**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:** Proposed rule with request for public comment.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) proposes to amend Regulation F, 12 CFR part 1006, 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's proposal would amend Regulation F to prescribe Federal rules governing the activities of debt collectors, as that term is defined in the FDCPA. The Bureau's proposal would, among other things, address communications in connection with debt collection; interpret and apply prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection; and clarify requirements for certain consumer-facing debt collection disclosures.

**DATES:** Comments must be received on or before August 19, 2019.

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB–2019–0022 or RIN 3170–AA41, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2019-NPRM-DebtCollection@cfpb.gov.* Include Docket No. CFPB–2019–0022 or RIN 3170–AA41 in the subject line of the email.
- *Mail:* Comment Intake—Debt Collection, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Comment Intake—Debt Collection, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

*Instructions:* The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov*. In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202–435–7275.

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

**FOR FURTHER INFORMATION CONTACT:** Adam Mayle, Counsel; or Dania Ayoubi, Owen Bonheimer, Seth Caffrey, David Hixson, David Jacobs, Courtney Jean, or Kristin McPartland, 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 Proposed Rule

The Bureau proposes to amend Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA),[1] to prescribe Federal rules governing the activities of debt collectors, as that term is defined in the FDCPA (FDCPA-covered debt collectors). The proposal focuses on debt collection communications and disclosures and also addresses related practices by debt collectors. The Bureau also proposes that FDCPA-covered debt collectors comply with certain additional disclosure-related and record retention requirements pursuant to the Bureau's rulemaking authority under title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[2]

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.[3] The statute was a response to "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors." [4] 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." [5]

The FDCPA established certain consumer protections, but interpretative questions have arisen since its passage. Some questions, including those related to communication technologies that did not exist at the time the FDCPA was passed (such as mobile telephones, email, and text messaging), have been the subject of inconsistent court decisions, resulting in legal uncertainty and additional cost for industry and risk for consumers. 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 proposes to clarify how debt collectors may employ such newer communication technologies in compliance with the FDCPA and to address other communications-related practices that may pose a risk of harm to consumers and create legal uncertainty for industry. The Bureau also proposes to interpret the FDCPA's consumer disclosure requirements to clarify how industry participants can comply with the law and to assist consumers in making better-informed decisions about debts they owe or allegedly owe.[6]

### *A. Coverage and Organization of the Proposed Rule*

The Bureau's proposed rule is based primarily on its authority to issue rules to implement the FDCPA. Consequently, the proposal generally would impose requirements on debt collectors, as that term is defined in the FDCPA. However, the Bureau proposes certain provisions of the regulation based on the Bureau's Dodd-Frank Act rulemaking authority. With respect to debt collection, the Bureau's authority under the Dodd-Frank Act generally may address the conduct of those who collect debt related to a consumer financial product or service, as that term is defined in the Dodd-Frank Act.[7] Proposed rule

[1] 15 U.S.C. 1692–1692p.

[2] Public Law 111–203, 124 Stat. 1376 (2010).

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

[4] 15 U.S.C. 1692(a).

[5] *Id.*

[6] Because this is a proposed rule, the Bureau's statements herein regarding proposed interpretations of the FDCPA or the Dodd-Frank Act do not represent final Bureau interpretations. The Bureau is not, through its proposed interpretations, finding that conduct either violates or is permissible under the FDCPA or the Dodd-Frank Act.

[7] Covered persons under the Dodd-Frank Act include persons who are "engage[d] in offering or providing a consumer financial product or service"; this generally includes persons who are "collecting debt related to any consumer financial product or service" (*e.g.,* debt related to the extension of consumer credit). *See* 12 U.S.C. 5481(5), (6), (15)(A)(i), (x).

provisions that rely on the Bureau's Dodd-Frank Act rulemaking authority generally would not, therefore, require FDCPA-covered debt collectors to comply if they are not collecting debt related to a consumer financial product or service.[8] Such FDCPA-covered debt collectors, however, would not violate the FDCPA by complying with any such provisions adopted in a final rule.

The proposed rule restates the FDCPA's substantive provisions largely in the order that they appear in the statute, sometimes without further interpretation. Restating the statutory text of all of the substantive provisions may facilitate understanding and compliance by ensuring that stakeholders need to consult only the regulation to view all relevant definitions and substantive provisions. Where the Bureau proposes to restate statutory text without further interpretation, the relevant section-by-section analysis explains that the proposed rule restates the statutory language with only minor wording or organizational changes for clarity. Except where specifically stated, the Bureau does not intend to codify existing case law or judicial interpretations of the statute by restating the statutory text. The Bureau requests comment on the proposed approach of restating the substantive provisions of the FDCPA.

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

*B. Scope of the Proposed Rule*

Communications Proposals

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 to either resolve a debt the consumer owes, or 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 excessive telephone calls with the intent to harass or abuse).

Communication technology has evolved significantly since the FDCPA was enacted in 1977. Today, consumers may prefer communicating with debt collectors using newer technologies, such as emails, text messages, or web portals, because these technologies may offer greater efficiency, convenience, and privacy. These technologies also may allow consumers to exert greater control over the timing, frequency, and duration of communications with debt collectors—for example, by choosing when, where, and how much time to spend responding to a debt collector's email. Debt collectors also may find that these technologies are a more effective and efficient means of communicating with consumers.

To address concerns about debt collection communications and to clarify the application of the FDCPA to newer communication technologies, the Bureau proposes to:

- Define a new term related to debt collection communications: Limited-content message. This definition would identify what information a debt collector must and may include in a message left 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 would permit a debt collector to leave a message for a consumer without communicating, as defined by the FDCPA, with a person other than the consumer.
- Clarify 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.
- Clarify 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.
- Clarify that, subject to certain exceptions, a debt collector is prohibited from placing 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.
- Clarify 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 prevent harassment or abuse, false or misleading representations, or unfair practices. For example, the Bureau proposes to require that a debt collector's emails and text messages include instructions for a consumer to opt out of receiving further emails or text messages. The Bureau also proposes procedures that, when followed, would protect a debt collector from liability for unintentional violations of the prohibition against third-party disclosures when communicating with a consumer by email or text message.

Consumer Disclosure Proposals

The FDCPA requires that a debt collector send a written notice to a consumer, within five days of the initial communication, containing certain information about the debt and actions the consumer may take in response, unless such information was provided in the initial communication or the consumer has paid the debt. To clarify the information that a debt collector must provide to a consumer at the outset of debt collection, including (if applicable) in a validation notice, the Bureau proposes:

- To specify that debt collectors must provide certain information about the debt and the consumer's rights with respect to the debt. The Bureau also proposes to require a debt collector to provide prompts that a consumer could use to dispute the debt, request information about the original creditor, or take certain other actions. The Bureau also proposes to permit a debt collector to include certain optional information.
- A model validation notice that a debt collector could use to comply with the FDCPA and the proposed rule's disclosure requirements.
- To clarify the steps a debt collector must take to provide the validation notice and other required disclosures electronically.
- A safe harbor if a debt collector complies with certain steps when delivering the validation notice within the body of an email that is the debt collector's initial communication with the consumer.

The Bureau also proposes to prohibit a debt collector from suing or threatening to sue a consumer to collect a time-barred debt. The Bureau plans to test consumer disclosures related to time-barred debt and, after testing, will

[8] These provisions appear in proposed §§ 1006.14(b)(1)(ii) (repeated or continuous telephone calls or telephone conversations), 1006.30(b)(1)(ii) (prohibition on the sale, transfer, or placement of certain debts), and 1006.34(c)(2)(iv) (certain information about the debt) and (3)(iv) (certain information about consumer protections). Note that proposed §§ 1006.14(b)(1)(i) and 1006.30(b)(1)(i) would prohibit the same conduct by all FDCPA-covered debt collectors that proposed §§ 1006.14(b)(1)(ii) and 1006.30(b)(1)(ii) would prohibit only for FDCPA-covered debt collectors collecting consumer financial product or service debt. Additionally, the record retention requirement in § 1006.100 is proposed only pursuant to Dodd-Frank Act rulemaking authority but would apply to all FDCPA-covered debt collectors.

assess whether a debt collector who collects a time-barred debt must disclose that the debt collector cannot sue to collect the debt because of its age. At a later date, the Bureau may release a report on such testing and issue a disclosure proposal related to the collection of time-barred debt. Stakeholders will have an opportunity to comment on such testing if the Bureau intends to use it to support disclosure requirements in a final rule.

Additional Proposals

The Bureau proposes to address certain other consumer protection concerns in the debt collection market. For example, the Bureau proposes:

- To clarify that the personal representative of a deceased consumer's estate is a consumer for purposes of proposed § 1006.6, which addresses communications in connection with debt collection. This clarification generally would allow a debt collector to discuss a debt with the personal representative of a deceased consumer's estate. The Bureau also proposes to clarify how a debt collector may locate the personal representative of a deceased consumer's estate. In addition, the proposed rule would interpret the requirement that a debt collector provide the validation notice to a ''consumer'' to require the notice be provided to the person acting on behalf of a deceased consumer's estate, *i.e.,* the executor, administrator, or personal representative of a deceased consumer's estate, who would have the right to dispute the debt.
- To prohibit a debt collector from furnishing information about a debt to a consumer reporting agency before communicating with the consumer about the debt.
- To prohibit, with certain exceptions, the sale, transfer, or placement for collection of a debt if a debt collector knows or should know that the debt has been paid or settled or has been discharged in bankruptcy, or that an identity theft report has been filed with respect to the debt.

The Bureau requests comment on all aspects of the proposed rule.

*C. Effective Date*

The Bureau proposes that the effective date of the final rule would be one year after the final rule is published in the **Federal Register**. The Bureau requests comment on this proposed effective date.

## 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. At other times, a debt arises from a consumer's use of an open-end line of credit, most 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 in some instances 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.[9] 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.[10]

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 an $11.5 billion-dollar industry employing nearly 118,500 people across approximately 7,700 collection agencies in the United States.[11]

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 these first-party recovery efforts. If these first-party recovery efforts 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 2018 revenue.[12] Contingency debt collectors compete with one another to secure business from creditors based on, among other factors, the debt collectors' effectiveness in obtaining recoveries.[13]

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.[14] 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.[15] Debt buyers generated about one-third of debt collection revenue, or about $3.5 billion, in 2017.[16] 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 a fraction of 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

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

[10] *See id.*

[11] *See* Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2019,* at 8 (Mar. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2019.pdf* (hereinafter 2019 FDCPA Annual Report).

[12] *Id.* at 10.

[13] 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), *https://www.ftc.gov/sites/default/files/documents/public_events/life-debt-data-integrity-debt-collection/understandingthemodel.pdf.*

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

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

[16] 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* (hereinafter 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.*

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.[17]

Debt Collection Law Firms

If debt collection attempts are unsuccessful, a debt owner may try to recover on a debt through litigation. 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.[18] 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.[19]

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. For example, rather than affirmatively locating and contacting consumers, some debt collectors collecting relatively small debts—such as many medical, utility, and telecommunications debts—will report the debts to consumer reporting agencies (CRAs) and then wait for consumers to contact them after discovering the debts on their consumer reports.[20] 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 CRAs 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 wishes to make 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. 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;[21] many of those complaints relate to practices addressed in the proposed 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.[22] In these cases, the Bureau has ordered 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

[17] FTC Debt Buying Report, *supra* note 14, at 23–24.

[18] 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* (hereinafter 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.

[19] *Id.* at 13.

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

[21] *See, e.g.,* 2019 FDCPA Annual Report, *supra* note 11, at 15–16; 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 16, 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 Annual Report 2017,* at 15–16 (Mar. 2017), *https://files.consumerfinance.gov/f/documents/201703_cfpb_Fair-Debt-Collection-Practices-Act-Annual-Report.pdf* (hereinafter 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.*

[22] *See, e.g.,* Consent Order, *In re Encore Capital Grp.,* 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.*

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.[23] When Congress enacted the FDCPA in 1977, it found that ''[e]xisting laws and procedures for redressing . . . injuries [were] inadequate to protect consumers.'' [24] 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.'' [25]

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.'' [26] 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.

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 did not exist in 1977. Further, to reduce legal risk, debt collectors typically use the language of the statute in making required disclosures, even though that language can be difficult for consumers to understand.

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.'' [27] Section 1031 of the Dodd-Frank Act also authorizes the Bureau, among other things, to prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.[28] Section 1031(b) provides that rules under section 1031 may include requirements for the purpose of preventing such unfair, deceptive, or abusive acts or practices.[29] Covered persons under the Dodd-Frank Act include persons who are ''engage[d] in offering or providing a consumer financial product or service''; [30] this generally includes persons who are ''collecting debt related to any consumer financial product or service'' (*e.g.,* debt related to the extension of consumer credit).[31] Covered persons under the Dodd-Frank Act thus include many FDCPA-covered debt collectors, as well as many creditors and their servicers, who are collecting debt related to a consumer financial product or service.

## III. The Rulemaking Process

The Bureau has conducted a wide range of outreach on the scope and substance of this proposed rule, including by holding field hearings,[32] hosting two joint roundtables with the FTC,[33] and issuing an Advance Notice of Proposed Rulemaking (ANPRM) in November 2013.[34] The Bureau has conducted several rounds of qualitative testing of prototype debt collection disclosure forms and has conducted formal and informal surveys over the past several years to obtain a more comprehensive and systematic understanding of debt collection practices. The Bureau also convened a Small Business Review Panel in August 2016 to obtain feedback from small debt collectors. Since the Bureau began studying this market, the Bureau has 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 [35] and its Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities,[36] and the Bureau has considered these comments in developing the proposed 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 proposed rule, has sought their input, and has received feedback that has helped the Bureau to prepare this proposed rule.

*A. 2013 Advance Notice of Proposed Rulemaking*

The Bureau issued an ANPRM regarding debt collection in November of 2013. The ANPRM sought information about both first- and third-party debt collection practices, including: Debt collectors' communication and calling practices; the use of disclosures, such as time-barred debt disclosures, in debt collection; the quantity and quality of information in the debt collection system; credit reporting by debt collectors; the prevalence and use of litigation by debt collectors, including by debt collection attorneys; and record retention, monitoring, and compliance issues.

The Bureau received more than 23,000 comments in response to the ANPRM, with approximately 379 non-form comments submitted. These non-form comments were provided by consumers, consumer advocacy groups,

[23] 15 U.S.C. 45.

[24] 15 U.S.C. 1692(b).

[25] 15 U.S.C. 1692(a).

[26] 15 U.S.C. 1692(e).

[27] 15 U.S.C. 1692*l*(d).

[28] Dodd-Frank Act section 1031(b), 12 U.S.C. 5531(b).

[29] *Id.*

[30] 12 U.S.C. 5481(6).

[31] 12 U.S.C. 5481(5), (15)(A)(i), (x).

[32] *See* Bureau of Consumer Fin. Prot., *Field Hearing on Debt Collection in Seattle, WA* (Oct. 24, 2012), *https://www.consumerfinance.gov/about-us/events/archive-past-events/field-hearing-on-deft-collection-from-seattle-washington/*; Bureau of Consumer Fin. Prot., *Field Hearing on Debt Collection in Portland, ME* (July 10, 2013), *https://www.consumerfinance.gov/about-us/events/archive-past-events/field-hearing-debt-collection-portland-me/*; Bureau of Consumer Fin. Prot., *Field Hearing on Debt Collection in Sacramento, CA* (July 28, 2016), *https://www.consumerfinance.gov/about-us/events/archive-past-events/field-hearing-debt-collection-sacramento-calif/*.

[33] Fed. Trade Comm'n & Bureau of Consumer Fin. Prot., *Debt Collection and the Latino Community: An FTC–CFPB Roundtable* (Oct. 23, 2014), *https://www.ftc.gov/news-events/events-calendar/2014/10/debt-collection-latino-community-roundtable*; Fed. Trade Comm'n & Bureau of Consumer Fin. Prot., *Roundtable on Data Integrity in Debt Collection: Life of a Debt* (July 6, 2013), *https://www.ftc.gov/system/files/documents/public_events/71120/life-debt-roundtable-transcript.pdf.*

[34] 78 FR 67848 (Nov. 12, 2013).

[35] 83 FR 12286 (Mar. 21, 2018).

[36] 83 FR 12881 (Mar. 26, 2018).

industry participants and trade associations, legal groups including law school clinics, State Attorneys General, and other stakeholders. The Bureau also worked with Cornell University's Regulation Room, which interacted with consumers to obtain their input and submitted a consolidated comment representing views from a multitude of consumers. Comments on the ANPRM related to both first- and third-party collection efforts. Commenters provided significant feedback regarding debt collector communication practices and interactions with consumers, consumer disclosures, and the use of newer communication technologies. Specific comments are discussed in more detail in part V where relevant.

*B. Consumer Testing*

The Bureau contracted with a third-party vendor, Fors Marsh Group (FMG), to assist with developing, and to 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 sought insight into consumers' existing understanding of debt collection protections and how consumers would interact with the forms if they were adopted in a final rule. Specific findings from the consumer testing are discussed in more detail in part V where relevant.[37]

Validation Notice Testing

*Focus groups.* FMG facilitated five focus groups in July 2014 to assess consumers' thoughts about debt collectors and debt collection, to evaluate their perceptions of disclosures provided by debt collectors, and to measure their understanding of consumers' rights in debt collection. Two focus groups, one consisting of participants who had been contacted by a debt collector within the previous two years and one consisting of participants without such experience, were held in Arlington, Virginia, on July 16, 2014. Three focus groups, two consisting of participants with debt collection experience and one consisting of participants without debt collection experience, were held in New Orleans, Louisiana, on July 29, 2014. In conjunction with the release of this proposal, the Bureau is making available a report prepared by FMG regarding the focus group testing (FMG Focus Group Report).[38]

*Cognitive Testing.* FMG also conducted 30 one-on-one interviews of consumers to assess their perceptions, preferences, and understanding of different validation notices and to evaluate how each of the notices might affect consumer behavior. The interviews took place at three locations: Arlington, Virginia, on September 23 and 24, 2014; Minneapolis, Minnesota, on October 9 through 11, 2014; and Las Vegas, Nevada, on October 23 and 24, 2014. At each location, FMG interviewed 10 participants, seven of whom had debt collection experience and three of whom did not.

FMG tested three validation notices at each location. The first form was modeled closely on validation notices commonly used by debt collectors. The form included the disclosures specifically required by FDCPA section 809(a), and the language on the form generally mirrored the statutory language. The second form provided the same information as the first form, but in plainer language. The third form used the same language as the second form, along with additional information, including consumer protection information, chain-of-title information describing the history of the debt, and, for two of the testing locations, information about time-barred debts.

FMG asked the participants to define, locate, and explain the meaning of specific elements on each form. Participants responded to three surveys, each with three Likert-scale questions.[39] Participants were asked to compare the first and second forms side-by-side and were asked targeted questions about what they would do after reading individual elements of each notice. In conjunction with the release of this proposal, the Bureau is making available a report prepared by FMG regarding the cognitive testing (FMG Cognitive Report).[40]

*Usability Testing.* FMG also conducted 30 additional one-on-one interviews of consumers to assess their perceptions, preferences, and understanding of different model validation notices and to evaluate what influence, if any, these forms could have on their behavior. FMG interviewed 23 consumers who had been contacted by a debt collector within the previous two years and seven without such experience. The interviews took place at three locations: Arlington, Virginia, on March 31 and April 1, 2015; Minneapolis, Minnesota, on April 14 and 15, 2015; and Las Vegas, Nevada, on April 28 and 29, 2015. During the interviews, researchers asked participants comprehension questions to determine their understanding of the forms and debriefing questions to establish their reactions to and perceptions of the forms. Researchers also engaged consumers in testing activities to assess their interactions with the forms. In conjunction with the release of this proposal, the Bureau is making available a report prepared by FMG regarding the usability testing (FMG Usability Report).[41] The Bureau also is making available a report prepared by FMG summarizing the focus group testing, cognitive testing, and usability testing (FMG Summary Report).[42]

Quantitative Testing

The Bureau plans to conduct a web survey of 8,000 individuals possessing a broad range of demographic characteristics. The survey will explore consumer comprehension and decision-making in response to sample debt collection disclosures relating to time-

[37] While the Bureau tested a statement of consumer rights disclosure, this proposal would not require debt collectors to provide such a disclosure to consumers. Instead, the Bureau proposes to require certain debt collectors to provide on the validation notice a statement referring consumers to a Bureau-provided website that would describe certain consumer protections in debt collection. See the section-by-section analysis of proposed § 1006.34(c)(3)(iv). Because the Bureau does not propose to require debt collectors to provide consumers with a statement of consumer rights disclosure, the Bureau does not summarize testing related to that disclosure in this proposal.

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

[39] A Likert-scale is a commonly used research scale that asks respondents to specify their level of agreement or disagreement with a series of statements.

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

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

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

barred debts. The Bureau will use the information it gathers to help assess how the Bureau may improve the clarity and effectiveness of debt collection disclosures, among other things. On February 4, 2019, in accordance with the Paperwork Reduction Act of 1995,[43] the Bureau proposed an information collection that described the web survey and was open for public comment for 30 days.[44] The comment period closed on March 6, 2019. This request is pending under OMB review and can be viewed on OMB's electronic docket at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201902-3170-001* (see ICR Reference Number 201902–3170–001). Stakeholders will have an opportunity to comment on a report describing the web survey results if the Bureau proposes to use those results to support disclosure requirements in a final rule.

*C. Study of Debt Collection Market Operations*

To better understand the operational costs of debt collection firms, including law firms, the Bureau 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).[45] The answers to the survey questions aided the Bureau's understanding of the compliance costs to debt collectors if the proposal were finalized. As a qualitative study, the survey's results are not necessarily representative of the debt collection industry as a whole, but they provide a broad understanding of how a range of different types of debt collectors operate.

The Operations Study focused on understanding how debt collection firms obtain information about delinquent consumer accounts and attempt to collect on those accounts.[46] Between July and September 2015, the Bureau sent a written survey to debt collection firms. The survey focused on current practices and included questions about employees, types of debt collected, clients, vendors, software, policies and procedures for consumer interaction, disputes, furnishing data to CRAs, litigation, and compliance. Between August and October 2015, the Bureau conducted telephone interviews with a subset of survey respondents. The interviews included several specific questions about the types of voicemails debt collectors leave and what share of lawsuits filed against consumers end with entry of default judgment, as well as some open-ended questions about the costs associated with making changes to collection management systems to address changes in State regulations. From July to October 2015, the Bureau conducted telephone interviews with debt collection vendors. A particular focus of these interviews was collection management systems, including programming and consulting services provided to system users. The Bureau also asked vendors about print mail services, predictive dialers, voice analytics, payment processing, and data services.

Although the Bureau constructed the survey sample to ensure representation of debt collection firms of various sizes, the survey was not intended to be nationally representative. Nonetheless, the survey findings generally have informed the Bureau's understanding of the operations and operating costs of various types of debt collection firms. Part VI discusses the Bureau's findings from the study in greater detail.

*D. Survey of Consumer Experiences With Debt Collection*

The Bureau conducted a survey of consumers' experiences with debt collection, approved under OMB control number 3170–0047, Debt Collection Survey from the Consumer Credit Panel, and published a report of the findings in January 2017 (CFPB Debt Collection Consumer Survey or Consumer Survey).[47] Distributed to consumers in December 2014, the survey asked consumers about their experiences with creditors and debt collectors over the prior year, including disputes and lawsuits, and how they prefer to communicate with a creditor or debt collector. The survey also asked for information on each consumer's demographic characteristics, general financial situation, and credit-market experiences. The survey sample was selected from the Bureau's Consumer Credit Panel, which consists of a nationally representative, de-identified set of credit records maintained by one of the three nationwide CRAs, and responses were weighted to provide nationally representative results. The Consumer Survey, which included survey participants' self-reported responses, provided a more comprehensive picture of consumers' experiences and preferences related to debt collection than was previously available.[48] The Bureau considered survey responses when developing the proposal.

The Consumer Survey describes in detail several key findings relating to the prevalence of debt collection, the extent to which consumers dispute debts, and the extent to which creditors or debt collectors pursue the collection of debts through lawsuits. About one-third of consumers with a credit file at one of the three nationwide CRAs reported being contacted by a creditor or debt collector about a debt in the prior year, and most of those consumers reported being contacted about two or more debts.[49] More than one-half of the consumers who had been contacted about a debt in collection indicated that at least one of the debts about which they had been contacted was not theirs or was for the wrong amount. Roughly one-quarter of the consumers who had been contacted about a debt in collection reported having disputed a debt with their creditor or debt collector in the past year.[50] About one-in-seven consumers (about 15 percent) who had been contacted about a debt in collection reported having been sued by a creditor or debt collector in the preceding year.[51]

The Consumer Survey also describes in detail several key findings related to the frequency with which consumers are contacted about debts in collection, how often consumers ask debt collectors to stop contacting them, how consumers prefer to be contacted by debt collectors, and the frequency with which consumers report negative experiences with debt collectors. More than one-third of consumers (37 percent) contacted about a debt in collection indicated that the creditor or debt collector that most recently had contacted them tried to reach them at least four times per week. Seventeen percent reported that the creditor or debt collector tried to reach them at least eight times per week. Close to two-thirds of consumers (63 percent) said

[43] 44 U.S.C. 3501 *et seq.*

[44] *See* Agency Information Collection Activities: Submission for OMB Review; Comment Request, 84 FR 1430 (Feb. 4, 2019).

[45] *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* (hereinafter CFPB Debt Collection Operations Study).

[46] Most respondents collected debt on behalf of clients, rather than buying debt and collecting on their own behalf. Respondents that bought some debt reported that the majority of accounts they collected were for clients. As a result, the Operations Study did not provide distinct information on debt buyers and their operations as compared to third-party debt collectors.

[47] *See generally* CFPB Debt Collection Consumer Survey, *supra* note 18.

[48] *Id.* at 4.

[49] *Id.* at 13.

[50] *Id.* at 24–25.

[51] *Id.* at 27.

they were contacted too often by the most recent creditor or debt collector.[52]

Consumers contacted at the same frequency by creditors and debt collectors were more likely to characterize contact by a debt collector as occurring ''too often'' than when a creditor engaged in the same frequency of contact. In addition, 42 percent of consumers who reported they had been contacted about a debt in collection said they had asked at least one creditor or debt collector to stop contacting them in the prior year, but only one in four consumers who made this request reported that the contact stopped. Consumers contacted by debt collectors were more likely than those contacted by creditors to report negative experiences, such as being treated impolitely or being threatened.[53]

Almost one-half of the consumers (including those who did not report having been contacted by a creditor or debt collector about a debt in collection in the prior year) said they would most prefer debt collectors to contact them by letter. When asked the way they would least like debt collectors to contact them, consumers most commonly indicated in-person contacts (20 percent of consumers). Nearly two-thirds of consumers said it was ''very important'' that others not see or hear a message from a creditor or debt collector. At the same time, most consumers also preferred that a creditor or debt collector include their name and the purpose of the call (*i.e.,* debt collection) in a voicemail or answering-machine message.[54]

*E. Small Business Review Panel*

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).[55] 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),[56] 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 participated in initial teleconferences with small groups of the small entity representatives to introduce the Outline and supporting materials and to obtain feedback. The Panel then conducted a full-day outreach meeting with the small entity representatives in August 2016 in Washington, DC. The Panel gathered information from the small entity representatives and made findings and recommendations regarding the potential compliance costs and other impacts of the proposals under consideration on those entities. 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.[57] The Bureau has considered these findings and recommendations in preparing this proposal and addresses many of them in greater detail in part V.[58]

## IV. Legal Authority

The Bureau issues this proposal 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.[59] 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.''[60] 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.[61] ''Federal consumer financial law'' includes title X of the Dodd-Frank Act and the FDCPA.[62]

These and other authorities are discussed in greater detail in parts IV.A through E below. Part IV.A discusses how the Bureau proposes to interpret its 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).

*A. FDCPA Sections 806 Through 808*

As discussed in part V, the Bureau proposes 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 proposes to interpret 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.''[63] Then, ''[w]ithout limiting the general application of the foregoing,'' it lists six examples of conduct that violate that section.[64] 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.''[65] Then,

[52] *Id.* at 30–31. As discussed further in the Consumer Survey, consumers' estimates of the frequency of contacts may be subject to uncertainty because the survey does not purport to distinguish in its questions or analysis between various factual scenarios.

[53] *Id.* at 34–35, 45–46.

[54] *Id.* at 36–38.

[55] 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. 847, 857 (1996) (as amended by Pub. L. 110–28, section 8302 (2007)).

[56] 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 2016), *https://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf* (hereinafter 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.

[57] 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* (hereinafter Small Business Review Panel Report).

[58] Certain proposals under consideration in the Small Business Review Panel Outline and discussed in the Small Business Review Panel Report are not included in this proposed rule and therefore are not discussed in part V. For example, because this proposed rule would apply only to FDCPA-covered debt collectors, the Bureau does not include a discussion of proposals under consideration that would have imposed information transfer requirements on first-party creditors who generally are not FDCPA-covered debt collectors.

[59] 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 proposed provisions, are discussed in part V.

[60] 12 U.S.C. 5512(a).

[61] 12 U.S.C. 5512(b)(1).

[62] 12 U.S.C. 5481(12)(H), (14).

[63] 15 U.S.C. 1692d.

[64] *Id.* at 1692d(1)–(6).

[65] 15 U.S.C. 1692e.

''[w]ithout limiting the general application of the foregoing,'' section 807 lists 16 examples of conduct that violate that section.[66] Finally, FDCPA section 808 prohibits a debt collector from ''us[ing] unfair or unconscionable means to collect or attempt to collect any debt.'' [67] Then, ''[w]ithout limiting the general application of the foregoing,'' FDCPA section 808 lists eight examples of conduct that violate that section.[68] 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 precedent.[69]

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,[70] as are opinions by courts that have addressed this issue.[71] Accordingly, the Bureau may prohibit conduct that the specific examples in FDCPA sections 806 through 808 do not address if the conduct violates the general prohibitions.

The Bureau proposes to use the specific examples in FDCPA sections 806 through 808 to inform its interpretation of those sections' general prohibitions. Accordingly, the proposal would interpret 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 proposal would interpret 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; [72] (2) FDCPA section 808(7), which prohibits communicating with a consumer regarding a debt by postcard; and FDCPA section 808(8), which prohibits the use of certain language and symbols on envelopes.[73] The interpretative approach of looking to specific provisions to inform general provisions is consistent with judicial precedent indicating that the general prohibitions in the FDCPA should be interpreted ''in light of [their] associates.'' [74] For example, courts have held that violating a consumer's privacy interest through public exposure of a debt violates the FDCPA, noting that violating a consumer's privacy is a type of conduct prohibited by several specific examples.[75] 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 ''without limiting the general application of the foregoing'' to introduce the specific examples.[76]

Judicial Precedent

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 provides 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.[77] 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.[78] 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.[79] Similarly, a debt collector could violate FDCPA section 807 by, for example, giving ''a false impression of the character of the debt,'' [80] such as by failing to disclose that an amount collected includes fees,[81] or by failing to disclose that the applicable statute of limitations has expired.[82]

Several courts have applied an objective standard of an ''unsophisticated'' or ''least sophisticated'' consumer to FDCPA sections 807 [83] and 808 [84] and an

[66] *Id.* at 1692e(1)–(16).

[67] 15 U.S.C. 1692f.

[68] *Id.* at 1692f(1)–(8).

[69] Where the Bureau proposes 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. Where the Bureau proposes an intervention both pursuant to its authority to implement and interpret FDCPA sections 806 through 808 and pursuant to its authority to identify and prevent unfair acts or practices under Dodd-Frank Act section 1031, the section-by-section analysis explains why the Bureau proposes to identify the act or practice as unfair under the Dodd-Frank Act.

[70] *See, e.g.,* S. Rept. No. 95–382, 95th Cong., 1st Sess. 2, at 4 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1698 (hereinafter S. Rept. 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).

[71] *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.'').

[72] 15 U.S.C. 1692d(3).

[73] 15 U.S.C. 1692f(7)–(8).

[74] *Currier* v. *First Resolution Inv. Corp.,* 762 F.3d 529, 534 (6th Cir. 2014) (citing *Limited, Inc.* v. *C.I.R.,* 286 F.3d 324, 332 (6th Cir. 2002)).

[75] *See id.* at 535.

[76] 15 U.S.C. 1692d–1692f.

