consumer replies, the consumer may speak to any of the company's representatives or associates. A message that includes a more detailed description of the representative or associate group is not a limited-content message. For example, a reference to an agent with the ''credit card receivables group'' is not a limited-content message because it includes more than a statement that the consumer's reply may be answered by a representative or associate.

2. *Example.* The following example illustrates a limited-content message that includes the content described in both § 1006.2(j)(1) and (2): ''Hi, this is Robin Smith calling from ABC Inc. It is 4:15 p.m. on Wednesday, September 1. Please contact me or any of our representatives at 1–800–555–1212 today until 6:00 p.m. Eastern time, or any weekday from 8:00 a.m. to 6:00 p.m. Eastern time.''

Subpart B—Rules for FDCPA Debt Collectors

Section 1006.6—Communications in Connection With Debt Collection

6(a) Consumer

Paragraph 6(a)(1)

1. *Spouse.* Section 1006.6(a)(1) provides that, for purposes of § 1006.6, the term consumer includes a consumer's spouse. The surviving spouse of a deceased consumer is a spouse as that term is used in § 1006.6(a)(1).

Paragraph 6(a)(2)

1. *Parent.* Section 1006.6(a)(2) provides that, for purposes of § 1006.6, the term consumer includes a consumer's parent, if the consumer is a minor. A parent of a deceased minor consumer is a parent as that term is used in § 1006.6(a)(2).

Paragraph 6(a)(4)

1. *Personal representative.* Section 1006.6(a)(4) provides that, for purposes of § 1006.6, the term consumer includes the executor or administrator of the consumer's estate, if the consumer is deceased. The terms executor or administrator include the personal representative of the consumer's estate. A personal representative is any person who is authorized to act on behalf of the deceased consumer's estate. Persons with such authority may include personal representatives under the informal probate and summary administration procedures of many States, persons appointed as universal successors, persons who sign declarations or affidavits to effectuate the transfer of estate assets, and persons who dispose of the deceased consumer's financial assets or other assets of monetary value extrajudicially.

6(b) Communications With a Consumer

6(b)(1) Prohibitions Regarding Unusual or Inconvenient Times or Places

1. *Designation of inconvenience.* Section 1006.6(b)(1) prohibits a debt collector from, among other things, communicating or attempting to communicate with a consumer in connection with the collection of any debt at a time or place that the debt collector knows or should know is inconvenient to the consumer, unless an exception in § 1006.6(b)(4) applies. For example, a debt collector knows or should know that a time or place is inconvenient to a consumer if the consumer uses the word ''inconvenient'' to notify the debt collector. In addition, depending on the facts and circumstances, the debt collector knows or should know that a time or place is inconvenient even if the consumer does not specifically state to the debt collector that a time or place is ''inconvenient.'' The debt collector may ask follow-up questions regarding whether a time or place is convenient to clarify statements by the consumer. For example:

i. Assume that a creditor places a debt for collection with a debt collector. To facilitate collection of the debt, the creditor provides the debt collector a file that includes recent notes stating that the consumer cannot be disturbed on Tuesdays and Thursdays through the end of the calendar year. Based on these facts, the debt collector knows or should know that Tuesdays and Thursdays through the end of the calendar year are inconvenient to the consumer. Unless the consumer informs the debt collector that those times are no longer inconvenient, § 1006.6(b)(1)(i) prohibits the debt collector from communicating or attempting to communicate with the consumer on those days through the end of the calendar year.

ii. Assume that a debt collector calls a consumer. The consumer answers the call but states ''I am busy'' or ''I cannot talk now.'' The debt collector asks the consumer when would be a convenient time. The consumer responds, ''on weekdays, except from 3:00 p.m. to 5:00 p.m.'' The debt collector asks the consumer whether there would be a convenient time on weekends. The consumer responds ''no.'' Based on these facts, the debt collector knows or should know that the time period between 3:00 p.m. and 5:00 p.m. on weekdays, and all times on weekends, are inconvenient to the consumer. Thereafter, unless the consumer informs the debt collector that those times are no longer inconvenient, § 1006.6(b)(1)(i) prohibits the debt collector from communicating or attempting to communicate with the consumer at those times.

iii. Assume that a consumer tells a debt collector not to communicate with the consumer at a particular place, such as the consumer's home. The debt collector asks whether the consumer intends to prohibit the debt collector from communicating with the consumer through all media associated with the consumer's home, including, for example, mail. Absent such additional information, the debt collector knows or should know that communications to the consumer at home, including mail to the consumer's home address and calls to the consumer's home landline telephone number, are inconvenient. Thereafter, unless the consumer informs the debt collector that the place is no longer inconvenient, § 1006.6(b)(1)(ii) prohibits the debt collector from communicating or attempting to communicate with the consumer at the consumer's home. See comment 6(b)(1)(ii)–1 for additional guidance regarding communications or attempts to communicate at an inconvenient place.

2. *Consumer-initiated communication.* If a consumer initiates a communication with a debt collector at a time or from a place that the consumer previously designated as inconvenient, the debt collector may respond once at that time or place through the same medium of communication used by the consumer. (For more on medium of communication, see § 1006.14(h) and its associated commentary.) After that response, § 1006.6(b)(1) prohibits the debt collector from communicating or attempting to communicate further with the consumer at that time or place until the consumer conveys that the time or place is no longer inconvenient, unless an exception in § 1006.6(b)(4) applies. For example:

i. Assume the same facts as in comment 6(b)(1)–1.ii, except that, after the consumer tells the debt collector that weekdays from 3:00 p.m. to 5:00 p.m. and weekends are inconvenient, the consumer sends an email message to the debt collector at 3:30 p.m. on Wednesday. Based on these facts, § 1006.6(b)(1)(i) does not prohibit the debt collector from responding once by email message before 5:00 p.m. on that day. Unless the consumer informs the debt collector that those times are no longer inconvenient, § 1006.6(b)(1)(i) prohibits the debt collector from future communications or attempts to communicate with the consumer on weekdays between 3:00 p.m. and 5:00 p.m. and on weekends. Additionally, if the consumer responds to the debt collector's email message, the debt collector may continue to respond once to each consumer-initiated email message before 5:00 p.m. on that day.

ii. Assume the same facts as in comment 6(b)(1)–1.iii, except that, after the consumer tells the debt collector not to communicate with the consumer at home, the consumer calls the debt collector from the consumer's home landline telephone number. Based on these facts, § 1006.6(b)(1)(ii) does not prohibit the debt collector from responding once by communicating with the consumer on that telephone call. Unless the consumer informs the debt collector that the place is no longer inconvenient, § 1006.6(b)(1)(ii) prohibits the debt collector from future communications or attempts to communicate with the consumer at home.

iii. Assume that a consumer tells a debt collector that all communications to the consumer on Friday every week are inconvenient to the consumer. On a Friday, the consumer visits the debt collector's website and uses the debt collector's mobile application. Based on these facts, while the consumer navigates the website or uses the mobile application, § 1006.6(b)(1)(i) does not prohibit the debt collector from conveying information to the consumer about the debt through the website or mobile application. Once the consumer stops navigating the website or using the mobile application, however, § 1006.6(b)(1)(i) prohibits the debt collector from further communications or attempts to communicate on that day. And unless the consumer informs the debt collector that those times are no longer inconvenient, § 1006.6(b)(1)(i) prohibits the debt collector from future communications or attempts to communicate with the consumer on Fridays.

iv. Assume the same facts as in comment 6(b)(1)–2.iii, except that after the consumer visits the debt collector's website and uses the debt collector's mobile application, the consumer sends an email message to the debt collector at 8:30 p.m. on Friday. Based on these facts, § 1006.6(b)(1)(i) does not prohibit the debt collector from responding once, such as by sending an automated email message reply generated in response to the consumer's email message. Unless the consumer informs the debt collector that those times are no longer inconvenient, § 1006.6(b)(1)(i) prohibits the debt collector from future communications or attempts to communicate with the consumer on Fridays.

Paragraph 6(b)(1)(i)

1. *Time of electronic communication.* Section 1006.6(b)(1)(i) prohibits a debt collector from communicating or attempting to communicate, including through electronic communication media, at any unusual time, or at a time that the debt collector knows or should know is inconvenient to the consumer. For purposes of determining the time of an electronic communication, such as an email or text message, under § 1006.6(b)(1)(i), an electronic communication occurs when the debt collector sends it, not, for example, when the consumer receives or views it.

2. *Consumer's location.* Under § 1006.6(b)(1)(i), in the absence of a debt collector's knowledge of circumstances to the contrary, an inconvenient time for communicating with a consumer is before 8:00 a.m. and after 9:00 p.m. local time at the consumer's location. If a debt collector has conflicting or ambiguous information regarding a consumer's location, then, in the absence of knowledge of circumstances to the contrary, the debt collector complies with § 1006.6(b)(1)(i) if the debt collector communicates or attempts to communicate with the consumer at a time that would be convenient in all of the locations at which the debt collector's information indicates the consumer might be located. The following examples, which assume that the debt collector has no information about times the consumer considers inconvenient or other information about the consumer's location, illustrate the rule.

i. Assume that a debt collector's information indicates that a consumer has a mobile telephone number with an area code associated with the Eastern time zone and a residential address in the Pacific time zone. The convenient times to communicate with the consumer are after 11:00 a.m. Eastern time (8:00 a.m. Pacific time) and before 9:00 p.m. Eastern time (6:00 p.m. Pacific time).

ii. Assume that a debt collector's information indicates that a consumer has a mobile telephone number with an area code associated with the Eastern time zone and a landline telephone number with an area code associated with the Mountain time zone. The convenient times to communicate with the consumer are after 10:00 a.m. Eastern time (8:00 a.m. Mountain time) and before 9:00 p.m. Eastern time (7:00 p.m. Mountain time).