[77] 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 precedent informs the Bureau's interpretation of the general prohibitions in FDCPA sections 806 through 808, the Bureau does not propose to adopt specific judicial interpretations through its restatement of the general prohibitions except where noted in the proposal.

[78] *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).

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

[80] *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'').

[81] *Id.*

[82] *See, e.g., Pantoja* v. *Portfolio Recovery Assocs.,* 852 F.3d 679, 686–87 (7th Cir. 2017).

[83] *See, e.g., 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) (same).

[84] *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) (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)

objective, vulnerable consumer standard to FDCPA section 806.[85] 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.'' [86]

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.[87] Courts have further reasoned that section 807's prohibition on false, deceptive, or misleading representations incorporates an objective, ''unsophisticated'' consumer standard.[88] This standard ''protects the consumer who is uninformed, naive, or trusting, yet it admits an objective element of reasonableness.'' [89] The Bureau agrees with the reasoning of courts that have applied this standard or a ''least sophisticated consumer'' standard.[90] The Bureau proposes to use the term ''unsophisticated'' consumer to describe the standard it will apply in this proposal 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.[91] In particular, FDCPA section 802 delineates certain specific harms that the general and specific prohibitions in sections 806 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.'' [92]

### *B. Dodd-Frank Act Section 1031*

Section 1031(b)

Section 1031(b) of the Dodd-Frank Act provides the Bureau with authority to prescribe rules to identify and prevent unfair, deceptive, or abusive acts or practices. Specifically, Dodd-Frank Act section 1031(b) authorizes the Bureau to prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.[93] Section 1031(b) of the Dodd-Frank Act further provides that ''[r]ules under this section may include requirements for the purpose of preventing such acts or practices'' [94] (sometimes referred to as prevention authority). The Bureau proposes certain provisions based on its authority under Dodd-Frank Act section 1031(b).

Section 1031(b) of the Dodd-Frank Act is similar to the FTC Act provisions relating to unfair and deceptive acts or practices.[95] Given these similarities, where the Bureau relies on Dodd-Frank Act section 1031(b) authority to support particular provisions, the Bureau is guided, in part, by case law and Federal agency rulemakings addressing unfair and deceptive acts or practices under the FTC Act. For example, case law establishes that, under the FTC Act, the FTC may impose requirements to prevent acts or practices that the FTC identifies as unfair or deceptive so long as the preventive requirements have a reasonable relation to the identified acts or practices.[96] Where the Bureau relies on Dodd Frank Act section 1031(b) prevention authority to support particular proposals, the Bureau explains how the preventive requirements have a reasonable relation to the identified unfair, deceptive, or abusive acts or practices.

Section 1031(c)

Section 1031(c)(1) of the Dodd-Frank Act provides that the Bureau shall have no authority under section 1031 to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair, unless the Bureau ''has a reasonable basis'' to conclude that: (A) The act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and (B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.[97] Section 1031(c)(2) of the Dodd-Frank Act provides that, in determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Public policy considerations may not serve as a primary basis for such a determination.[98] The Bureau proposes certain interventions based in part on its authority under Dodd-Frank Act section 1031(c).

The unfairness standard under Dodd-Frank Act section 1031(c)—requiring primary consideration of the three elements (substantial injury, not reasonably avoidable by consumers, and

(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,* 225 F.3d 350, 353 (3d Cir. 2000).

[85] 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.''

[86] *See* 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) and *Clomon* v. *Jackson,* 988 F.2d 1314, 1319 (2d Cir. 1993)).

[87] *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.'').

[88] *See* Brief for the United States as Amicus Curiae Supporting Respondents, *supra* note 86, at *10, 27–30.

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

[90] *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'') (internal quotation marks and citation 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.'').

[91] 15 U.S.C. 1692(e).

[92] 15 U.S.C. 1692(a).

[93] 12 U.S.C. 5531(b).

[94] *Id.*

[95] 15 U.S.C. 45.

[96] *See Jacob Siegel Co.* v. *Fed. Trade Comm'n,* 327 U.S. 608, 612–13 (1946) (''The Commission is the expert body to determine what remedy is necessary to eliminate the unfair or deceptive trade practices which have been disclosed. It has wide latitude for judgment and the courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist.'').

[97] 12 U.S.C. 5531(c)(1).

[98] 12 U.S.C. 5531(c)(2).

countervailing benefits to consumers or to competition) and permitting secondary consideration of public policy—is similar to the unfairness standard under the FTC Act.[99] Section 5(n) of the FTC Act was amended in 1994 to incorporate the principles set forth in the FTC's ''Commission Statement of Policy on the Scope of Unfairness Jurisdiction,'' [100] issued on December 17, 1980. The FTC Act unfairness standard, the FTC Policy Statement on Unfairness, rulemakings by the FTC and other Federal agencies,[101] and related cases [102] inform the scope and meaning of the Bureau's authority under Dodd-Frank Act section 1031(b) to issue rules that identify and prevent acts or practices that the Bureau determines are unfair pursuant to Dodd-Frank Act section 1031(c).

*Substantial injury.* The first element for a determination of unfairness under Dodd-Frank Act section 1031(c)(1) is that the act or practice causes or is likely to cause substantial injury to consumers. As discussed above, the FTC Act unfairness standard, the FTC Policy Statement on Unfairness, rulemakings by the FTC and other Federal agencies, and related cases inform the meaning of the elements of the unfairness standard under Dodd-Frank Act section 1031(c)(1). The FTC noted in its Policy Statement on Unfairness that substantial injury ordinarily involves monetary harm.[103] The Policy Statement stated that trivial or speculative harms are not cognizable under the test for substantial injury.[104] The FTC also noted that an injury is ''sufficiently substantial'' if it consists of a small amount of harm to a large number of individuals or raises a significant risk of harm.[105] The FTC has found that substantial injury also may involve a large amount of harm experienced by a small number of individuals.[106] As described in the FTC Policy Statement, emotional effects from an act or practice might be a basis for a finding of unfairness in an extreme case in which tangible injury from the act or practice could be clearly demonstrated,[107] and the D.C. Circuit has upheld an FTC conclusion that the demonstrated effects on consumers from threats to seize household possessions were sufficient to form part of the substantial injury along with financial harm.[108] The Bureau has stated that emotional impact and other more subjective types of harm ''will not ordinarily amount to substantial injury'' but that, in certain circumstances, ''emotional impacts may amount to or contribute to substantial injury.'' [109]

*Not reasonably avoidable.* The second element for a determination of unfairness under Dodd-Frank Act section 1031(c)(1) is that the substantial injury is not reasonably avoidable by consumers. As discussed above, the FTC Act unfairness standard, the FTC Policy Statement on Unfairness, rulemakings by the FTC and other Federal agencies, and related case law inform the meaning of the elements of the unfairness standard under Dodd-Frank Act section 1031(c)(1). The FTC stated that knowing the steps for avoiding injury is not enough for the injury to be reasonably avoidable; rather, the consumer must also understand and appreciate the necessity of taking those steps.[110] As the FTC explained in its Policy Statement on Unfairness, most unfairness matters are brought to ''halt some form of seller behavior that unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decisionmaking.'' [111] The D.C. Circuit has noted that, if such behavior exists, there is a ''market failure'' and the agency ''may be required to take corrective action.'' [112] Assessing whether an injury is reasonably avoidable also requires taking into account the costs of making a choice other than the one made and the availability of alternatives in the marketplace.[113]

*Countervailing benefits to consumers or competition.* The third element for a determination of unfairness under Dodd-Frank Act section 1031(c)(1) is that the act or practice's countervailing benefits to consumers or to competition do not outweigh the substantial consumer injury. As discussed above, the FTC Act unfairness standard, the FTC Policy Statement on Unfairness, rulemakings by the FTC and other Federal agencies, and related cases inform the meaning of the elements of the unfairness standard under Dodd-Frank Act section 1031(c)(1). In applying the FTC Act's unfairness standard, the FTC has stated that it generally is important to consider both the costs of imposing a remedy and any benefits that consumers receive as a result of the act or practice. Authorities addressing the FTC Act's unfairness standard indicate that the countervailing benefits test does not require a precise quantitative analysis of benefits and costs, as such an analysis may be unnecessary or, in some cases,

[99] Section 5(n) of the FTC Act, as amended in 1994, provides that, ''The [FTC] shall have no authority . . . to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the [FTC] may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.'' 15 U.S.C. 45(n).

[100] Letter from the FTC to Hon. Wendell Ford and Hon. John Danforth, Committee on Commerce, Science & Transportation, United States Senate, Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction (Dec. 17, 1980), *reprinted in Int'l Harvester Co.,* 104 F.T.C. 949, 1070–76 (1984), *https://www.ftc.gov/sites/default/files/documents/commission_decision_volumes/volume-104/ftc_volume_decision_104__july_-_december_1984pages949_-_1088.pdf* (hereinafter FTC Policy Statement on Unfairness); *see also* S. Rept. 103–130, at 12–13 (1993), *reprinted in* 1994 U.S.C.C.A.N. 1776 (legislative history to FTC Act amendments indicating congressional intent to codify the principles of the FTC Policy Statement on Unfairness).

[101] In addition to the FTC's rulemakings under unfairness authority, certain Federal prudential regulators have prescribed rules prohibiting unfair practices under section 18(f)(1) of the FTC Act and, in doing so, they applied the statutory elements consistent with the standards articulated by the FTC. *See* 74 FR 5498, 5502 (Jan. 29, 2009) (background discussion of legal authority for interagency Subprime Credit Card Practices rule). The Board, FDIC, and the OCC also previously issued guidance generally adopting these standards for purposes of enforcing the FTC Act's prohibition on unfair and deceptive acts or practices. *See id.*

[102] *See, e.g., Consumer Fin. Prot. Bureau* v. *NDG Fin. Corp.,* No. 15–cv–52110 CM, 2016 WL 7188792 (S.D.N.Y. Dec. 2, 2016); *Consumer Fin. Prot. Bureau* v. *Universal Debt & Payment Sols., LLC,* No. 1:15–CV–00–859 RWS, 2015 WL 11439178 (N.D. Ga. Sept. 1, 2015); *Consumer Fin. Prot. Bureau* v. *ITT Educ. Servs., Inc.,* 219 F. Supp. 3d 878 (S.D. Ind. 2015).

[103] *See* FTC Policy Statement on Unfairness, *supra* note 100, at 1073.

[104] *Id.*

[105] *Id.* at 1073 n.12.

[106] *Int'l Harvester Co.,* 104 F.T.C. 949, 1064 (1984).

[107] FTC Policy Statement on Unfairness, *supra* note 100, at 1073 n.16 (''In an extreme case, however, where tangible injury could be clearly demonstrated, emotional effects might possibly be considered as the basis for a finding of unfairness'').

[108] *See Am. Fin. Servs. Assoc.* v. *FTC,* 767 F.2d 957, 973–74 n.20 (D.C. Cir. 1985) (''the Commission found that 'the threat to seize household possessions causes 'great emotional suffering, humiliation, anxiety, and deep feelings of guilt, and this distress can lead to physical breakdowns or illness, disruption of the family, and undue strain on family relationships' '') (internal citations omitted).

[109] Bureau of Consumer Fin. Prot., *CFPB Supervision and Examination Process,* at UDAAP 2 (Apr. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual.pdf.*

[110] *See Int'l Harvester,* 104 F.T.C. at 1066.

[111] FTC Policy Statement on Unfairness, *supra* note 100, at 1074.

[112] *Am. Fin. Servs. Assoc.,* 767 F.2d at 976.

[113] *See* FTC Policy Statement on Unfairness, *supra* note 100, at 1074 n.19 (''In some senses any injury can be avoided—for example, by hiring independent experts to test all products in advance, or by private legal actions for damages—but these courses may be too expensive to be practicable for individual consumers to pursue.''); *Am. Fin. Servs. Assoc.,* 767 F.2d at 976–77 (reasoning that, because of factors such as substantial similarity of contracts offered by creditors, ''consumers have little ability or incentive to shop for a better contract'').

impossible; rather, the agency is expected to gather and consider reasonably available evidence.[114]

*Public policy.* As noted above, Dodd-Frank Act section 1031(c)(2) provides that, in determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Public policy considerations, however, may not serve as a primary basis for such a determination.[115]

### *C. Dodd-Frank Act Section 1032*

The Bureau proposes certain provisions based in part on its authority under 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.'' [116] 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(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.'' [117] Dodd-Frank Act section 1032(b)(2) provides that such a model form ''shall contain a clear and conspicuous disclosure that at a minimum—(A) uses plain language comprehensible to consumers; (B) contains a clear format and design, such as an easily readable type font; and (C) succinctly explains the information that must be communicated to the consumer.'' [118] Dodd-Frank Act section 1032(b)(3) provides that any such model form ''shall be validated through consumer testing.''; [119]

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.'' [120] Dodd-Frank Act section 1032(d) provides that ''[a]ny covered person that uses a model form included with a rule issued under this section shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form.'' [121]

### *D. Other Authorities Under the Dodd-Frank Act*

The Bureau proposes certain interventions based in part on its authority under Dodd-Frank Act sections 1022 and 1024. 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.'' [122] ''Federal consumer financial laws'' include the FDCPA and title X of the Dodd-Frank Act.[123]

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).[124] See part VI for a discussion of the Bureau's standards for rulemaking under Dodd-Frank Act section 1022(b)(2).

Proposed § 1006.100 concerning the retention of records would be based in part on the Bureau's authority under Dodd-Frank Act section 1024(b)(7)(A) and (B) [125] as applied to debt collectors who are nondepository covered persons that the Bureau supervises under Dodd-Frank Act section 1024(a).[126] The section-by-section analysis of proposed § 1006.100 contains an additional description of the authorities on which the Bureau relies for proposed § 1006.100.

### *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 to a consumer in writing. The E-SIGN Act sets forth criteria under which Federal regulatory agencies may exempt a specified category or type of record from the consent requirements for electronic disclosures in the E-SIGN Act.[127] For the reasons set forth in part V, proposed § 1006.42(c) and (d) would exempt electronic delivery of certain required notices from the consent requirements of the E-SIGN Act. Pursuant to E-SIGN Act section 104(b)(1), which permits the Bureau to interpret the E-SIGN Act through the issuance of regulations, proposed comments 6(c)(1)–1 and –2 provide 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; proposed comments 38–2 and –3 provide an interpretation of the E-SIGN Act as applied to a debt collector responding to a consumer dispute or request for original-creditor information; and proposed § 1006.42(b)(1) and proposed comment 42(b)(1)–1 provide an interpretation of the E-SIGN Act as applied to certain disclosures that the regulation would require debt collectors to provide.

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[114] *Pa. Funeral Dirs. Ass'n* v. *FTC,* 41 F.3d 81, 91 (3d Cir. 1994) (upholding FTC's amendments to the Funeral Industry Practices Rule and noting that ''much of a cost-benefit analysis requires predictions and speculation''); *Int'l Harvester,* 104 F.T.C. at 1065 n.59 (''In making these calculations we do not strive for an unrealistic degree of precision. . . . We assess the matter in a more general way, giving consumers the benefit of the doubt in close issues. . . . What is important . . . is that we retain an overall sense of the relationship between costs and benefits. We would not want to impose compliance costs of millions of dollars in order to prevent a bruised elbow.''); *see also* S. Rept. 103–130, at 13 (1994) (noting that, ''[i]n determining whether a substantial consumer injury is outweighed by the countervailing benefits of a practice, the Committee does not intend that the FTC quantify the detrimental and beneficial effects of the practice in every case. In many instances, such a numerical benefit-cost analysis would be unnecessary; in other cases, it may be impossible. This section would require, however, that the FTC carefully evaluate the benefits and costs of each exercise of its unfairness authority, gathering and considering reasonably available evidence.'').

[115] 12 U.S.C. 5531(c)(2).

[116] 12 U.S.C. 5532(a).

[117] 12 U.S.C. 5532(b)(1).

[118] 12 U.S.C. 5532(b)(2).

[119] 12 U.S.C. 5532(b)(3).

[120] 12 U.S.C. 5532(c).

[121] 12 U.S.C. 5532(d).

[122] 12 U.S.C. 5512(b)(1).

[123] 12 U.S.C. 5481(14).

[124] 12 U.S.C. 5512(b)(2).

[125] 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, and 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.

[126] 12 U.S.C. 5514(b)(7)(A)–(B).

[127] 15 U.S.C. 7004(d)(1).

## V. Section-by-Section Analysis

*Subpart A—General*

Section 1006.1 Authority, Purpose, and Coverage

1(a) Authority

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 certain conditions have been met.[128] Before the Bureau's creation, FDCPA section 817 provided the same authority to the FTC, and the FTC issued a rule to describe procedures for a State to apply for such an exemption.[129] After the Dodd-Frank Act granted the Bureau FDCPA rulewriting authority, the Bureau restated the FTC's existing rule regarding State exemptions without substantive change as the Bureau's Regulation F, 12 CFR part 1006.[130] Existing § 1006.1(a) thus states that the purpose of Regulation F is to establish 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-covered debt collectors, the Bureau proposes to revise existing § 1006.1(a) to set forth the Bureau's authority to issue such rules. Proposed § 1006.1(a) provides that part 1006 is known as Regulation F and is issued by the Bureau pursuant to sections 814(d) and 817 of the FDCPA,[131] title X of the Dodd-Frank Act,[132] and section 104(b)(1) and (d)(1) of the E–SIGN Act.[133] The Bureau proposes 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.[134]

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-covered debt collectors, the Bureau proposes to revise § 1006.1(b) to identify the purposes of part 1006. The Bureau proposes to move the definitions in existing § 1006.1(b) to paragraph 1(b) of appendix A of the regulation.[135]

Consistent with FDCPA section 802, proposed § 1006.1(b) explains that part 1006 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. Consistent with Dodd-Frank Act section 1032, proposed § 1006.1(b) further explains that part 1006 also prescribes requirements to ensure that certain features of debt collection are fully, accurately, and effectively disclosed 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, consistent with Dodd-Frank Act sections 1022(b)(1) and 1024(b)(7), proposed § 1006.1(b) explains that part 1006 sets forth record retention requirements to enable the Bureau to administer and carry out the purposes of the FDCPA and the Dodd-Frank Act and to prevent evasions thereof, and to facilitate supervision of debt collectors and the assessment and detection of risks to consumers.

1(c) Coverage

The Bureau proposes to add § 1006.1(c) to address coverage under the proposed rule, which, with the exception of proposed § 1006.108 and appendix A, would apply to FDCPA-covered debt collectors.[136] Proposed § 1006.1(c)(1) thus provides that, except as provided in § 1006.108 and appendix A regarding applications for State exemptions from the FDCPA, proposed part 1006 applies to debt collectors as defined in proposed § 1006.2(i), *i.e.,* debt collectors covered by the FDCPA.[137]

Proposed § 1006.1(c)(1) also would implement FDCPA section 814(d), which provides, in part, that the Bureau may not prescribe rules under the FDCPA with respect to motor vehicle dealers as described in section 1029(a) of the Dodd-Frank Act.[138] Proposed § 1006.1(c)(1) would clarify that Regulation F would not apply to a person excluded from coverage by section 1029(a) of the Dodd-Frank Act.[139]

The Bureau proposes certain provisions of the proposed rule only under sections 1031 or 1032 of the Dodd-Frank Act. 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.[140] Dodd-Frank Act section 1032 grants the Bureau authority to ensure that the features of any consumer financial product or service are fully, accurately, and effectively disclosed to consumers.[141] Under the Dodd-Frank Act, collecting a debt related to any consumer financial product or service generally is, itself, a consumer financial product or service.[142] Of primary relevance here, a consumer financial product or service includes the extension of consumer credit.[143] Provisions proposed only under Dodd-Frank Act sections 1031 or 1032, if adopted, therefore would apply to FDCPA-covered 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.[144] This would include, for example, FDCPA-covered debt collectors collecting debts related to consumer mortgage loans or credit cards.

Proposed § 1006.1(c)(2) would clarify that certain provisions in proposed Regulation F apply to FDCPA-covered debt collectors only when they are collecting consumer financial product or service debt, as defined in § 1006.2(f).[145] Proposed § 1006.1(c)(2) specifies that these provisions are §§ 1006.14(b)(1)(ii), 1006.30(b)(1)(ii),

[128] 15 U.S.C. 1692o.

[129] *See* 16 CFR part 901.

[130] 76 FR 78121 (Dec. 16, 2011).

[131] 15 U.S.C. 1692*l*(d), 1692o.

[132] 12 U.S.C. 5481 *et seq.*

[133] 15 U.S.C. 7004(b)(1), 7004(d)(1).

[134] See the section-by-section analysis of proposed § 1006.108 and appendix A.

[135] *See id.*

[136] Proposed § 1006.108 and appendix A would apply to States.

[137] Section 812 of the FDCPA addresses the furnishing of deceptive forms and applies to any person, not just to debt collectors. Proposed 1006.30(e) would prohibit FDCPA-covered debt collectors from furnishing deceptive forms. Other persons would continue to be prohibited from furnishing deceptive forms under FDCPA section 812.

[138] 12 U.S.C. 5519(a).

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

[140] 12 U.S.C. 5531(b).

[141] 12 U.S.C. 5532.

[142] It is a financial product or service and is a consumer financial product or service if, for example, it is delivered offered, or provided in connection with a consumer financial product or service. *See* 12 U.S.C. 5481(5)(B), 5481(15)(A)(x).

[143] 12 U.S.C. 5481(15)(A)(i). The Dodd-Frank Act defines credit to mean the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase. 12 U.S.C. 5481(7).

[144] 12 U.S.C. 5481(5).

[145] See the section-by-section analysis of proposed § 1006.2(f).

and 1006.34(c)(2)(iv) and (3)(iv). The Bureau requests comment on all aspects of proposed § 1006.1(c), including on whether additional clarification would be helpful.

Section 1006.2 Definitions

FDCPA section 803 defines terms used throughout the statute.[146] Proposed § 1006.2 would repurpose existing § 1006.2 to implement and interpret FDCPA section 803 and define additional terms that would be used in the regulation.[147] The Bureau proposes to move existing § 1006.2, which describes how a State may apply for an exemption from the FDCPA, to paragraph II of appendix A of the regulation.[148]

Paragraphs (c), (g), and (*l*) of proposed § 1006.2 would implement the FDCPA section 803 definitions of Bureau, creditor, and State, respectively. These paragraphs generally restate the statute, with only minor wording and organizational changes for clarity, and thus are not addressed further in the section-by-section analysis below. Proposed § 1006.2(a) and (b), (d) through (f), and (h) through (k) would define other terms that would be used in the regulation, as described below. The Bureau proposes § 1006.2 to implement and interpret FDCPA section 803, pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors. In addition to the specific comment requests noted below, the Bureau generally requests comment on whether additional clarification is needed for any of the proposed definitions and on whether additional definitions would be helpful. For example, the proposal uses the term ''day'' to refer to any day, including weekends and public holidays. The Bureau requests comment on whether adding a defined term such as ''calendar day'' and using it in the final rule would be helpful.

2(a) Act or FDCPA

Proposed § 1006.2(a) provides that the terms Act and FDCPA mean the Fair Debt Collection Practices Act.

2(b) Attempt To Communicate

Several of the proposed rule's requirements would apply not only to communications as defined in § 1006.2(d) but also to communication attempts. For example, proposed § 1006.6(b) and (c) would, among other things, prohibit a debt collector from communicating or attempting to communicate with a consumer at times or places that the debt collector knows or should know are inconvenient to the consumer or after a consumer notifies the debt collector in writing that the consumer wishes the debt collector to cease further communication with the consumer. In addition, proposed § 1006.22(f)(3) and (4) would generally prohibit a debt collector from communicating or attempting to communicate with a consumer using an email address that the debt collector knows or should know is maintained by the consumer's employer or by a social media platform that is viewable by a person other than the consumer.

To facilitate compliance with the proposed provisions that apply to attempts to communicate, proposed § 1006.2(b) would 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. Proposed § 1006.2(b) further states that an attempt to communicate includes providing a limited-content message, as defined in § 1006.2(j). The Bureau proposes this definition of attempt to communicate on the basis that any outreach by a debt collector to a consumer—whether by a telephone call, text message, email, or otherwise—is designed to bring about a communication either immediately (*e.g.,* a consumer answers a debt collector's telephone call and they engage in a conversation about the debt) or at a later point in time (*e.g.,* in response to a missed telephone call or a limited-content message from a debt collector, a consumer calls or texts the debt collector and they engage in a conversation about the debt).

As proposed, an attempt to communicate covers a broader range of activity than a communication. As discussed in the section-by-section analysis of proposed § 1006.2(d), the proposed rule would define a communication, consistent with FDCPA section 803(2), as the conveying of information regarding a debt directly or indirectly to any person through any medium. The proposed definition of communication further states that a debt collector does not convey information regarding a debt directly or indirectly to any person if the debt collector provides only a limited-content message, as defined in proposed § 1006.2(j). The proposed definition of attempt to communicate, in contrast, does not require the conveying of information regarding a debt. As the examples in proposed comment 2(b)–1 illustrate, an attempt to communicate includes leaving a limited-content message for a consumer or placing a telephone call to a person, regardless of whether the debt collector speaks to any person or leaves any message at the dialed number. Proposed comment 2(b)–1 also would clarify that an act to initiate a communication or other contact 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.

Although the proposed definition of attempt to communicate covers a broader range of conduct than the proposed definition of communication, in many circumstances the same conduct may give rise to both an attempt to communicate and a communication. For example, a debt collector who places a telephone call to a consumer and speaks to the consumer about the debt has both attempted to communicate with the consumer (by initiating the call and speaking to the consumer) and communicated with the consumer (by conveying information about the debt). Sometimes, however, an attempt to communicate may not give rise to a communication. For example, a debt collector who places an unanswered telephone call to a consumer and chooses not to leave a message has attempted to communicate with the consumer but has not communicated with the consumer. The Bureau requests comment on proposed § 1006.2(b) and on proposed comment 2(b)–1.

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.[149] Proposed § 1006.2(d) would implement and interpret this definition.

Proposed § 1006.2(d) first restates the statutory definition of communication, with only minor changes for clarity. Proposed § 1006.2(d) also would interpret FDCPA section 803(2) to provide 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 proposed § 1006.2(j). The section-by-section analysis of proposed § 1006.2(j)

[146] 15 U.S.C. 1692a.

[147] FDCPA section 803(7) defines the term ''location information.'' 15 U.S.C. 1692a(7). The Bureau proposes to define that term in § 1006.10, rather than in § 1006.2. See the section-by-section analysis of proposed § 1006.10(a).

[148] See the section-by-section analysis of proposed § 1006.108 and appendix A.

[149] 15 U.S.C. 1692a(2).

regarding limited-content messages explains and requests comment both on the proposed content of limited-content messages and on the Bureau's proposal to interpret the term communication in § 1006.2(d) as excluding such messages.

Proposed comment 2(d)–1 notes that a communication can occur through ''any medium'' and explains that ''any medium'' includes any oral, written, electronic, or other medium. The proposed comment states that a communication may occur, for example, in person or by telephone, audio recording, paper document, mail, email, text message, social media, or other electronic media. The Bureau proposes comment 2(d)–1 in part to clarify that debt collectors may communicate with consumers through newer communication media, such as electronic media. The Bureau elsewhere proposes provisions to clarify how debt collectors may use those media to communicate with consumers. The Bureau requests comment on proposed § 1006.2(d) and on proposed comment 2(d)–1 and on whether additional clarification about the definition of communication would be useful.

2(e) Consumer

FDCPA section 803(3) defines a consumer as any natural person obligated or allegedly obligated to pay any debt.[150] Proposed § 1006.2(e) would implement this definition, interpret it to include a deceased natural person who is obligated or allegedly obligated to pay a debt, and cross-reference the special definition of consumer for certain communications in connection with the collection of a debt set forth in proposed § 1006.6(a).

As summarized in part I.B, the Bureau proposes to address several consumer protection concerns and ambiguities in statutory language related to the collection of debts owed by deceased consumers, also known as decedent debt. One such issue is that the FDCPA does not specify whether a consumer, as defined in section 803(3), includes a deceased consumer (or whether a natural person, as that term is used in section 803(3), includes a deceased natural person). Because the definition of consumer in FDCPA section 803(3) is silent with respect to deceased consumers, debt collectors may be uncertain, when collecting a deceased consumer's debts, how to comply with FDCPA provisions that refer to a debt collector's obligations to a consumer.

For example, certain important FDCPA disclosure requirements, such as a debt collector's obligation to provide a validation notice and to respond to disputes and requests for original-creditor information, refer only to a debt collector's obligations to consumers.[151] In the absence of guidance, debt collectors may be uncertain who, if anyone, should receive the validation notice and have the right to dispute the debt if the consumer obligated or allegedly obligated to pay the debt is deceased. Without a validation notice and an opportunity to dispute the debt, individuals trying to resolve debts in a deceased consumer's estate may experience difficulty because they lack information needed to determine whether they are being asked to pay the right debt, in the right amount, to the right debt collector, and to assert dispute rights. To address that concern, the Bureau proposes to clarify in the commentary to §§ 1006.34(a)(1) and 1006.38 that a person who is authorized to act on behalf of the deceased consumer's estate, such as the executor, administrator, or personal representative, operates as the consumer for purposes of proposed §§ 1006.34(a)(1) and 1006.38.[152]

Consistent with those proposed clarifications, the Bureau proposes in § 1006.2(e) to interpret the definition of consumer in FDCPA section 803(3) to mean any natural person, whether living or deceased, who is obligated or allegedly obligated to pay any debt. The proposed interpretation should clarify the meaning of the term consumer in the decedent debt context and appears to be consistent with a modern trend in the law that favors recognizing, as a default, the continued existence of a natural person after death.[153] Further, the Bureau notes that debt collectors often collect or attempt to collect debts from deceased consumers (*i.e.,* from their estates), which presents many of the same consumer-protection concerns as collecting or attempting to collect debts from living consumers.

In addition to proposing to clarify the meaning of the term consumer in the decedent debt context, the Bureau proposes in § 1006.2(e) to cross-reference the special definition of consumer for certain communications in connection with the collection of a debt in proposed § 1006.6(a). As described in the section-by-section analysis of proposed § 1006.6, FDCPA section 805(d) identifies certain persons in addition to the section 803(3) consumer as persons with whom a debt collector may communicate in connection with the collection of any debt without violating FDCPA section 805(b)'s prohibition on third-party disclosures.[154] The Bureau proposes to implement FDCPA section 805(d) in § 1006.6(a) and to cross-reference the § 1006.6(a) definition in proposed § 1006.14(h). As discussed below, proposed § 1006.14(h) would 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. Accordingly, proposed § 1006.2(e) provides that, for purposes of proposed §§ 1006.6 and 1006.14(h), the term consumer has the meaning given to it in proposed § 1006.6(a). For further discussion, see the section-by-section analysis of proposed § 1006.6(a). The Bureau requests comment on the definition of consumer in proposed § 1006.2(e), including on whether the definition should include deceased consumers.

2(f) Consumer Financial Product or Service Debt

As discussed in the section-by-section analysis of proposed § 1006.1(c), certain proposed provisions would apply to debt collectors only if they are collecting a debt related to a consumer

[150] 15 U.S.C. 1692a(3).

[151] *See* 15 U.S.C. 1692g(a)–(b).

[152] See proposed comments 34(a)(1)–1, 34(d)(1)(ii)–2, and 38–1.

[153] *See, e.g.,* Cal. Civ. Proc. Code sec. 377.20(a) (2018) (''Except as otherwise provided by statute, a cause of action for or against a person is not lost by reason of the person's death, but survives subject to the applicable limitations period.''). Federal law often provides an unclear answer about whether claims survive the death of a natural person. Rule 25(a) of the Federal Rules of Civil Procedure allows substitution ''[i]f a party dies and the claim is not extinguished,'' but Federal statutes often do not address whether claims extinguish upon the death of a plaintiff or defendant and, in these cases, Federal common law generally permits survival of claims where they are merely remedial in nature and not penal. *See Ex parte Schreiber,* 110 U.S. 76, 80 (1884). Most authority suggests that claims brought under other portions of the Consumer Credit Protection Act (CCPA), of which the FDCPA is subchapter V, likely are remedial rather than penal in nature. *See, e.g., Murphy* v. *Household Fin. Corp.,* 560 F.2d 206, 210 (6th Cir. 1977) (holding, in a widely adopted test, that double damages under Truth in Lending Act (TILA), subchapter I of the CCPA, are remedial rather than penal); *In re Wood,* 643 F.2d 188, 192 (5th Cir. 1980) (following *Murphy* to conclude that trustee of debtor's estate had standing to bring claims under TILA). On the other hand, some courts, for example, follow the tradition of the common law and treat a ''natural person'' as ceasing to exist at the point of death. *See, e.g., Williamson* v. *Treasurer,* 814 A.2d 1153, 1164 (N.J. Super. Ct. App. Div. 2003) (''We would not describe the body or remains of a deceased person as still a human being or a natural person.'' (interpreting the New Jersey Right to Know law and citing *Natural person,* Black's Law Dictionary (7th ed. 1999))). In light of the conflicting traditions and the FDCPA's silence, it appears appropriate to regard the statutory term ''consumer'' as ambiguous as to whether it includes or excludes a deceased consumer.

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

financial product or service, as that term is defined in section 1002(5) of the Dodd-Frank Act.[155] Debt related to a consumer financial product or service would include, for example, debts related to consumer mortgage loans or credit cards. For ease of reference, proposed § 1006.2(f) would define the term consumer financial product or service debt to mean a debt related to a consumer financial product or service, as consumer financial product or service is defined in section 1002(5) of the Dodd-Frank Act.

2(h) Debt

FDCPA section 803(5) defines the term debt for purposes of the FDCPA. Proposed § 1006.2(h) would implement FDCPA section 803(5) and generally restates the statute. Proposed § 1006.2(h) also would clarify that, for purposes of § 1006.2(f), the term debt means debt as that term is used in the Dodd-Frank Act. The Bureau proposes this clarification to ensure that, when determining whether a debt is a debt related to a consumer financial product or service for purposes of § 1006.2(f), debt collectors and other stakeholders refer to the Dodd-Frank Act rather than the FDCPA's definition of debt.

2(i) Debt Collector

FDCPA section 803(6) defines the term debt collector for purposes of the FDCPA. 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).[156] FDCPA section 803(6) also sets forth several exclusions from the general definition.[157] Proposed § 1006.2(i) would implement FDCPA section 803(6)'s definition of debt collector and generally restates the statute, with only minor wording and organizational changes for clarity [158] and to specify that the term excludes private entities that operate certain bad check enforcement programs that comply with FDCPA section 818.[159]

The Supreme Court recently has interpreted FDCPA section 803(6). In *Henson* v. *Santander Consumer USA Inc.,* the Court held that a company may collect defaulted debts that it has purchased from another without being an FDCPA-covered debt collector.[160] In so holding, 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). 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.[161] 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.[162]

Proposed § 1006.2(i) generally would restate FDCPA section 803(6)'s definition of debt collector. Consistent with the Court's holding in *Henson,* the proposed definition thus could include a debt buyer collecting debts that it purchased and owned, 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.[163]

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.[164] As discussed, proposed § 1006.2(d) would implement and interpret 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.[165] Proposed § 1006.2(j) would further interpret FDCPA section 803(2) by defining the content that a limited-content message would be required and permitted to include. For the reasons discussed below, under the Bureau's interpretation of the term communication, a limited-content message would not convey information about a debt directly or indirectly to any person, and, as a result, 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.

The definition of communication is central to the FDCPA's protections, many of which regulate a debt collector's communications with a consumer or other person. For example, FDCPA section 805 [166] restricts when and where a debt collector may communicate with a consumer, FDCPA sections 806 through 808 [167] contain requirements concerning the form and content of a debt collector's communications with a consumer or other person, and FDCPA section 804 [168] imposes requirements on a debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer.

Uncertainty about what constitutes a communication, however, has led to questions about how debt collectors can leave voicemails or other messages for consumers while complying with certain FDCPA provisions. Most significantly, 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.[169] 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.[170] Uncertainty about what constitutes a communication may result in debt collectors repeatedly calling consumers

[155] 12 U.S.C. 5481(5). See the section-by-section analysis of proposed § 1006.1(c).

[156] 15 U.S.C. 1692a(6).

[157] *Id.*

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

[159] 15 U.S.C. 1692p.

[160] *Henson* v. *Santander Consumer USA, Inc.,* 137 S. Ct. 1718 (2017). 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-covered debt collector, except for the limited purpose of FDCPA section 808(6). *See Obduskey* v. *McCarthy & Holthus LLP,* 139 S. Ct. 1029 (2019).

[161] *Henson,* 137 S. Ct. at 1721. The Court had not identified these questions as being presented when it granted certiorari. *Id.*

[162] *Id.* at 1721–22.

[163] *See, e.g., Barbato* v. *Greystone Alliance, LLC,* 916 F.3d 260 (3d Cir. 2019) (holding that a debt buyer whose principal purpose was debt collection was an FDCPA-covered debt collector even though the debt buyer outsourced its collection activities to third parties).

[164] 15 U.S.C. 1692a(2).

[165] See the section-by-section analysis of proposed § 1006.2(d).

[166] 15 U.S.C. 1692c.

[167] 15 U.S.C. 1692d–1692f.

[168] 15 U.S.C. 1692b.

[169] 15 U.S.C. 1692e(11). See also the section-by-section analysis of proposed § 1006.18(e).

[170] 15 U.S.C. 1692c(b). See also the section-by-section analysis of proposed § 1006.6(d).

and hanging up rather than risking liability by leaving messages.

Courts interpreting the FDCPA's definition of communication and the intersection of FDCPA sections 805(b) and 807(11) have reached conflicting results. Some courts hold that a message asking for a return call from a consumer is a communication and that a debt collector who leaves such a message violates FDCPA section 805(b)'s prohibition on communicating with third parties if the message is heard by a person other than the consumer.[171] These courts also hold that, because the message is a communication with the consumer, it must include a statement pursuant to FDCPA section 807(11) that the caller is attempting to collect a debt, which further increases the likelihood that a third party hearing the message would know that the message relates to debt collection.[172] Conversely, other courts hold that a message limited to certain content—such as the debt collector's name, a statement that the caller is a debt collector, and a call-back number—is not a communication and thus does not, itself, constitute a prohibited third-party disclosure under FDCPA section 805(b) or require an FDCPA section 807(11) disclosure.[173]

Many debt collectors state that they err on the side of caution and make repeated telephone calls instead of leaving messages on a consumer's voicemail or with a third party who answers a consumer's telephone, or sending text messages.[174] 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.[175] In comments to the Bureau's ANPRM and in feedback during the SBREFA process, many debt collectors stated that they would place fewer telephone calls if they were confident that leaving voicemails or other messages for consumers would not expose them to risk of liability under the FDCPA.[176] 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.[177]

To address uncertainty about what constitutes an FDCPA communication and to reduce the need for debt collectors to rely on repeated telephone calls without leaving messages to establish contact with consumers, the Bureau proposes § 1006.2(j) to interpret FDCPA section 803(2) and define a message whose content would not ''convey[ ] information regarding a debt directly or indirectly to any person.'' Specifically, proposed § 1006.2(j) would provide that a limited-content message means a message for a consumer that includes all of the content described in § 1006.2(j)(1), and that may include any of the content described in § 1006.2(j)(2), but does not include other content. As discussed in the section-by-section analysis of proposed § 1006.2(b) and (d), a limited-content message would not be a communication, as defined in § 1006.2(d), but would be an attempt to communicate, as defined in § 1006.2(b).

Under the proposal, a debt collector who leaves a limited-content message for a consumer would not have communicated with the consumer or any other person through that message. In turn, because FDCPA sections 805(b) and 807(11) both apply only to communications as defined by the FDCPA, the requirements described in those sections would not apply to the limited-content message. Accordingly, a limited-content message would not be required to include a disclosure pursuant to FDCPA section 807(11) (as implemented by proposed § 1006.18(e)), and a debt collector would not risk violating FDCPA section 805(b) (as

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[171] *See, e.g., Cordes* v. *Frederick J. Hanna & Assocs., P.C.,* 789 F. Supp. 2d 1173, 1177 (D. Minn. 2011) (holding that debt collector violated FDCPA section 805(b) by leaving voicemail messages that disclosed that the caller was a debt collector); *Marisco* v. *NCO Fin. Sys., Inc.,* 946 F. Supp. 2d 287, 289, 291–96 (E.D.N.Y. 2013) (holding that consumer stated a claim for a violation of FDCPA 805(b) where debt collector's voicemail message was overheard by a third party and stated, in part, ''This is an important message from NCO Financial Systems, Inc. The law requires that we notify that this is a debt collection company. This is an attempt to collect a debt and any information obtained will be used for that purpose. This is an attempt to collect a debt.''); *Fed. Trade Comm'n* v. *Check Enforcement,* No. CIV.A. 03–2115 (JWB), 2005 WL 1677480, at *8 (D.N.J. July 18, 2005) (''[T]he record indicates that defendants left messages on home answering machines, which were overheard by family members and other third parties, to obtain payments from alleged indebted consumers. Thus, defendants have . . . engaged in prohibited communications with third parties in violation of Section 805 of the FDCPA.''), *aff'd sub nom. Fed. Trade Comm'n* v. *Check Investors, Inc.,* 502 F.3d 159 (3d Cir. 2007); *see also Foti* v. *NCO Fin. Sys., Inc.,* 424 F. Supp. 2d 643, 655–56 (S.D.N.Y. 2006) (''Defendant's voicemail message, while devoid of any specific information about any particular debt, clearly provided some information, even if indirectly, to the intended recipient of the message. Specifically, the message advised the debtor that the matter required immediate attention, and provided a specific number to call to discuss the matter. Given that the obvious purpose of the message was to provide the debtor with enough information to entice a return call, it is difficult to imagine how the voicemail message is not a communication under the FDCPA.'').

[172] *Foti,* 424 F. Supp. 2d at 657–58 (''[A] narrow reading of the term 'communication' to exclude instances such as the present case where no specific information about a debt is explicitly conveyed could create a significant loophole in the FDCPA, allowing debtors to circumvent the § 1692e(11) disclosure requirement, and other provisions of the FDCPA that have a threshold 'communication' requirement, merely by not conveying specific information about the debt . . . . Such a reading is inconsistent with Congress's intent to protect consumers from 'serious and widespread' debt collection abuses.''); *Hosseinzadeh* v. *M.R.S. Assocs., Inc.,* 387 F. Supp. 2d 1104, 1116 (C.D. Cal. 2005) (''Because it appears that defendant's messages are 'communications' subjecting defendant to the provisions of § 1692e(11), it also appears that defendant has violated § 1692e(11) because the messages do not convey the information required by § 1692e(11), in particular, that the messages were from a debt collector.'').

[173] *See, e.g., Zortman* v. *J.C. Christensen & Assocs., Inc.,* 870 F. Supp. 2d 694, 701, 707–08 (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.''); *Zweigenhaft* v. *Receivables Performance Mgmt., LLC,* No. 14 CV 01074 RJD JMA, 2014 WL 6085912, at *1 (E.D.N.Y. Nov. 13, 2014) (similar); *Biggs* v. *Credit Collections, Inc.,* No. CIV–07–0053–F, 2007 WL 4034997, at *4 (W.D. Okla. Nov. 15, 2007) (''Words matter—in this instance, the words of the voice mails and the words of the statutory definition of a 'communication.' The transcript of the voice mail messages demonstrates that the voice mails 'convey[ed]' no 'information regarding a debt.' No amount of liberal construction can broaden the statutory language to encompass the words recorded in these voice mails.''); *see also* Consent Order at ¶ IV.A., *Fed. Trade Comm'n* v. *Expert Global Solutions, Inc.,* No. 3:13–cv–02611–M (N.D. Tex. July 16, 2013), *https://www.ftc.gov/sites/default/files/documents/cases/2013/07/130709ncoorder.pdf* (enjoining defendant debt collector from leaving recorded messages in which defendant states both the debtor's name and that the caller is a debt collector, unless the recipient's voicemail greeting identifies only the debtor's first and last name or defendant has already spoken with the debtor at the called number).

[174] *See, e.g.,* Small Business Review Panel Report, *supra* note 57, at 25–26.

[175] See the section-by-section analysis of proposed § 1006.14(b)(2).

[176] *See* Bureau of Consumer Fin. Prot., Advanced Notice of Proposed Rulemaking, Debt Collection (Regulation F), 78 FR 67848, 67867 (Nov. 12, 2013) (noting that debt collectors believe that recent case law presents a dilemma in which a debt collector's voicemail for a consumer may not be able to comply with both FDCPA sections 805(b) and 807(11)); Fed. Trade Comm'n, *Collecting Consumer Debts: The Challenges of Change,* at 36 n.228 (Feb. 2009), *https://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf* (hereinafter FTC Modernization Report) (summarizing industry members' comments that conflicting case law on debt collectors' ability to communicate by newer forms of technology deters debt collectors from using such technologies, including leaving voicemails); *id.* at 47–49 (noting industry commenters' concerns about their ability to leave voicemails that comply with the FDCPA and recommending that the law regarding voicemails be clarified).

[177] *See* FTC Modernization Report, *supra* note 176, at 49–50; U.S. Gov't Accountability. Off., GAO–09–748, *Credit Cards: Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace and Use of Technology,* at 47–48, 52 (Sept. 2009), *http://www.gao.gov/assets/300/295588.pdf.*

implemented by proposed § 1006.6(d)) if someone other than the consumer heard or received the message.

The proposal would define a limited-content message as, in part, a message ''for a consumer.'' As a result, any message left for a person other than a consumer would not be a limited-content message. FDCPA section 807(11)'s requirement that a debt collector disclose that the purpose of a communication is to collect a debt and that any information obtained will be used for that purpose applies only when a debt collector is communicating ''with the consumer.'' Concerns about the intersection of FDCPA sections 805(b) and 807(11) are thus not as relevant when a debt collector contacts a person other than a consumer. In addition, because debt collectors generally are prohibited from communicating with a person other than the consumer, they generally have no need to contact third parties, and, when such communications are permitted for obtaining location information about a consumer, FDCPA section 804 already provides a comprehensive disclosure regime. Therefore, it may not be necessary to specify the content of a message that does not constitute a communication if left by a debt collector for a person other than the consumer.

The proposal would enable a debt collector to transmit a limited-content message by voicemail, by text message, or orally. Debt collectors may be most likely to use these methods to send limited-content messages, and these methods may be most likely to generate a response from a consumer. The proposal would not enable a debt collector to transmit a limited-content message by email because, as discussed below, email messages 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). In addition, other aspects of the proposed rule (*e.g.,* the procedures described in proposed § 1006.6(d)(3) for emails and text messages) may encourage debt collectors to send debt collection communications to consumers by email. Accordingly, a rule that would enable debt collectors to send limited-content messages by email might not sufficiently protect consumers' privacy interests or be of significant benefit to debt collectors.

Proposed comment 2(j)–1 explains that any message other than a message that includes the content specified in § 1006.2(j) is not a limited-content message. The comment further explains that, if a message includes any other content and such other content directly or indirectly conveys any information about a debt, including but not limited to any information that indicates that the message relates to the collection of a debt, the message would be a communication, as defined in proposed § 1006.2(d). Proposed comment 2(j)–2 provides examples of limited-content messages.

Proposed comment 2(j)–3 provides examples of ways in which a debt collector could transmit a limited-content message to a consumer, such as by leaving a voicemail at the consumer's telephone number, sending a text message to the consumer's mobile telephone number, or leaving a message orally with a third party who answers the consumer's home or mobile telephone number. Proposed comment 2(j)–3 notes, however, that leaving a limited-content message would be subject to other FDCPA provisions, including the prohibitions on harassing or abusive conduct and unfair or unconscionable practices in FDCPA sections 806 and 808, respectively.[178] As the section-by-section analyses of proposed §§ 1006.2(b) and (d), 1006.6(b) and (c), 1006.14(h), and 1006.22(f)(3) and (4) explain in more detail, consumers may be harassed or otherwise injured not only by communications, but also by attempts to communicate, including when a debt collector conveys limited-content messages. Accordingly, those sections propose certain restrictions on when and how a debt collector may attempt to communicate with a person, including by leaving a limited-content message.

Proposed comment 2(j)–4 would clarify that a debt collector who places a telephone call and leaves only a limited-content message for a consumer does not, with respect to that telephone call, violate FDCPA section 806(6)'s prohibition on the placement of telephone calls without meaningful disclosure of the caller's identity. Under the proposed interpretation, the content described in proposed § 1006.2(j)(1) would meaningfully disclose the caller's identity. The proposed interpretation would be limited to the narrow circumstance of a debt collector providing only a limited-content message to a consumer. As described below, proposed § 1006.2(j)(1) would require 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; a limited-content message could not contain any content that is not described in proposed § 1006.2(j)(1) or (2), and debt collectors would be prohibited from including false or misleading statements about the caller's identity or the purpose of the call. As a result, the message should not mislead a consumer about the identity of the caller and the consumer could use the contact information to call a particular employee of a debt collector. Upon receiving such a call and engaging in a communication, the debt collector would be required by FDCPA section 807(11) to disclose to the consumer that the communication is from a debt collector. This sequence of events—a limited-content message followed by a communication in which the debt collector provides the FDCPA section 807(11) disclosures—may benefit consumers more than the status quo, under which many debt collectors place repeated telephone calls without leaving any message or any contact information that the consumer can use to reply to the debt collector.

The interpretation in proposed comment 2(j)–4 would apply only when a debt collector places a telephone call and leaves only a limited-content message for a consumer. It would not extend to any other message a debt collector leaves for a consumer or other person, as such messages might not include all of the content that must be included in a limited-content message, might include content that is not described in proposed § 1006.2(j)(1) or (2) and that conveys a misleading impression about the caller's identity or purpose of the call, or might constitute a communication that is subject to FDCPA section 807(11) or that otherwise would need to include different disclosures about the caller's identity and purpose in order to satisfy FDCPA section 806(6). Similarly, the rationale in proposed comment 2(j)–4 would not extend to a telephone call that is a live conversation with the consumer because, again, the content of such a conversation would be different than the content of a limited-content message.

The Bureau requests comment on whether the proposal to define a limited-content message that a debt collector could leave for a consumer without risking a violation of FDCPA sections 805(b) or 807(11) will enable debt collectors to establish contact with consumers while reducing the number of telephone calls that consumers receive. The Bureau further requests comment on the costs and benefits of

[178] 15 U.S.C. 1692d, 1692f.

permitting debt collectors to leave limited-content messages for consumers, including on whether those costs and benefits differ depending on whether a debt collector leaves a limited-content message: (1) In a voicemail message on a home, mobile, or work telephone; (2) in a live conversation with a third party who answers the consumer's home, mobile, or work telephone number; or (3) by text message. The Bureau requests comment on whether there are other communication media, such as email, by which debt collectors should be permitted to leave limited-content messages, including in particular on the advantages and disadvantages of the proposed approach, which would not permit debt collectors to send limited-content messages by email. In addition, the Bureau requests comment on whether a debt collector should be permitted to leave limited-content messages with third parties only in certain circumstances (*e.g.,* if a third party answers the consumer's telephone number) and whether a debt collector should be able to include additional content in a limited-content message if leaving it with a third party (*e.g.,* a request that the third party take a message).

The Bureau also requests comment on the proposed commentary. In particular, the Bureau requests comment on whether proposed comment 2(j)–4 properly interprets the requirement to ''meaningful[ly] disclose the caller's identity'' as satisfied when a debt collector places a telephone call and leaves only a limited-content message, and on whether there are other disclosures that would satisfy the meaningful disclosure requirement of FDCPA section 806(6) without causing the message to become a communication (*i.e.,* without conveying information about a debt directly or indirectly to any person).

During the SBREFA process, small entity representatives overwhelmingly supported a rule clarifying how and when a debt collector may leave a voicemail or other message for a consumer.[179] They predicted that a rule defining a limited-content message that is not a communication under the FDCPA would reduce the number and frequency of collection calls as well as facilitate communications between debt collectors and consumers. The Small Business Review Panel Report recommended that the Bureau request comment on the costs and benefits of any limited-content message proposal, including on the costs and benefits of providing limited-content messages by media other than telephone, and of any proposal that would require debt collectors to include a toll-free callback telephone number in a limited-content message (as the proposal then under consideration would have).[180] Proposed § 1006.2(j) and the requests for comment in this section are consistent with the feedback received during the SBREFA process, which supported a definition of limited-content message, and the Panel Report's recommendations.

2(j)(1) Required Content

Proposed § 1006.2(j)(1) would require that limited-content messages include certain content to ensure that they facilitate contact between debt collectors and consumers. In particular, proposed § 1006.2(j)(1) provides that a limited-content message must include all of the following: 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,[181] a telephone number that the consumer can use to reply to the debt collector,[182] and, if delivered electronically, a disclosure explaining how the consumer can stop receiving messages through that medium.[183] The consumer's name and a request that the consumer reply to the message may help to ensure that the correct person receives the message and is prompted to respond. Including in the message a telephone number that the consumer can use to reply to the message, as well as the name of at least one person the consumer can speak to, should enable the consumer to reply to the message and interact with a debt collector's employee who has access to information about the debt in collection. In the case of a limited-content message sent by text message, a disclosure explaining how the consumer can stop receiving such messages may help prevent harassment, as further explained in the section-by-section analysis of proposed § 1006.6(e). In addition, the Bureau understands that the content required by § 1006.2(j)(1) often is included in a voicemail or other message for a person in a wide variety of non-debt collection circumstances, so a third party hearing or observing the message may not infer from its content that the consumer owes a debt. Under this proposed interpretation, none of the items in the limited-content message themselves individually or collectively convey that the consumer owes a debt or other information regarding a debt.

Proposed comment 2(j)(1)(iv)–1 notes that a limited-content message must include a telephone number that the consumer can use to reply to the debt collector. The proposed comment explains 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. The Bureau considered permitting such telephone numbers to be included in limited-content messages on the condition that they do not convey information about a debt, but such a condition would require a case-by-case analysis to determine if a particular vanity number conveyed information about a debt. As a result, permitting the inclusion of a vanity number in any or all circumstances could undermine the certainty that the limited-content message definition is designed to provide and could increase the risk that a third party hearing or observing the message could infer that it relates to debt collection. Similarly, the sender's email address could, in some circumstances, convey information about a debt. In part for that reason, proposed § 1002.2(j) would not permit a limited-content message to include a sender's email address and, consequently, would effectively prohibit sending a limited-content message by email. As discussed, debt collectors also may have less of a need to send a limited-content message by email because proposed § 1006.6(d)(3) would clarify the procedures that a debt

[179] Small Business Review Panel Report, *supra* note 57, at 36.

[180] *Id.*

[181] Proposed § 1006.18(f) would clarify that a debt collector's employee does not violate § 1006.18 by 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 any employee who is using an assumed name. See the section-by-section analysis of proposed § 1006.18(f).

[182] The proposal under consideration during the SBREFA process would have required the telephone number to be toll-free to the consumer (*e.g.,* a 1–800 number). *See* Small Business Review Panel Outline, *supra* note 56, at 24. In light of feedback from some small entity representatives regarding the potential costs of maintaining a 1–800 number for the sole purpose of being able to transmit limited-content messages, the proposed rule would not require a toll-free telephone number.

[183] Proposed § 1006.6(e) would require a debt collector who communicates or attempts to communicate with a consumer electronically in connection with the collection of a debt using, among other things, a 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 one or more ways the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number. See the section-by-section analysis of proposed § 1006.6(e).

collector could maintain to avoid incurring liability for a prohibited third-party communication by email, thereby reducing the risk to debt collectors of sending debt collection communications to consumers by email.

2(j)(2) Optional Content

Proposed § 1006.2(j)(2) would permit a debt collector to include in a limited-content message certain content that may help prompt a consumer to reply but that, unlike the content described in proposed § 1006.2(j)(1), may not be necessary to enable the consumer to reply to the message or to prevent harassment. In particular, proposed § 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, a generic statement that the message relates to an account, and suggested dates and times for the consumer to reply to the message. The proposed interpretation would hold that none of these items, individually or collectively, conveys that the consumer owes a debt or other information regarding a debt.

The Bureau requests comment on all aspects of proposed § 1006.2(j), including on the proposed interpretation that none of the content described in proposed § 1006.2(j)(1) and (2) conveys information regarding a debt. The Bureau also requests comment on whether the proposal to allow a limited-content message to include a generic statement that the message relates to an ''account'' raises a risk that the message would convey information about a debt to a third party hearing or observing the message, and whether there is an alternative statement that would better minimize such risk. For example, the Bureau considered proposing permitting a limited-content message to state that the message relates to a ''personal,'' ''business,'' ''confidential,'' ''private,'' ''important,'' or ''time-sensitive'' matter, but each of these might, in at least certain contexts, be misleading or confusing to a consumer. The Bureau further requests comment on whether there is sufficient information required or permitted in the limited-content message to prompt consumers to make a return call or text to the included telephone number and, if not, what additional information could be included in the message that would not cause the message to constitute a communication. The Bureau also requests comment on whether including a sender or recipient email address or a vanity telephone number in a limited-content message could convey information about a debt to a third party hearing or observing the message and reduce the utility of a bright-line definition. Finally, the Bureau requests comment on the media by which debt collectors anticipate that they would send limited-content messages and on whether additional clarification is necessary regarding sending limited-content messages by media other than telephone.

2(k) Person

Proposed § 1006.2(k) would define the term person to have the meaning set forth in 1 U.S.C. 1, which provides 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.'' [184] The FDCPA does not define the term person, and the context does not appear to indicate that a meaning other than the meaning in 1 U.S.C. 1 should apply. The term person is used throughout the FDCPA and the proposed regulation. The Bureau proposes to define this term to facilitate compliance, with only minor wording changes from the statute.

Subpart B—Rules for FDCPA Debt Collectors [185]

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.[186] Proposed § 1006.6 would implement and interpret FDCPA section 805; it also would interpret FDCPA sections 806 and 808 to provide certain additional protections regarding debt collection communications.

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. Accordingly, the protections in FDCPA section 805 apply to these individuals and 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.[187] For example, under FDCPA section 805(d), a debt collector may communicate not only with the consumer who owes or allegedly owes the debt, but also with the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator,[188] even though debt collectors generally are prohibited from communicating in connection with the collection of a debt with third parties.[189] 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.[190]

Proposed § 1006.6(a) would implement and interpret FDCPA section 805(d) and would define consumer for purposes of proposed §§ 1006.6 and 1006.14(h). Consistent with proposed § 1006.2(e), which, as described above, would interpret consumer to include deceased persons, proposed comments 6(a)(1)–1 and 6(a)(2)–1 would clarify that surviving spouses and parents of deceased minor consumers, respectively, are consumers for purposes of proposed § 1006.6. Except for these clarifications, and except for the interpretations discussed in the section-by-section analysis of proposed § 1006.6(a)(4) and (5), proposed § 1006.6(a) generally mirrors the statute. The section-by-section analysis below therefore addresses only proposed § 1006.6(a)(4) and (5).

6(a)(4)

Proposed § 1006.6(a)(4) would implement FDCPA section 805(d)'s definition of the term consumer as related to executors and administrators. Proposed § 1006.6(a)(4) generally restates the statute and its commentary also interprets FDCPA section 805(d) to include the personal representative of the deceased consumer's estate.

As discussed above, FDCPA section 805 generally limits the individuals with whom a debt collector may discuss the debt to those individuals identified as consumers in FDCPA section 805(d). If the consumer who owes or allegedly owes the debt is deceased, the consumer's family members may find that debt collectors are reluctant to communicate with the individuals attempting to resolve any outstanding debts of the decedent unless they are among the individuals identified in FDCPA section 805(d) with whom a debt collector may generally discuss the

[184] *See* 1 U.S.C. 1.

[185] Consistent with its proposal to amend Regulation F to prescribe Federal rules governing the activities of debt collectors, the Bureau proposes to move 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 proposed § 1006.108 and appendix A.

[186] 15 U.S.C. 1692c.

[187] 15 U.S.C. 1692c(d).

[188] *Id.*

[189] *See* 15 U.S.C. 1692c(b).

[190] *See* 15 U.S.C. 1692b. For additional discussion of these provisions, see the section-by-section analyses of proposed §§ 1006.6(d) and 1006.10(c).

debt, *i.e.,* individuals with the title of executor or administrator under State law. This reluctance may delay the prompt resolution of estates.

The Bureau understands that most States currently provide procedures for resolving estates that are faster and less expensive than the formal probate process that may have been more common when Congress enacted the FDCPA more than 40 years ago. Under these expedited State procedures, an individual with the authority to pay the decedent's debts out of the assets of the estate may lack the particular title of executor or administrator under State law. The Bureau proposes to interpret the terms executor and administrator as used in the FDCPA to include personal representatives, which is defined in proposed comment 6(a)(4)–1 as any person who is authorized to act on behalf of the deceased consumer's estate. These terms are not defined in the FDCPA, and the FDCPA does not indicate that they are limited to persons who formally have the title of executor or administrator under State law. Rather, it is ambiguous whether the terms executor and administrator include personal representatives of a consumer's estate, as these persons serve the functions of executors or administrators but do not formally have that title. Accordingly, the Bureau proposes to interpret executor and administrator in a manner that is flexible enough to recognize the evolution in estate resolution processes over time, including the use of a personal representative to be the executor or administrator of the decedent's estate.[191]

The ability to resolve the debts of estates outside of the formal probate process through informal processes may benefit consumers. 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. In its Policy Statement on Decedent Debt, the FTC voiced similar concerns about unnecessarily pushing estates into probate. In light of such concerns, the FTC indicated that the agency would take no enforcement action against debt collectors who communicated about a decedent's debts with an individual who has the authority to pay the debts out of the assets of the deceased consumer's estate.[192]

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, the Bureau proposes § 1006.6(a)(4). The Bureau requests comment on proposed § 1006.6(a)(4).

Proposed comment 6(a)(4)–1 would clarify that the terms executor or administrator include the personal representative of the consumer's estate, and that a personal representative of the consumer's estate is any person who is authorized to act on behalf of the deceased consumer's estate. The proposed comment explains that 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 assets extrajudicially.

The term personal representative in comment 6(a)(4)–1 includes the same individuals as those recognized by the FTC's Policy Statement on Decedent Debt.[193] As the FTC has noted, some of the terms used to describe these individuals come from the Uniform Probate Code.[194] However, proposed comment 6(a)(4)–1 adapts the general description of the term personal representative from Regulation Z, 12 CFR 1026.11(c), comment 11(c)–1 (persons ''authorized to act on behalf of the estate'') rather than the general description found in the FTC's Policy Statement (persons with the ''authority to pay the decedent's debts from the assets of the decedent's estate.''). The Bureau believes that this change is non-substantive. The description of the term personal representative also reflects the language that a debt collector may use to acquire location information about the executor, administrator, or personal representative of the deceased consumer's estate, as explained in proposed comment 10(b)(2)–1.[195] The Bureau requests comment on the scope of the definition of personal representative in proposed comment 6(a)(4)–1 and on any ambiguity in the illustrative descriptions of personal representatives. The Bureau specifically requests comment on experiences under the FTC's Policy Statement on Decedent Debt.

In its Small Business Review Panel Outline, the Bureau stated that it was considering limiting the definition of personal representative to individuals recognized under State probate or estate laws.[196] However, the Bureau received feedback from industry indicating that many State laws define personal representative to mean an executor or administrator. In these States, the definition of personal representative under consideration in the Small Business Review Panel Outline would have restricted communication to formally appointed executors or administrators, which would not have alleviated the harms the Bureau intended to address. Proposed comment 6(a)(4)–1, which provides that a personal representative is any person who is authorized to act on behalf of the deceased consumer's estate, is designed to address this post-SBREFA feedback.

6(a)(5)

Proposed § 1006.6(a)(5) would interpret FDCPA section 805(d)'s definition of the term consumer to include confirmed successors in interest. Under Regulations X and Z, a successor in interest is a person to whom a borrower transfers 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, provided that the transfer is: (1) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety; (2) a transfer to a relative resulting from the death of a borrower; (3) a transfer where the spouse or children of the borrower become an owner of the property; (4) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or (5) a transfer into an *inter vivos* trust in which the borrower is and remains a beneficiary and which does not relate to

[191] Additionally, 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 individuals who are consumers for purposes of FDCPA section 805. *See* 15 U.S.C. 1692c(d).

[192] Statement of Policy Regarding Communications in Connection with the Collection of Decedents' Debts, 76 FR 44915, 44919 (July 27, 2011) (hereinafter FTC Policy Statement on Decedent Debt).

[193] *Id.*

[194] Statement of Policy Regarding Communications in Connection with Collection of a Decedent Debt, 75 FR 62389, 62391–92 (Oct. 8, 2010) (describing the processes of informal probate and administration and universal succession).