Paragraph 6(b)(1)(ii)

1. *Communications or attempts to communicate at unusual or inconvenient places.* Section 1006.6(b)(1)(ii) prohibits a debt collector from communicating or attempting to communicate with a consumer in connection with the collection of any debt at any unusual place, or at a place that the debt collector knows or should know is inconvenient to the consumer. Some communication media, such as mailing addresses and landline telephone numbers, are associated with a place. Pursuant to § 1006.6(b)(1)(ii), a debt collector must not communicate or attempt to communicate with a consumer through media associated with an unusual place, or with a place that the debt collector knows or should know is inconvenient to the consumer. Other communication media, such as email addresses and mobile telephone numbers, are not associated with a place. Section 1006.6(b)(1)(ii) does not prohibit a debt collector from communicating or attempting to communicate with a consumer through such media unless the debt collector knows that the consumer is at an unusual place, or at a place that the debt collector knows or should know is inconvenient to the consumer. For example:

i. Assume the same facts as in comment 6(b)(1)–1.iii. Unless the debt collector knows that the consumer is at home, a telephone call to the consumer's mobile telephone number or an electronic communication, including, for example, an email message or a text message to the consumer's mobile telephone, does not violate § 1006.6(b)(1)(ii) even if the consumer receives or views the communication while at home.

6(b)(2) Prohibitions Regarding Consumer Represented by an Attorney

1. *Consumer-initiated communications.* A consumer-initiated communication from a consumer represented by an attorney constitutes the consumer's prior consent to that communication under § 1006.6(b)(4)(i); therefore, a debt collector may respond to that consumer-initiated communication. However, the consumer's act of initiating the communication does not negate the debt collector's knowledge that the consumer is represented by an attorney and does not revoke the protections afforded the consumer under § 1006.6(b)(2). After the debt collector's response, the debt collector must not communicate or attempt to communicate further with the consumer unless the debt collector knows the consumer is not represented by an attorney with respect to the debt, either based on information from the consumer or the consumer's attorney, or unless an exception under § 1006.6(b)(2)(i) or (ii) or § 1006.6(b)(4) applies.

6(b)(3) Prohibitions Regarding Consumer's Place of Employment

1. *Communications at consumer's place of employment.* Section 1006.6(b)(3) prohibits a debt collector from communicating or attempting to communicate with a consumer in connection with the collection of any debt at the consumer's place of employment, if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication. A debt collector knows or has reason to know that a consumer's employer prohibits the consumer from receiving such communication if, for example, the consumer tells the debt collector that the consumer cannot take personal calls at work. The debt collector may ask follow-up questions regarding the employer's prohibitions or limitations on contacting the consumer at the place of employment to clarify statements by the consumer.

2. *Employer-provided email.* For special rules regarding employer-provided email addresses, see § 1006.22(f)(3) and its associated commentary.

6(b)(4) Exceptions

Paragraph 6(b)(4)(i)

1. *Prior consent—in general.* Section 1006.6(b)(4)(i) provides, in part, that the prohibitions in § 1006.6(b)(1) through (3) on a debt collector communicating or attempting to communicate with a consumer in connection with the collection of any debt do not apply if the debt collector communicates or attempts to communicate with the prior consent of the consumer. If the debt collector learns during a communication that the debt collector is communicating with the consumer at an inconvenient time or place, for example, the debt collector may ask the consumer during that communication what time or place would be convenient. However, § 1006.6(b)(4)(i) prohibits the debt collector from asking the consumer to consent to the continuation of that inconvenient communication.

2. *Directly to the debt collector.* Section 1006.6(b)(4)(i) requires the prior consent of the consumer to be given directly to the debt collector. For example, a debt collector cannot rely on the prior consent of the consumer given to a creditor or to a previous debt collector.

6(c) Communications With a Consumer—After Refusal To Pay or Cease Communication Notice

6(c)(1) Prohibitions

1. *Notification complete upon receipt.* If, pursuant to § 1006.6(c)(1), a consumer notifies a debt collector in writing or electronically using a medium of electronic communication through which a debt collector accepts electronic communications from consumers that the consumer either refuses to pay a debt or wants the debt collector to cease further communication with the consumer, notification is complete upon the debt collector's receipt of that information. The following example illustrates the rule.

i. Assume that on August 3, a consumer places in the mail a written notification to a debt collector that the consumer either refuses to pay a debt or wants the debt collector to cease further communication with the consumer pursuant to § 1006.6(c)(1). On August 4, the debt collector sends the consumer an email message. The debt collector receives the consumer's written notification on August 6. Because the consumer's notification is complete upon the debt collector's receipt of that information on August 6, the debt collector's email message communication on August 4 does not violate § 1006.6(c)(1).

2. *Interpretation of the E–SIGN Act.* Comment 6(c)(1)–1 constitutes the Bureau's interpretation of section 101 of the E–SIGN Act as applied to FDCPA section 805(c). Under this interpretation, section 101(a) of the E–SIGN Act enables a consumer to satisfy the requirement in FDCPA section 805(c) that the consumer's notification of the debt collector be ''in writing'' through an electronic request. Further, because the consumer may only satisfy the writing requirement using a medium of electronic communication through which a debt collector accepts electronic communications from consumers, section 101(b) of the E–SIGN Act is not contravened.

6(c)(2) Exceptions

1. *Written early intervention notice for mortgage servicers.* The Bureau has interpreted the written early intervention notice required by 12 CFR 1024.39(d)(3) to fall within the exceptions to the cease communication provision in FDCPA section 805(c)(2) and (3). See 12 CFR 1024.39(d)(3), its commentary, and the Bureau's 2016 FDCPA Interpretive Rule (81 FR 71977 (Oct. 19, 2016)).

2. *Other mortgage servicing rule provisions.* Notwithstanding a consumer's cease communication request pursuant to § 1006.6(c)(1), a mortgage servicer who is subject to the FDCPA with respect to a mortgage loan is not liable under the FDCPA for complying with certain servicing rule provisions, including requirements to provide a consumer with disclosures regarding the forced placement of hazard insurance as required by 12 CFR 1024.37, a disclosure regarding an adjustable-rate mortgage's initial interest rate adjustment as required by 12 CFR 1026.20(d), and a periodic statement for each billing cycle as required by 12 CFR 1026.41. See CFPB Bulletin 2013–12 (Oct. 15, 2013) providing implementation guidance for certain mortgage servicing rules.

6(d) Communications With Third Parties

6(d)(2) Exceptions

1. *Prior consent.* See the commentary to § 1006.6(b)(4)(i) for guidance concerning a consumer giving prior consent directly to a debt collector.

6(d)(3) Reasonable Procedures for Email and Text Message Communications

Paragraph 6(d)(3)(ii)

1. *Knowledge of prohibited disclosure.* For purposes of § 1006.6(d)(3)(ii), a debt collector knows that sending an email to an email address or a text message to a telephone number has led to a disclosure prohibited by § 1006.6(d)(1) if any person has informed the debt collector of that fact.

6(d)(4) Procedures for Email Addresses

6(d)(4)(i) Procedures Based on Communication Between the Consumer and the Debt Collector

Paragraph 6(d)(4)(i)(B)

1. *Prior consent—in general.* Section 1006.6(d)(4)(i)(B) provides that, for purposes of § 1006.6(d)(3)(i), a debt collector may send an email to an email address if, among other things, the debt collector has received directly from the consumer prior consent to use the email address to communicate with the consumer about the debt. For purposes of § 1006.6(d)(4)(i)(B), a consumer may provide consent directly to a debt collector through any medium of communication, such as in writing, electronically, or orally.

2. *Prior consent—consumer-provided email address.* If a consumer provides an email address to a debt collector (including on the debt collector's website or online portal), the debt collector may treat the consumer as having consented directly to the debt collector's use of the email address to communicate with the consumer about the debt for purposes of § 1006.6(d)(4)(i)(B) if the debt collector discloses clearly and conspicuously that the debt collector may use the email address to communicate with the consumer about the debt.

6(d)(4)(ii) Procedures Based on Communication by the Creditor

Paragraph 6(d)(4)(ii)(B)

1. *Communications about the account.* Section 1006.6(d)(4)(ii)(B) provides that, for purposes of § 1006.6(d)(3)(i), a debt collector may send an email to an email address if, among other things, the creditor used the email address to communicate with the consumer about the account giving rise to the debt. For purposes of § 1006.6(d)(4)(ii)(B), communications about the account include, for example, required disclosures, bills, invoices, periodic statements, payment reminders, and payment confirmations. Communications about the account do not include, for example, marketing or advertising materials unrelated to the consumer's account.

Paragraph 6(d)(4)(ii)(C)

1. *Clear and conspicuous.* Clear and conspicuous means readily understandable. In the case of written and electronic disclosures, the location and type size also must be readily noticeable and legible to consumers, although no minimum type size is mandated.

2. *Sample language.* Section 1006.6(d)(4)(ii)(C) provides that, for purposes of § 1006.6(d)(3)(i), a debt collector may send an email to an email address if, among other things, the creditor sent the consumer a written or electronic notice that clearly and conspicuously disclosed that the debt would be transferred to the debt collector; that the debt collector might use the email address to communicate with the consumer about the debt; that, if others have access to this email address, then it is possible they may see the emails; instructions for a reasonable and simple method by which the consumer could

opt out of such communications; and the date by which the debt collector or creditor must receive the consumer's request to opt out.

i. When a creditor sends the notice in writing, the creditor may use, but is not required to use, the following language to satisfy § 1006.6(d)(4)(ii)(C): ''We are transferring your account to ABC debt collector, and we are providing ABC debt collector with the following email address for you: [email address]. ABC debt collector may use this email address to communicate with you about the debt. If others have access to this email address, then it is possible they may see the emails. If you would like to opt out of communications by ABC debt collector to [email address], please fill out the enclosed form and return it in the enclosed envelope so that we receive it by [date].''

ii. When a creditor sends the notice electronically, the creditor may use, but is not required to use, the following language to satisfy § 1006.6(d)(4)(ii)(C): ''We are transferring your account to ABC debt collector, and we are providing ABC debt collector with the following email address for you: [email address]. ABC debt collector may use this email address to communicate with you about the debt. If others have access to this email address, then it is possible they may see the emails. If you would like to opt out of communications by ABC debt collector to [email address], please click here by [date].''

3. *Combined notice.* A notice provided by the creditor under § 1006.6(d)(4)(ii)(C) may be contained in a larger communication that conveys other information, as long as the notice is clear and conspicuous.

Paragraph 6(d)(4)(ii)(C)(1)

1. *Identification of the debt collector.* Under § 1006.6(d)(4)(ii)(C)(*1*), the notice must clearly and conspicuously disclose, among other things, that the debt has been or will be transferred to the debt collector. To satisfy this requirement, the notice must identify the name of the specific debt collector to which the debt has been or will be transferred.