[195] See the section-by-section analysis of proposed § 1006.10(b).

[196] Small Business Review Panel Outline, *supra* note 56, at 32–33.

a transfer of rights of occupancy in the property.[197] A confirmed successor in interest, in turn, means a successor in interest once a servicer has confirmed the successor in interest's identity and ownership interest in the relevant property type.[198]

As the Bureau explained in its 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)[199] and its concurrently issued FDCPA interpretive rule (2016 FDCPA Interpretive Rule),[200] 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 individuals 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 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. 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).[201]

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 proposes to interpret FDCPA section 805(d) in § 1006.6(a)(5) to provide that a confirmed successor in interest, as defined in Regulations X and Z, is a consumer for purposes of proposed § 1006.6. The Bureau requests comment on proposed § 1006.6(a)(5), including on the benefits and risks of communications about debts between debt collectors and confirmed successors in interest.

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.[202] The Bureau generally proposes § 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. In addition, the Bureau proposes § 1006.6(b) 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. The Bureau proposes § 1006.6(b) pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors.

Attempts To Communicate

The Bureau proposes to clarify in proposed § 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. As discussed, proposed § 1006.2(b) would define an attempt to communicate to mean any attempt by a debt collector to initiate contact with any person, including by soliciting a response from such person, regardless of whether the attempt, if successful, would be a communication as defined in proposed § 1006.2(d). For example, a debt collector who places a telephone call to the consumer that goes unanswered has attempted to communicate with the consumer. The phrase attempt to communicate thus appears throughout proposed § 1006.6(b)(1) through (4).

The Bureau proposes to limit attempts to communicate in § 1006.6(b) 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.[203] 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 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 proposes to interpret 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.[204] A debt collector who places a telephone call without the intent to speak to any person who answers the telephone (thus avoiding a communication for purposes of FDCPA section 805) may be causing injury to persons at the called number without any legitimate purpose, 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. The Bureau requests comment on its proposed interpretations regarding attempts to communicate.

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 times or places that the debt collector knows or should know are inconvenient to the consumer, subject to certain exceptions. As discussed in the section-by-section analysis below, proposed § 1006.6(b)(1)(i) and (ii)

[197] 12 CFR 1024.31; 1026.2(a)(27)(i).

[198] 12 CFR 1024.31; 1026.2(a)(27)(ii).

[199] 81 FR 72160 (Oct. 19, 2016).

[200] 81 FR 71977 (Oct. 19, 2016).

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

[202] 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.

[203] 15 U.S.C. 1692d.

[204] 15 U.S.C. 1692f.

generally would implement and interpret FDCPA section 805(a)(1).

Proposed comment 6(b)(1)–1 provides general interpretations and illustrations of the time and place restrictions in proposed § 1006.6(b)(1). Proposed comment 6(b)(1)–1 illustrates how a debt collector knows or should know that a time or place is inconvenient to a consumer. The proposed comment explains that a debt collector may know, 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. The proposed comment also explains that, even if the consumer does not use the word ''inconvenient'' to notify the debt collector, the debt collector nevertheless may know, or should know, based on the facts and circumstances, that a time or place is inconvenient. The Bureau proposes this interpretation because FDCPA section 805(a)(1) refers to what is ''inconvenient to the consumer,'' without specifying that a consumer must designate communications as inconvenient using the word ''inconvenient.'' The Bureau's proposed interpretation also is consistent with some case law holding that a consumer need not use the precise language of the statute to invoke the protections of FDCPA section 805.[205]

Proposed comment 6(b)(1)–1 would further clarify that, if the consumer initiates a communication with the debt collector at a time or from a place that the consumer previously designated as inconvenient, the debt collector may respond once to that consumer-initiated communication at that time or place. Because the consumer initiated the communication, the debt collector neither knows nor should know that responding to that specific communication is inconvenient to the consumer. The debt collector is permitted to respond once. After that response, 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. Proposed comment 6(b)(1)–1 also provides four specific examples of when a debt collector knows or should know that the time or place of a communication is inconvenient to a consumer.

The Bureau requests comment on proposed § 1006.6(b)(1) and on comment 6(b)(1)–1, including on whether other general clarifications regarding inconvenient times or places would be useful or whether other examples and illustrations would be instructive. The Bureau specifically requests comment on whether additional clarification is needed regarding the delivery of legally required communications at a time or place that a debt collector knows or should know is inconvenient to a particular consumer. The Bureau requests 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. The Bureau also requests comment on what effect a consumer-initiated communication should have on the times and places that a debt collector knows or should know are inconvenient to the consumer.

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.[206] 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.

Proposed § 1006.6(b)(1)(i) would implement and interpret FDCPA section 805(a)(1)'s prohibitions regarding unusual or inconvenient times.[207] The Bureau interprets 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. The Bureau requests comment on proposed § 1006.6(b)(1)(i).[208]

Proposed comment 6(b)(1)(i)–1 would 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. Ambiguity exists about whether, for purposes of FDCPA section 805(a)(1), an electronic communication occurs at the time of sending or at the time of receipt or viewing. A rule that clarifies that an electronic communication occurs when the debt collector sends it makes it possible for a debt collector to comply. 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. Accordingly, under proposed § 1006.6(b)(1)(i), a debt collector would be prohibited from sending an electronic communication at a time that the debt collector knows or should know is inconvenient to the consumer. The Bureau requests comment on proposed comment 6(b)(1)(i)–1.

Proposed comment 6(b)(1)(i)–2 would 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. Proposed comment 6(b)(1)(i)–2 would clarify that, if a debt collector is unable to determine a consumer's location, then, in the absence of knowledge of circumstances to the contrary, the debt collector would comply with the prohibition in § 1006.6(b)(1)(i) on communicating at inconvenient times if the debt collector communicated or attempted to communicate with the consumer at a time that would be convenient in all of the locations at which the debt collector's information indicated the consumer might be located. A debt collector with such conflicting information may know or should know that it is inconvenient to contact 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 indicated by some industry

[205] *See, e.g., Horkey* v. *J.V.D.B. & Assocs., Inc.*, 333 F.3d 769, 773 (7th Cir. 2003).

[206] 15 U.S.C. 1692c(a)(1).

[207] As discussed in the section-by-section analysis of proposed § 1006.6(b), proposed § 1006.6(b)(1)(i) also would interpret 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.

[208] In the Small Business Review Panel Outline, the Bureau described a proposal under consideration to define the 30-day period after the death of a consumer 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. *See* Small Business Review Panel Outline, *supra* note 56, at 33. The proposed rule does not include such a waiting period. The Bureau requests evidence of specific consumer harm and benefits from debt collection communications occurring within 30 days after a consumer's death.

commenters in response to the Bureau's ANPRM, some debt collectors already have adopted this proposed approach for determining the convenient times to contact a consumer if the debt collector has conflicting location information for the consumer. Proposed comment 6(b)(1)(i)–2 also provides two examples of how a debt collector could comply with proposed § 1006.6(b)(1)(i). The Bureau requests comment on proposed comment 6(b)(1)(i)–2.

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.[209] Proposed § 1006.6(b)(1)(ii) would implement this prohibition and generally restates the statute, with only minor changes for clarity.[210] [211]

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.[212] Proposed § 1006.6(b)(2) would implement this prohibition and generally restates the statute.[213] The Bureau requests comment on proposed § 1006.6(b)(2), including whether additional clarification regarding this prohibition would be useful.

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.[214] Proposed § 1006.6(b)(3) would implement this prohibition and generally restates the statute.[215]

Even under circumstances where proposed § 1006.6(b)(3) may not apply because the debt collector does not know or have reason to know that a consumer's employer prohibits the consumer from receiving communications in connection with the collection of a debt at the consumer's place of employment, proposed § 1006.22(f)(3), discussed below, would prohibit the debt collector from communicating or attempting to communicate with the consumer using an email address that the debt collector knows or should know is provided to the consumer by the consumer's employer, unless an exception under proposed § 1006.22(f)(3) applies (*i.e.,* the debt collector has received directly from the consumer either prior consent to use that email address or an email from that email address).[216] Proposed comment 6(b)(3)–1 cross-references the employer-provided email rule described in proposed § 1006.22(f)(3).

The Bureau requests comment on proposed § 1006.6(b)(3). The Bureau also requests 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 non-work mobile telephone or portable electronic device.

6(b)(4) Exceptions

FDCPA section 805(a) provides certain exceptions to its limitations on a debt collector's communications with a consumer. Proposed § 1006.6(b)(4) would implement and interpret the exceptions in FDCPA section 805(a).

6(b)(4)(i)

Proposed § 1006.6(b)(4)(i) would implement the text 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.[217] Proposed § 1006.6(b)(4)(i) generally mirrors the statute, except that proposed § 1006.6(b)(4)(i) would interpret 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 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. 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 proposed § 1006.6(b)(1) through (3) (*e.g.,* consent obtained from a represented consumer where the consumer's attorney is not present) is likely to compromise or eliminate a consumer's ability to freely choose whether to consent. By addressing only prior consent purported to be obtained during a communication that would violate proposed § 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).

Proposed comments 6(b)(4)(i)–1 and –2 would clarify the meaning of prior consent.[218] Proposed comment 6(b)(4)(i)–1 explains 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 proposes this comment because consent that satisfies proposed § 1006.6(b)(4)(i) must be ''prior'' and therefore given in advance of a communication that otherwise would violate proposed § 1006.6(b)(1) through

[209] 15 U.S.C. 1692c(a)(1).

[210] As discussed in the section-by-section analysis of proposed § 1006.6(b), proposed § 1006.6(b)(1)(ii) also would interpret 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) would prohibit the debt collector from communicating with the consumer.

[211] In the Small Business Review Panel Outline, the Bureau described a proposal under consideration to designate four categories of places as presumptively inconvenient. *See* Small Business Review Panel Outline, *supra* note 56, at 29–30. In response to feedback received during the SBREFA process, the Bureau does not propose that intervention at this time.

[212] 15 U.S.C. 1692c(a)(2).

[213] As discussed in the section-by-section analysis of proposed § 1006.6(b), proposed § 1006.6(b)(2) also would interpret 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) would prohibit the debt collector from communicating with that consumer.

[214] 15 U.S.C. 1692c(a)(3).

[215] As discussed in the section-by-section analysis of proposed § 1006.6(b), proposed § 1006.6(b)(3) also would interpret 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) would prohibit the debt collector from communicating with the consumer there.

[216] For additional discussion of proposed work email restrictions, see the section-by-section analysis of proposed § 1006.22(f)(3).

[217] 15 U.S.C. 1692c(a).

[218] The interpretations and illustrations of prior consent discussed here also apply to proposed §§ 1006.14(b) and 1006.22(f), as discussed in the corresponding section-by-section analyses below.

(3). Additionally, permitting a debt collector to ask a consumer to consent to a communication once the debt collector knows the communication is occurring at an inconvenient time or place would undermine the very protection guaranteed to the consumer under FDCPA section 805(a)(1). Although proposed comment 6(b)(4)(i)–1 would clarify that the debt collector would be prohibited from asking the consumer to consent to the continuation of the communication at the inconvenient time or place, the comment also would clarify that a debt collector may ask the consumer what time or place would be convenient.

Proposed comment 6(b)(4)(i)–2 restates the rule that the prior consent of the consumer must be given directly to the debt collector and explains 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 proposes this interpretation because prior consent given to the original creditor or to a previous debt collector is not given ''directly'' to the debt collector, as the FDCPA expressly requires.[219] The Bureau requests comment on proposed § 1006.6(b)(4)(i) and its related commentary, including on whether additional clarification regarding a consumer's prior consent for the purposes of these rule provisions would be instructive. Additionally, because the definition of consumer for purposes of proposed § 1006.6 includes the individuals listed in proposed § 1006.6(a)(1) through (5) (*e.g.,* the consumer's spouse), the Bureau requests comment on whether additional clarification is needed regarding which ''consumer'' may give prior consent pursuant to proposed § 1006.6(b)(4)(i).

6(b)(4)(ii)

Proposed § 1006.6(b)(4)(ii) would implement the text in FDCPA section 805(a) that, in relevant part, sets forth the exception for the express permission of a court of competent jurisdiction.[220] Proposed § 1006.6(b)(4)(ii) generally restates the statute, with only minor changes for clarity.

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 (the ''cease communication provision'').[221] The Bureau proposes § 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.

6(c)(1) Prohibitions

Proposed § 1006.6(c)(1) would implement FDCPA section 805(c)'s cease communication provision and generally restates the statute, with only minor changes for clarity. Specifically, proposed § 1006.6(c)(1) would provide 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.[222]

The Bureau proposes to interpret the applicability of the E-SIGN Act to a consumer electronically notifying a debt collector that the consumer wants the debt collector to cease further communication.[223] Specifically, the Bureau proposes to interpret FDCPA section 805(c)'s writing requirement as being satisfied if a consumer notifies a debt collector using a medium of electronic communication through which a debt collector accepts electronic communications from consumers, such as email or a website portal. Thus, 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 Bureau proposes to codify this interpretation of the E-SIGN Act in proposed comment 6(c)(1)–2.

Proposed comment 6(c)(1)–1 would implement FDCPA section 805(c)'s provision that, if such notice is made by mail, a consumer's notification is complete upon receipt by the debt collector.[224] Proposed comment 6(c)(1)–1 would apply this standard to all written or electronic forms of a consumer's notification. The Bureau notes that FDCPA section 805(c) does not state that *only* mail notifications are complete upon receipt, but rather leaves vague when other forms of notification are complete. The Bureau proposes to clarify this ambiguity by providing that written or electronic forms of notification are complete upon receipt. The Bureau proposes this clarification on the basis that, regardless of the medium, before a debt collector has received a notification, it may not be reasonable to consider the debt collector to have been notified. On the other hand, once the debt collector has received a notification, the debt collector can reasonably be considered to have been notified.

The Bureau requests comment on proposed § 1006.6(c)(1) and on proposed comment 6(c)(1)–1, including on: Whether additional clarification is needed with respect to a consumer's notification pursuant to proposed § 1006.6(c)(1) being complete upon receipt by the debt collector; whether a debt collector should be afforded a certain period of time to update its systems to reflect the consumer's request even after the notification is received, and, if so, how long; and whether receipt works differently for different written and electronic communication media. Additionally, because the definition of consumer for purposes of proposed § 1006.6 includes the individuals listed in proposed § 1006.6(a)(1) through (5) (*e.g.,* the consumer's spouse), the Bureau requests comment on whether additional clarification is needed regarding which ''consumer'' may notify the debt collector pursuant to proposed § 1006.6(c)(1).

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

[219] This proposal is also consistent with the FDCPA's legislative history. *See* H. Rept. 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.'').

[220] 15 U.S.C. 1692c(a).

[221] 15 U.S.C. 1692c(c).

[222] For the same reasons that proposed § 1006.6(b) would prohibit debt collectors from attempting to communicate with consumers if FDCPA section 805(a) would prohibit communications with consumers, proposed § 1006.6(c) would interpret FDCPA sections 806 and 808 to prohibit a debt collector from attempting to communicate with a consumer if FDCPA section 805(c) would prohibit the debt collector from communicating with the consumer.

[223] 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).

[224] 15 U.S.C. 1692c(c).

consumer even after a consumer has notified a debt collector pursuant to FDCPA section 805(c)'s cease communication provision: (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.[225] Proposed § 1006.6(c)(2) would implement these exceptions and generally restates the statute, with only minor changes for clarity.

In the 2016 Servicing Final Rule[226] and the concurrently issued 2016 FDCPA Interpretive Rule,[227] the Bureau interpreted the written early intervention notice required in Regulation X, 12 CFR 1024.39(d)(3), to fall within the exceptions to the cease communication provision in FDCPA section 805(c)(2) and (3). As the Bureau explained in the 2016 Servicing Final Rule, the Bureau concluded that, because failure to provide the written early intervention notice required by Regulation X, 12 CFR 1024.39(d)(3), is closely linked to the ability of a mortgage servicer (who also is a debt collector subject to the FDCPA with respect to a mortgage loan) to invoke its specified remedy of foreclosure, the notice falls within the exceptions in FDCPA sections 805(c)(2) and (3).[228] For a further discussion of the requirement in Regulation X, see the 2016 Servicing Final Rule's section-by-section analysis discussion of 12 CFR 1024.39(d)(3).[229] The Bureau proposes comment 6(c)(2)–1 to incorporate by reference this interpretation, which applies to a mortgage servicer who also is a debt collector 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 or certain other persons.[230] FDCPA section 805(b) also identifies certain exceptions to this prohibition. Proposed § 1006.6(d)(1) would implement FDCPA section 805(b)'s general prohibition against communicating with third parties, and proposed § 1006.6(d)(2) would implement the exceptions. Proposed § 1006.6(d)(3) would 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 proposes § 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. Proposed § 1006.6(d)(1) would implement FDCPA section 805(b) and generally restates the statute, with minor wording and organizational changes for clarity. Proposed comment 6(d)(1)–1 explains 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.[231] The comment explains that the message would be an attempt to communicate with the consumer (as defined in proposed § 1006.2(b)). It further explains, however, that if, during the course of the interaction with the third party, the debt collector conveys content other than the specific limited-content-message items described in proposed § 1006.2(j)(1) and (2), and such other content directly or indirectly conveys any information regarding a debt, the message is a communication, subject to the prohibition on third-party communications in proposed § 1006.6(d)(1). The Bureau requests comment on proposed § 1006.6(d)(1) and on whether additional clarification would be useful.

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. Proposed § 1006.6(d)(2) would implement the exceptions in FDCPA section 805(b) and generally restates the statute, with minor wording and organizational changes for clarity. Proposed comment 6(d)(2)–1 refers to the commentary to proposed § 1006.6(b)(4)(i) for guidance concerning a consumer giving prior consent directly to a debt collector. Additionally, because the definition of consumer for purposes of proposed § 1006.6 includes those individuals listed in proposed § 1006.6(a)(1) through (5) (*e.g.,* the consumer's spouse), the Bureau requests comment on whether additional clarification is needed regarding which consumer under proposed § 1006.6(a) may give prior consent pursuant to proposed § 1006.6(d).

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

FDCPA section 813(c) provides 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 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.[232] Proposed § 1006.6(d)(3) identifies procedures that a debt collector may use to obtain a safe harbor from civil liability for unintentionally violating the third-party disclosure prohibition in proposed § 1006.6(d)(1) and, by extension, FDCPA section 805(b), as a result of a bona fide error resulting from a communication by email or text message.

FDCPA section 805(b) generally prohibits a debt collector from communicating with any person other than the consumer unless the consumer provides consent directly to the debt collector. FDCPA section 803(2), in turn, defines the term communication to include the conveying of information regarding a debt directly or indirectly to any person.[233] In the context of oral communications, courts have found that, if a debt collector leaves a voice message that is overheard by a third party, the debt collector may violate FDCPA section 805(b) by indirectly conveying information regarding a debt to a person other than the consumer.[234]

[225] 15 U.S.C. 1692c(c)(1)–(3).

[226] 81 FR 72160 (Oct. 19, 2016).

[227] 81 FR 71977 (Oct. 19, 2016).

[228] 81 FR 72160, 72232 (Oct. 19, 2016).

[229] *Id.* at 72233–38.

[230] 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.

[231] The Bureau separately requests comment in the section-by-section analysis of proposed § 1006.2(j) defining limited-content messages on whether to permit a debt collector to leave limited-content messages with third parties.

[232] 15 U.S.C. 1692k(c).

[233] See the section-by-section analysis of proposed § 1006.2(d).

[234] See the section-by-section analysis of proposed § 1006.2(j).

While nothing in the FDCPA prohibits debt collectors from communicating using newer communication media such as email and text messages, the case law regarding communications has given rise to uncertainty about how FDCPA section 805(b) applies to such media, because of the potential for inadvertent disclosure of communications to third parties. In pre-proposal feedback, several industry stakeholders asserted that this uncertainty, particularly about liability for third-party disclosures, discourages the use of electronic communications in debt collection.[235] Consistent with this feedback, the Bureau's Consumer Survey found that only 8 percent of consumers contacted by a debt collector were contacted by email—even though email is widely available and less expensive than other forms of communication, and 15 percent of surveyed consumers said that email was their most preferred method of being contacted about a debt in collection.[236] In pre-proposal feedback, industry participants expressed interest in communicating with consumers using electronic technologies. They therefore requested that the Bureau clarify how FDCPA section 805(b) applies to the inadvertent disclosure of an electronic communication to a third party not authorized to receive it.[237]

In light of this feedback and evidence suggesting that some consumers may prefer debt collectors to communicate by newer media, the Bureau proposes to identify procedures that debt collectors may use to reduce the risk of liability from communicating with consumers by email or text message. Pursuant to its authority to implement and interpret FDCPA sections 805(b) and 813(c), the Bureau proposes § 1006.6(d)(3) to specify when 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 § 1006.6(d)(1). A debt collector would maintain such procedures 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 include steps to reasonably confirm and document that the debt collector: (1) Has obtained and used the email address or telephone number in accordance with one of the three methods specified in § 1006.6(d)(3)(i); and (2) has taken the additional steps specified in § 1006.6(d)(3)(ii).

The procedures in proposed § 1006.6(d)(3) 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. The FTC staff and some courts have found that debt collectors do not violate the prohibition on third-party disclosures unless they have reason to anticipate that the disclosure may be heard or read by third parties.[238] Designing the procedures around the reason-to-anticipate standard is consistent with these principles. A debt collector who follows the procedures in proposed § 1006.6(d)(3) may not have reason to anticipate that a disclosure may be heard or read by a third party.

Proposed § 1006.6(d)(3) would not fully eliminate a debt collector's risk of liability for third-party disclosures. To be protected from civil liability under FDCPA 813(c), a debt collector would need to show, by a preponderance of the evidence, that the debt collector's disclosure to the third party was unintentional and that the debt collector, in fact, maintained the specified procedures. As proposed, this would require a debt collector to show that the procedures included steps to reasonably confirm and document that the debt collector acted in accordance with proposed § 1006.6(d)(3)(i) and (ii). For example, procedures that permitted a debt collector to use obviously incorrect email addresses merely because the addresses were obtained consistent with one of the three methods would not satisfy proposed § 1006.6(d)(3)'s reasonableness requirement.[239]

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 communication because consumers do not appear accustomed to using such technologies in their financial lives. The Bureau may revisit this conclusion if consumer use of these technologies changes. The Bureau also does not propose procedures related to the use of voicemails. The limited-content message described in proposed § 1006.2(j) is designed to enable debt collectors to leave voicemails for consumers without risking third-party disclosures.

Proposed § 1006.6(d)(3) does not identify the only circumstances in which a debt collector may communicate with a consumer by email or text message, nor does it identify the only procedures that may be reasonably adapted to avoid a violation of proposed § 1006.6(d)(1) and FDCPA section 805(b). Thus, a debt collector would not necessarily violate proposed § 1006.6(d)(1) or FDCPA section 805(b) if the debt collector communicated with a consumer by email or text message without following the procedures in proposed § 1006.6(d)(3). Depending on the facts, a debt collector could 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.

The Bureau requests comment on proposed § 1006.6(d)(3). In particular, the Bureau requests comment on the risk of third-party disclosure and resulting consumer harm posed by debt collection communications that take place by email or text message. The

[235] An industry trade association commenting on the Bureau's ANPRM surveyed its members and found that only 15 percent of respondents communicated electronically with consumers, primarily because of concerns about liability. A later study by a consulting firm, released in 2017, reported that about one-third of debt collectors communicate with consumers by email. Ernst & Young, *The Impact of Third-Party Debt Collection on the US National and State Economies in 2016: Prepared for ACA Int'l,* at 5 (Nov. 2017), *https://www.acainternational.org/assets/ernst-young/ey-2017-aca-state-of-the-industry-report-final-5.pdf*; *see also* Gov't Accountability Off., No. GAO–09–748, *Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace and Use of Technology,* at 48 (Sept. 2009), *https://www.gao.gov/assets/300/295588.pdf* (''Debt collection agencies have been reluctant to use email and faxes to communicate with debtors because of the risk that someone other than the debtor may read the transmission, which could violate FDCPA's prohibition on disclosure to third parties.'').

[236] *See* CFPB Debt Collection Consumer Survey, *supra* note 18, at 37, 42.

[237] For example, one industry trade association suggested that the Bureau establish a presumption against liability when debt collectors use consumer-provided email addresses and telephone numbers. In addition, a Federal regulator recently recommended that the Bureau ''codify that reasonable digital communications, especially when they reflect a consumer's preferred method, are appropriate for use in debt collection.'' U.S. Dept. of Treasury, *A Financial System that Creates Economic Opportunities: Nonbank Financials, FinTech, and Innovation,* at 21 (July 2018), *https://home.treasury.gov/news/press-releases/sm447*.

[238] *See, e.g., Statements of General Policy or Interpretation: Staff Commentary on the FDCPA,* 53 FR 50097, 50104 (Dec. 13, 1988) (''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.''); *Peak* v. *Prof'l Credit Serv.,* No. 6:14–cv–01856–AA, 2015 WL 7862774, at *5–6 (D. Or. Dec. 2, 2015); *Berg* v. *Merchants Ass'n Collection Div., Inc.,* 586 F. Supp. 2d 1336, 1342, 1345 (S.D. Fla 2008); *Chlanda* v. *Wymard,* No. C–3–93–321, 1995 WL 17917574, at *2 (S.D. Ohio Sept. 5, 1995).

[239] In addition, a debt collector who communicates with a consumer consistent with proposed § 1006.6(d)(3) would not be protected from liability for violations unrelated to third-party disclosures (*e.g.,* for failure to include the opt-out notice that proposed § 1006.6(e) would require).

Bureau is especially interested in any data or other information bearing on the harm associated with such disclosure. The Bureau also requests comment on whether the procedures identified in proposed § 1006.6(d)(3) are likely to increase debt collectors' use of emails and text messages to communicate with consumers. The Bureau also requests comment on whether additional clarification is needed about the 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)(i) and (ii). In addition, the Bureau requests comment on whether to clarify the meaning of the term email in proposed § 1006.6(d)(3), such as by specifying that it includes direct messaging technology in mobile applications or on social media platforms.

6(d)(3)(i) Method of Obtaining and Using an Email Address or Telephone Number

Proposed § 1006.6(d)(3)(i) describes three methods of obtaining and using an email address or, in the case of a text message, a telephone number. As discussed below, a debt collector whose policies and procedures include steps to reasonably confirm and document compliance with proposed § 1006.6(d)(3)(i) would be entitled to a safe harbor from liability for an unintentional third-party disclosure resulting from use of one of the three methods, assuming the debt collector's procedures also include steps to reasonably confirm and document compliance with proposed § 1006.6(d)(3)(ii).

6(d)(3)(i)(A)

A debt collector who communicates with a consumer electronically using an email address or telephone number that the consumer recently used to contact the debt collector electronically may not have reason to anticipate that the communication may be read by third parties with whom the debt collector is not otherwise permitted to communicate about the debt. This is because, the Bureau believes, a consumer generally is better positioned than a debt collector to determine whether third parties have access to a specific email address or telephone number, and a consumer's decision to communicate electronically using a specific email address or telephone number may suggest that the consumer has assessed the risk of third-party disclosure to be low. For this reason, proposed § 1006.6(d)(3)(i)(A) provides that a debt collector could obtain [240] a safe harbor from liability for an unintentional third-party disclosure if the debt collector maintained procedures to reasonably confirm and document that the debt collector communicated with the consumer using an email address or, in the case of a text message, a telephone number that the consumer recently used to contact the debt collector for purposes other than opting out of electronic communications.[241]

Proposed § 1006.6(d)(3)(i)(A) would apply to any email address or, in the case of a text message, any telephone number—including any work email address or any work telephone number—the consumer used to contact the debt collector for purposes other than opting out of electronic communications. As discussed in the section-by-section analysis of proposed § 1006.22(f)(3), the proposed rule generally would prohibit a debt collector from attempting to communicate with a consumer using an email address that the debt collector knows or should know is maintained by the consumer's employer. Work emails appear to present a heightened risk of third-party disclosure because many employers have a legal right to read messages sent or received by employees on work email accounts, and some employers exercise that right. Text messages sent to a work telephone number appear to present a heightened risk of third-party disclosure for the same reason. However, some consumers may be in a position to assess the risk that an employer will read their work emails or work text messages based on, among other things, their knowledge of work policies and practices, so it may be reasonable for a debt collector to presume that a consumer who initiates an electronic communication with a debt collector using a work email address or work telephone number has assessed that risk to be low.

In addition, proposed § 1006.6(d)(3)(i)(A) would apply only if the consumer recently used the email address or telephone number to contact the debt collector. Telephone numbers frequently are disconnected and reassigned from one person to another. In fact, according to a recent Federal Communications Commission (FCC) notice of proposed rulemaking, nearly 35 million telephone numbers are disconnected and made available for reassignment each year.[242] Given the frequency with which telephone numbers are reassigned, it may be reasonable for a debt collector to anticipate that sending a text message to a telephone number that the consumer has not recently used could result in the disclosure of sensitive information to third parties—namely, persons to whom the consumer's telephone number has been reassigned. Because a telephone number the consumer recently used may be less likely to have been reassigned than a telephone number the consumer used in the more distant past, proposed § 1006.6(d)(3)(i)(A)'s recency requirement may limit the third-party disclosure risk posed by the reassignment of telephone numbers. Although email addresses do not appear to carry as great a risk of reassignment as telephone numbers,[243] for consistency and ease of administration of the regulation, the Bureau nevertheless proposes to apply the same recency requirement to email addresses.

The Bureau requests comment on proposed § 1006.6(d)(3)(i)(A). In particular, the Bureau requests comment on what, if anything, a consumer's decision to contact a debt collector using a work email address or, in the case of a text message, a work telephone number may suggest about the consumer's assessment of the risk of third-party disclosure. The Bureau also requests comment on what, if anything, a consumer's decision to contact a debt collector using a non-work email address or, in the case of a text message, a non-work telephone number may suggest about the consumer's

[240] To be entitled to a safe harbor, the debt collector's procedures also would need to comply with proposed § 1006.6(d)(3)(ii).

[241] As discussed in the section-by-section analysis of proposed § 1006.14(h)(2), if a consumer opts out of receiving electronic communications from a debt collector, the debt collector would be permitted to 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. Proposed § 1006.6(d)(3)(i)(A)'s safe harbor would not be available to a debt collector who sends the reply to an email address or, in the case of a text message, a telephone number that the consumer used only for purposes of opting out of electronic communications.

[242] *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.'').

[243] Although email addresses can be reassigned, the Bureau has not identified evidence suggesting that reassignment happens frequently. For example, one of the largest email providers states it does not reassign email addresses. *See Delete Your Gmail Service,* Google Account Help, *https://support.google.com/accounts/answer/61177?co=GENIE.Platform%3DDesktop&hl=en* (last visited May 6, 2019). One industry report suggests that a majority of consumers have never deactivated an email account. Direct Marketing Ass'n, *Consumer Email Tracker 2017,* at 6 (2017), *https://dma.org.uk/uploads/misc/5a1583ff3301a-consumer-email-tracking-report-2017-(2)_5a1583ff32f65.pdf.*

assessment of the risk of third-party disclosure. In addition, the Bureau requests comment on the third-party disclosure risks to consumers posed by the practice of reassigning telephone numbers. The Bureau also requests comment on whether the recency requirement in proposed § 1006.6(d)(3)(i)(A) adequately addresses those risks, and, if not, on how the Bureau could address them in a final rule. In addition, the Bureau requests comment on whether to apply the recency requirement to emails. The proposed rule does not define when a consumer's contact would qualify as recent. The Bureau therefore also requests comment on whether and how to define recent in the context of proposed § 1006.6(d)(3)(i)(A), including on whether contact by the consumer in the past year should qualify as recent.

6(d)(3)(i)(B)

A debt collector may not have reason to anticipate that an electronic communication to a consumer's non-work email address or non-work telephone number may be read by third parties with whom the debt collector is not otherwise permitted to communicate about the debt if the consumer has received notice and a reasonable opportunity to opt out of such communications, but the consumer has not done so. This is because, the Bureau believes, a consumer's failure to opt out in these circumstances may suggest that the consumer has assessed the risk of such a disclosure to be low. For this reason, proposed § 1006.6(d)(3)(i)(B) provides that a debt collector could obtain [244] a safe harbor from liability for an unintentional third-party disclosure if the debt collector maintained procedures to reasonably confirm and document that: (1) The debt collector communicated with the consumer using a non-work email address or, in the case of a text message, a non-work telephone number, after the creditor or the debt collector provided the consumer with notice that the debt collector might use that non-work email address or non-work telephone number for debt collection communications and a reasonable opportunity to opt out; and (2) the consumer did not opt out.