Paragraph 6(d)(4)(ii)(C)(4)

1. *Reasonable and simple method to opt out.* Under § 1006.6(d)(4)(ii)(C)(*4*), the notice must clearly and conspicuously disclose instructions for a reasonable and simple method by which the consumer can opt out of the debt collector's use of the email address to communicate about the debt. The following examples illustrate the rule.

i. When the creditor sends the notice in writing, reasonable and simple methods for opting out include providing a reply form and a pre-addressed envelope together with the opt-out notice. Requiring a consumer to call or write to obtain a form for opting out, rather than including the form with the opt-out notice, does not meet the requirement to provide a reasonable and simple method for opting out.

ii. When the creditor sends the notice electronically, reasonable and simple methods for opting out include providing an electronic means to opt out, such as a hyperlink, or allowing the consumer to opt out by replying to the communication with the word ''stop.'' Requiring a consumer who receives the opt-out notice electronically to opt out by postal mail, telephone, or visiting a website without providing a link does not meet the requirement to provide a reasonable and simple method for opting out.

Paragraph 6(d)(4)(ii)(C)(5)

1. *Recipient of opt-out request.* Under § 1006.6(d)(4)(ii)(C)(*5*), the notice must clearly and conspicuously disclose the date by which a debt collector or creditor must receive a consumer's request to opt out, which must be at least 35 days after the date the notice is sent. The notice may instruct the consumer to respond to the debt collector or to the creditor but not to both.

Paragraph 6(d)(4)(ii)(D)

1. *Effect of opt-out request after expiration of opt-out period.* If a consumer requests after the expiration of the opt-out period that the debt collector not communicate using the email address identified in the opt-out notice, such as by returning the notice or opting out under § 1006.6(e), § 1006.14(h)(1) prohibits the debt collector from communicating or attempting to communicate with the consumer using that email address. If the consumer requests after the expiration of the opt-out period that the debt collector not communicate with the consumer by email, § 1006.14(h)(1) prohibits the debt collector from communicating or attempting to communicate with the consumer by email, including by using the specific email address identified in the notice. For more on prohibited communication media and certain exceptions, see § 1006.14(h) and its associated commentary. If after the expiration of the opt-out period the consumer notifies the debt collector in writing or electronically using a medium of electronic communication through which a debt collector accepts electronic communications from consumers that the consumer refuses to pay the debt or wants the debt collector to cease further communication with the consumer, § 1006.6(c)(1) prohibits the debt collector from communicating or attempting to communicate with the consumer with respect to the debt, subject to the exceptions in § 1006.6(c)(2). For more on communications with a consumer after refusal to pay or a cease communication notice, see § 1006.6(c) and its associated commentary.

2. *Scope of opt-out request.* In the absence of evidence that the consumer refuses to pay the debt or wants the debt collector to cease all communication with the consumer, a consumer's request under § 1006.6(d)(4)(ii)(D) to opt out of a debt collector's use of a particular email address to communicate with the consumer by email does not constitute a notification to cease further communication with respect to the debt under § 1006.6(c)(1).

Paragraph 6(d)(4)(ii)(E)

1. *Domain name available for use by the general public.* Under § 1006.6(d)(4)(ii)(E), the domain name of an email address is available for use by the general public when multiple members of the general public are permitted to use the same domain name, whether for free or through a paid subscription. Such a name does not include one that is reserved for use by specific registrants, such as a domain name branded for use by a particular commercial entity (*e.g., john.doe@springsidemortgage.com*) or reserved for particular types of institutions (*e.g., john.doe@agency.gov, john.doe@university.edu,* or *john.doe@nonprofit.org*).

2. *Knowledge of employer-provided email address.* For purposes of § 1006.6(d)(4)(ii)(E), a debt collector knows that an email address is provided by the consumer's employer if any person has informed the debt collector that the address is employer provided. However, § 1006.6(d)(4)(ii)(E) does not require a debt collector to conduct a manual review of consumer accounts to determine whether an email address might be employer provided.

6(d)(4)(iii) Procedures Based on Communication by the Prior Debt Collector

1. *Immediately prior debt collector.* Section 1006.6(d)(4)(iii) provides that, for purposes of § 1006.6(d)(3)(i), a debt collector may send an email to an email address if, among other things, the immediately prior debt collector used the email address to communicate with the consumer about the debt. For purposes of § 1006.6(d)(4)(iii), the immediately prior debt collector is the debt collector immediately preceding the current debt collector. For example, if ABC debt collector returns a debt to the creditor and the creditor places the debt with XYZ debt collector, ABC debt collector is the immediately prior debt collector for purposes of § 1006.6(d)(4)(iii).

2. *Examples.* The following examples illustrate the rule.

i. After obtaining a consumer's email address in accordance with the procedures in § 1006.6(d)(4)(i) or (ii), ABC debt collector communicates with the consumer about the debt using that email address and the consumer does not opt out. ABC debt collector returns the debt to the creditor, who places it with XYZ debt collector. XYZ debt collector communicates with the consumer about the debt using the email address obtained by ABC debt collector. Assuming that the requirements of § 1006.6(d)(3)(ii) are satisfied, XYZ debt collector may have a bona fide error defense to civil liability for any unintentional third-party disclosure that occurs during that communication because a prior debt collector (*i.e.,* ABC debt collector) obtained the email address in accordance with the procedures in § 1006.6(d)(4)(i) or (ii), the immediately prior debt collector (*i.e.,* ABC debt collector) used the email address to communicate with the consumer about the debt, and the consumer did not opt out of such communications by ABC debt collector.

ii. After obtaining a consumer's email address in accordance with the procedures in § 1006.6(d)(4)(i) or (ii), ABC debt collector communicates with the consumer about the debt using that email address and the consumer does not opt out. ABC debt collector returns the debt to the creditor, who places it with EFG debt collector. EFG debt collector communicates with the consumer about the debt using the email address obtained by ABC debt collector, and the consumer does not opt out. EFG debt collector returns the debt to the creditor, who places it with XYZ debt collector. XYZ debt collector communicates with the consumer about the debt using the email address obtained by ABC debt collector and used by EFG debt collector. Assuming that the requirements of § 1006.6(d)(3)(ii) are satisfied, XYZ debt collector may have a bona fide error defense to civil liability for any unintentional third-party disclosure that occurs during that communication because a prior debt collector (*i.e.,* ABC debt collector) obtained the email address in accordance with the procedures in § 1006.6(d)(4)(i) or (ii), the immediately prior debt collector (*i.e.,* EFG debt collector) used the email address to communicate with the consumer about the debt, and the consumer did not opt out of such communications by EFG debt collector.

iii. After obtaining a consumer's email address in accordance with the procedures in § 1006.6(d)(4)(i) or (ii), ABC debt collector communicates with the consumer about the debt using that email address and the consumer does not opt out. ABC debt collector returns the debt to the creditor, who places it with EFG debt collector, who chooses not to communicate with the consumer by email. EFG debt collector returns the debt to the creditor, who places it with XYZ debt collector. XYZ debt collector communicates with the consumer about the debt using the email address obtained by ABC debt collector. Section 1006.6(d)(4)(iii) does not provide XYZ debt collector with a bona fide error defense to civil liability for any unintentional third-party disclosure that occurs during that communication because the immediately prior debt collector (*i.e.,* EFG debt collector) did not use the email address to communicate with the consumer about the debt.

6(d)(5) Procedures for Telephone Numbers for Text Messages

1. *Complete and accurate database.* Section 1006.6(d)(5)(i) and (ii) provides that, for purposes of § 1006.6(d)(3)(i), a debt collector may send a text message to a telephone number if, among other things, the debt collector confirms, using a complete and accurate database, that the telephone number has not been reassigned from the consumer to another user. For purposes of § 1006.6(d)(5)(i) and (ii), the database established by the FCC in *In re Advanced Methods to Target & Eliminate Unlawful Robocalls* (33 FCC Rcd. 12024 (Dec. 12, 2018)) qualifies as a complete and accurate database, as does any commercially available database that is substantially similar in terms of completeness and accuracy to the FCC's database.

Paragraph 6(d)(5)(i)

1. *Response to telephone call by consumer.* Section 1006.6(d)(5)(i) provides that, for purposes of § 1006.6(d)(3)(i), a debt collector may send a text message to a telephone number if, among other things, the consumer used the telephone number to communicate by text message with the debt collector about the debt. Section 1006.6(d)(5)(i) does not apply if the consumer used the telephone number to communicate only by telephone call with the debt collector about the debt.

Paragraph 6(d)(5)(ii)

1. *Prior consent.* See comment 6(d)(4)(i)(B)–1 for guidance concerning how a consumer may provide prior consent directly to a debt collector. See comment 6(d)(4)(i)(B)–2 for guidance concerning when a debt collector may treat a consumer who provides a telephone number for text messages as having consented directly to the debt collector.

6(e) Opt-Out Notice for Electronic Communications or Attempts To Communicate

1. *In general.* Section 1006.6(e) requires a debt collector who communicates or attempts to communicate with a consumer electronically in connection with the collection of a debt using a specific email address, telephone number for text messages, or other electronic-medium address to include in such communication or attempt to communicate a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number. See comment 6(d)(4)(ii)(C)–1 for guidance on the meaning of clear and conspicuous. See comment 6(d)(4)(ii)(C)(*4*)–1 for guidance on the meaning of reasonable and simple. The following examples illustrate the rule.

i. Assume that a debt collector sends a text message to a consumer's mobile telephone number. The text message includes the following instruction: ''Reply STOP to stop texts to this telephone number.'' Assuming that it is readily noticeable and legible to consumers, this instruction constitutes a clear and conspicuous statement describing a reasonable and simple method to opt out of receiving further text messages from the debt collector to that telephone number consistent with § 1006.6(e). No minimum type size is mandated.

ii. Assume that a debt collector sends the consumer an email that includes a hyperlink labeled: ''Click here to opt out of further emails to this email address.'' Assuming that it is readily noticeable and legible to consumers, this instruction constitutes a clear and conspicuous statement describing a reasonable and simple method to opt out of receiving further emails from the debt collector to that email address consistent with § 1006.6(e). No minimum type size is mandated.

iii. Assume that a debt collector sends the consumer an email that includes instructions in a textual format explaining that the consumer may opt out of receiving further email communications from the debt collector to that email address by replying with the word ''stop'' in the subject line. Assuming that it is readily noticeable and legible to consumers, this instruction constitutes a clear and conspicuous statement describing a reasonable and simple method to opt out of receiving further emails from the debt collector to that email address consistent with § 1006.6(e). No minimum type size is mandated.