Proposed § 1006.6(d)(3)(i)(B) would apply only to non-work email addresses and non-work telephone numbers; it would not apply to work email addresses or work telephone numbers. A notice-and-opt-out process may not be reasonably designed to prevent employers from reading electronic debt collection communications sent to work email addresses and work telephone numbers. Unlike a consumer's affirmative decision to contact a debt collector using a work email address or, in the case of a text message, a work telephone number, as described in proposed § 1006.6(d)(3)(i)(A), a consumer's failure to opt out of the debt collector's use of a work email address or a work telephone number may not indicate that the consumer has assessed the risk of third-party disclosure to be low. Instead, it may reflect an unwillingness to engage with a debt collector in any manner—even to opt out of further communications—using a work email address or a work telephone number.

Proposed comment 6(d)(3)(i)–1 would clarify that an email address qualifies as a non-work email address unless the debt collector knows or should know that the email address is provided to the consumer by the consumer's employer. The proposed comment also refers to § 1006.22(f)(3) and its related commentary for further clarification regarding whether a debt collector knows or should know that an email address is provided by a consumer's employer. The proposed comment also would clarify that a telephone number qualifies as a non-work telephone number unless the debt collector knows or should know that the telephone number is provided to the consumer by the consumer's employer.

The Bureau requests comment on proposed § 1006.6(d)(3)(i)(B) and on comment 6(d)(3)(i)–1. In particular, the Bureau requests comment on what, if anything, a consumer's failure to opt out of a debt collector's use of a non-work email address or, in the case of a text message, a non-work telephone number may suggest about the consumer's assessment of the risk of third-party disclosure. The Bureau also requests comment on what, if anything, a consumer's failure to opt out of a debt collector's use of a work email address or, in the case of a text message, a work telephone number may suggest about the consumer's assessment of the risk of third-party disclosure.

6(d)(3)(i)(B)(1)

Proposed § 1006.6(d)(3)(i)(B)(*1*) describes three requirements that a debt collector using the notice-and-opt-out approach would need to confirm and document had been satisfied. First, the creditor or the debt collector would need to notify the consumer clearly and conspicuously that the debt collector might use a specific non-work email address or a specific non-work telephone number for debt collection communications by email or text message. The creditor or the debt collector may provide the notice orally, in writing, or electronically, but, if provided electronically, the notice could not be sent to the specific non-work email address or non-work telephone number the debt collector seeks to use for future communications. This limitation may help avoid a third-party disclosure through the notice itself, which could occur if the opt-out notice were sent to the email address or telephone number identified in the notice.

Second, the creditor or the debt collector would need to provide the notice no more than 30 days before the debt collector engages in debt collection communications by email or text message. This timing component is meant to ensure that the consumer has made a decision about whether to opt out, including based on the risk of third-party disclosure, at a time reasonably contemporaneous with the proposed electronic communications.

Third, the notice would need to identify the legal name of the debt collector and the non-work email address or non-work telephone number the debt collector proposes to use, describe one or more ways the consumer could opt out of such communications, and provide the consumer with a specified reasonable period during which to opt out before the debt collector would begin such communications. The content of the notice is meant to ensure that the notice includes enough information for the consumer to make an adequately informed decision about whether to opt out and, should the consumer elect not to opt out, to prepare to receive any electronic communications.[245]

Although the procedures described in proposed § 1006.6(d)(3)(i)(B) include steps to reasonably confirm and document that the creditor or the debt collector provided the opt-out notice described in proposed § 1006.6(d)(3)(i)(B)(*1*), they do not include a requirement to provide the notice itself in writing. Proposed comment 6(d)(3)(i)(B)(*1*)–1 would clarify that the opt-out notice described in § 1006.6(d)(3)(i)(B)(*1*) may be provided orally, in writing, or

[244] To be entitled to a safe harbor, the debt collector's procedures also would need to comply with proposed § 1006.6(d)(3)(ii).

[245] As explained below, the Bureau proposes comment 6(d)(3)(i)(B)(1)–2 to clarify that, when an opt-out notice is provided orally, the creditor or the debt collector may require the consumer to make an opt-out decision during that same communication. As also noted below, the Bureau does not propose to specify what would qualify as a reasonable opt-out period when an opt-out notice is provided in writing or electronically; however, the Bureau requests comment on this issue.

electronically. The proposed comment also would clarify that the opt-out notice must be provided clearly and conspicuously, as defined in § 1006.34(b)(1), and that, if the opt-out notice is provided in writing or electronically, it must comply with the requirements of § 1006.42(a) for providing required disclosures.[246] The Bureau proposes comment 6(d)(3)(i)(B)(*1*)–1 to provide consumers, debt collectors, and creditors with the flexibility to satisfy the proposed notice-and-opt-out requirements orally or electronically, which may be more convenient or efficient in some circumstances.

Proposed comment 6(d)(3)(i)(B)(*1*)–2 would clarify how to provide the opt-out notice described in proposed § 1006.6(d)(3)(i)(B)(*1*) to the consumer in an oral communication, such as in a telephone or in-person conversation. The comment explains 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. Proposed comment 6(d)(3)(i)(B)(*1*)–2 appears consistent with industry practice in other markets for consumer financial products and services, where consumers may commonly make decisions about their communication preferences at one time, often at origination.

Proposed comment 6(d)(3)(i)(B)(*1*)–3 would clarify that a debt collector or a creditor may provide the opt-out notice together with other notices required under the rule. As discussed in the section-by-section analysis of proposed § 1006.42(c)(2)(ii) and (d), the proposed rule would permit a debt collector to deliver required disclosures by hyperlink if, among other things, the debt collector or a creditor first provided the consumer with notice and an opportunity to opt out. Because it may be more convenient and cost effective for consumers, debt collectors, and creditors if consumers can make their various communication preferences known at the same time, proposed comment 6(d)(3)(i)(B)(*1*)–3 would clarify that a debt collector or a creditor may include the opt-out notice described in § 1006.6(d)(3)(i)(B)(*1*) in the same communication as the opt-out notice described in § 1006.42(d)(1) or (2), as applicable.

The Bureau requests comment on proposed § 1006.6(d)(3)(i)(B)(*1*) and its related commentary. In particular, the Bureau requests comment on whether to limit further the email addresses or telephone numbers to which a creditor or a debt collector may send the opt-out notice that would be required by proposed § 1006.6(d)(3)(i)(B)(*1*) and, if so, what those limitations should be. The Bureau also requests comment on proposed § 1006.6(d)(3)(i)(B)(*1*)'s requirement to provide the notification no more than 30 days before the debt collector's first communication pursuant to proposed § 1006.6(d)(3)(i)(B), including on whether the period should be shortened or lengthened. The Bureau also requests comment on whether to clarify, for purposes of proposed § 1006.6(d)(3)(i)(B)(*1*), what constitutes a reasonable period within which to opt out when an opt-out notice is not provided through a telephone conversation. In addition, the Bureau requests comment on whether, in other consumer financial products and services markets, consumers commonly make decisions about their communication preferences during a single telephone call. The Bureau also requests comment on the benefits and risks of allowing debt collectors and creditors to include the opt-out notice described in proposed § 1006.6(d)(3)(i)(B)(*1*) in the same communication as the opt-out notice described in proposed § 1006.42(d)(1) or (2), as applicable.

6(d)(3)(i)(B)(2)

As discussed above, proposed § 1006.6(d)(3)(i)(B)(*1*) describes requirements that a debt collector using the notice-and-opt-out approach would need to confirm and document had been satisfied. One such requirement is to provide the consumer with a reasonable period during which to opt out of receiving debt collection communications by email or text message to the non-work email address or non-work telephone number identified in the opt-out notice. The consumer's failure to opt out in these circumstances may suggest that the consumer has assessed the risk of third-party disclosure to be low.[247] For this reason, proposed § 1006.6(d)(3)(i)(B)(*2*) provides that, if the opt-out period specified in the notice has expired and the consumer has not opted out, the debt collector may use the specific non-work email address or non-work telephone number to send debt collection communications by email or text message.

Proposed comment 6(d)(3)(i)(B)(*2*)–1 would clarify how proposed § 1006.6(d)(3)(i)(B)(*2*) would work with proposed § 1006.14(h), which would 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.[248] Proposed comment 6(d)(3)(i)(B)(*2*)–1 provides that, if a consumer requests after the expiration of the opt-out period set forth in the § 1006.6(d)(3)(i)(B)(*1*) opt-out notice that a debt collector not use the non-work email address or non-work telephone number specified in that notice, § 1006.14(h) would prohibit the debt collector from communicating or attempting to communicate with the consumer using that email address or telephone number. Likewise, if the consumer requests after the expiration of the opt-out period that the debt collector not communicate with the consumer by email or text message, § 1006.14(h) prohibits the debt collector from communicating or attempting to communicate with the consumer by email or text message, including by using the non-work email address or non-work telephone number specified in the § 1006.6(d)(3)(i)(B)(*1*) opt-out notice. The Bureau requests comment on proposed § 1006.6(d)(3)(i)(B)(*2*) and its related commentary.

6(d)(3)(i)(C)

A debt collector who communicates with a consumer electronically using the consumer's non-work email address or non-work telephone number recently used by the creditor or a prior debt collector may not have reason to anticipate that the communication may be read by third parties with whom the debt collector is not otherwise permitted to communicate about the debt. The Bureau has not identified data suggesting that creditors communicate with consumers at non-work email addresses or non-work telephone numbers that are generally accessible to

[246] As discussed in the section-by-section analysis of proposed § 1006.42(a)(1), that section would apply when debt collectors provide certain required disclosures in writing or electronically; it would not apply when debt collectors provide those disclosures orally.

[247] By contrast, as explained in the section-by-section analysis of proposed § 1006.6(d)(3)(i)(B), a consumer's failure to opt out of a debt collector's use of a work email address or, in the case of a text message, a work telephone number may not indicate that the consumer has assessed the risk of third-party disclosure to be low. When it comes to a debt collector's use of a non-work email address or non-work telephone number, a consumer likely possesses the information necessary to assess the risk of unwanted third-party disclosure. With respect to work email addresses and telephone numbers, however, a consumer who receives a debt collection communication may not wish to engage with a debt collector in any manner—even to opt out of further communications—using a work email address or telephone number.

[248] See the section-by-section analysis of proposed § 1006.14(h).

such individuals. Further, the Bureau believes that a consumer's decision to communicate with a creditor or a prior debt collector using a non-work email address or non-work telephone number may suggest that the consumer has assessed the risk of third-party disclosure to be low.

For these reasons, proposed § 1006.6(d)(3)(i)(C) provides that a debt collector could obtain [249] a safe harbor from liability for an unintentional third-party disclosure if the debt collector maintained procedures to reasonably confirm and document that: (1) The debt collector communicated with the consumer using a non-work email address or, in the case of a text message, a non-work telephone number that the creditor or a prior debt collector obtained from the consumer to communicate about the debt; (2) before the debt was placed with the debt collector, the creditor or the prior debt collector recently sent communications about the debt to the non-work email address or non-work telephone number; and (3) the consumer did not request the creditor or the prior debt collector to stop using the non-work email address or non-work telephone number to communicate about the debt.

Proposed § 1006.6(d)(3)(i)(C) would apply only to non-work email addresses and non-work telephone numbers. As noted above, some employers monitor work email addresses, and some employers may also monitor text messages sent to and from work telephone numbers. A consumer might agree to receive electronic communications from a creditor to a work email address or work telephone number without regard to the risk that an employer might monitor or read those communications because a consumer may not consider communications from a creditor to be as sensitive as communications from a debt collector. In other words, consumer consent to a creditor's use of a work email address or, in the case of a text message, a work telephone number might not mean that the risk of third-party disclosure is low. Therefore, procedures that permit a debt collector to communicate using a work email address or work telephone number merely because the creditor communicated using that email address or telephone number might not prevent unintentional disclosures of debt collection communications to employers.[250] Nor does the Bureau propose that a prior debt collector's use of a consumer's work email address or work telephone number would be sufficient to justify a later debt collector's use of that email address or telephone number. Even if a consumer had indicated to a prior debt collector that the risk of monitoring by an employer was low, an employer's monitoring policies and practices can change and debt collectors may differ in their approach to communications with consumers.

Proposed § 1006.6(d)(3)(i)(C) would apply only if the creditor or a prior debt collector recently used the non-work email address or non-work telephone number to send communications about the debt. The Bureau proposes this recency requirement for the same reasons that it proposes the recency requirement in § 1006.6(d)(3)(i)(A).[251]

The Bureau requests comment on proposed § 1006.6(d)(3)(i)(C), including on how often creditors communicate with consumers using non-work email addresses and, in the case of text messages, non-work telephone numbers. The Bureau also requests comment on what, if anything, a consumer's decision to communicate with a creditor or a prior debt collector using a non-work email address or non-work telephone number may suggest about the consumer's assessment of the risk of third-party disclosure. In addition, the Bureau requests comment on the third-party disclosure risks to consumers posed by the practice of reassigning telephone numbers. The Bureau also requests comment on whether the recency requirement in proposed § 1006.6(d)(3)(i)(C) adequately addresses these risks, and, if not, on how the Bureau could address them in a final rule. In addition, the Bureau requests comment on whether to apply the recency requirement to email addresses. The proposed rule does not define when a creditor's or a prior debt collector's communication about the debt would qualify as recent. The Bureau therefore also requests comment on whether and how to define recent in the context of proposed § 1006.6(d)(3)(i)(C), including on whether a communication by the creditor or a prior debt collector in the past year should qualify as recent.

6(d)(3)(ii) Additional Requirements

To fall within the safe harbor from liability that proposed § 1006.6(d)(3) would establish for unintentional violations of proposed § 1006.6(d)(1) and FDCPA section 805(b), a debt collector's procedures would not only need to include steps to reasonably confirm and document that the debt collector obtained and used an email address or, in the case of a text message, a telephone number consistent with one of the three methods identified in proposed § 1006.6(d)(3)(i), but the procedures also would need to comply with proposed § 1006.6(d)(3)(ii). Proposed § 1006.6(d)(3)(ii) would require a debt collector to take steps to prevent communications using an email address or telephone number that the debt collector knows has led to a disclosure prohibited by § 1006.6(d)(1).[252]

The Bureau proposes § 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. The Bureau requests comment on proposed § 1006.6(d)(3)(ii), including on whether the procedures described in proposed § 1006.6(d)(3)(ii) are reasonably adapted to avoid a violation of the prohibition on third-party disclosures in proposed § 1006.6(d)(1) and FDCPA section 805(b).

6(e) Opt-Out Notice for Electronic Communications or Attempts To Communicate

The Bureau's proposal includes several provisions designed to facilitate debt collectors' use of electronic communication media, such as emails and text messages, when collecting debts. Some consumers, however, may not wish to receive electronic debt collection communications because, for example, they receive too many such communications or because such communications force them to incur charges.[253] To address this concern, proposed § 1006.6(e) would require debt

[249] To be entitled to a safe harbor, the debt collector's procedures also would need to comply with proposed § 1006.6(d)(3)(ii).

[250] The special sensitivity of debt collection communications is reflected in the law: The FDCPA regulates a debt collector's communications at the consumer's place of employment, while consumer credit origination and servicing laws, such as the Truth in Lending Act, generally do not. *See* 15 U.S.C. 1692c(a)(3).

[251] See the section-by-section analysis of proposed § 1006.6(d)(3)(i)(A).

[252] As noted above, even if a debt collector selects an email address or telephone number in accordance with the procedures in proposed § 1006.6(d)(3), the debt collector would not be permitted to communicate or attempt to communicate with a consumer using that email address or telephone number if doing so would violate another provision of the proposed rule, such as the opt-out-notice requirements of proposed § 1006.6(e).

[253] CFPB Debt Collection Consumer Survey, *supra* note 18, at 36–37 (noting that almost one-half of consumers said they would most prefer to be reached by written letter and that the second most common preference for contact was through some kind of telephone other than a work telephone).

collectors to notify consumers how to opt out of receiving electronic debt collection communications or communication attempts directed at a specific email address, telephone number for text messages, or other electronic-medium address.

The Bureau generally believes that the use of electronic media for debt collection communications can further the interests of both consumers and debt collectors. But electronic communications also pose potential consumer harms. One potential harm relates to consumer harassment. The FDCPA recognizes this harm in section 806, which prohibits conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Because communicating with consumers electronically is essentially costless, debt collectors may have little economic incentive to limit the number of such communications. As discussed in the section-by-section analysis of proposed § 1006.14(b), however, repeated or continuous debt collection communications may have the natural consequence of harassing, oppressing, or abusing the recipient. In part for this reason, the proposed rule would establish bright-line rules limiting the frequency with which a debt collector may place telephone calls in connection with the collection of a debt. However, the frequency limits in the proposed rule would not apply to emails or text messages.[254]

Another potential consumer harm relates to communication costs. The FDCPA recognizes this harm in section 808(5), which prohibits debt collectors from causing charges to be made to any person for communications by concealment of the true purpose of the communication and specifies that such charges include, but are not limited to, collect telephone calls. Although many consumers have unlimited text messaging plans, some do not.[255] 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.[256] For these consumers, receiving a text message from a debt collector may be similar to accepting a collect call from a debt collector.

One way to help consumers address potentially harassing or costly electronic communications or communication attempts is to provide them with a convenient way to opt out of such communications. In pre-proposal feedback, a debt collector and several consumer advocates supported an opt-out requirement. An opt-out requirement also would be consistent with several established public policies protecting consumers who receive electronic communications.[257]

For these reasons, proposed § 1006.6(e) would require 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 each such communication or attempt to communicate a clear and conspicuous statement describing one or more ways the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number. Proposed § 1006.6(e) also would prohibit a debt collector from requiring, directly or indirectly, that the consumer, in order to opt out, pay any fee or provide any information other than the email address, telephone number for text messages, or other electronic-medium address subject to the opt-out. The Bureau proposes to require debt collectors to provide consumers with opt-out instructions to help ensure that a consumer who receives written electronic communications from a debt collector can, with minimal effort and cost, stop the debt collector from sending further written electronic communications or communication attempts directed at a specific address or telephone number.[258] Proposed comment 6(e)–1 would clarify that clear and conspicuous under § 1006(e) has the same meaning as in § 1006.34(b)(1) regarding validation notices and provides examples illustrating the proposed rule.

Proposed § 1006.6(e) seeks to address a group of concerns that are unique to written electronic communications and attempts to communicate. With respect to concerns about harassment from excessive communications of other types, consumers likely know how to request debt collectors to stop placing unwanted telephone calls, and proposed § 1006.14(h) would require debt collectors to honor such requests. In addition, the frequency limitations in proposed § 1006.14(b)(2) would apply to telephone calls. Moreover, debt collectors are unlikely to communicate by mail repeatedly because of the cost.[259] With respect to concerns about costs, consumers generally do not incur costs when they receive written letters, whereas some consumers do incur costs when they receive text messages. Accordingly, proposed § 1006.6(e) would not apply to non-electronic communications and attempts to

[254] See the section-by-section analysis of proposed § 1006.14(b). Proposed § 1006.14(b)(2) provides that, subject to § 1006.14(b)(3), a debt collector violates § 1006.14(b)(1) by placing a telephone call to a particular person in connection with the collection of a particular debt either: (i) More than seven times within seven consecutive days, or (ii) 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.

[255] According to one 2015 estimate, approximately 10 percent of U.S. mobile telephone numbers are not enrolled in an unlimited text plan. *See* Josh Zagorsky, *Almost 90% of Americans Have Unlimited Texting,* Instant Census Blog (Dec. 8, 2015), *https://instantcensus.com/blog/almost-90-of-americans-have-unlimited-texting.*

[256] The FCC has found, for example, that unwanted calls and text messages can create substantial costs for consumers when aggregated across many contacts. *See, e.g., In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991,* 30 F.C.C.Rcd. 7961, 8021 (2015) (''In addition to the invasion of consumer privacy for all wireless consumers, the record confirms that some are charged for incoming calls and messages. These costs can be substantial when they result from the large numbers of voice calls and texts autodialers can generate.''), *set aside in part by ACA Int'l* v. *Fed. Commc'ns Comm'n,* 885 F.3d 687 (D.C. Cir. 2018).

[257] For example, with respect to emails, the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN–SPAM) Act 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; *see also* Definitions & Implementation Under the CAN–SPAM Act, 73 FR 29654, 29675 (May 21, 2008) (concluding that, to implement an unsubscribe function, requests for personal information are unnecessary).

[258] For ease of reference, throughout the section-by-section analysis of proposed § 1006.6(e), the Bureau uses the phrase ''written electronic communications'' to refer to emails, text messages, and other electronic communications that are readable. The Bureau's use of this phrase has no bearing on the Bureau's interpretation of the terms ''written'' or ''in writing'' under any law or regulation, including the FDCPA or the E-SIGN Act.

[259] *See, e.g.,* 15 U.S.C. 7701(a)(1) (noting Congressional finding, in connection with CAN–SPAM Act, that the ''low cost'' of email makes it ''extremely convenient and efficient''); Arthur Middleton Hughes, *Why Email Marketing is King,* Harv. Bus. Rev. (Aug. 21, 2012), *https://hbr.org/2012/08/why-email-marketing-is-king* (''Direct mail costs more than $600 per thousand pieces. With email, there are almost no costs at all.'').

communicate with a consumer, such as letters. Nor would it apply to telephone calls.

While emails and text messages are common forms of written electronic communications today, technology likely will evolve to introduce newer forms of written electronic communications. Proposed § 1006.6(e) would apply to all written electronic communications, regardless of whether they are specified in the rule and regardless of whether they exist now or come to exist in the future. For example, direct messaging communications on social media and communications in an application on a private website, mobile telephone, or computer, would be covered by proposed § 1006.6(e).

In its Small Business Review Panel Outline, the Bureau described a proposal under consideration to require debt collectors, absent consumer consent, to use free-to-end-user (FTEU) text messages so that the debt collector, rather than the consumer, would incur any charge for the message.[260] On balance, however, requiring FTEU technology may be too restrictive. FTEU technology may only be supported by certain wireless platforms, and industry standards may only permit its use with affirmative consumer consent.[261] Requiring debt collectors to use FTEU technology could therefore disadvantage some consumers by preventing them from receiving text messages, even when text messages are an equal or preferred medium of communication.

The Bureau requests comment on proposed § 1006.6(e) and its related commentary, including on the costs to debt collectors and benefits to consumers. In addition, the Bureau requests comment on the potential consumer harms posed by written electronic communications, including the proportion of consumers in debt collection that do not maintain unlimited text messaging plans and the cost to such consumers of receiving text messages. The Bureau also requests comment on whether consumers are likely to find it harassing, oppressive, or abusive to receive written electronic communications, such as emails and text messages, without having a simple mechanism to make them stop, and the costs consumers incur when trying to unsubscribe from written electronic communications that do not contain an unsubscribe option. In addition, the Bureau requests comment on whether to identify a non-exclusive list of words or phrases that express an opt-out instruction. In pre-proposal outreach, for example, one consumer advocate urged that debt collectors be required to honor standard phrases, such as ''stop,'' ''unsubscribe,'' ''end,'' ''quit,'' and ''cancel.'' The Bureau also requests comment on whether to specify the period within which a debt collector must process a consumer's request to opt out pursuant to proposed § 1006.6(e), and, if so, what that period should be.

The Bureau proposes § 1006.6(e) as an interpretation of FDCPA section 806 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. It is essentially costless for debt collectors to send written electronic communications, such as emails and text messages, to consumers. Debt collectors may therefore have little economic incentive to limit the number of such communications. Individual consumers may find it harassing, oppressive, or abusive to receive written electronic communications, such as emails and text messages, without having a simple mechanism to make them stop. The Bureau proposes § 1006.6(e) to provide consumers with a way to stop written electronic communications that they find harassing, oppressive, or abusive.

The Bureau also proposes § 1006.6(e) as an interpretation of 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. FDCPA section 808 prohibits the use of unfair or unconscionable means to collect or attempt to collect any debt. It may be unfair or unconscionable for a debt collector to send a consumer a written electronic communication, such as an email or text message, without providing an unsubscribe option. Because written electronic communications, such as emails and text messages, are essentially costless for debt collectors, failing to provide consumers with an unsubscribe option may lead to excessive written electronic communications. In the absence of a convenient unsubscribe option, a consumer who wishes to unsubscribe from written electronic communications may incur time and cost doing so. The process may require the consumer to write an unsubscribe request, search for and identify the debt collector (an entity with whom the consumer may not be familiar), obtain contact information for the debt collector, and follow up with the debt collector if necessary. On balance, these costs to consumers do not appear to outweigh the benefit to debt collectors of omitting an unsubscribe option from written electronic communications. Further, FDCPA section 808(5) specifically prohibits debt collectors from causing charges to be incurred through the concealment of the true purpose of a communication, and it specifies that such charges include collect telephone calls. A debt collector who sends a text message to a consumer who lacks an unlimited text messaging plan may—similar to a debt collector who places a collect call to a consumer while concealing the purpose of the call—cause the consumer to incur communications charges that the consumer does not wish to incur. The Bureau proposes § 1006.6(e) to limit written electronic communications that cause consumers to incur such charges.

The Bureau also proposes § 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 written 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.[262] FDCPA section 803(7) defines the term location information.[263] The Bureau understands that there may be some uncertainty regarding aspects of these provisions, such as how to determine whether a debt collector who has acquired some information about a

[260] Small Business Review Panel Outline, *supra* note 56, at appendix H at 1.

[261] 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 May 6, 2019); Mobile Mkt'g 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'').

[262] 15 U.S.C. 1692c.

[263] 15 U.S.C. 1692a(7).

consumer's whereabouts no longer has the purpose of acquiring location information when communicating with a person other than the consumer. Such uncertainty may relate at least in part to broader issues regarding the information debt collectors receive from creditors. The Bureau will continue to consider these and other issues related to location information communications to identify areas that pose a risk of consumer harm or require clarification.

Accordingly, proposed § 1006.10 would implement FDCPA sections 803(7) and 804 and generally mirrors the statute, with minor wording and organizational changes for clarity.[264] Proposed 1006.10(c), however, would clarify that a debt collector who is subject to the frequency restrictions in FDCPA section 804 also must comply with the frequency restrictions in proposed 1006.14(b)—that is, the proposal's limits on telephone calls also apply to location calls. The Bureau proposes § 1006.10 pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors.

The Bureau also proposes two comments clarifying what is location information in the decedent debt context. Proposed comment 10(a)–1 would clarify the definition of location information in the decedent debt context by providing that, if a consumer obligated or allegedly obligated to pay any debt is deceased, location information includes the information described in proposed § 1006.10(a) for a person who is authorized to act on behalf of the deceased consumer's estate. The Bureau proposes this comment on the basis that, as discussed in the section-by-section analysis of proposed § 1006.2(e) (definition of consumer), the term consumer under the FDCPA includes deceased consumers. A debt collector may obtain location information for such consumers by obtaining location information for the person with the authority to act on behalf of the deceased consumer's estate. Proposed comment 10(a)–1 would enable debt collectors who are trying to collect a deceased consumer's debts to locate a person with the authority to act on behalf of the deceased consumer's estate, thereby facilitating the prompt resolution of estates.

Proposed comment 10(b)(2)–1 would interpret FDCPA section 804(2) in the decedent debt context. Proposed comment 10(b)(2)–1 explains that, if the consumer obligated or allegedly obligated to pay the debt is deceased, and the debt collector is attempting to locate a person with the authority 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 a person who is authorized to act on behalf of the deceased consumer's estate.

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.''[265] FDCPA section 804(2) prohibits debt collectors communicating with third parties from stating that the consumer owes any debt. The FTC believed that, unlike the word ''debts,'' a reference to ''outstanding bills'' would be unlikely to reveal information about whether the deceased consumer was delinquent on those bills because nearly all consumers leave some bills at the time of their death.[266] The Bureau is concerned that even references to ''outstanding bills'' may convey that the consumer owes a debt because the definition of ''debt'' in FDCPA section 803(5) broadly includes ''any obligation or alleged obligation of a consumer to pay money arising out of a transaction . . . primarily for personal, family, or household purposes.'' Accordingly, the Bureau proposes to limit debt collectors to asking for information about a person authorized to act on behalf of the deceased consumer's estate. However, the FTC's phrase ''with the authority to pay any outstanding bills of the decedent out of the decedent's estate'' may be more understandable than the Bureau's proposed phrase ''who is authorized to act on behalf of the deceased consumer's estate.'' The Bureau requests comment on proposed comment 10(b)(2)–1, including on any experiences with the language contained in the FTC's Policy Statement on Decedent Debt and on whether the rule should follow the FTC's approach.

## Section 1006.14 Harassing, Oppressive, or Abusive Conduct

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.[267] It lists six non-exhaustive examples of such prohibited conduct. Proposed § 1006.14 would implement and interpret FDCPA section 806. Except with respect to proposed § 1006.14(b) and (h), proposed § 1006.14 generally restates the statute, with only minor wording and organizational changes for clarity. Paragraph (a) and paragraphs (c) through (g) of proposed § 1006.14 are not addressed further in the section-by-section analysis below.[268]

### 14(b) Repeated or Continuous Telephone Calls or Telephone Conversations

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. FDCPA section 806(5) 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.[269] Proposed § 1006.14(b)(1) through (5) would implement and interpret FDCPA section 806(5)—and, by extension, FDCPA section 806[270]—by restating the language of section 806(5), with one clarification, and by proposing numerical limits on the frequency with which a debt collector may place telephone calls to a person. The proposed frequency limits include certain exceptions and would establish whether a debt collector has violated or has complied with FDCPA section 806(5).

For debt collectors collecting a consumer financial product or service debt, as defined in proposed § 1006.2(f), proposed § 1006.14(b)(1) through (5) also would identify an unfair act or practice under section 1031(b) of the Dodd-Frank Act and would prescribe requirements for the purpose of preventing covered persons from engaging in that unfair act or

[264] For example, while no change in meaning is intended, the proposal substitutes the phrase ''by mail'' for the phrase ''effected by the mails or telegram'' in FDCPA section 804(5) to avoid obsolete language.

[265] FTC Policy Statement on Decedent Debt, *supra* note 192, at 44918–23.

[266] *Id.* at 44921 n.56.

[267] 15 U.S.C. 1692d.

[268] Proposed § 1006.14(a) would implement FDCPA section 806's 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. Proposed § 1006.14(c) through (g) would implement FDCPA section 806(1) through (4) and (6) (15 U.S.C. 1692d(1)–(4), (6)).

[269] 15 U.S.C. 1692d(5).

[270] Because the conduct described in FDCPA section 806(5) merely illustrates conduct that section 806 prohibits, proposed § 1006.14(b)(1) through (5) necessarily implements and interprets both FDCPA section 806 and 806(5). For efficiency, the section-by-section analysis of proposed § 1006.14(b)(1) through (5) focuses primarily on interpreting the language of FDCPA section 806(5).

practice.[271] Although FDCPA section 806 and 806(5) and section 1031(b) of the Dodd-Frank Act define the conduct they proscribe differently, in the interest of brevity, the discussion below generally uses the catchalls ''harass'' and ''harassment'' to refer to the conduct addressed by proposed § 1006.14(b)(1) through (5).

The Bureau proposes § 1006.14(b)(1) through (5) 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 its authority under section 1031(b) of the Dodd-Frank Act to prescribe rules to identify and prevent unfair acts or practices in connection with the collection of a consumer financial product or service debt, as that term is defined in proposed § 1006.2(f).

14(b)(1) In General

14(b)(1)(i) FDCPA Prohibition

FDCPA section 806(5) 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.'' Since the FDCPA's 1977 enactment, telephone-calling technology has evolved, and changes in technology may create uncertainty about whether a debt collector has ''caus[ed] a telephone to ring.'' It now is common to place a telephone call and be connected to the dialed number without ever causing a traditional, audible ring. For example, many telephones afford users the option to have their telephones ring in the form of vibrating, visual, or customized audio alerts. In addition, many callers, including many debt collectors, now can bypass a person's opportunity to answer the telephone by connecting directly to the person's voicemail. As a result, debt collectors can place telephone calls or leave voicemail messages for a person without ever causing a traditional, audible ring. Such telephone calls, if made repeatedly and continuously, nonetheless may be intended to harass or may have the effect of harassing a person in ways that the FDCPA prohibits. For that reason, even if a debt collector's telephone call may not cause a traditional ring, the Bureau's proposal treats the call as within the scope of FDCPA section 806(5), or in any event within the scope of FDCPA section 806, if the call is connected to the dialed number. Accordingly, the Bureau proposes to interpret the prohibitions in FDCPA section 806 and 806(5) as applying when a debt collector ''places'' a telephone call.[272]

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, as well as pursuant to its authority to implement and interpret FDCPA section 806 and 806(5), the Bureau proposes to provide in § 1006.14(b)(1)(i) 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.

The Bureau proposes comment 14(b)(1)–1 to clarify that placing a telephone call includes placing a telephone call that results in 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.[273] The Bureau proposes this clarification because, given the specific language of FDCPA section 806(5), the Bureau believes that Congress may have intended for this provision 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. In addition, as discussed in the section-by-section analysis of proposed § 1006.14(b)(2), the Bureau understands that few debt collectors contact consumers using such electronic messages and, as a result, that debt collectors have not been sending electronic messages to consumers repeatedly or continuously with intent to harass them or to cause substantial injury. The Bureau requests comment on proposed § 1006.14(b)(1)(i) and on comment 14(b)(1)–1.

The Bureau also requests comment on whether to interpret FDCPA section 806 and 806(5) as prohibiting debt collectors from using communication media other than telephone calls frequently and repeatedly with intent to annoy, abuse, or harass any person in connection with the collection of any debt. For example, the Bureau considered proposing a broader version of proposed § 1006.14(b)(1)(i) that would have prohibited repeated or continuous attempts to contact a person by other media, such as by sending letters, emails, or text messages. Under such an approach, contacts by such other media also could be subject to a bright-line frequency limit, similar to the structure for telephone calls in proposed § 1006.14(b)(2). The Bureau does not propose subjecting communication media other than telephone calls to the prohibitions on repeated or continuous contacts (or to bright-line limits on the number of permissible contacts per week) primarily because the Bureau is not aware of evidence demonstrating that debt collectors commonly harass consumers or others through repeated or continuous debt collection contacts by media other than telephone calls.

As to mail, the Bureau has received few complaints about debt collectors sending excessive letters; in fact, available evidence suggests that a significant percentage of consumers prefer to communicate with debt collectors by mail.[274] In addition, in feedback to the Bureau after publication of the Small Business Review Panel Outline, industry stakeholders and consumer advocates agreed that there currently is not evidence of a need to regulate the frequency with which debt collectors communicate with consumers or others by mail. The cost of sending mail—currently about $0.50 to $0.80 cents to print and mail a letter, as noted in part VI—is significantly greater than the cost of making telephone calls and may deter debt collectors from sending excessive communications by mail.[275]

As to email and text messages, debt collectors generally have not yet begun communicating with consumers using these or other newer communication media.[276] The Bureau thus is unaware of evidence, including from consumer complaints or feedback from industry stakeholders or consumer advocates, demonstrating that debt collectors commonly use such media to contact consumers repeatedly or continuously with intent to harass or with the effect of harassing them. Indeed, both industry

[271] Dodd-Frank Act section 1031 applies to covered persons and service providers. Debt collectors collecting consumer financial product or service debt are covered persons. 12 U.S.C. 5481(5), (6), (15)(A)(x).

[272] As explained in the section-by-section analysis of proposed § 1006.14(b)(3)(iii), the proposed rule also provides that a debt collector's telephone calls that are unable to connect to the dialed number do not count toward, and are permitted in excess of, the frequency limits in proposed § 1006.14(b)(2).

[273] Proposed comment 14(b)(1)–1 also would clarify that the same interpretation of ''placing a telephone call'' applies with respect to proposed § 1006.14(b)(1)(ii).

[274] Forty-two percent of respondents to the Bureau's Debt Collection Consumer Survey who had been contacted about a debt in the prior year identified mail as their preferred medium of communication for debt collection. *See* CFPB Debt Collection Consumer Survey, *supra* note 18, at 37.

[275] The Bureau notes that the Commonwealth of Massachusetts's debt collection regulations, which include communication frequency limits for debt collectors and creditors, exclude postal mail from those limits. *See* 209 Code. Mass. Regs 18.14(1)(d); 940 Code Mass. Regs. 7.04(1)(f) (frequency limits apply to telephone calls and text messages).

[276] See generally the section-by-section analysis of proposed § 1006.6(d)(3).

stakeholders and consumer advocates have suggested that such media may be inherently less harassing than telephone calls because, for example, recipients may have more freedom to decide when to engage with an email or a text message than with a debt collection telephone call.[277] Although the Bureau currently is unaware of sufficient evidence of consumer injury that would suggest a need for restricting the frequency of email and text message communications, the Bureau recognizes that the use of such media, if abused, could harass consumers in some of the same ways as repeated or continuous telephone calls or telephone conversations.[278] The Bureau notes that proposed § 1006.14(a)—which generally prohibits any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of any debt—would apply to harassment through media other than telephone calls and could provide sufficient protection to consumers. The Bureau requests comment on the proposed approach, including on whether the frequency limits should apply to communication media other than telephone calls and, if so, to which media.[279]

During the SBREFA process, the Bureau's proposal under consideration to establish numerical limits on the frequency with which debt collectors communicate and attempt to communicate with consumers and others would have applied to all forms of communication media, not just to telephone calls. Several small entity representatives suggested that, in their experience, consumers increasingly prefer communicating by email, and that excluding email from any frequency limits would encourage debt collectors to use email instead of potentially more harassing communication strategies, such as placing repeated telephone calls. One small entity representative advised that using email to contact consumers allowed it to greatly reduce its number of outbound telephone calls, resulting in fewer consumer complaints and enabling it to monitor communications for compliance with the FDCPA more easily. In addition, small entity representatives suggested that written correspondence (*e.g.,* mailed letters) should be excluded from any frequency limits. The Small Business Review Panel therefore recommended that the Bureau consider whether the frequency limits should apply equally to all communication channels.[280] Limiting proposed § 1006.14(b)(1)(i) and (2) to a prohibition against repeated and continuous telephone calls should address small entity representatives' concerns about a frequency limit that would apply to all types of communication media.

14(b)(1)(ii) Identification and Prevention of Dodd-Frank Act Unfair Act or Practice

The Bureau proposes § 1006.14(b)(1)(ii) to identify that a debt collector who is engaged in the collection of a consumer financial product or service debt, as that term is defined in proposed § 1006.2(f), engages in an unfair act or practice by placing telephone calls or engaging any person in telephone conversation repeatedly or continuously, such that the natural consequence is to harass, oppress, or abuse any person at the called number. The Bureau proposes § 1006.14(b)(1)(ii) on the basis that such conduct by debt collectors is an unfair act or practice as described in Dodd-Frank Act section 1031(c) because, as discussed in the section-by-section analysis of proposed § 1006.14(b)(2) below,[281] the conduct causes or is likely to cause substantial injury to consumers that consumers cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or to competition.[282] The Bureau also proposes § 1006.14(b)(1)(ii) to provide requirements to prevent such an unfair act or practice; specifically, under the proposal, a debt collector engaged in the collection of a consumer financial product or service debt must not exceed the calling frequency limits proposed in § 1006.14(b)(2). The Bureau proposes § 1006.14(b)(1)(ii) pursuant to its authority under section 1031(b) of the Dodd-Frank Act to prescribe rules to identify and prevent unfair acts or practices in connection with the collection of a consumer financial product or service debt, as that term is defined in proposed § 1006.2(f).

14(b)(2) Frequency Limits

Proposed § 1006.14(b)(2) sets forth bright-line frequency limits for debt collection telephone calls. This section-by-section analysis discusses the Bureau's proposal to establish bright-line frequency limits generally; the section-by-section analysis of proposed § 1006.14(b)(2)(i) and (ii) addresses the specific numerical frequency limits that the Bureau proposes.

As noted, 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. 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 years since the FDCPA was enacted, courts interpreting FDCPA section 806(5) have not developed a consensus or bright-line rule regarding call frequency.[283] While several States and localities have imposed numerical limits on debt collection contacts, the limits vary, and the large majority of jurisdictions have not established any numerical limits.[284]

Also in the years since the FDCPA was enacted, technological developments have intensified the

[277] As with mail, the Bureau notes that Massachusetts's debt collection regulations do not limit the frequency of a debt collector's email communications. See *supra* note 275.

[278] *Cf. Clements* v. *HSBC Auto Fin., Inc.,* Civ. A. No. 5:09–cv–0086, 2011 WL 2976558, at *5 (S.D. W. Va. July 21, 2011) (''That Plaintiffs were not at home all of the time and, therefore, could not have heard each one of the calls is of little moment. They had notice of every missed call through Caller ID. . . . Missed calls communicate more than a phone number. They can, depending on volume and frequency, communicate urgency and panic.'').

[279] The Bureau notes in particular that the FCC has interpreted a statutory reference to ''mak[ing] any call'' as encompassing the sending of text messages. *See In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991,* 18 FCC Rcd. 14,014, 14,115 ¶ 165 (2003).

[280] Small Business Review Panel Report, *supra* note 57, at 37.

[281] Section 1006.14(b)(2) proposes bright-line frequency limits that would determine whether a debt collector has violated § 1006.14(b)(1).

[282] Section 1031(c) of the Dodd-Frank Act defines unfairness without regard to a covered person's or service provider's intent. For FDCPA-covered debt collectors who are collecting a consumer financial produce or service debt, the Bureau's proposal therefore identifies the unfair act or practice as repeated or continuous telephone calls that have the natural consequence of harassment, oppression, or abuse, without regard to the debt collector's intent.

[283] *See, e.g., Turner* v. *Prof'l Recovery Servs., Inc.,* 956 F. Supp. 2d 573, 578 (D.N.J. 2013) (noting the lack of consensus or bright-line rule); *Neu* v. *Genpact Servs., LLC,* No. 11–CV–2246 W KSC, 2013 WL 1773822, at *4 (S.D. Cal. Apr. 25, 2013) (same); *Hicks* v. *Am.'s Recovery Sols., LLC,* 816 F. Supp. 2d 509, 515 (N.D. Ohio 2011) (same).

[284] For example, the Commonwealth of Massachusetts and City of New York generally limit debt collectors to initiating two communications per week with a consumer. *See* 209 Code. Mass. Regs 18.14(1)(d) (limiting contacts by debt collectors); 940 Code Mass. Regs. 7.04(1)(f) (limiting contacts by creditors engaged in debt collection); N.Y.C. Admin. Code 5–77(b)(1)(iv) (limiting contacts by debt collectors). The State of Washington generally limits debt collectors to three total communications and one workplace communication per week with a consumer. *See* Wash. Rev. Code 19.16.250(13)(a), (b). The States of New Hampshire and Oregon limit the frequency of workplace communications. *See* N.H. Rev. Stat. Ann. 358–C:3(I)(c); Or. Rev. Stat. 646.639(2)(g).

consumer-protection concerns underlying FDCPA section 806(5). In 1977, placing a telephone call was typically a manual process that required a caller to dial a telephone number one digit at a time. Since then, the development of ''predictive dialers'' has enabled callers, such as debt collectors, to load a large number of telephone numbers into a program that automatically dials the numbers and, if the call is answered, connects the call to a debt collector. Predictive dialers have substantially reduced the cost to debt collectors of placing telephone calls and have enabled debt collectors to place many more calls at a very low cost.[285]

In light of these developments, and in the absence of a bright-line rule about how many telephone calls is too many, numerous problems with call frequency persist. Frequent telephone calls are a consistent source of consumer-initiated litigation and consumer complaints to Federal and State regulators. Consumers' lawsuits allege injuries such as feeling harassed, stressed, intimidated, or threatened, and sometimes allege adverse impacts on employment.[286] In addition, from 2011 through 2018, the Bureau and the FTC received over 100,000 complaints about repeated debt collection telephone calls.[287] Some consumers submit narrative descriptions along with their complaints to the Bureau, providing a window into their experiences with repeated telephone calls. Some consumers describe being called multiple times per day, every day of the week, for weeks or months at a time.[288] 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.[289]

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. 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.[290] In connection with that finding, among others, Congress granted the Bureau the authority to prescribe rules with respect to the activities of FDCPA-covered debt collectors, as well as to issue regulations to prevent and prohibit persons covered under the Dodd-Frank Act from engaging in unfair, deceptive, or abusive acts or practices.[291]

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). They do, however, suggest 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.[292] To address this persistent harm, the Bureau proposes § 1006.14(b)(2) to establish bright-line rules for determining whether a debt collector has violated FDCPA section 806(5) (and, in turn, FDCPA section 806), as implemented and interpreted in proposed § 1006.14(b)(1).

Proposed § 1006.14(b)(2) provides that, subject to § 1006.14(b)(3), a debt collector violates proposed § 1006.14(b)(1) by placing a telephone call to a particular person in connection with the collection of a particular debt either: (i) More than seven times within seven consecutive days, or (ii) 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

[285] *See In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991,* 30 F.C.C. Rcd. 7961, 8021 (2015) (''Autodialers can quickly dial thousands of numbers, a function that costs large numbers of wireless consumers money and aggravation.''), *set aside in part by ACA Int'l* v. *Fed. Commc'ns Comm'n,* 885 F.3d 687 (D.C. Cir. 2018).

[286] *See, e.g., Meadows* v. *Franklin Collection Serv., Inc.,* 414 F. App'x 230, 233–34 (11th Cir. 2011) (reversing district court's dismissal of consumer's FDCPA section 806(5) claim where ''[plaintiff] testified that [the debt collector's] phone calls eventually made her feel harassed, stressed, upset, aggravated, inconvenienced, frustrated, shaken up, intimidated, and threatened on occasion. And, several times the calls woke her up from sleep and caused her difficulty sleeping.''); *Roots* v. *Am. Marine Liquidators, Inc.,* No. 0:12–CV–00602–JFA, 2012 WL 3136462, at *1–2 (D.S.C. Aug. 1, 2012) (awarding damages to consumer where, among other things, ''[p]laintiff testified that after his manager learned that Plaintiff was getting repeated collection calls at work, they treated him differently which caused him to seek out other employment. Plaintiff took a new job in April, 2012, which resulted in a pay reduction of $2.00 per hour for a period of 52 weeks. He works 40 hours each week, for a total loss of income in the amount of $ 4,160.'').

[287] *See* 2019 FDCPA Annual Report, *supra* note 11, at 15–17; 2018 FDCPA Annual Report, *supra* note 16, at 14–16; 2017 FDCPA Annual Report, *supra* note 21, at 15–17; Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2016,* at 18–19 (Mar. 2016), *https://files.consumerfinance.gov/f/201603_cfpb-fair-debt-collection-practices-act.pdf*; Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2015,* at 12–14 (Mar. 2015), *https://files.consumerfinance.gov/f/201503_cfpb-fair-debt-collection-practices-act.pdf*; Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2014,* at 11–13, 19 (Mar. 2014), *https://files.consumerfinance.gov/f/201403_cfpb_fair-debt-collection-practices-act.pdf*; 2013 FDCPA Annual Report, *supra* note 9, at 17; Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2012,* at 8 (Mar. 2012), *https://files.consumerfinance.gov/f/201203_cfpb_FDCPA_annual_report.pdf.* This total reflects complaints about all persons collecting debt, including creditors and other first-party collectors in addition to debt collectors covered by the FDCPA. For complaints submitted to the Bureau, complaint data reflects the number of complaints that consumers self-identified as being primarily about frequent or repeated debt collection communications (consumers must choose only one topic when filing their complaints). The Bureau has not attempted to identify the specific number of communications-related consumer complaints that it has received because many complaints that consumers self-identify as being primarily about a different issue also may include concerns about a debt collector's communication practices.

[288] *See generally* Bureau of Consumer Fin. Prot., *Consumer Complaints, https://data.consumerfinance.gov/dataset/Consumer-Complaints/s6ew-h6mp* (last visited May 6, 2019).

[289] *Id.*

[290] S. Rept. 111–176, at 19 (2010).

[291] 15 U.S.C. 1692*l;* Dodd-Frank Act sections 1031(b), 1032; 12 U.S.C. 5531(b), 5532 (2010).

[292] *See, e.g.,* Complaint at ¶¶ 63, 124–28, *Fed. Trade Comm'n & Consumer Fin. Prot. Bureau* v. *Green Tree Servicing LLC,* No. 0:15–cv–02064 (D. Minn. Apr. 21, 2015), *https://www.ftc.gov/enforcement/cases-proceedings/112-3008/green-tree-servicing-llc* (alleging that defendant violated FDCPA section 806(5) by, among other things, having frequently called consumers between seven and 20 times per day, every day, week after week); Complaint at ¶¶ 20–22, 41, *Fed. Trade Comm'n* v. *K.I.P., LLC,* No. 1:15–cv–02985 (N.D. Ill. Apr. 6, 2015), *https://www.ftc.gov/enforcement/cases-proceedings/152-3048/kip-llc-payday-loan-recovery-group* (alleging that defendant violated FDCPA section 806(5) by, among other things, ''call[ing] consumer multiple times per day or night . . . over an extended period of time''); Complaint at ¶¶ 22, 50–53, *Fed. Trade Comm'n* v. *Expert Glob. Sols, Inc.,* No. 3–13 CV 2611–M (N.D. Tex. July 8, 2013), *https://www.ftc.gov/enforcement/cases-proceedings/1023201/expert-global-solutions-inc-nco-group-inc* (alleging that defendants violated FDCPA section 806(5) by, among other things, ''call[ing] multiple times per day or frequently over an extended period of time [including,] for example, calling some persons three or more time per day''); Complaint at ¶¶ 80, 97(b), *Fed Trade Comm'n* v. *Jefferson Capital Sys., LLC,* No. 1:08–cv–1976 BBM (N.D. Ga. June 10, 2008), *https://www.ftc.gov/enforcement/cases-proceedings/062-3212/compucredit-corporation-jefferson-capital-systems-llc* (alleging that defendant violated FDCPA section 806(5) by, among other things, ''[calling] individual consumers in excess of twenty times per day, in some cases, at intervals of only twenty to thirty minutes'').

the telephone conversation being the first day of the seven-consecutive-day period.[293] As discussed in the section-by-section analysis of proposed § 1006.14(b)(2)(i) and (ii), which addresses the specific frequency limits that the Bureau proposes, the Bureau proposes § 1006.14(b)(2) pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors, its authority to implement and interpret FDCPA section 806 and 806(5), and its authority under Dodd-Frank Act section 1031(b) to prescribe rules to prevent Bureau-identified unfair acts or practices in connection with any transaction with a consumer for a consumer financial product or service.

Proposed § 1006.14(b)(2) would apply 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). Congress recognized the potential harm from debt collectors placing repeated or continuous telephone calls to persons other than consumers when it enacted FDCPA section 806(5), which protects ''any person'' from repeated or continuous telephone calls or conversations made with intent to annoy, abuse, or harass. Likewise, Dodd-Frank Act section 1031 applies to acts or practices ''in connection with a transaction with a consumer for a consumer financial product or service'' (or ''the offering of a consumer financial product or service''), provided that ''the act or practice causes or is likely to cause substantial injury to consumers'' and meets the other criteria for unfairness. Like the language of FDCPA section 806(5), the language of Dodd-Frank Act section 1031 suggests that an act or practice may be unfair to consumers generally, presumably even if the injury is to a consumer who is not a party to the transaction creating the debt, so long as the injury is ''in connection with'' a transaction with a consumer for a consumer financial product or service. The frequency limits in proposed § 1006.14(b)(2) thus would apply to any person (with certain exceptions described below), not only to the consumer who is alleged to owe the debt.[294]

The Bureau requests comment on the proposal to establish a bright-line rule to determine when a debt collector's calling frequency has violated FDCPA section 806(5) and the prohibition in proposed § 1006.14(b)(1)(i), as well as to prevent an unfair act or practice under Dodd-Frank Act section 1031(b). As discussed, under such a bright-line rule, a debt collector who exceeds the frequency limits would per se violate FDCPA section 806(5) and the prohibitions in proposed § 1006.14(b)(1), while a debt collector who stays within the frequency limits would per se comply with those provisions. In lieu of a bright-line rule, it would be possible, for example, to have a rebuttable-presumption rule. Under a rebuttable presumption, a debt collector who exceeded the frequency limits presumptively would violate FDCPA section 806(5) and the prohibitions in proposed § 1006.14(b)(1), but the debt collector would have the opportunity to rebut that presumption.

As discussed further in the section-by-section analysis of proposed § 1006.14(b)(4) below, the Bureau does not propose a rebuttable presumption because the benefits of a rebuttable presumption approach are unclear. It appears that most, if not all, of the circumstances that might require a debt collector to exceed the frequency limits could be addressed by specific exceptions to a bright-line rule.[295] It thus appears that a well-defined, bright-line rule with specific exceptions could provide needed flexibility without sacrificing the clarity of a bright-line rule. A bright-line rule may also promote predictability and reduce the risk and uncertainty of litigation. The Bureau requests comment on this aspect of the proposal and on whether, if a rebuttable presumption approach were adopted, the Bureau should retain any of the exceptions described in proposed § 1006.14(b)(3).

During the SBREFA process, the Bureau's proposal under consideration would have applied to any of a debt collector's communications or attempts to communicate. The Bureau's Small Business Review Panel Outline noted that a bright-line rule could provide exceptions for certain types of contacts, but the Outline did not identify any particular exceptions that were under consideration.[296] Small entity representatives suggested that contacts initiated by consumers should not count toward the frequency limits, and the Small Business Review Panel Report recommended that the Bureau consider whether consumer-initiated contacts should be excluded.[297] Proposed § 1006.14(b)(2) would count only telephone calls that a debt collector ''places'' to a person toward the frequency limits, which may help to address small entity representatives' concerns about consumer-initiated contacts.

14(b)(2)(i)

Proposed § 1006.14(b)(2)(i) provides that, subject to the exceptions in § 1006.14(b)(3), a debt collector violates § 1006.14(b)(1)(i) by placing a telephone call to a person more than seven times within seven consecutive days in connection with the collection of a particular debt. Under this bright-line rule, and subject to the exceptions in proposed § 1006.14(b)(3), a debt collector who places more than seven telephone calls to any person within seven consecutive days about a debt would per se violate FDCPA section 806 and 806(5) and the prohibitions in proposed § 1006.14(b)(1).[298]

The Bureau's proposed frequency limits take into account a number of competing considerations. One consideration is that, for many—perhaps most—people, even a small number of debt collection telephone calls may have the natural consequence of causing them to experience harassment, oppression, or abuse, and therefore, assuming a debt collector is aware of this effect, the debt collector's placement of even a small number of such calls may indicate that the debt collector has the requisite intent to annoy, abuse, or harass. In the Bureau's Debt Collection Consumer Survey, nearly 90 percent of respondents who

[293] Because proposed § 1006.14(b)(1)(ii) provides that a debt collector engaged in the collection of a consumer financial product or service debt must not exceed the calling frequency limits proposed in § 1006.14(b)(2), such a debt collector who exceeds the frequency limits also would violate proposed § 1006.14(b)(1)(ii). Separately, proposed § 1006.14(b)(4) provides a parallel bright-line rule that debt collectors who place telephone calls or engage in telephone conversations at or below the levels in § 1006.14(b)(2) do not, based on their calling frequency, violate the FDCPA, the Dodd-Frank Act, or § 1006.14(b)(1).

[294] While proposed § 1006.14(b)(2) would apply to ''any person,'' the Bureau uses the term ''consumer'' throughout this section-by-section analysis as a shorthand to refer both to consumers, as defined by the FDCPA, and others who may be contacted by debt collectors.

[295] See the section-by-section analysis of proposed § 1006.14(b)(3) for a discussion of the Bureau's proposed exceptions.

[296] Small Business Review Panel Outline, *supra* note 56, at 25.

[297] *See* Small Business Review Panel Report, *supra* note 57, at 37.

[298] Because proposed § 1006.14(b)(1)(ii) provides that a debt collector engaged in the collection of a consumer financial product or service debt must not exceed the frequency limits proposed in § 1006.14(b)(2), such a debt collector who places more than seven telephone calls within seven consecutive days also would violate § 1006.14(b)(1)(ii). Separately, under the proposal, a debt collector who placed seven or fewer telephone calls within a period of seven consecutive days would per se *not* have placed telephone calls repeatedly or continuously to the person at the called number. See the section-by-section analysis of proposed § 1006.14(b)(4).

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.[299] The effect on a consumer of a single debt collector placing repeated or continuous telephone calls is amplified by the fact that, according to the Bureau's research, almost 75 percent of consumers with at least one debt in collection have multiple debts in collection, such that many consumers may receive calls from multiple debt collectors each week.[300] Debt collectors who are aware that many consumers have multiple debts in collections and that these consumers are already receiving telephone calls from other debt collectors may be placing additional calls with intent to annoy, abuse, or harass those consumers.

At the same time, debt collectors have a legitimate interest in reaching consumers. The FDCPA's purposes include ''eliminat[ing] *abusive* debt collection practices by debt collectors'' and ensuring that debt collectors who refrain from such practices ''are not competitively disadvantaged.'' [301] The FDCPA does not contemplate that the elimination of abusive practices entails the elimination of ''the effective collection of debts.'' [302] Communicating with consumers is central to debt collectors' ability to recover amounts owed to creditors. Debt collectors typically must make multiple attempts before establishing what in industry parlance is referred to as ''right-party contact''—that is, before they actually speak to a consumer. Too greatly restricting the ability of debt collectors and consumers 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. For example, during the SBREFA process, small entity representatives reported 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 can entail the financial or opportunity cost of the lawsuit or subject a consumer to wage garnishment. And 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.

The Bureau also has considered whether debt collectors' reliance on making repeated telephone calls to establish contact with consumers could be reduced by other aspects of the proposed rule that are designed to address legal ambiguities regarding how and when debt collectors may communicate with consumers. For example, as discussed above, 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 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. Proposed § 1006.2(j) seeks 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). 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.[303]

Another legal ambiguity regarding how and when debt collectors may communicate with consumers is that the FDCPA does not address how debt collectors may use electronic communication media such as emails or text messages to communicate. The Bureau's proposals in §§ 1006.6(d)(3) and 1006.42 are designed to clarify that ambiguity so that debt collectors may communicate electronically with consumers who prefer to communicate that way. Further, for the reasons discussed in the section-by-section analysis of proposed § 1006.14(b)(1), the Bureau does not propose subjecting email, text messages, or other electronic communications to the proposed frequency limits.

Taking all of these factors into account, the Bureau proposes to draw the line at which a debt collector places telephone calls repeatedly or continuously with 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) [304] at seven telephone calls in a seven-day period about a particular debt. The proposal would allow debt collectors to call up to seven times per week across multiple telephone numbers (*e.g.,* a home landline, mobile, and work), and to leave a limited-content message each time. It also would not limit how many mailed letters, emails, and text messages debt collectors could send. At the same time, by making clear that debt collectors cannot call consumers more than seven times each week about a particular debt in collection, the proposal would protect consumers and others from being harmed by debt collectors making repeated or continuous telephone calls with intent to annoy, abuse, or harass.

For the reasons discussed above, the Bureau proposes § 1006.14(b)(2)(i) to provide that, subject to proposed § 1006.14(b)(3), a debt collector violates proposed § 1006.14(b)(1)(i) by placing more than seven telephone calls within seven consecutive days to a particular person in connection with the collection of a particular debt. Proposed comment 14(b)(2)(i)–1 provides illustrative examples of the proposed rule.[305]

[299] *See* CFPB Debt Collection Consumer Survey, *supra* note 18, at 31. Consumers were asked ''How often did this creditor or debt collector usually try to reach you each week, including times they did not reach you?'' Response options included: Less than once per week; one to three times per week; four to seven times per week; eight to 14 times per week; 15 to 21 times per week; and more than 21 times per week. A separate question asked consumers whether the debt collector had contacted them too often. Survey respondents had the option of indicating that they were not sure whether contacts had come from a debt collector, creditor, or another source. The data reflects responses given by any respondent who reported being contacted about a debt in collection. Limitations on the survey data include that respondents were not asked to distinguish between contact attempts and actual contacts and were not asked to specify whether they already had spoken with the debt collector who was trying to contact them. *Id.* at 30–31.

[300] *Id.* at 13, table 1.

[301] 15 U.S.C. 1692(e) (emphasis added).

[302] 15 U.S.C. 1692(c).

[303] See the section-by-section analysis of proposed § 1006.2(j) for a full discussion of the proposed limited-content message.

[304] *Litt* v. *Portfolio Recovery Assocs. LLC,* 146 F. Supp. 3d 857, 873 (E.D. Mich. 2015) (''[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 act.''); *see also United States* v. *Falstaff Brewing Corp.,* 410 U.S. 526, 570 n.22 (1973) (Marshall, J., concurring in result) (''[P]erhaps the oldest rule of evidence—that a man is presumed to intend the natural and probable consequences of his acts—is based on the common law's preference for objectively measurable data over subjective statements of opinion and intent.'').

[305] The examples would clarify how the proposed rule would apply to calls to consumers or to third parties. The Bureau understands that debt collectors may make location calls to several numbers, but

Proposed comment 14(b)(2)(i)–2 would clarify how to determine the number of telephone calls a debt collector has placed if the debt collector learns that the telephone number that the debt collector previously used to call a person is not, in fact, that person's number. The comment would clarify that telephone calls placed to the wrong number are not counted towards the frequency limit in proposed § 1006.14(b)(2)(i) with respect to the person the debt collector is trying to contact. The Bureau proposes this clarification because a person is unlikely to be harassed by debt collection calls that are placed to a number that belongs to someone else.

The Bureau requests comment on several aspects of proposed § 1006.14(b)(2)(i). First, the Bureau requests comment on the proposal to set the frequency limit at seven telephone calls to a particular consumer within seven consecutive days regarding a particular debt, including on the harms to consumers that may be prevented by this limit and on how such a limit may impact debt collectors. Some stakeholders may take the position that this proposed line should be adjusted upward or downward to account for certain concerns. Debt collectors and other industry stakeholders have advised the Bureau that, today, they often need to make more telephone calls than would be allowed under the proposal in order to establish right-party contact; they have expressed concern that a too-restrictive limit may hamper their ability to reach consumers and collect debts. Consumer advocates have suggested that a lower call limit is necessary to prevent harassment in part because consumers with multiple debts in collection could receive multiple calls about each debt each week; under the proposed limits, for example, a consumer with four or five debts in collection could receive up to two or three dozen telephone calls each week.[306] Some consumer advocates therefore have recommended that the Bureau prohibit a debt collector from placing, for example, more than three telephone calls per week to any one consumer, regardless of how many debts the debt collector is trying to recover from that consumer.

The Bureau encourages commenters who believe the Bureau should set a higher or lower limit to provide data supporting any recommended numbers, such as data regarding the frequency of calls that debt collectors currently make and how that frequency relates to the time needed to establish right-party contact and payments received from consumers. The Bureau also encourages commenters to provide data demonstrating the marginal impact on consumers and debt collectors, as well as on competition and the cost of credit, of adjusting the weekly limit on telephone calls from the proposed seven calls per week to a different number. To the extent that a commenter recommends a higher limit on telephone calls to permit debt collectors to recover more payments from consumers, the Bureau encourages the commenter to submit data quantifying the benefits such increased recovery would have on competition or consumers, such as by lowering the cost of credit. The Bureau also requests data regarding the financial, emotional, or other impact on consumers of calls from debt collectors at varying levels of frequency. In addition, the Bureau requests comment on whether debt collectors currently are able to, or under the proposed rule would expect to be able to, establish right-party contact through voicemails or electronic media, such that debt collectors may have less of a need to place repeated telephone calls to consumers.

Second, the Bureau requests comment on the proposal to measure the frequency of telephone calls on a per-week basis. This framework could result in debt collectors placing, for example, seven telephone calls about one debt to a consumer in one day. The Bureau considered combining a seven-day frequency limit with a per-day frequency limit that would have prohibited, for example, more than one telephone call to a consumer per debt per day, up to a limit of seven telephone calls per consumer per debt every seven days. The Bureau does not propose a combined daily and weekly limit because, while such an approach would eliminate multiple telephone calls about a single debt on any given day, it might not provide flexibility for unforeseen situations or the need to attempt to contact some consumers at different telephone numbers and at different times of the day. It also is not clear that many debt collectors would respond to the proposed weekly limit on telephone calls by placing all of their permitted calls in rapid succession, thus foregoing the opportunity to call the consumer at a different time of day or on a different day of the week for the following seven days. Further, a rule with both daily and weekly frequency limits would sacrifice the ease of implementing and monitoring one frequency limit. The Bureau requests comment on its approach and on the merits of limiting telephone calls based on a different time period (*e.g.,* by day, by month, or through a combination of time periods).