Section 1006.10—Acquisition of Location Information

10(a) Definition

1. *Location information about deceased consumers.* If a consumer obligated or allegedly obligated to pay any debt is deceased, location information includes the information described in § 1006.10(a) for a person who is authorized to act on behalf of the deceased consumer's estate, as described in § 1006.6(a)(4) and its associated commentary.

10(b) Form and Content of Location Communications

Paragraph 10(b)(2)

1. *Executors, administrators, or personal representatives of a deceased consumer's estate.* Section 1006.10(b)(2) prohibits a debt collector who is communicating with any person other than the consumer for the purpose of acquiring location information about the consumer from stating that the consumer owes any debt. If the consumer obligated or allegedly obligated to pay the debt is deceased, and the debt collector is attempting to locate the person who is authorized to act on behalf of the deceased consumer's estate, the debt collector does not violate § 1006.10(b)(2) by stating that the debt collector is seeking to identify and locate the person who is authorized to act on behalf of the deceased consumer's estate. The debt collector may also state that the debt collector is seeking to identify and locate the person handling the financial affairs of the deceased consumer. For more on executors, administrators, and personal representatives, see § 1006.6(a)(4) and its associated commentary.

Section 1006.14—Harassing, Oppressive, or Abusive Conduct

14(a) In General

1. *General prohibition.* Section 1006.14(a), which implements FDCPA section 806 (15 U.S.C. 1692d), sets forth a general standard that prohibits a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. The general prohibition covers the specific conduct described in § 1006.14(b) through (h), as well as any conduct by the debt collector that is not specifically prohibited by § 1006.14(b) through (h) but the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Such conduct can occur regardless of the communication media the debt collector uses, including in-person interactions, telephone calls, audio recordings, paper documents, mail, email, text messages, social media, or other electronic media, even if not specifically addressed by § 1006.14(b) through (h). The following example illustrates the rule.

i. Assume that, in connection with the collection of a debt, a debt collector sends a consumer numerous, unsolicited text messages per day for several consecutive days. The consumer does not respond. Assume further that the debt collector does not communicate or attempt to communicate with the consumer using any other communication medium and that, by sending the text messages, the debt collector has not violated § 1006.14(b) through (h). Even though the debt collector's conduct does not violate any specific prohibition under § 1006.14(b) through (h), it is likely that the natural consequence of the debt collector's text messages is to harass, oppress, or abuse the person receiving the text messages; when such natural consequence occurs, the debt collector has violated § 1006.14(a) and FDCPA section 806.

2. *Cumulative effect of conduct.* Whether a debt collector's conduct violates the general standard in § 1006.14(a) may depend on the cumulative effect of the debt collector's conduct through any communication medium the debt collector uses, including in-person interactions, telephone calls, audio recordings, paper documents, mail, email, text messages, social media, or other electronic media. Depending on the facts and circumstances, conduct that on its own would violate neither the general prohibition in § 1006.14(a), nor any specific prohibition in § 1006.14(b) through (h), nonetheless may violate § 1006.14(a) when such conduct is evaluated cumulatively with other conduct. The following example illustrates the rule as applied to a debt collector who uses multiple communication media to communicate or attempt to communicate with a person.

i. Assume that a debt collector places seven unanswered telephone calls within seven consecutive days to a consumer in connection with the collection of a debt. During this same period, the debt collector also sends multiple additional unsolicited emails about the debt to the consumer. The consumer does not respond. The frequency of the debt collector's telephone calls during the seven-day period does not exceed the telephone call frequencies described in § 1006.14(b)(2)(i), so the debt collector is presumed to comply with § 1006.14(b)(1). Assume further that no evidence is offered to rebut the presumption of compliance, such that the debt collector complies with § 1006.14(b)(1). Also assume that, for purposes of this illustrative example only, the frequency of the debt collector's emails alone does not violate § 1006.14(a). It nevertheless is likely that the cumulative effect of the debt collector's telephone calls and emails is harassment; when such natural consequence occurs, the debt collector has violated § 1006.14(a) and FDCPA section 806.

14(b) Repeated or Continuous Telephone Calls or Telephone Conversations

1. *Placing telephone calls repeatedly or continuously.* Section 1006.14(b) prohibits a debt collector from, in connection with the collection of a debt, placing telephone calls or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number, and it describes when a debt collector is presumed to have complied with or violated that prohibition. For purposes of § 1006.14(b)(1) through (4), ''placing a telephone call'' includes conveying a ringless voicemail but does not include sending an electronic message (*e.g.,* a text message or an email) that may be received on a mobile telephone.

14(b)(1) In General

1. *Effect of compliance.* A debt collector who complies with § 1006.14(b)(1) and FDCPA section 806(5) (15 U.S.C. 1692d(5)) complies with § 1006.14(a) and FDCPA section 806 (15 U.S.C. 1692d) solely with respect to the frequency of its telephone calls. The debt collector nevertheless could violate § 1006.14(a) and FDCPA section 806 if the natural consequence of another aspect of the debt collector's telephone calls, unrelated to frequency, is to harass, oppress, or abuse any person in connection with the collection of a debt. See also comment 14(a)–2 regarding the cumulative effect of the debt collector's conduct.

2. *Example.* Assume that a debt collector communicates or attempts to communicate with a consumer about a particular debt only by telephone. The debt collector does not exceed either of the telephone call frequencies described in § 1006.14(b)(2)(i). Under § 1006.14(b)(2)(i), the debt collector is presumed to comply with § 1006.14(b)(1). Assume, further, that no evidence is offered to rebut that presumption of compliance. Pursuant to § 1006.14(b)(1), the debt collector complies with § 1006.14(a) and FDCPA section 806, but only with respect to the frequency of its telephone calls. Assume, however, that one of the debt collector's telephone calls results in the debt collector leaving a voicemail that contains obscene language. Even though the debt collector does not violate § 1006.14(a) and FDCPA section 806 based solely on the frequency of the telephone calls, the debt collector's obscene voicemail would violate § 1006.14(a) and (d) and FDCPA section 806 and 806(2) (15 U.S.C. 1692, 1692d(2)).

14(b)(2) Telephone Call Frequencies; Presumptions of Compliance and Violation

Paragraph 14(b)(2)(i)

1. *Presumption of compliance; examples.* Section 1006.14(b)(2)(i) provides that a debt collector is presumed to comply with § 1006.14(b)(1) and FDCPA section 806(5) (15 U.S.C. 1692d(5)) if the debt collector places a telephone call to a particular person in connection with the collection of a particular debt neither: More than seven times within seven consecutive days (§ 1006.14(b)(2)(i)(A)); nor within a period of seven consecutive days after having had a telephone conversation with the person in connection with the collection of such debt (§ 1006.14(b)(2)(i)(B)). For the presumption of compliance to apply, the debt collector's telephone call frequencies must not exceed either prong of § 1006.14(b)(2)(i). The telephone call frequencies are subject to the exclusions in § 1006.14(b)(3). In addition, for purposes of § 1006.14(b)(2)(i)(B), the date of the telephone conversation is the first day of the seven-consecutive-day period. The following examples illustrate the rule.

i. On Wednesday, April 1, a debt collector first attempts to communicate with a consumer in connection with the collection of a credit card debt by placing a telephone call and leaving a limited-content message. Between Thursday, April 2, and Tuesday, April 7, the debt collector places six more telephone calls to the consumer about the debt, all of which go unanswered. As of Tuesday, April 7, the debt collector has placed seven telephone calls to the consumer in connection with the collection of the credit card debt within the period of seven consecutive days that started on Wednesday, April 1. Assume the debt collector does not place any additional telephone calls about the debt until Wednesday, April 8. Under § 1006.14(b)(2)(i), the debt collector is presumed to comply with § 1006.14(b)(1) and FDCPA section 806(5).

ii. On Thursday, August 13, a consumer places a telephone call to, and initiates a telephone conversation with, a debt collector regarding a particular debt. Assume that the debt collector does not place a telephone call to the consumer in connection with the collection of that debt again prior to Thursday, August 20. The debt collector is presumed to comply with § 1006.14(b)(1) and FDCPA section 806(5).

iii. On Tuesday, October 6, a debt collector first attempts to communicate with a particular third party for the purpose of acquiring location information about a consumer by placing a telephone call to that third party. The call is unanswered. The debt collector places up to six more unanswered telephone calls to that third party for the purpose of acquiring location information about the consumer through Monday, October 12. The debt collector is presumed to comply with § 1006.14(b)(1) and FDCPA section 806(5). See § 1006.10(c) for further guidance concerning when a debt collector is prohibited from communicating with a person other than the consumer for the purpose of acquiring location information.

2. *Factors to rebut the presumption of compliance.* To rebut the presumption of compliance, it must be proven that a debt collector who did not place a telephone call in excess of either of the telephone call frequencies described in § 1006.14(b)(2)(i) nevertheless placed a telephone call or engaged a person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number. For purposes of determining whether the presumption of compliance has been rebutted, it is assumed that debt collectors intend the natural consequence of their actions. Comments 14(b)(2)(i)–2.i through .iv provide a non-exhaustive list of factors that may rebut the presumption of compliance. The factors may be considered either individually or in combination with one another (or other non-specified factors). The factors may be viewed in light of any other relevant facts and circumstances and therefore may apply to varying degrees. Factors that may rebut the presumption of compliance include:

i. The frequency and pattern of telephone calls the debt collector places to a person, including the intervals between them. The considerations relevant to this factor include whether the debt collector placed telephone calls to a person in rapid succession (*e.g.,* two unanswered telephone calls to the same telephone number within five minutes) or in a highly concentrated manner (*e.g.,* seven telephone calls to the same telephone number within one day). For example, assume the same facts as in comment 14(b)(2)(i)–1.i, except assume that, after the debt collector placed the first telephone call to the consumer about the credit card debt on Wednesday, April 1, the debt collector placed six additional telephone calls to the consumer about that debt on Friday, April 3. Under § 1006.14(b)(2)(i), the debt collector is presumed to comply with § 1006.14(b)(1) and FDCPA section 806(5), but the high concentration of telephone calls on Friday, April 3, is a factor that may rebut the presumption of compliance.

ii. The frequency and pattern of any voicemails that the debt collector leaves for a person, including the intervals between them. The considerations relevant to this factor include whether the debt collector left voicemails for a person in rapid succession (*e.g.,* two voicemails within five minutes left at the same telephone number) or in a highly concentrated manner (*e.g.,* seven voicemails left at the same telephone number within one day).

iii. The content of a person's prior communications with the debt collector. Among the considerations relevant to this factor are whether the person previously informed the debt collector, for example, that the person did not wish to be contacted again about the particular debt, that the person was refusing to pay the particular debt, or that the person did not owe the particular debt. This factor also includes a consumer's cease communication notification described in § 1006.6(c) and a consumer's request under § 1006.14(h) that the debt collector not use telephone calls to communicate or attempt to communicate with the consumer. The amount of time elapsed since any such prior communications also may be relevant to this factor.

iv. The debt collector's conduct in prior communications or attempts to communicate with the person. Among the considerations relevant to this factor are whether, during a prior communication or attempt to communicate with a person, the debt collector, for example, used obscene, profane, or otherwise abusive language (*see* § 1006.14(d)), used or threatened to use violence or other criminal means to harm the person (*see* § 1006.14(c)), or called at an inconvenient time or place (*see* § 1006.6(b)(1)). The amount of time elapsed since any such prior communications or attempts to communicate also may be relevant to this factor.

3. *Misdirected telephone calls.* Section 1006.14(b)(2)(i) provides that a debt collector is presumed to comply with § 1006.14(b)(1) and FDCPA section 806(5) (15 U.S.C. 1692d(5)) if the debt collector's telephone call frequencies do not exceed the telephone call frequencies described in § 1006.14(b)(2)(i). If, within a period of seven consecutive days, a debt collector attempts to communicate with a particular person by placing telephone calls to a particular telephone number, and the debt collector then learns that the telephone number is not that person's number, the telephone calls that the debt collector made to that number are not considered to have been telephone calls placed to that person during that seven-consecutive-day period for purposes of § 1006.14(b)(2)(i). For example:

i. Assume that a debt collector first attempts to communicate with a consumer on Monday, and again on Wednesday, by placing one unanswered telephone call to a particular telephone number on each of those days. On Thursday, the debt collector learns that the telephone number belongs to someone else and that the consumer does not answer telephone calls to that number. For purposes of § 1006.14(b)(2)(i), the debt collector has not yet placed any telephone calls to that consumer during that seven-consecutive-day period.

Paragraph 14(b)(2)(ii)

1. *Presumption of a violation; examples.* Section 1006.14(b)(2)(ii) provides that a debt collector is presumed to violate § 1006.14(b)(1) and FDCPA section 806(5) (15 U.S.C. 1692d(5)) if the debt collector places a telephone call to a particular person in connection with the collection of a particular debt in excess of either of the telephone call frequencies described in § 1006.14(b)(2)(i). The telephone call frequencies are subject to the exclusions in § 1006.14(b)(3). The following examples illustrate the rule.

i. On Wednesday, April 1, a debt collector first attempts to communicate with a consumer in connection with the collection of a mortgage debt by placing a telephone call and leaving a limited-content message. On each of the next three business days (*i.e.,* on Thursday, April 2, Friday, April 3, and Monday, April 6), the debt collector places two additional telephone calls to the consumer about the debt, all of which go unanswered. On Tuesday, April 7, the debt collector places an additional telephone call to the consumer about the debt. The debt collector has placed a total of eight telephone calls to the consumer about the debt during the seven-day period starting Wednesday, April 1. None of the calls was subject to the exclusions in § 1006.14(b)(3). The debt collector is presumed to violate § 1006.14(b)(1) and FDCPA section 806(5).

ii. On Tuesday, August 11, a debt collector first attempts to communicate with a consumer in connection with the collection of a credit card debt by placing a telephone call to the consumer that the consumer does not answer. On Friday, August 14, the debt collector again places a telephone call to the consumer and has a telephone conversation with the consumer in connection with the collection of the debt. Subject to the exclusions in § 1006.14(b)(3), the debt collector is presumed to violate § 1006.14(b)(1) and FDCPA section 806(5) if the debt collector places a telephone call to the consumer in connection with the collection of that debt again prior to Friday, August 21.

2. *Factors to rebut the presumption of a violation.* To rebut the presumption of a violation, it must be proven that a debt collector who placed telephone calls in excess of either of the frequencies described in § 1006.14(b)(2)(i) nevertheless did not place a telephone call or engage any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number. For purposes of determining whether the presumption of a violation has been rebutted, it is assumed that debt collectors intend the natural consequence of their actions. Comments 14(b)(2)(ii)–2.i through .iv provide a non-exhaustive list of factors that may rebut the presumption of a violation. The factors may be considered either individually or in combination with one another (or other non-specified factors). The factors may be viewed in light of any other relevant facts and circumstances and therefore may apply to varying degrees. Factors that may rebut the presumption of a violation include:

i. Whether a debt collector placed a telephone call to comply with, or as required by, applicable law. For example, assume the same facts as in comment 14(b)(2)(ii)–1.i, except assume that the debt collector placed the final telephone call of the seven-consecutive-day period to inform the consumer of available loss mitigation options in compliance with the Bureau's mortgage servicing rules under Regulation X, 12 CFR 1024.39(a). The debt collector's compliance with applicable law is a factor that may rebut the presumption of a violation.

ii. Whether a debt collector placed a telephone call that was directly related to active litigation involving the collection of a particular debt. For example, assume the same facts as in comment 14(b)(2)(ii)–1.ii, except assume that, after the debt collector and the consumer had a telephone conversation about the credit card debt on Friday, August 14, the debt collector placed another telephone call to the consumer before Friday, August 21, to complete a court-ordered communication with the consumer about the debt, or as part of negotiations to settle active debt collection litigation regarding the debt. The direct relationship between the additional telephone call and the active debt collection litigation is a factor that may rebut the presumption of a violation.

iii. Whether a debt collector placed a telephone call in response to a consumer's request for additional information when the exclusion in § 1006.14(b)(3)(i) for telephone calls made with the consumer's prior consent given directly to the debt collector did not apply. For example, assume the same facts as in comment 14(b)(2)(ii)–1.ii, except assume that, during the telephone conversation about the credit card debt on Friday, August 14, the consumer told the debt collector that the consumer would like more information about the amount of the debt but that the consumer could not talk at that moment. The consumer ended the telephone call before the debt collector could seek prior consent under § 1006.14(b)(3)(i) to call back with the requested information. The debt collector placed another telephone call to the consumer prior to Friday, August 21, to provide the requested information. The fact that the debt collector placed the additional telephone call in response to the consumer's request is a factor that may rebut the presumption of a violation.

iv. Whether a debt collector placed a telephone call to convey information to the consumer that, as shown through evidence, would provide the consumer with an opportunity to avoid a demonstrably negative effect relating to the collection of the particular debt, where the negative effect was not in the debt collector's control, and where time was of the essence. For example, in each of the following three scenarios, assume the same facts as in comment 14(b)(2)(ii)–1.ii, and also assume that:

A. During the telephone conversation about the credit card debt on Friday, August 14, the debt collector and the consumer engaged in a lengthy conversation regarding settlement terms, and, toward the end of the conversation, the telephone call dropped. The debt collector immediately placed an additional telephone call to the consumer to complete the conversation. The fact that the debt collector placed the telephone call to permit the debt collector and the consumer to complete the conversation about settlement terms, which provided the consumer an opportunity to avoid a demonstrably negative effect that was not in the debt collector's control (*i.e.,* having to repeat a substantive conversation with a potentially different representative of the debt collector) and where time was of the essence (*i.e.,* to prevent the delay of settlement negotiations by seven days) is a factor that may rebut the presumption of a violation.

B. The consumer previously entered into a payment plan with the debt collector regarding the credit card debt. The conditions for the payment plan were set by the creditor, and among those conditions is that only the creditor, in its sole discretion, may approve waivers of late fees. On Monday, August 17, the debt collector learned that the consumer's payment failed to process, and the applicable grace period was set to expire on Tuesday, August 18. The debt collector placed a telephone call to the consumer on Monday to remind the consumer that a late fee would be applied by the creditor for non-payment unless the consumer made the payment by the next day. The fact that the debt collector placed the telephone call to alert the consumer to the pending penalty, giving the consumer an opportunity to avoid a demonstrably negative effect that was not in the debt collector's control and where time was of the essence, is a factor that may rebut the presumption of a violation.

C. On Monday, August 17, the debt collector placed a telephone call to the consumer to offer the consumer a ''one-time only'' discount on the payment of the credit card debt. The debt collector stated that the offer would expire the next day when, in fact, the debt collector could have offered the same or a similar discount through the end of August. Because the negative effect on the consumer was in the debt collector's control, the discount offer is not a factor that may rebut the presumption of a violation.

14(b)(3) Certain Telephone Calls Excluded From Telephone Call Frequencies

Paragraph 14(b)(3)(i)

1. *Prior consent.* Section 1006.14(b)(3)(i) excludes from the telephone call frequencies described in § 1006.14(b)(2) certain telephone calls placed to a person who gives prior consent. See § 1006.6(b)(4)(i) and its associated commentary for guidance about giving prior consent directly to a debt collector. Nothing in § 1006.14(b)(3)(i) regarding prior consent for telephone call frequencies permits a debt collector to communicate, or attempt to communicate, with a consumer as prohibited by §§ 1006.6(b) and 1006.14(h).

2. *Duration of prior consent.* For purposes of § 1006.14(b)(3)(i), if a person gives prior consent for additional telephone calls about a particular debt directly to a debt collector, any telephone calls that the debt collector thereafter places to the person about that particular debt do not count toward the telephone call frequencies described in § 1006.14(b)(2) for a period of up to seven consecutive days. A person's prior consent may expire before the conclusion of the seven-consecutive-day period. A person's prior consent expires when any of the following occurs: (1) The person consented to the additional telephone calls for a shorter time period and such time period has ended; (2) the person revokes such prior consent; or (3) the debt collector has a telephone conversation with the person regarding the particular debt.