Third, the Bureau requests comment on the proposal to apply frequency limits on a per-debt, rather than on a per-consumer, basis.[307] As proposed, § 1006.14(b)(2)(i) could permit, for example, a debt collector who is attempting to collect two debts from the same consumer to place up to 14 telephone calls in one week to that consumer without violating the FDCPA, the Dodd-Frank Act, or Regulation F based on the frequency of its calling. The Bureau requests comment on this aspect of the proposal, which also is discussed further in the section-by-section analysis of proposed § 1006.14(b)(5).

Fourth, the Bureau requests comment on the proposal to count telephone calls placed about a particular debt to different telephone numbers associated with the same consumer together for purposes of determining whether a debt collector has exceeded the limit in proposed § 1006.14(b)(2)(i) (*i.e.,* an aggregate approach). 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. The Bureau instead proposes an aggregate approach because of concerns that a more prescriptive, per-telephone number approach could produce undesirable results—for example, 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

that location calls do not generally involve frequently calling each number. Therefore the Bureau does not expect that debt collectors would be affected by the proposed limits as they apply to location calls made to third parties.

[306] The proposed frequency limits generally would apply per debt in collection (see proposed § 1006.14(b)(5)), and the Bureau's research shows that a majority of consumers who have at least one debt in collection have multiple debts in collection. For example, 57 percent of consumers with at least one debt in collection reported having between two and four debts in collection. *See* CFPB Debt Collection Consumer Survey, *supra* note 18, at 13, table 1. Overall, the Bureau's research shows that almost 75 percent of consumers with at least one debt in collection have multiple debts in collection. *See id.; see also* CFPB Medical Debt Report, *supra* note 20, at 20 (reporting that most consumers with one tradeline have multiple tradelines).

[307] As discussed in the section-by-section analysis of proposed § 1006.14(b)(5), with respect to 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 would be treated as a single debt for purposes of the frequency limits.

debt collectors happened to know about). Such an approach also could incentivize debt collectors to place telephone calls to less convenient telephone numbers after exhausting their telephone calls to consumers' preferred numbers. The Bureau requests comment on the merits of an aggregate versus a per-telephone number limit.

Finally, the Bureau requests comment on proposed comment 14(b)(2)(i)–2. In particular, the Bureau requests comment on whether the Bureau should provide additional clarification about how a debt collector determines that a telephone number is not associated with a particular person, or whether, for purposes of the proposed frequency limits, there is an alternative way to treat telephone calls inadvertently made to the wrong person.

The Bureau's 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. Before a debt collector confirmed contact with a consumer, the proposal under consideration would have imposed weekly limits of (i) three contact attempts per unique communication medium and (ii) six total contact attempts. After confirming contact with the consumer, a debt collector would have been subject to weekly limits of (i) two contact attempts per unique communication medium and (ii) three total contact attempts.[308] Many small entity representatives expressed a strong preference for bright-line, simplified rules. Many also stated that the proposal under consideration would inhibit communications between debt collectors and consumers and extend the time necessary to reach consumers. In particular, small entity representatives stated that they regularly attempt to contact consumers more than seven times per week when trying to establish right-party contact. Small entity representatives suggested several exceptions to the proposal under consideration, including telephone calls about which a consumer was unaware because, for example, the telephone number called was not, in fact, associated with that consumer.[309] In its report, the Small Business Review Panel recommended, among other things, that the Bureau consider whether the frequency limits should apply equally to all communication media (*e.g.,* telephone, postal mail, email, text messages, and other newer communication media).[310]

The Bureau considered the small entity representatives' feedback in developing the proposed frequency limits and believes that proposed § 1006.14(b)(2)(i) responds to many of the small entity representatives' concerns. In particular, proposed § 1006.14(b)(2)(i) would permit a debt collector to place seven telephone calls to a consumer in a seven-day period regarding a particular debt, without a different numerical limit on the number of calls the debt collector could make during a seven-day period after having established initial contact with the consumer. The proposal thus avoids potential ambiguities regarding when a debt collector has confirmed or lost contact with a consumer and may represent the type of bright-line, simplified approach that small entity representatives sought. The proposal would not limit debt collectors to sending a particular number of letters, emails, and text messages, and proposed comment 14(b)(2)(i)–2 would clarify that a telephone call to a number that the debt collector later determines is not associated with the consumer does not count toward the frequency limit. As discussed in the section-by-section analysis of proposed § 1006.14(b)(3), the Bureau proposes several other exceptions to the frequency limits in response to small entity representatives' feedback.

As noted above, the Bureau proposes § 1006.14(b)(2)(i) and its related commentary pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors, and as an interpretation of FDCPA section 806(5), because a debt collector who places more than seven telephone calls to a particular person about a particular debt within seven consecutive days may have the intent to annoy, abuse, or harass the person.[311] Some debt collectors may, in fact, place more than seven telephone calls to a person each week precisely because they believe that additional telephone calls may cause sufficient harassment or annoyance to pressure the person to respond or make a payment that the person otherwise would not have made.

With respect to a debt collector who is collecting a consumer financial product or service debt, as defined in proposed § 1006.2(f), the Bureau also proposes § 1006.14(b)(2)(i) pursuant to its authority under section 1031(b) of the Dodd-Frank Act to prescribe rules applicable to a covered person or service provider that identify, and that may include requirements to prevent, unfair acts or practices in connection with any transaction with a consumer for a consumer financial product or service. To identify an act or practice as unfair under the Dodd-Frank Act, the Bureau must have a reasonable basis to conclude that: (1) The act or practice causes or is likely to cause substantial injury to consumers, which consumers cannot reasonably avoid; and (2) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.[312]

The Bureau proposes § 1006.14(b)(2)(i) to prevent[313] the unfair act or practice, identified in proposed § 1006.14(b)(1)(ii), of placing, in connection with the collection of a consumer financial product or service debt, telephone calls to any person repeatedly or continuously such that the natural consequence is to harass, oppress, or abuse any person at the called number. The Bureau proposes to set the frequency limit at seven telephone calls within seven consecutive days about a particular debt because such a limit appears to bear a reasonable relationship to preventing the unfair practice.[314]

[308] The proposals under consideration described in the Small Business Review Panel Outline would have applied the same limits for contact attempts to individuals other than the consumer, except that all third-party contact attempts would have been prohibited after the debt collector had successfully contacted the consumer, on the theory that the debt collector at that point would have had no reason to continue to engage in third-party outreach. The Bureau's proposal does not include the aspect of the Small Business Review Panel Outline that would have prohibited third-party contact attempts after the debt collector had successfully contacted the consumer. Proposed § 1006.10, which would implement FDCPA section 804's general prohibition against communicating more than once with a person to obtain location information, may provide sufficient protection regarding the making of location information communications when location information has already been obtained.

[309] *See* Small Business Review Panel Report, *supra* note 57, at 36–37.

[310] *Id.* at 37.

[311] Calls in excess of this limit may have the natural consequence of harassing, oppressing, or abusing a person at the called number, and, as noted above, the Bureau assumes that debt collectors intend the natural consequences of their actions.

[312] Dodd-Frank Act section 1031(c), 12 U.S.C. 5531(c).

[313] The Bureau has not determined in connection with this proposal whether telephone calls in excess of the limit in proposed § 1006.14(b)(2)(i) by creditors and others generally not covered by the FDCPA would constitute an unfair act or practice under section 1031(c) of the Dodd-Frank Act if engaged in by those persons, rather than by an FDCPA-covered debt collector. The Bureau's proposal does not address, for example, whether consumers could reasonably avoid harm from creditor contacts or whether frequent creditor contacts provide greater benefits to consumers or competition.

[314] Dodd-Frank Act section 1031(c). Some courts have held that the consumer stated a claim under FDCPA section 806(5) where the debt collector called, on average, more than seven times per week. *See, e.g., U.S.* v. *Cent. Adjustment Bureau, Inc.,* 667

Consumers may suffer or be likely to suffer substantial injury from repeated or continuous debt collection telephone calls. Consumers have alleged in complaints lodged with the FTC and the Bureau, and in litigation, that such telephone calls can cause them, among other things, to suffer great emotional distress and anxiety, and that such calls can interfere with their health or sleep.[315] Consumers may pay debts that they otherwise might not have paid simply to stop the telephone calls. For example, consumers may pay debts that they do not owe or to which they have legal defenses; pay debts using funds that are exempt from collection; or pay the particular debt being collected instead of other debts or expenses that the consumer otherwise would prioritize, such as a secured or nondischargable debt or expenses for food, shelter, clothing, or medical treatment. A debt collector's telephone calls also may cause some consumers to incur charges on their mobile telephones.[316] Although the charge for an individual call may be minimal, the FCC has found that ''[t]hese costs can be substantial'' when aggregated across all consumers,[317] which is consistent with the FTC's and the Bureau's approach of aggregating all injuries (including small injuries) caused by a practice to determine whether the practice is unfair.[318]

Consumers may not be reasonably able to avoid the substantial injuries that could stem from frequent or repeated debt collection telephone calls. Many consumers carry their mobile telephones at all times to coordinate essential tasks or to be available in case of emergency.[319] Consumers also may share their mobile or landline telephones with family members. For these consumers, disengaging from all telephone calls to avoid debt collectors may not be an option. Moreover, courts have held that the ringing or vibrating alert caused by a debt collector's calls can contribute to harassment by conveying a sense of urgency to the consumer,[320] which can overwhelm some consumers, especially those with multiple debts in collection.

FDCPA section 805(c) provides, in part, that a debt collector generally shall not communicate further with a consumer with respect to a debt if the consumer notifies the debt collector in writing that the consumer wishes the debt collector to cease further communication.[321] Section 805(c), however, may be insufficient to permit consumers to reasonably avoid injuries from repeated or continuous telephone calls. First, many consumers may invoke the cease communication right only after they are harassed. Second, some consumers, even if they are aware of their rights, may not invoke them because ceasing communication entirely could make it more difficult to resolve the debt and, in turn, subject the consumer to other injuries. In particular, an unresolved debt could cause the consumer to incur additional fees, interest, adverse credit reporting, or, in the case of secured debts, loss of a home, automobile, or other property. Numerous debt collectors also have reported that a consumer who ceases communications is more likely to be sued and subjected to wage garnishment because the debt collector has no other way to recover on the debt.[322] Accordingly, a consumer who is aware of these potential outcomes, even if only in the abstract, or who wishes to resolve the debt in the future, may be reluctant to invoke the cease communication right to prevent harassment. Moreover, it may not be reasonable to expect a consumer to avoid harassment by invoking the cease communication right if doing so makes it more likely that the debt collector will sue the consumer to recover on the debt. Third, only a consumer as defined in FDCPA sections 803(3) and 805(d) may invoke the cease communication right, leaving other persons unable to invoke this remedy.

The Bureau proposes § 1006.14(b)(2)(i) because the injuries described above appear not to be outweighed by the countervailing benefits to consumers or to competition of more frequent telephone calls from FDCPA-covered debt collectors. If the proposed limit on telephone calls adversely affects debt collectors' ability to collect debts, the reduction in recoveries and corresponding increases in losses could result in an increase in the cost of credit. However, as discussed above and more fully in part VI, debt collectors may not need to make repeated or continuous telephone calls to collect debts effectively, and debt collectors may face diminishing returns as they increase the frequency of their calling. Further, the Bureau has sought

F. Supp. 370, 376, 394 (N.D. Tex. 1986), *aff'd as modified,* 823 F.2d 880 (5th Cir. 1987) (per curiam) (holding that debt collector violated FDCPA section 806(5) by, among other things, placing successive telephone calls in a single day and calling at least one consumer four-to-five times in a single day); *Schwartz-Earp* v. *Advanced Call Ctr. Techs.,* LLC, No. 15–CV–01582–MEJ, 2016 WL 899149, at *4 (N.D. Cal. Mar. 9, 2016) (denying debt collector's summary judgment motion where the debt collector called the consumer ''multiple times a day, with as many as five calls in a day,'' and remarking that ''the volume and pattern of calls alone is sufficient to raise a genuine dispute of material fact''); *Neu* v. *Genpact Servs., LLC,* No. 11–CV–2246 W KSC, 2013 WL 1773822, at *4 (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' ''); *Forrest* v. *Genpact Servs., LLC,* 962 F. Supp. 2d 734, 737 (M.D. Pa. 2013) (holding that consumer stated a claim under FDCPA section 806(5) by alleging that debt collector called the consumer 225 times within 54 days); *Bassett* v. *I.C. Sys., Inc.,* 715 F. Supp. 2d 803, 810 (N.D. Ill. 2010) (denying debt collector's summary judgment motion where debt collector called the consumer 31 times in 12 days).

[315] See *supra* notes 286 and 287.

[316] See the section-by-section analysis of proposed § 1006.6(e).

[317] Fed. Comms. Comm'n, In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, 30 FCC Rcd. 7961, 8020 ¶ 118 (2015) (''In addition to the invasion of consumer privacy for all wireless consumers, the record confirms that some are charged for incoming calls and messages. These costs can be substantial when they result from the large numbers of voice calls and texts autodialers can generate.'').

[318] *Fed. Trade. Comm'n* v. *Pantron I Corp.,* 33 F.3d 1088, 1102–03 (9th Cir. 1994) (''Both the Commission and the courts have recognized that consumer injury is substantial when it is the aggregate of many small individual injuries.'') (citing *Orkin Exterminating Co.* v. *Fed. Trade. Comm'n,* 849 F.2d 1354, 1365 (11th Cir. 1988)); FTC Policy Statement on Unfairness, *supra* note 100, at 1073 n.12 (''An injury may be sufficiently substantial . . . if it does a small harm to a large number of people, or if it raises a significant risk of concrete harm.''); Bureau of Consumer Fin. Prot., CFPB Examination Procedures, Unfair, Deceptive, or Abusive Acts or Practices, at 2 (Oct. 2012), *https://www.consumerfinance.gov/documents/4576/102012_cfpb_unfair-deceptive-abusive-acts-practices-udaaps_procedures.pdf* (''An act or practice that causes a small amount of harm to a large number of people may be deemed to cause substantial injury.'').

[319] *See, e.g.,* Fed. Comms. Comm'n, In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, 30 FCC Rcd. 7961, 7996 ¶ 61 (2015) at 7996 ¶ 61 (''Indeed, some consumers may find unwanted intrusions by phone more offensive than home mailings because they can cost them money and because, for many, their phone is with them at almost all times.'').

[320] *See, e.g., Clements* v. *HSBC Auto Fin., Inc.,* Civ. A. No. 5:09–cv–0086, 2011 WL 2976558, at *5 (S.D. W. Va. July 21, 2011) (noting that ''[m]issed calls communicate more than a phone number'' and ''can, depending on volume and frequency, communicate urgency and panic,'' but nevertheless finding that, based on the facts of the case, plaintiffs had suffered minimal emotional harm); *Bassett* v. *I.C. Sys., Inc.,* 715 F. Supp. 2d 803, 807–810 (N.D. Ill. 2010) (denying debt collector's summary judgment motion where debt collector placed 31 telephone calls to a consumer's blocked telephone and explaining that, although the consumer's telephone did not ring, the consumer could still have been harassed because the telephone displayed the incoming calls).

[321] 15 U.S.C. 1692c(c). Proposed § 1006.6(c) would implement FDCPA section 805(c).

[322] As noted earlier in this section-by-section analysis, the Bureau has received feedback from small entity representatives and other industry stakeholders that overly restrictive frequency limits could result in some of these same consumer harms, and the Bureau requests comment on the proposed frequency limits for that reason.

to mitigate concerns about increasing the cost of credit by limiting only the number of telephone calls placed per seven days, not the total number of telephone calls placed throughout the course of collections, thus permitting debt collectors to continue making as many telephone calls as needed, albeit over a longer period. Further, even if preventing harassing or oppressive contacts did have some marginal effect on collections success, the injuries caused by such contacts do not appear to be outweighed by countervailing benefits to consumers or to competition.

For similar reasons, the FTC and the Bureau previously have alleged through enforcement actions that repeated or continuous telephone calls or telephone conversations can constitute an unfair act or practice in violation of section 5 of the FTC Act and section 1031 of the Dodd-Frank Act.[323] For example, the FTC has alleged that a party engaged in an unfair act or practice under section 5 by making repeated or continuous telephone calls with intent to harass or abuse either consumers who owed debts or third parties, explaining that these calls can cause substantial injuries by, among other things, affecting the consumer's reputation, impairing the consumer's relationship with family, friends, and co-workers, and inducing the payment of disputed debts.[324] Similarly, the Bureau has alleged that a party engaged in unfair acts or practices under section 1031 by making an excessive number of telephone calls to consumers and by calling third parties repeatedly even after being informed that the calls were to the wrong person.[325]

Section 1031(c)(2) of the Dodd-Frank Act allows the Bureau to ''consider established public policies as evidence to be considered with all other evidence'' in determining whether an act or practice is unfair, as long as the public policy considerations are not the primary basis of the determination.[326] Established public policy appears to support the Bureau's proposed finding that it is an unfair act or practice for a debt collector who is collecting a consumer financial product or service debt to place telephone calls repeatedly or continuously such that the natural consequence is to harass, oppress, or abuse any person at the called number. Several consumer financial statutes and regulations, as well as industry standards,[327] require or recommend that debt collectors or others who are engaged in marketing or collections limit the frequency of their telephone calls to consumers. These include several State and local laws that limit the number of times a debt collector or creditor may call a consumer each week,[328] as well as the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Telephone Consumer Protection Act, and related FTC and FCC rulemakings that establish the Do Not Call Registry, limit the use of autodialers, and impose requirements related to Caller ID.[329] In short, Congress, State and local legislatures, and other agencies have found that consumers are harmed by repeated telephone calls. These established policies support a finding that it is an unfair act or practice for a debt collector who is collecting a consumer financial product or service debt to place telephone calls to a person repeatedly or continuously such that the natural consequence is to harass, oppress, or abuse any person at the called number, and they evince public policy that supports the Bureau's proposed frequency limits. The Bureau gives weight to this policy and bases its proposed finding that the identified act or practice is unfair in part on this body of public policy.

14(b)(2)(ii)

Proposed § 1006.14(b)(2)(ii) would provide that, subject to the exceptions in proposed § 1006.14(b)(3), a debt collector must not place a telephone call to a person in connection with the collection of a particular debt after already having had a telephone conversation with that person in connection with the collection of such debt within a period of seven consecutive days ending on the date of the call. Proposed comment 14(b)(2)(ii)–1 provides examples of the proposed rule.

In developing this proposal, the Bureau has 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, the debt collector who has already conversed with a consumer may be more likely than the debt collector who has not conversed with a consumer 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 to a debt collector about a debt by telephone may be more likely than a consumer who has not spoken to a debt collector about a debt by telephone 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.

A consumer may experience, and a debt collector may intend to cause, such

[323] Complaint at ¶¶ 56–58, *Fed. Trade Comm'n* v. *Citigroup Inc.,* No. 1:01–CV–00606 JTC (N.D. Ga. Mar. 6, 2001), *https://www.ftc.gov/sites/default/files/documents/cases/2001/03/citigroupcmp.pdf*(alleging that defendant engaged in an unfair act or practice under section 5 of the FTC Act by ''making repeated and continuous telephone calls to consumers with intent to annoy, abuse, or harass any person at the called number''); Consent Order at ¶¶ 5, 6, 19, *In re Avco Fin. Servs.,* 104 F.T.C. 485, 1984 WL 565343, at *2–3 (1984) (settling FTC's allegations that defendant engaged in an unfair act or practice under section 5 of the FTC Act by ''[m]aking repeated or continuous telephone calls to debtors or third parties with intent to harass or abuse persons at the called number,'' and explaining that these ''acts and practices * * * had and now [have] the capacity and tendency to cause substantial injury to debtors or third parties who are contacted by [defendant] by, among other things, adversely affecting the debtor's reputation, interfering with the debtor's or third party's employment relations including, but not limited to, causing warnings by employers of possible discharge, impairing the debtor's relations with friends, relatives, neighbors, and co-workers, and inducing the payment of disputed debts.''); Consent Order at ¶¶ 12, 19–23, *In re Ace Cash Express,* No. 2014–CFPB–0008 (July 10, 2014), *https://files.consumerfinance.gov/f/201407_cfpb_consent-order_ace-cash-express.pdf* (settling Bureau's allegations that defendant engaged in unfair acts or practices under section 1031 of the Dodd-Frank Act by, among other things, ''[m]aking an excessive number of calls to consumers' home, work, and cell phone numbers'' and ''[c]ontinuing to call consumers with no relation to the debt after being told that [defendant] had the wrong person''); *see also* Consent Order, *In re DriveTime Auto. Grp., Inc.,* 2014–CFPB–0017 (Nov. 19, 2014), *https://files.consumerfinance.gov/f/201411_cfpb_consent-order_drivetime.pdf* (settling Bureau's allegations that defendant engaged in unfair acts or practices under section 1031 of the Dodd-Frank Act ''by failing: (A) To prevent account servicing and collection calls to consumers' workplaces after consumers asked [defendant] to stop such calls; (B) to prevent calls to consumers' third-party references after the references or consumers asked [defendant] to stop calling them; and (C) to prevent calls to people at wrong numbers after they have asked [defendant] to stop calling'').

[324] *Avco Fin. Servs.,* 104 F.T.C. 485, 1984 WL 565343, at *2–3.

[325] *Ace Cash Express,* No. 2014–CFPB–0008.

[326] 12 U.S.C. 5531(c)(2).

[327] Many creditors and debt collectors have found it advantageous to adopt voluntary daily or weekly limits on telephone calls that they or their service provider make in connection with collecting debts. *See, e.g.,* Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market,* at 313–14 (Dec. 2017), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2017.pdf.* See also *infra* part VI.B.2.

[328] See *supra* note 284.

[329] 15 U.S.C. 6101 *et seq.;* 47 U.S.C. 227; 16 CFR part 310; 47 CFR 64.1200 *et seq.;* 47 CFR 64.1600 *et seq.*

annoyance, abuse, or harassment from a second telephone conversation within one week 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 count as the debt collector's one permissible telephone conversation for the next week. In some instances, a consumer might request additional information when speaking with a debt collector and would not view a follow-up telephone call from the debt collector as harassing. For that reason, proposed § 1006.14(b)(3)(i), discussed below, would create an exception for telephone calls that are made to respond to a request for information from the consumer. Similarly, proposed § 1006.14(b)(3)(ii), also discussed below, would create an exception under which a consumer who wishes to speak to a debt collector more than once in one week could consent, in the first telephone conversation or by other media, to additional telephone calls from the debt collector.

The Bureau requests comment on proposed § 1006.14(b)(2)(ii). The Bureau considered, but does not propose, a frequency limit that would have limited only the total number of telephone calls that a debt collector could place to a person about a debt during a defined time period, regardless of whether the debt collector had engaged in a telephone conversation with that person about that debt during the relevant time period. The Bureau requests comment on the merits of such an alternative approach.

The Bureau proposes § 1006.14(b)(2)(ii) and its commentary pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors and its authority to interpret FDCPA section 806(5). The Bureau proposes § 1006.14(b)(2)(ii) on the basis that, unless an exception (such as consent) applies, once a debt collector and a consumer engage in a telephone conversation regarding a particular debt, a debt collector who places additional calls to that person about that debt within the following seven days may intend to annoy, abuse, or harass the person.[330]

With respect to a debt collector who is collecting a consumer financial product or service debt, as defined in proposed § 1006.2(f), the Bureau also proposes § 1006.14(b)(2)(ii) pursuant to its authority under section 1031(b) of the Dodd-Frank Act to prescribe rules identifying and preventing unfair acts or practices.[331] Specifically, the Bureau proposes § 1006.14(b)(2)(ii) to prevent the unfair act or practice described in proposed § 1006.14(b)(1)(ii).[332] For the reasons discussed in the section-by-section analysis of proposed § 1006.14(b)(2)(i), and based on the evidence currently available to the Bureau, the Bureau believes that, if a debt collector places a telephone call to a particular person about a particular debt after already having spoken to that person about that debt within the previous seven days, the person naturally may feel harassed by the subsequent telephone call. For the reasons discussed in the section-by-section analysis of proposed § 1006.14(b)(2)(i), the debt collector's conduct may cause or be likely to cause the person to suffer substantial injury that is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or to competition.[333] The Bureau thus proposes § 1006.14(b)(2)(ii) to establish a frequency limit that would prevent debt collectors from engaging in this unfair act or practice and, as detailed above, the Bureau proposes a limit of one telephone conversation per seven days on the theory that such a limit bears a reasonable relationship to preventing the unfair practice.

14(b)(3) Certain Telephone Calls Excluded From the Frequency Limits

Proposed § 1006.14(b)(3) describes four types of telephone calls that would not count toward, and that would be permitted in excess of, the frequency limits in proposed § 1006.14(b)(2). These are telephone calls that are: (i) Made to respond to a request for information from the person whom the debt collector is calling; (ii) made with such person's consent given directly to the debt collector; (iii) unable to connect to the dialed number; or (iv) placed to a person described in proposed § 1006.6(d)(1)(ii) through (vi). As discussed in the section-by-section analysis of proposed § 1006.14(b)(3)(i) through (iv) below, the Bureau proposes these exclusions pursuant to its authority under FDCPA section 814(d) to prescribe rules for the collection of debts by debt collectors and to implement and interpret FDCPA section 806(5). The Bureau proposes to exclude these telephone calls from counting toward the proposed frequency limits because they are unlikely to be harassing to consumers, and debt collectors are unlikely to place such calls with intent to annoy, abuse, or harass a person. The Bureau further proposes to exclude these telephone calls from counting toward the proposed frequency limits because they are unlikely to contribute to substantial injury that a person cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or competition. The Bureau requests comment on proposed § 1006.14(b)(3) and its related commentary, including on whether any other types of telephone calls should be excluded from the frequency limits.

During the SBREFA process, the Bureau's proposal under consideration noted that a bright-line frequency limit could except certain types of contacts, but it did not identify any specific exceptions. Many small entity representatives suggested exceptions, including for: (1) Contacts that respond to a consumer's request or question; (2) contact attempts that leave no ''footprint,'' such that the consumer is unaware of the telephone call or other contact attempt; (3) contacts with a consumer's attorney; and (4) contacts that are legally required. The Small Business Review Panel Report recommended that the Bureau consider incorporating such exceptions into the proposal.[334] The Panel Report also specifically recommended that the Bureau consider whether the frequency limits should be modified for communications that occur after a law firm files a complaint, on the grounds that one conversation per week might not be sufficient in various litigation situations. Proposed § 1006.14(b)(3) takes into account the small entity representatives' suggestions and the recommendations in the Panel Report. The Bureau does not propose an

[330] Unless an exception applies, a person who receives such a telephone call after already having spoken to the debt collector within the previous seven days may naturally feel harassed, oppressed, or abused, and, as noted above, the Bureau assumes that debt collectors intend the natural consequences of their actions.

[331] The Bureau has not determined in connection with this proposal whether telephone calls in excess of the limit in proposed § 1006.14(b)(2)(ii) by creditors and others not covered by the FDCPA would constitute an unfair act or practice under Dodd-Frank Act 1031(c) if engaged in by those persons, rather than by an FDCPA-covered debt collector.

[332] As with § 1006.14(b)(2)(i), proposed § 1006.14(b)(2)(ii) would apply when a debt collector places a telephone call to ''a person.''

[333] 12 U.S.C. 5531(c).

[334] *See* Small Business Review Panel Report, *supra* note 57, at 36. Other suggested exceptions in the Small Business Review Panel Report—including for contacts initiated by the consumer, contacts that occur through written correspondence (*e.g.,* letters), and misdirected contact attempts—are addressed elsewhere in the section-by-section analysis of proposed § 1006.14(b).

exception for legally required communications because the Bureau understands that very few legally required communications must be delivered by telephone and that, with respect to the few such communications that must be delivered telephonically, it appears unlikely that a debt collector would need to place more than seven telephone calls to a consumer within a period of seven consecutive days to deliver the required communication.

14(b)(3)(i)

Proposed § 1006.14(b)(3)(i) would exclude from the frequency limits telephone calls that a debt collector places to a person to respond to a request for information from that person. The Bureau proposes this exclusion because the Bureau believes that, if a person is speaking to a debt collector and asks for information that the debt collector does not have at the time of the telephone conversation, the person likely would expect (and not be harassed by) a return telephone call (or calls) from the debt collector providing the requested information; nor would the debt collector place the return telephone call with intent to annoy, abuse, or harass the person. Proposed comment 14(b)(3)(i)–1 would clarify that, once a debt collector provides a response 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. Proposed comment 14(b)(3)(i)–2 provides an example of the rule.[335]

The Bureau requests comment on the proposal to exclude from the frequency limits the placement of telephone calls that are made to respond to a request for information. The Bureau specifically requests comment on whether there should be any separate limit on the number of telephone calls a debt collector could place under the exception. As proposed, § 1006.14(b)(3)(i) would permit a debt collector who engages in a telephone conversation with a consumer to place an unlimited number of unanswered telephone calls to the consumer during the next seven days in an effort to provide the requested information. As proposed, § 1006.14(b)(3)(i) also would permit the debt collector to continue to exceed the frequency limits until the debt collector reached the consumer to respond to the request. A debt collector responding to a person's request for information may not need to place repeated or continuous telephone calls to reach the consumer, however, because such a debt collector is likely to have reliable contact information and the consumer presumably will be expecting the debt collector's telephone call. The Bureau requests comment on this approach and on alternatives to it. The Bureau also requests comment on whether additional clarification is needed on 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 on how to determine whether the debt collector has responded to a request for information, such that the exclusion no longer applies.

14(b)(3)(ii)

Proposed § 1006.14(b)(3)(ii) would exclude from the proposed frequency limits telephone calls that a debt collector places to a person with the person's prior consent given directly to the debt collector. The Bureau proposes to exclude such telephone calls from the frequency limits because 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 consent to additional telephone calls would not be likely to place such calls with intent to annoy, abuse, or harass the person. The Bureau also believes that proposed § 1006.14(b)(3)(ii) may address small entity representatives' concerns about the frequency limits precluding necessary conversations in various litigation contexts because it would enable a person to consent to additional telephone calls if, for example, the parties were negotiating a settlement or resolving a discovery dispute.

Proposed comment 14(b)(3)(ii)–1 refers to the commentary to proposed § 1006.6(b)(4)(i) for guidance concerning a person giving prior consent directly to a debt collector. Proposed comment 14(b)(3)(ii)–2 provides an example of the rule. The Bureau requests comment on proposed § 1006.14(b)(3)(ii) and its related commentary, including on whether there should be a separate limit on the number of telephone calls that a debt collector could place under the proposed exception or whether there should be any other type of limitation or condition on the proposed exception.

14(b)(3)(iii)

Proposed § 1006.14(b)(3)(iii) would exclude from the frequency limits telephone calls that a debt collector places to a person but that are unable to connect to the dialed number (*e.g.,* that result in a busy signal or are placed to an out-of-service number). The Bureau proposes this exclusion because a person is unlikely to know about, let alone be 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, it appears that a debt collector who places several calls to a person in response to which the debt collector receives a busy signal or out-of-service notification is likely to place 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.[336] The proposed exclusion also responds to feedback from small entity representatives suggesting that, for example, a telephone call met with a busy signal should not count toward the frequency limit.[337] Proposed comment 14(b)(3)(iii)–1 and –2 provide examples of telephone calls that are able and unable to connect to the dialed number. The Bureau requests comment on proposed § 1006.14(b)(3)(iii), including on whether the Bureau should include any other specific examples in commentary.

14(b)(3)(iv)

Proposed § 1006.14(b)(3)(iv) would exclude from the frequency limits telephone calls that a debt collector places to the persons described in proposed § 1006.6(d)(1)(ii) through (vi). Proposed § 1006.6(d)(1)(ii) through (vi) would implement, in part, FDCPA section 805(b)'s exception from the general prohibition on communicating

[335] Some State and local laws exclude responsive communications from their frequency limits. For example, Massachusetts' creditor-collection law provides that ''a creditor shall not be deemed to have initiated a communication with a debtor if the communication by the creditor is in response to a request made by the debtor for said communication''). 940 Code Mass. Regs. 7.04(1)(f). *See also* 9 Wash. Rev. Code 19.16.250(13)(a) (debt collector may exceed the weekly contact limit when ''responding to a communication from the debtor or spouse''); N.Y.C. Admin. Code 5–77(b)(1)(iv) (weekly contact limit does not include ''any communication between a consumer and the debt collector which is in response to an oral or written communication from the consumer'').