3. *Examples.* The following examples illustrate how § 1006.14(b)(3)(i) applies:

i. On Friday, April 3, a debt collector places a telephone call to a consumer. During the ensuing telephone conversation in connection with the collection of a debt, the consumer tells the debt collector to ''call back on Monday.'' Absent an exception, under § 1006.14(b)(2)(ii), the debt collector would be presumed to violate § 1006.14(b)(1) and FDCPA section 806(5) (15 U.S.C. 1692d(5)) if the debt collector called the consumer on Monday, April 6, because the additional telephone call would exceed the frequency described in § 1006.14(b)(2)(i)(B). Under § 1006.14(b)(3)(i), however, in the scenario described (and absent any other facts), the debt collector could, pursuant to the consumer's prior consent, place telephone calls to the consumer on Monday, April 6, and not lose a presumption of compliance with § 1006.14(b)(1) and FDCPA section 806(5).

ii. Assume the same facts as in the preceding example, except that the consumer does not specify a particular day the debt collector may call back. Assume further that, on Monday, April 6, the debt collector calls the consumer back and has a telephone conversation with the consumer. The exception in § 1006.14(b)(3)(i) does not apply to subsequent telephone calls placed by the debt collector to the consumer, absent additional prior consent from the consumer. For example, if the debt collector, without additional prior consent, placed a telephone call to the consumer on Wednesday, April 8, that telephone call would count toward the telephone call frequencies described in § 1006.14(b)(2), and, pursuant to § 1006.14(b)(2)(ii), the debt collector would be presumed to violate § 1006.14(b)(1) and FDCPA section 806(5).

iii. Between Monday, June 1, and Wednesday, June 3, a debt collector places three unanswered telephone calls to a consumer in connection with the collection of a debt. Also on Wednesday, June 3, the debt collector sends the consumer an email message in connection with the collection of the debt. The consumer responds by email on Thursday, June 4, requesting additional information about available repayment options related to the debt and writes, ''You can call me at 123–456–7891 to discuss the repayment options.'' The debt collector receives the consumer's prior consent by email on Thursday, June 4, and thereafter places eight unanswered telephone calls to the consumer between Monday, June 8, and Wednesday, June 10. Because the consumer provided prior consent directly to the debt collector, the exclusion in § 1006.14(b)(3)(i) applies to the eight telephone calls placed by the debt collector during the seven-consecutive-day period that began with receipt of the consumer's consent on Thursday, June 4. Those telephone calls therefore do not count toward the telephone call frequencies described in § 1006.14(b)(2)(i). However, any telephone calls placed by the debt collector after the end of the seven-day period (*i.e.,* on or after Thursday, June 11) would count toward the telephone call frequencies described in § 1006.14(b)(2)(i), unless the consumer again gives prior consent directly to the debt collector.

Paragraph 14(b)(3)(ii)

1. *Unconnected telephone calls.* Section 1006.14(b)(3)(ii) provides that telephone calls placed to a person do not count toward the telephone call frequencies described in § 1006.14(b)(2)(i) if they do not connect to the dialed number. A debt collector's telephone call does not connect to the dialed number if, for example, the debt collector receives a busy signal or an indication that the dialed number is not in service. Conversely, a telephone call placed to a person counts toward the telephone call frequencies described in § 1006.14(b)(2)(i) if it connects to the dialed number, unless an exclusion in § 1006.14(b)(3) applies. A debt collector's telephone call connects to the dialed number if, for example, the telephone call is answered, even if it subsequently drops; if the telephone call causes a telephone to ring at the dialed number but no one answers it; or if the telephone call is connected to a voicemail or other recorded message, even if it does not cause a telephone to ring and even if the debt collector is unable to leave a voicemail.

14(b)(4) Definition

1. *Particular debt.* Section 1006.14(b)(2) establishes presumptions of compliance and violation with respect to § 1006.14(b)(1) and FDCPA section 806(5) (15 U.S.C. 1692d(5)) based on the frequency with which a debt collector places telephone calls to, or engages in telephone conversation with, a person in connection with the collection of a particular debt. Section 1006.14(b)(4) provides that, except in the case of student loan debt, the term particular debt means each of a consumer's debts in collection. For student loan debt, § 1006.14(b)(4) provides that the term particular debt means all student loan debts that a consumer owes or allegedly owes that were serviced under a single account number at the time the debts were obtained by a debt collector.

i. *Placing a telephone call in connection with the collection of a particular debt.* Under § 1006.14(b)(2)(i)(A), if a debt collector places a telephone call to a person and initiates a conversation or leaves a voicemail about one particular debt, the debt collector counts the telephone call as a telephone call in connection with the collection of the particular debt, subject to the exclusions in § 1006.14(b)(3). If a debt collector places a telephone call to a person and initiates a conversation or leaves a voicemail about more than one particular debt, the debt collector counts the telephone call as a telephone call in connection with the collection of each such particular debt, subject to the exclusions in § 1006.14(b)(3). If a debt collector places a telephone call to a person but neither initiates a conversation about a particular debt nor leaves a voicemail that refers to a particular debt, or if the debt collector's telephone call is unanswered, the debt collector counts the telephone call as a telephone call in connection with the collection of at least one particular debt, unless an exclusion in § 1006.14(b)(3) applies.

ii. *Engaging in a telephone conversation in connection with the collection of a particular debt.* Under § 1006.14(b)(2)(i)(B), if a debt collector and a person discuss one particular debt during a telephone conversation, the debt collector has engaged in a telephone conversation in connection with the collection of the particular debt, regardless of which party initiated the discussion about the particular debt, subject to the exclusions in § 1006.14(b)(3). If a debt collector and a person discuss more than one particular debt during a telephone conversation, the debt collector has engaged in a telephone conversation in connection with the collection of each such particular debt, regardless of which party initiated the discussion about the particular debts, subject to the exclusions in § 1006.14(b)(3). If no particular debt is discussed during a telephone conversation between a debt collector and a person, the debt collector counts the conversation as a telephone conversation in connection with the collection of at least one particular debt, unless an exclusion in § 1006.14(b)(3) applies.

2. *Examples.* The following examples illustrate the rule.

i. A debt collector is attempting to collect a medical debt and two credit card debts (denominated A and B for this example) from the same consumer. Under § 1006.14(b)(2)(i)(A), a debt collector may count an unanswered telephone call as one telephone call placed toward any one particular debt, even if the debt collector intended to discuss more than one particular debt had the telephone call resulted in a telephone conversation. Therefore, if the debt collector, within a period of seven consecutive days, places a total of 21 unanswered telephone calls, seven of which the debt collector counted as unanswered telephone calls to the consumer in connection with the collection of the medical debt, seven of which the debt collector counted as unanswered telephone calls to the consumer in connection with the collection of credit card debt A, and seven of which the debt collector counted as unanswered telephone calls to the consumer in connection with the collection of credit card debt B, the debt collector is presumed to comply with § 1006.14(b)(1) and FDCPA section 806(5), even if, for example, the debt collector intended to discuss both credit card debt A and credit card debt B had any of the telephone calls with respect to the credit card debts resulted in a telephone conversation.

ii. A debt collector is attempting to collect a medical debt and a credit card debt from the same consumer. The debt collector places a telephone call to the consumer, intending to discuss both particular debts, but the consumer does not answer, and the telephone call goes to voicemail. The debt collector leaves a limited-content message, as defined in § 1006.2(j). Because the limited-content message does not specifically refer to any particular debt, under § 1006.14(b)(2)(i)(A), a debt collector may count the voicemail as one telephone call placed toward either of the particular debts, even though the debt collector intended to discuss both particular debts if the telephone call had resulted in a telephone conversation.

iii. A debt collector is attempting to collect a medical debt and a credit card debt from the same consumer. On Monday, November 9, the debt collector places a telephone call to, and engages in a telephone conversation with, the consumer solely in connection with the collection of the medical debt. The debt collector does not place any telephone calls to the consumer in connection with the collection of the credit card debt. Regarding the medical debt, under § 1006.14(b)(2)(i)(A) and (B) respectively, the debt collector has placed a telephone call to, and has and engaged in a telephone conversation with, the consumer in connection with the collection of the particular debt, unless an exclusion in § 1006.14(b)(3) applies. Regarding the credit card debt, under § 1006.14(b)(2)(i)(A) and (B) respectively, the debt collector has neither placed a telephone call to, nor engaged in a telephone conversation with, the consumer in connection with the collection of the particular debt.

iv. Assume the same facts as in the preceding example, except that on Monday, November 9, the debt collector engages in a telephone conversation with the consumer in connection with the collection of both the medical debt and the credit card debt. Under § 1006.14(b)(2)(i)(A) and (B) respectively, the debt collector has placed a telephone call to, and has engaged in a telephone conversation with, the consumer in connection with the collection of both the medical debt and the credit card debt, unless an exclusion in § 1006.14(b)(3) applies.

v. A debt collector is attempting to collect a medical debt and a credit card debt from the same consumer. Beginning on Monday, November 9, and through Wednesday, November 11, the debt collector places two unanswered telephone calls to the consumer which the debt collector counts as telephone calls in connection with the collection of the medical debt, and four unanswered telephone calls to the consumer which the debt collector counts as telephone calls in connection with the collection of the credit card debt. On Thursday, November 12, the debt collector places a telephone call to, and engages in a general telephone conversation with, the consumer, but the debt collector and the consumer do not discuss either particular debt. Under § 1006.14(b)(2)(i)(A) and (B) respectively, the debt collector may count the November 12 telephone call and ensuing conversation toward either the medical debt or the credit card debt. For example, if the debt collector counts the November 12 telephone call and ensuing conversation toward the collection of only the medical debt, then, during this time period, the debt collector has placed three telephone calls and has had one conversation in connection with the collection of the medical debt, and has placed four telephone calls and has had no conversations in connection with the collection of the credit card debt.

vi. A debt collector is attempting to collect a medical debt and a credit card debt from the same consumer. On Monday, November 9, the debt collector places a telephone call to, and initiates a telephone conversation with, the consumer about the collection of the medical debt. The consumer states that the consumer does not want to discuss the medical debt, and instead initiates a discussion about the credit card debt. Under § 1006.14(b)(2)(i)(A) and (B) respectively, the debt collector has both placed a telephone call to, and engaged in a telephone conversation with, the consumer in connection with the collection of the medical debt, even though the consumer was unwilling to engage in the discussion initiated by the debt collector regarding the medical debt. Under § 1006.14(b)(2)(i)(A) and (B) respectively, the debt collector has not placed a telephone call to the consumer in connection with the credit card debt, but the debt collector has engaged in a telephone conversation in connection with the collection of the credit card debt, even though the consumer, not the debt collector, initiated the discussion about the credit card debt.

vii. A debt collector is attempting to collect three student loan debts that were serviced under a single account number at the time that they were obtained by a debt collector and that are owed or allegedly owed by the same consumer. All three debts are treated as a single debt for purposes of § 1006.14(b)(2). The debt collector is presumed to comply with § 1006.14(b)(1) and FDCPA section 806(5) if the debt collector places seven or fewer telephone calls within seven consecutive days to the consumer in connection with the collection of the three student loan debts, and the debt collector does not place a telephone call within a period of seven consecutive days after having had a telephone conversation with the consumer in connection with the collection of any one of the three student loan debts, unless an exclusion in § 1006.14(b)(3) applies.

14(h) Prohibited Communication Media

14(h)(1) In General

1. *Communication media designations.* Section 1006.14(h)(1) prohibits a debt collector from communicating or attempting to communicate with a person in connection with the collection of any debt through a medium of communication if the person has requested that the debt collector not use that medium to communicate with the person.

The debt collector may ask follow-up questions regarding preferred communication media to clarify statements by the person. For examples of communication media, see comment 2(d)–1.

2. *Specific address or telephone number.* Within a medium of communication, a person may request that a debt collector not use a specific address or telephone number. For example, if a person has two mobile telephone numbers, the person may request that the debt collector not use one or both mobile telephone numbers.

3. *Examples.* The following examples illustrate the prohibition in § 1006.14(h)(1).

i. Assume that a person tells a debt collector to ''stop calling'' the person. Based on these facts, the person has requested that the debt collector not use telephone calls to communicate with the person and, thereafter, § 1006.14(h)(1) prohibits the debt collector from communicating or attempting to communicate with the person through telephone calls.

ii. Assume that, in response to receipt of either the opt-out procedures described in § 1006.6(d)(4)(ii) or the opt-out notice in § 1006.6(e), a consumer requests to opt out of receiving electronic communications from a debt collector at a particular email address or telephone number. Based on these facts, the consumer has requested that the debt collector not use that email address or telephone number to electronically communicate with the consumer for any debt and, thereafter, § 1006.14(h)(1) prohibits the debt collector from electronically communicating or attempting to communicate with the consumer through that email address or telephone number.

14(h)(2) Exceptions

1. *Legally required communication media.* Under § 1006.14(h)(2)(iii), if otherwise required by applicable law, a debt collector may communicate or attempt to communicate with a person in connection with the collection of any debt through a medium of communication that the person has requested the debt collector not use to communicate with the person. For example, assume that a debt collector who is also a mortgage servicer subject to the periodic statement requirement for residential mortgage loans under Regulation Z, 12 CFR 1026.41, is engaging in debt collection communications with a person about the person's residential mortgage loan. The person tells the debt collector to stop mailing letters to the person, and the person has not consented to receive statements electronically in accordance with 12 CFR 1026.41(c). Although the person has requested that the debt collector not use mail to communicate with the person, § 1006.14(h)(2)(iii) permits the debt collector to mail the person periodic statements, because the periodic statements are required by applicable law.

Section 1006.18—False, Deceptive, or Misleading Representations or Means

18(d) False Representations or Deceptive Means

1. *Social media.* Under § 1006.18(d), a debt collector may not use any false representation or deceptive means to collect any debt or to obtain information concerning a consumer. In the social media context, the following examples illustrate the rule:

i. Assume that a debt collector sends a private message, in connection with the collection of a debt, requesting to be added as one of the consumer's contacts on a social media platform marketed for social or professional networking purposes. A debt collector makes a false representation or implication if the debt collector does not disclose his or her identity as a debt collector in the request.

ii. Assume that a debt collector communicates privately with a friend or coworker of a consumer on a social media platform, for the purpose of acquiring location information about the consumer. Pursuant to § 1006.10(b)(1), the debt collector must identify himself or herself individually by name when communicating for the purpose of acquiring location information. To avoid violating § 1006.18(d), the debt collector must communicate using a profile that accurately identifies the debt collector's individual name. (But see § 1006.18(f) and its associated commentary regarding use of assumed names.) The debt collector also must comply with the other applicable requirements for obtaining location information in § 1006.10 (*e.g.,* with respect to stating that the debt collector is confirming or correcting location information concerning the consumer and, only if expressly requested, identifying the name of the debt collector's employer), for communicating with third parties in § 1006.6(d)(1), and for communicating through social media in § 1006.22(f)(4).

18(e) Disclosures Required

1. *Communication.* A limited-content message, as defined in § 1006.2(j), is not a communication, as that term is defined in § 1006.2(d). Thus, a debt collector who leaves only a limited-content message for a consumer need not make the disclosures required by § 1006.18(e)(1) and (2). However, if a debt collector leaves a voicemail message for a consumer that includes content in addition to the content described in § 1006.2(j)(1) and (2) and that directly or indirectly conveys any information regarding a debt, the voicemail message is a communication, and the debt collector is required to make the § 1006.18(e) disclosures. See the commentary to § 1006.2(d) and (j) for additional clarification regarding the definitions of communication and limited-content message.

18(e)(1) Initial Communications

1. *Example.* A debt collector must make the disclosure required by § 1006.18(e)(1) in the debt collector's initial communication with a consumer, regardless of the medium of communication and regardless of whether the debt collector or the consumer initiated the communication. For example, assume that a debt collector who has not previously communicated with a consumer attempts to communicate with the consumer by leaving a limited-content message, as defined in § 1006.2(j). After listening to the debt collector's limited-content message, the consumer initiates a telephone call to, and communicates with, the debt collector. Pursuant to § 1006.18(e)(1), because the consumer-initiated call is the initial communication between the debt collector and the consumer, the debt collector must disclose to the consumer during that telephone call that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.

18(e)(4) Translated Disclosures

1. *Example.* Section 1006.18(e)(4) provides that a debt collector must make the disclosures required by § 1006.18(e)(1) and (2) in the same language or languages used for the rest of the communication in which the disclosures are conveyed. The following example illustrates the rule:

i. ABC debt collector is collecting a debt. ABC debt collector's initial communication with the consumer takes place in Spanish. Section 1006.18(e)(4) requires ABC debt collector to provide in Spanish the disclosure required by § 1006.18(e)(1). Thereafter, ABC debt collector has a communication with the consumer that takes place partly in English and partly in Spanish. During this communication, the debt collector must provide the disclosure required by § 1006.18(e)(2) in both English and Spanish.

18(f) Assumed Names

1. *Readily identifiable by the employer.* Section 1006.18(f) provides, in part, that § 1006.18 does not prohibit a debt collector's employee from using an assumed name when communicating or attempting to communicate with a person, provided that the debt collector can readily identify any employee using an assumed name. A debt collector may use any method of managing assumed names that enables the debt collector to determine the true identity of any employee using an assumed name. For example, a debt collector may require an employee to use the same assumed name when communicating or attempting to communicate with any person and may prohibit any other employee from using the same assumed name.

Section 1006.22—Unfair or Unconscionable Means

22(f) Restrictions on Use of Certain Media

Paragraph 22(f)(2)

1. *Language or symbol.* Section 1006.22(f)(2) provides, in relevant part, that a debt collector must not use any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by mail. For purposes of § 1006.22(f)(2), the phrase ''language or symbol'' does not include language and symbols that facilitate communications by mail, such as: The debtor's name and address; postage; language such as ''forwarding and address correction requested''; and the United States Postal Service's Intelligent Mail barcode.

Paragraph 22(f)(3)

1. *Email addresses described in § 1006.6(d)(4).* Section 1006.22(f)(3) generally prohibits a debt collector from communicating or attempting 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. The prohibition does not apply if the debt collector sends the email to an email address described in § 1006.6(d)(4)(i) or (iii), which specifically contemplate debt collectors sending emails to any email address—including an email address that a debt collector knows is employer provided—if the consumer has used the email address to communicate with the debt collector about a debt (§ 1006.6(d)(4)(i)(A)), has provided prior consent directly to the debt collector to use the email address (§ 1006.6(d)(4)(i)(B)), or has obtained the email address from a prior debt collector who satisfied either § 1006.6(d)(4)(i) or (ii). A debt collector who sends an email to an email address described in § 1006.6(d)(4)(ii) complies with the prohibition in § 1006.22(f)(3) because the procedures in § 1006.6(d)(4)(ii) do not permit debt collectors to send emails to email addresses that the debt collector knows are employer provided.

Paragraph 22(f)(4)

1. *Social media.* Section 1006.22(f)(4) prohibits a debt collector from communicating or attempting to communicate with a person in connection with the collection of a debt through a social media platform if the communication or attempt to communicate is viewable by the general public or the person's social media contacts. For example, § 1006.22(f)(4) prohibits a debt collector from posting, in connection with the collection of a debt, any message for a person on a social media web page if that web page is viewable by the general public or the person's social media contacts. Section 1006.22(f)(4) does not prohibit a debt collector from sending a message to a person if the message is not viewable by the general public or the person's social media contacts. Section 1006.6(b) or § 1006.14(h) nonetheless may prohibit the debt collector from sending such a message, and a debt collector who communicates by sending such a message about the debt to the wrong person violates § 1006.6(d)(1). See also comment 18(d)–1 with respect to communications and attempts to communicate with consumers and third parties on social media platforms.

Section 1006.30—Other Prohibited Practices

30(b) Prohibition on the Sale, Transfer for Consideration, or Placement for Collection of Certain Debts

30(b)(1) In General

1. *Transfer for consideration.* Section 1006.30(b)(1) prohibits, among other things, a debt collector from transferring for consideration a debt that has been paid or settled or discharged in bankruptcy. A debt collector transfers a debt for consideration when the debt collector receives or expects to receive compensation for the transfer of the debt. A debt collector does not transfer a debt for consideration when the debt collector sends information about the debt, as opposed to the debt itself, to another party. For example, a debt collector does not transfer a debt for consideration when the debt collector sends a file with data about the debt to another person for analytics, ''scrubbing,'' or archiving. A debt collector also does not transfer a debt for consideration when the debt collector reports to a credit reporting agency information that a debt has been paid or settled or discharged in bankruptcy.

2. *Debt that resulted from identity theft.* Section 615(f)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681m(f)(1)) states that no person shall sell, transfer for consideration, or place for collection a debt if such person has been notified under section 605B of the Fair Credit Reporting Act (15 U.S.C. 1681c–2) that the debt has resulted from identity theft. Nothing in § 1006.30(b)(1) alters a debt collector's obligation to comply with the prohibition set forth in section 615(f)(1) of the Fair Credit Reporting Act.

30(b)(2) Exceptions

30(b)(2)(i) In General

Paragraph 30(b)(2)(i)(A)

1. *In general.* Under § 1006.30(b)(2)(i)(A), a debt collector who is collecting a debt described in § 1006.30(b)(1) may transfer the debt to the debt's owner. However, unless another exception under § 1006.30(b)(2) applies, the debt collector may not transfer the debt or the right to collect the debt to another entity on behalf of the debt owner.

Section 1006.38—Disputes and Requests for Original-Creditor Information

1. *In writing.* Section 1006.38 contains requirements related to a dispute or request for the name and address of the original creditor timely submitted in writing by the consumer. A consumer has disputed the debt or requested the name and address of the original creditor in writing for purposes of § 1006.38(c) or (d)(2) if the consumer, for example:

i. Mails the written dispute or request to the debt collector;

ii. Provides the dispute or request to the debt collector using a medium of electronic communication through which the debt collector accepts electronic communications from consumers, such as an email address or a website portal; or

iii. Delivers the written dispute or request in person or by courier to the debt collector.

2. *Interpretation of the E-SIGN Act.* Comment 38–1.ii constitutes the Bureau's interpretation of section 101 of the E-SIGN Act as applied to section 809(b) of the FDCPA. Under this interpretation, section 101(a) of the E-SIGN Act enables a consumer to satisfy through an electronic request the requirement in section 809(b) of the FDCPA that the consumer's notification of the debt collector be ''in writing.'' Further, because the consumer may only use a medium of electronic communication through which a debt collector accepts electronic communications from consumers, section 101(b) of the E-SIGN Act is not contravened.

38(a) Definitions

38(a)(1) Duplicative Dispute

1. *Substantially the same.* Section 1006.38(a)(1) provides that a dispute is a duplicative dispute if, among other things, the dispute is substantially the same as a dispute previously submitted by the consumer in writing within the validation period for which the debt collector has already satisfied the requirements of § 1006.38(d)(2)(i). A later dispute can be substantially the same as an earlier dispute even if the later dispute does not repeat verbatim the language of the earlier dispute.

2. *New and material information.* Section 1006.38(a)(1) provides that a dispute that is substantially the same as a dispute previously submitted by the consumer in writing within the validation period for which the debt collector has already satisfied the requirements of § 1006.38(d)(2)(i) is not a duplicative dispute if the consumer provides new and material information to support the dispute. Information is new if the consumer did not provide the information when submitting an earlier dispute. Information is material if it is reasonably likely to change the verification the debt collector provided or would have provided in response to the earlier dispute. The following example illustrates the rule:

i. ABC debt collector is collecting a debt from a consumer and sends the consumer a validation notice. In response, the consumer submits a written dispute to ABC debt collector within the validation period asserting that the consumer does not owe the debt. The consumer does not include any information in support of the dispute. Pursuant to § 1006.38(d)(2)(i), ABC debt collector provides the consumer a copy of verification of the debt. The consumer then sends a cancelled check showing the consumer paid the debt. The cancelled check is new and material information.

38(d) Disputes

38(d)(2) Response to Disputes

Paragraph 38(d)(2)(ii)

1. *Duplicative dispute notice.* Section 1006.38(d)(2)(ii) provides that, in the case of a dispute that a debt collector reasonably determines is a duplicative dispute, the debt collector must cease collection of the debt, or any disputed portion of the debt, until the debt collector either notifies the consumer that the dispute is duplicative (§ 1006.38(d)(2)(ii)(A)) or provides a copy either of verification of the debt or of a judgment to the consumer (§ 1006.38(d)(2)(ii)(B)). If the debt collector notifies the consumer that the dispute is duplicative, § 1006.38(d)(2)(ii)(A) requires that the notice provide a brief statement of the reasons for the debt collector's determination that the dispute is duplicative and refer the consumer to the debt collector's response to the earlier dispute. A debt collector complies with the requirement to provide a brief statement of the reasons for its determination if the notice states that the dispute is substantially the same as an earlier dispute submitted by the consumer and the consumer has not included any new and material information in support of the earlier dispute. A debt collector complies with the requirement to refer the consumer to the debt collector's response to the earlier dispute if the notice states that the debt collector responded to the earlier dispute and provides the date of that response.

Section 1006.42—Sending Required Disclosures

42(a) Sending Required Disclosures

42(a)(1) In General

1. *Relevant factors.* Section 1006.42(a)(1) provides, in part, that a debt collector who sends disclosures required by the Act or this part in writing or electronically must, among other things, do so in a manner that is reasonably expected to provide actual notice. In determining whether a debt collector has complied with this requirement, relevant factors include whether the debt collector:

i. Identified the purpose of the communication by including, in the subject line of an electronic communication transmitting the disclosure, the name of the creditor to whom the debt currently is owed or allegedly is owed and one additional piece of information identifying the debt, other than the amount, such as a truncated account number; the name of the original creditor; the name of any store brand associated with the debt; the date of sale of a product or service giving rise to the debt; the physical address of service; and the billing or mailing address on the account;

ii. Permitted receipt of notifications of undeliverability from communications providers, monitored for any such notifications, and treated any such notifications as precluding a reasonable expectation of actual notice for that delivery attempt; and

iii. Identified itself as the sender of the communication by including a business name that the consumer would be likely to recognize, such as the name included in the notice described in § 1006.6(d)(4)(ii)(C), or the name that the debt collector has used in a prior limited-content message left for the consumer or in an email message sent to the consumer.

2. *Notice of undeliverability.* A debt collector who sends a required disclosure in writing or electronically and who receives a notice that the disclosure was not delivered has not sent the disclosure in a manner that is reasonably expected to provide actual notice under § 1006.42(a)(1).

3. *Safe harbor for notices sent by mail.* Subject to comment 42(a)(1)–2, a debt collector satisfies § 1006.42(a)(1) if the debt collector mails a printed copy of a disclosure to the consumer's last known address, unless the debt collector, at the time of mailing, knows or should know that the consumer does not currently reside at, or receive mail at, that location.

4. *Effect of consumer opt out.* If a consumer has opted out of debt collection communications to a particular email address or telephone number by, for example, following the instructions provided pursuant to § 1006.6(e), then a debt collector cannot use that email address or telephone number to send required disclosures.

Subpart C—[Reserved]

Subpart D—Miscellaneous

Section 1006.100—Record Retention

1. *Three-year retention period.* Section 1006.100 requires a debt collector to maintain records that are evidence of compliance or noncompliance with the FDCPA and this part starting on the date that the debt collector begins collection activity on a debt until three years after the debt collector's last collection activity on the debt or, in the case of telephone call recordings, until three years after the dates of the telephone calls. Nothing in § 1006.100 prohibits a debt collector from retaining records that are evidence of compliance or noncompliance with the FDCPA and this part for more than three years after the applicable date.

100(a) In General

1. *Records that evidence compliance.* Section 1006.100(a) provides, in part, that a debt collector must retain records that are evidence of compliance or noncompliance with the FDCPA and this part. Thus, under § 1006.100(a), a debt collector must retain records that evidence that the debt collector performed the actions and made the disclosures required by the FDCPA and this part, as well as records that evidence that the debt collector refrained from conduct prohibited by the FDCPA and this part. If a record is of a type that could evidence compliance or noncompliance depending on the conduct of the debt collector that is revealed within the record, then the record is one that is evidence of compliance or noncompliance and the debt collector must retain it. Such records include, but are not limited to, records that evidence that the debt collector's communications and attempts to communicate in connection with the collection of a debt complied (or did not comply) with the FDCPA and this part. For example, a debt collector must retain:

i. Telephone call logs as evidence of compliance or noncompliance with the prohibition against harassing telephone calls in § 1006.14(b)(1); and

ii. Copies of documents provided to consumers as evidence that the debt collector provided the information required by FDCPA section 809(a) (15 U.S.C. 1692g(a)), as implemented by Bureau regulation, and § 1006.38 and met the delivery requirements of § 1006.42.

2. *No requirement to create additional records.* A debt collector 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 set forth in § 1006.100(a). For example, § 1006.100(a) does not require a debt collector to create call logs showing that it has not attempted to communicate with any consumers at times that the consumers designated as inconvenient. However, if the debt collector maintains call logs, the call logs are evidence of compliance or noncompliance with the FDCPA and this part and the collector must retain them.

3. *Methods of retaining evidence.* Section 1006.100(a) does not require a debt collector to retain actual paper copies of documents. Records may be retained by any method that reproduces the records accurately (including computer programs) and that ensures that the debt collector can easily access the records (including a contractual right to access records possessed by another entity).

4. *When the three-year record retention clock starts to run.* Section 1006.100(a) provides, in part, that a debt collector must retain records that are evidence of compliance or noncompliance until three years after the debt collector's last collection activity on a debt. An event such as the debt collector transferring the debt for consideration to another party would start the running of the debt collector's three-year record retention clock with respect to the debt, provided that the transfer of the debt represents the debt collector's last collection activity on the debt. In contrast, the debt's discharge in bankruptcy, or the consumer's curing of default on the debt, would not represent the time at which the three-year record-retention clock starts to run if the debt collector continues collection activity on the debt after that time, which might occur when the debt is secured and an enforceable lien on the collateral that secured the debt survives the bankruptcy discharge (and collection activity pursuant to the lien continues after the discharge).

100(b) Special Rule for Telephone Call Recordings

1. *Recorded telephone calls.* Nothing in § 1006.100 requires a debt collector to record telephone calls. However, if a debt collector records telephone calls, the recordings are evidence of compliance or noncompliance with the FDCPA and this part, and, under § 1006.100(b), the debt collector must retain the recording of each such telephone call for three years after the date of the call.

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