[336] The Bureau's approach in proposed § 1006.14(b)(3)(iii) is informed, in part, by State and local laws that exclude undeliverable contact attempts from their frequency limits. *See* Commonwealth of Mass., Off. of the Att'y Gen., *Guidance with Respect to Debt Collection Regulations* (2013), *https://www.mass.gov/files/documents/2016/08/xc/debt-collection-guidance-2013.pdf* (''unsuccessful attempts . . . to reach a debtor via telephone'' do not count toward the frequency limit in 940 Code Mass. Regs. 7.04(1)(f) ''if the creditor is truly unable to reach the debtor or to leave a message for the debtor); N.Y.C. Admin. Code 5–77(b)(1)(iv) (weekly contact limit does not include ''returned unopened mail'').

[337] *See* Small Business Review Panel Report, *supra* note 57, at 37.

about a debt with a person other than the consumer; it would permit a debt collector to communicate with a consumer's attorney, a consumer reporting agency, a creditor, a creditor's attorney, or a debt collector's attorney. Proposed § 1006.14(b)(3)(iv) would exclude from the frequency limits telephone calls placed to such persons on the basis that these persons are unlikely to be harassed by frequent and repeated telephone calls from a debt collector and that a debt collector is unlikely to place calls to such persons with intent to annoy, abuse, or harass them. Unlike most consumers, each of these persons has professional training and experience in, and is likely engaging in, the debt collection process in a professional capacity. Moreover, the Bureau is not aware of evidence that such persons receive an excessive number of telephone calls from debt collectors.

The Bureau also proposes to exclude telephone calls to such persons from the frequency limits because debt collectors may have non-harassing reasons for calling these persons more often than proposed § 1006.14(b)(2) would permit. 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; the Bureau's proposal would not limit such contacts. The Bureau requests comment on proposed § 1006.14(b)(3)(iv), including on whether telephone calls that a debt collector places to certain other persons also should be excluded from the frequency limits and, if so, which categories of persons should be excluded.

14(b)(4) Effect of Complying With Frequency Limits

Proposed § 1006.14(b)(4) would clarify the effect of complying with the frequency limits in § 1006.14(b)(2). Under proposed § 1006.14(b)(4), a debt collector who complies with (*i.e.,* does not exceed) the frequency limits in § 1006.14(b)(2) would per se comply with § 1006.14(b)(1). Proposed § 1006.14(b)(4) also would clarify that a debt collector who complies with § 1006.14(b)(2) does not violate either: (1) FDCPA section 806's general prohibition as it applies to placing telephone calls or engaging any person in telephone conversation repeatedly or continuously such that the natural consequence is to harass, oppress, or abuse the person; or (2) FDCPA section 806(5)'s specific prohibition against causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass the person. Based on the evidence currently available to the Bureau, the Bureau believes that a debt collector who places seven or fewer telephone calls to, and engages in one telephone conversation with, a particular consumer about a particular debt within a period of seven consecutive days, including the additional telephone calls permitted under proposed § 1006.14(b)(3), may not have the natural consequence of harassing, oppressing or abusing a person; that a debt collector who places such calls or engages in such conversations does not intend to annoy, abuse, or harass the person; and that such a frequency of telephone calls and conversations would not be repeated or continuous as those terms are used in FDCPA section 806(5).

Proposed § 1006.14(b)(4) also would clarify the consequence under the Dodd-Frank Act of complying with the frequency limits. Proposed § 1006.14(b)(4) provides that a debt collector who complies with § 1006.14(b)(2) does not violate Dodd-Frank Act sections 1031(c) or 1036(a)(1)(B) by engaging in the unfair act or practice of, in connection with the collection of a consumer financial product or service debt, placing telephone calls or engaging any person in telephone conversation repeatedly or continuously such that the natural consequence is to harass, oppress, or abuse the person. The Bureau proposes § 1006.14(b)(4) on the basis that telephone calls that do not exceed the frequency limits in § 1006.14(b)(2) do not cause substantial injury and that any possible injury is outweighed by the benefits to consumers or to competition. Under this interpretation, telephone calls at or below the frequency limits are unlikely to harass consumers and, in turn, are unlikely to cause substantial injury. Further, under this interpretation, debt collection provides substantial benefits to the consumer credit marketplace, and debt collectors may need to make telephone calls up to the frequency limits to collect debts effectively. Given these premises, any injury that might result from telephone calls at or below the frequency limits would be outweighed by the benefits to consumers or to competition.

The Bureau further believes that clarifying the effect of complying with proposed § 1006.14(b)(2), and creating a bright-line rule for compliance with it, could benefit both consumers and debt collectors. For debt collectors, the clarification should provide greater legal certainty and, in turn, should reduce the costs of litigation and threats of litigation about repeated or continuous contacts under FDCPA section 806 and 806(5). Consistent with this view, during the SBREFA process, small entity representatives expressed a preference for a bright-line approach. For consumers, a bright-line rule could make it easier to identify violations of the FDCPA. Providing a bright-line rule for determining compliance with the FDCPA and the Dodd-Frank Act therefore may be appropriate to advance the objectives of the FDCPA and title X of the Dodd-Frank Act.

Proposed § 1006.14(b)(4) would not provide a debt collector with protection from liability as to any other provision of the proposed rule, the FDCPA, or the Dodd-Frank Act. For example, proposed § 1006.14(b)(4) would not protect a debt collector from liability for using obscene language or false representations in connection with collection of a debt, in violation of FDCPA sections 806 or 807 (as proposed to be implemented by §§ 1006.14 and 1006.18). Similarly, proposed § 1006.14(b)(4) would not protect a debt collector from liability for communicating with a consumer in violation of FDCPA section 805(a) or (c) (as proposed to be implemented by § 1006.6(b)(1) and (c)). Nor would proposed § 1006.14(b)(4) protect a debt collector from liability under the Dodd-Frank Act for engaging in other unfair, deceptive, or abusive acts or practices.

The Bureau requests comment on all aspects of proposed § 1006.14(b)(4). The Bureau specifically requests comment on whether proposed § 1006.14(b)(4) adequately addresses concerns about debt collectors making telephone calls in rapid succession and, if not, what approach would address such calling behavior without imposing undue or unnecessary costs on debt collectors. For example, under the Bureau's proposed approach, a debt collector would not violate § 1006.14(b)(1) by placing seven or fewer telephone calls in rapid succession, so long as the debt collector did not exceed seven telephone calls or one telephone conversation with the same person about the same debt during a period of seven consecutive days.

The Bureau also requests comment on whether, instead of a bright-line rule, the Bureau should adopt a rebuttable presumption of compliance and of a violation. Under a rebuttable presumption approach, a debt collector who places telephone calls at or below the frequency limits presumptively would comply with § 1006.14(b)(1). Likewise, a debt collector who exceeds the frequency limits presumptively would violate § 1006.14(b)(1). These presumptions could be rebutted based on the facts and circumstances of a particular situation. For example, a consumer could rebut the presumption of compliance for a debt collector who stayed below the frequency limits by showing that the debt collector knew or should have known that telephone calls, even below the frequency limits, would have the natural consequence of harassing, oppressing, or abusing the consumer. Similarly, a debt collector who exceeded the frequency limits could rebut the presumption of a violation by showing that, under the circumstances, additional calls above the limits would not have the natural consequence of harassing, oppressing, or abusing the consumer.

Finally, the Bureau requests comment on the alternative of adopting only a rebuttable presumption of a violation or only a rebuttable presumption of compliance. For example, one alternative would be to provide a safe harbor only for telephone calls below the frequency limits, with no provision for telephone calls above the frequency limits. Such an approach would provide certainty to both debt collectors and consumers about a per se permissible level of calling, but it would leave open the question of how many telephone calls is too many under the FDCPA and the Dodd-Frank Act. The Bureau does not propose such an approach because it appears that it would not provide the clarity that debt collectors and consumers have sought; nor does it appear to provide the same degree of consumer protection as a per se prohibition against telephone calls in excess of a specified frequency. Another alternative that the Bureau considered is a safe harbor for telephone calls below the limits paired with a rebuttable presumption of a violation for telephone calls above the limits. (The Bureau also considered the opposite: A rebuttable presumption of compliance for telephone calls below the limits paired with a per se prohibition against telephone calls in excess of the limits). The Bureau requests comment on the merits of these alternative approaches and others that the Bureau may not have considered.

14(b)(5) Definition

Proposed § 1006.14(b)(5) generally would define the term particular debt, as that term is used in proposed § 1006.14(b)(2), to mean each of a consumer's debts in collection. With respect to student loan debts, however, the term particular debt would 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. Proposed § 1006.14(b)(5) would clarify how the frequency limits in § 1006.14(b)(2) would apply when a consumer has multiple debts being collected by the same debt collector at the same time.[338]

In some cases, when a consumer has multiple debts in collection, either from one creditor or from multiple creditors, 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 of the debts during a single telephone call. One reason for this segregation is that larger debt collectors often collect multiple debts owed by the same consumer to different creditors, and each creditor may require its debt collectors to keep information about its debts separate from information about other creditors' debts. A creditor may require this so that it can ensure that debt collectors are complying with the creditor's specific debt collection guidelines. Consequently, some larger debt collectors may have groups of employees dedicated to collecting only a particular creditor's debts.

In addition, some debt collectors segregate debts because they have employees who specialize in collecting different types of debts. In other cases, such as with medical debts, privacy concerns or State or Federal laws may require a debt collector to segregate information about a particular debt from information about a consumer's other debts. A consumer's debts also may enter collection at different points in time and thus be at different stages of the collections process, such that the different debts may be eligible for different types of settlement offers. Debt collectors report that, in many cases, their systems are not structured to consolidate information about different debts owed by the same consumer. Finally, debt collectors may not find it productive to discuss multiple debts on a single telephone call because consumers may not be able or prepared to discuss more than one debt during the telephone call or may find it overwhelming, confusing, or simply too time consuming to discuss multiple debts, with different related terms and offers, during a single telephone call.

The Bureau considered proposing a limit on the number of times a debt collector could place telephone calls to any one person within seven days (*i.e.,* a per-person limit), regardless of how many debts the debt collector was attempting to collect from that person. Creditors, however, 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. Alternatively, if one debt collector were collecting multiple debts for multiple creditors, a per-person limit could incentivize the debt collector to discuss all of those debts with the consumer in the single permissible telephone conversation each week. This could result in consumers receiving an overwhelming amount of information about, for example, different settlement or payment structures for different creditors. This also could complicate debt collection conversations if, for example, consumers wanted to dispute one or some, but not all, of the debts. Alternatively, a per-person limit could encourage debt collectors to sequence collection of a consumer's debts, thereby prolonging the collections process for some debts. For these reasons, and pursuant to its authority under FDCPA section 814(d) to prescribe rules for the collection of debt by debt collectors, the Bureau proposes § 1006.14(b)(5) to define the term particular debt, as used in proposed § 1006.14(b)(2), generally to mean each of a consumer's debts in collection.

The concerns outlined above may not apply to the collection of multiple student loan debts that were serviced under a single account number at the time the debts were obtained by the debt collector. In these situations, the debt collector and consumer appear to interact as if there were only a single debt. This would be consistent with how the loans were likely serviced before entering collection, as multiple student loan debts are often serviced under a single account number and billed on a single, combined account statement, with a single total amount due and requiring a single payment from the consumer. For this reason, in the case of student loan debts, the Bureau proposes to define the term particular debt to mean all such 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. Under proposed § 1006.14(b)(5), the frequency limits in proposed § 1006.14(b)(2) would apply to all such debts collectively. Proposed comment 14(b)(5)–1 provides illustrative examples.

[338] This clarification may be necessary because most consumers with at least one debt in collection have multiple debts in collection. *See* CFPB Debt Collection Consumer Survey, *supra* note 18, at 13, table 1; *see also* CFPB Medical Debt Report, *supra* note 20, at 20 (reporting that most consumers with one collections tradeline have multiple collections tradelines).

The Bureau requests comment on the proposed definition of particular debt. The Bureau specifically requests comment on the proposal to apply the frequency limits in proposed § 1006.14(b)(2) generally on a per-debt, as opposed to per-person, basis. The Bureau requests comment on whether, if the proposed per-debt approach is adopted, additional clarification is needed about how to count telephone calls when a debt collector places one telephone call to a consumer to discuss more than one particular debt. In particular, the Bureau requests comment on whether the rule should clarify how the frequency limits apply when a debt collector places an unanswered telephone call to a consumer to discuss two of the consumer's debts (*e.g.,* a credit card debt and a medical debt), or when a debt collector who is collecting two such debts leaves the consumer only a general message that does not refer specifically to either debt (*e.g.,* ''Please remember to pay what you owe''). The Bureau similarly requests comment on whether clarification is needed for the situation in which a debt collector has a telephone conversation with a consumer about more than one debt but does not specifically refer to either debt, and on whether the proposal appropriately counts the single conversation as having been about all of the debts for purposes of the frequency limits.

Finally, the Bureau requests comment on: (1) The proposal to aggregate certain student loan debts for purposes of § 1006.14(b)(2), including whether some student loan debts serviced under the same account number should be counted separately; and (2) whether any types of debts other than student loans should be aggregated, such that multiple debts that were serviced under a single account number at the time the debts were obtained by the debt collector (or met other specified conditions) would be treated as a single debt for purposes of the frequency limits. Under such an approach, for example, multiple medical debts could be aggregated for purposes of § 1006.14(b)(2) if they met certain conditions, such as being serviced under the same account number at the time the debt collector obtained them. The Bureau requests comment on such an approach, including on the possible difficulties of aggregating accounts other than student loan accounts given the different facts that could apply to each debt.

14(h) Prohibited Communication Media [339]

14(h)(1) In General

Proposed § 1006.14(h)(1) would 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. Pursuant to its authority under FDCPA section 814(d) to write rules with respect to the collection of debts by debt collectors, the Bureau proposes § 1006.14(h)(1) as an interpretation of FDCPA section 806, which, as discussed in part IV, 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.

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 consumer may receive a telephone call at any time or place. As the CFPB Debt Collection Consumer Survey indicated, consumers have varied but strong preferences about the media that debt collectors use to communicate with them.[340]

Once a consumer has requested that a debt collector not use a specific medium of communication to communicate with the consumer, the Bureau believes that the natural consequence of further communications or attempts to communicate from the debt collector to the consumer using that same medium likely is harassment, oppression, or abuse of the consumer. Consistent with this interpretation, the Bureau understands that some debt collectors currently refrain from communicating with a consumer through a medium that the consumer has requested that the debt collector not use to communicate with the consumer, including, for example, specific telephone numbers that the consumer has asked the debt collector not to call.

For these reasons, the Bureau proposes § 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 consumer through a medium of communication if the consumer has requested that the debt collector not use that medium to communicate with the consumer. The Bureau also proposes commentary to § 1006.14(h)(1). Proposed comment 14(h)(1)–1 refers to comment 2(d)–1 for examples of communication media. Proposed comment 14(h)(1)–2 would clarify that, within a medium of communication, a consumer may request that a debt collector not use a specific address or telephone number and provides an example. The Bureau proposes this comment on the grounds that a specific address or telephone number may be considered a medium, and that contacting a consumer through a specific address or telephone number that the consumer has requested the debt collector not use may be just as harassing as contacting the consumer through a medium of communication that the consumer has requested the debt collector not use. The Bureau requests comment on proposed § 1006.14(h)(1) and its related commentary.

As discussed above, pursuant to its authority under FDCPA section 814(d) to write rules with respect to the collection of debts by debt collectors, the Bureau proposes § 1006.14(h)(1) as an interpretation of FDCPA section 806, on the basis that once a consumer has requested that a debt collector not use a specific medium of communication to communicate with the consumer, a debt collector who nevertheless continues to communicate or attempt to communicate with the consumer using that medium is engaging in conduct the natural consequence of which is to harass, oppress, or abuse. The Bureau believes that proposed § 1006.14(h)(1) is consistent with this statutory language and the purpose of the FDCPA. As FDCPA section 802(e) explains, in relevant part, the purpose of the Act is to eliminate abusive debt collection practices by debt collectors.[341] The Bureau interprets FDCPA section 806's general prohibition on engaging in conduct the natural consequence of which is to harass, oppress, or abuse in light of this purpose specified in the FDCPA, as well as in light of similar conduct specifically prohibited by the FDCPA.

14(h)(2) Exceptions

Proposed § 1006.14(h)(2) provides two exceptions to the general prohibition in proposed § 1006.14(h)(1). Proposed

[339] As noted above, proposed § 1006.14(c) through (g) generally mirror the statute, with minor wording and organizational changes for clarity, and are not discussed further in this section-by-section analysis.

[340] *See* CFPB Debt Collection Consumer Survey, *supra* note 18, at 36–37.

[341] 15 U.S.C. 1692(e).

§ 1006.14(h)(2)(i) provides 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. Proposed § 1006.14(h)(2)(ii) provides 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 proposes § 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.[342] The Bureau requests comment on the exceptions in proposed § 1006.14(h)(2).

As discussed above, a consumer may request that a debt collector not communicate with the consumer using a specific medium of communication. However, there may be circumstances in which applicable law requires the debt collector to communicate with the consumer only through that specific medium and does not offer an alternative medium for compliance (*e.g.,* by permitting a debt collector to electronically provide a notice that otherwise would be mailed). The Bureau requests comment on whether there are specific laws that require communication with the consumer through one 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 generally requested that the debt collector not use that medium to communicate with the consumer.

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. The section lists 16 non-exhaustive examples of such prohibited conduct.[343] Proposed § 1006.18 would implement FDCPA section 807. Except for certain organizational changes and interpretations in § 1006.18(e) through (g), which are discussed below, proposed § 1006.18 generally restates the statute with only minor wording changes for clarity. The Bureau proposes § 1006.18 pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors.

The Bureau proposes 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, as follows. Proposed § 1006.18(a) would implement the general prohibition in FDCPA section 807 by prohibiting a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt. Proposed § 1006.18(b) restates FDCPA section 807's examples of false, deceptive, or misleading representations.[344] Proposed § 1006.18(c) restates FDCPA section 807's examples of false, deceptive, or misleading collection means.[345] Proposed § 1006.18(d) restates the catch-all prohibition against false representations or deceptive means as described in FDCPA section 807(10). Proposed § 1006.18(e) addresses the disclosures required under FDCPA section 807(11). Finally, proposed § 1006.18(f) addresses the use of assumed names by debt collectors' employees, and proposed § 1006.18(g) addresses misrepresentations of meaningful attorney involvement in debt collection litigation.

18(e) Disclosures Required

FDCPA section 807(11) 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.[346] Proposed § 1006.18(e) would implement FDCPA section 807(11).

Proposed comment 18(e)(1)–1 describes 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 specifies 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 provides an example of the rule regarding required disclosures during initial communications.

Proposed comment 18(e)–1 provides general commentary to explain how the disclosure requirements in proposed § 1006.18(e) interact with the proposed rule's limited-content message, a message that is not a communication under proposed § 1006.2(d). Proposed comment 18(e)–1 would clarify that, because a limited-content message is not a communication, a debt collector who leaves only a limited-content message for a consumer does not need to provide the disclosures required under proposed § 1008.18(e)(1) and (2). For a more detailed discussion of the terms communication and limited-content message, see the section-by-section analysis of proposed § 1006.2(d) and (j), respectively.

The Bureau requests comment on all aspects of proposed § 1006.18 and on whether additional clarification would be useful. In particular, the Bureau requests 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. As discussed in the section-by-section analysis of proposed §§ 1006.2(e) and 1006.6(a)(4), this proposal would define the term consumer to clarify with whom debt collectors may communicate when attempting to resolve the debts of a deceased consumer. In its Policy Statement on Decedent Debt, the FTC expressed concern 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

[342] 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.

[343] 15 U.S.C. 1692e.

[344] Proposed § 1006.18(b)(1)(i) through (viii) would implement, respectively, paragraphs (1), (16), (3), (7), (6), (12), (13), and (15) of FDCPA section 807, and proposed § 1006.18(b)(2) would implement FDCPA section 807(2). Restating the statutory language is not intended to suggest any particular interpretation of that language. For example, the omission of the words ''or imply'' from the introductory language to § 1006.18(b)(2) consistent with the statutory language in FDCPA section 807(2) is 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).

[345] Proposed § 1006.18(c)(1) through (4) would implement, respectively, paragraphs (5), (8), (9), and (14) of FDCPA section 807.

[346] 15 U.S.C. 1692e(11).

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 such individuals about their liability for the decedent's debts.[347] The FTC also noted that the information that would need to be disclosed to avoid deception would depend on the circumstances.

While the Bureau believes that the FTC's suggested disclosures generally would be sufficient to avoid deception in many circumstances, proposed § 1006.18 would not require such disclosures. Since the FTC issued its Policy Statement in 2011, neither the FTC nor the Bureau has brought any cases against debt collectors for making deceptive claims in the decedent debt context, including any such claims concerning the liability of other individuals for the decedent's debts. Proposed § 1006.18's general prohibition against false, deceptive, or misleading representations, however, would apply to express or implied misrepresentations that a personal representative is liable for the deceased consumer's debts. The Bureau requests comment on whether the general prohibition against false, deceptive, or misleading representations in proposed § 1006.18 is sufficient to protect individuals who communicate with debt collectors about a deceased consumer's debts, or whether affirmative disclosures in the decedent debt context are needed.

18(f) Use of Assumed Names

Debt collectors commonly instruct or permit their employees to use assumed names when interacting with consumers, including by telephone. They do so for a variety of reasons. For example, some employees may have names that are difficult for some consumers to spell or pronounce. These employees may find that assuming a simpler name facilitates communications with consumers. Other employees may have privacy or safety concerns about revealing their true name and employer to a potentially large number of consumers.

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. For example, 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.[348] An employee's consistent use of that name is not likely to affect the decisions a consumer makes about the debt. Further, a debt collector's ability to readily ascertain the employee's identity would enable the debt collector to monitor and address the conduct of such employee. Therefore, an approach similar to the FTC's prior guidance may be appropriate for the use of assumed names.

For these reasons, proposed § 1006.18(f) provides 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. The Bureau requests comment on proposed § 1006.18(f), including 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.

The Bureau proposes § 1006.18(f) pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors. Specifically, the Bureau interprets FDCPA section 807's prohibition on false or misleading representations, and 806(6)'s prohibition on placing telephone calls without ''meaningful disclosure of the caller's identity,'' to allow a debt collector's employee to disclose an assumed name as long as the employee uses the name consistently and the debt collector can readily ascertain that employee's true identity.

18(g) Safe Harbor for Meaningful Attorney Involvement in Debt Collection Litigation Submissions

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.[349] The meaningful attorney involvement case law has been applied in the specific context of debt collection litigation submissions.[350]

It may be particularly important for consumers, attorneys, and law firms engaged in such litigation to be protected by a clear articulation of what meaningful attorney involvement in debt collection litigation submissions means under FDCPA section 807, as would be implemented by proposed § 1006.18. A clear articulation of meaningful attorney involvement also may be useful to avoid confusion and unnecessary conflicts between State standards and Federal standards under the FDCPA and any implementing regulations.

To provide clarity for law firms and attorneys submitting pleadings, written motions, or other papers to courts in debt collection litigation, proposed section § 1006.18(g) provides a safe harbor for attorneys and law firms against claims that they violated § 1006.18 due to the lack of meaningful attorney involvement in debt collection litigation materials signed by the attorney and submitted to the court,

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[347] FTC Policy Statement on Decedent Debt, *supra* note 192, at 44922. The FTC's suggested disclosures were: ''(1) That the 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.*

[348] Fed. Trade Comm'n, Staff Commentary on the Fair Debt Collection Practices Act, 53 FR 50097, 50105 (Dec. 13, 1988) (''1. *Aliases.* A debt collector employee's use of an alias that permits identification of the debt collector (*i.e.,* where he uses the alias consistently, and his true identity can be ascertained by the employer) constitutes a ''meaningful disclosure of the caller's identity.''); *see also id.* at 50103 (''An individual debt collector may use an alias if it is used consistently and if it does not interfere with another party's ability to identify him (*e.g.,* the true identity can be ascertained by the employer).'').

[349] *See, e.g., Clomon* v. *Jackson,* 988 F.2d 1314, 1320 (2d Cir. 1993); *Nielsen* v. *Dickerson,* 307 F.3d 623, 635 (7th Cir. 2002). Courts have found violations of other subsections of FDCPA section 807 for similar conduct. *See e.g., Avila* v. *Rubin,* 84 F.3d 222, 229 (7th Cir. 1996); *Lesher* v. *Law Offices of Mitchell N. Kay, PC,* 650 F.3d 993, 1002 (3d Cir. 2011).

[350] *See Miller* v. *Upton, Cohen & Slamowitz,* 687 F.Supp.2d 86, 100 (applying meaningful involvement liability to, among other actions, filing of complaint in court); *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).

provided that they meet the requirements in proposed § 1006.18(g). Proposed § 1006.18(g) provides 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 factors in proposed § 1008.18(g) are similar to some of the nationally recognized standards for attorneys making submissions in civil litigation.[351] Because most FDCPA claims are considered by Federal courts, and Federal court rules are adopted and apply nationwide, Federal Rule of Civil Procedure 11(b)(2) through (4) as currently adopted may provide an appropriate guide for judging whether a submission to the court has complied with § 1006.18(g). Indeed, courts that have applied the meaningful attorney involvement doctrine to litigation submissions have considered that standard.[352] Accordingly, the safe harbor in proposed § 1006.18(g) restates certain provisions of Federal Rule of Civil Procedure Rule 11(b). An attorney or law firm who establishes compliance with the factors set forth in proposed § 1006.18(g), including when a court in debt collection litigation determines that the debt collector has complied with a court rule that is substantially similar to the standard in § 1006.18(g), will have complied with FDCPA section 807 regarding the attorney's meaningful involvement in submissions made in debt collection litigation. The Bureau requests comment on whether the safe harbor proposed for meaningful attorney involvement in debt collection litigation submissions provides sufficient clarity for consumers, attorneys, and law firms.

Section 1006.22 Unfair or Unconscionable Means

FDCPA section 808 prohibits a debt collector from using any unfair or unconscionable means to collect or attempt to collect any debt and lists eight non-exhaustive examples of such prohibited conduct.[353] The Bureau proposes § 1006.22 to implement and interpret FDCPA section 808 and pursuant to its authority under FDCPA section 814(d) to write rules with respect to the collection of debts by debt collectors.

Proposed § 1006.22(a) would implement FDCPA section 808's general prohibition against unfair debt collection practices, and proposed § 1006.22(b) through (f)(2) would implement the prohibited conduct examples in FDCPA section 808.[354] These proposed paragraphs generally mirror the statute, with minor wording and organizational changes for clarity. The following section-by-section analysis thus discusses only proposed § 1006.22(f)(3) and (4) and (g).

22(f) Restrictions on Use of Certain Media

Proposed § 1006.22(f)(3) and (4) would restrict a debt collector's use of two specific types of electronic media: Work email accounts and public-facing social media. As to electronic media more generally, the Bureau plans to monitor their evolution and use by debt collectors, as well as any trends in FDCPA section 808 litigation concerning such media, to identify issues that pose a risk of consumer harm or require clarification as part of any future rulemakings.

22(f)(3)

Proposed § 1006.22(f)(3) would prohibit a debt collector 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, unless the debt collector has received directly from the consumer either prior consent to use that email address or an email from that email address.

The FDCPA contains both general and specific prohibitions intended to protect consumers from the harms that workplace collections communications can cause. For example, absent obtaining the consumer's prior consent, a debt collector who discloses a debt to a consumer's employer generally would violate FDCPA section 805(b)'s prohibition on communicating with a third party about a debt.[355] A debt collector also could violate FDCPA section 805(a)(3) by communicating with the 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 communications.[356]

Debt collectors and consumers may have questions about how the FDCPA's protections against third-party disclosures apply to workplace contacts by newer means of communication, such as email. Debt collectors should be aware that many employers have a legal right to read, and in fact frequently do read, messages sent or received by employees on their work email accounts.[357] Workplace emails therefore present a particularly high risk of third-party disclosure through an employer reading an email sent by a debt collector to a consumer's work account. In addition, Congress and the courts have recognized that an employer learning that an employee has a debt in collection may cause the consumer to suffer significant harms, including loss

[351] The factors in proposed § 1008.18(g) omit the following two aspects of Federal Rule of Civil Procedure 11(b)(2) through (4): First, that the claims, defenses, or other legal contentions are a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law; and second, that the factual contentions are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. This safe harbor is proposed in part to set clearer standards for routine debt collection litigation cases, in which there is unlikely to be an argument to extend, modify, or reverse existing law or to establish new law. The Bureau also understands that most factual contentions pled in debt collection litigation should be supported by evidence in the creditor's or debt collector's possession, thereby negating the need for further investigation or discovery. Moreover, proposed § 1006.18(g) would provide a safe harbor; thus, meeting one of these omitted aspects may permit an attorney to establish meaningful attorney involvement even if doing so would not entitle the attorney to the safe harbor that proposed § 1006.18(g) would establish.

[352] *See, e.g., Bock* v. *Pressler & Pressler,* 2017 WL 4711472 at *7 n.5 (discussing initial decision at 30 F.Supp.3d 283, 299–302); *Miller,* 687 F.Supp.2d at 101 (analogizing to Rule 11).

[353] 15 U.S.C. 1692f.

[354] Specifically, proposed § 1006.22(b) would implement FDCPA section 808(1); proposed § 1006.22(c) would implement FDCPA section 808(2) through (4); proposed § 1006.22(d) would implement FDCPA section 808(5); proposed § 1006.22(e) would implement FDCPA section 808(6); proposed § 1006.22(f)(1) would implement FDCPA section 808(7); and proposed § 1006.22(f)(2) would implement FDCPA section 808(8).

[355] 15 U.S.C. 1692c(b).

[356] 15 U.S.C. 1692c(a)(3).

[357] *See, e.g.,* Am. Mgmt. Ass'n & ePolicy Inst., *Electronic Monitoring and Surveillance 2007 Survey* (2008), *http://www.amanet.org/training/articles/2007-electronic-monitoring-and-surveillance-survey-41.aspx* (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").

of employment.[358] The Bureau proposes § 1006.22(f)(3) on the ground that a debt collector who sends a communication to a consumer's work email account violates the FDCPA if the debt collector knows or can reasonably anticipate that a communication sent to a consumer's work email account might be opened and read by someone other than the consumer. There is support for this interpretation in court decisions holding that a debt collector who sends a letter to a consumer's place of employment violates the FDCPA if the debt collector ''knew or could reasonably anticipate that [such] a letter . . . might be opened and read by someone other than the debtor as it made its way to [the consumer].'' [359]

As suggested by numerous consumer advocacy groups and a consortium of State attorneys general in comments to the Bureau's ANPRM, requiring a debt collector to obtain a consumer's consent, or to have received an email from the consumer, before sending emails to the consumer's work account could protect the consumer's privacy interest in avoiding the disclosure of the debt to the consumer's employer. This privacy interest is implicated by both communications and attempts to communicate. A debt collector's initial, unsolicited email that does not convey information regarding a debt nonetheless may induce a recipient such as a consumer or an employer to inquire about the purpose of the debt collector's message. The debt collector's attempt to communicate thus may lead to the disclosure of the debt to a third party before the consumer has had a meaningful opportunity to provide prior consent. A consumer who chooses to use a work email account to contact a debt collector, or who provides prior consent for the debt collector to use such an email account to contact the consumer, presumably has made a determination that the benefits of communicating with a debt collector about a debt using a work email account outweigh the potential risks, and a debt collector who receives such an email or prior consent from the consumer may not reasonably anticipate that its emails to the consumer would be read by the consumer's employer. Accordingly, after a consumer uses the work email account to contact the debt collector or provides prior consent, it would not appear to be an unfair or unconscionable practice under FDCPA section 808 for a debt collector to communicate or attempt to communicate with the consumer using an email address that the debt collector knows or should know is provided by the consumer's employer.

For all of these reasons, pursuant to its authority to implement and interpret FDCPA section 808 and its authority under FDCPA section 814(d) to write rules with respect to the collection of debts by debt collectors, the Bureau proposes § 1006.22(f)(3) to prohibit a debt collector 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, unless the debt collector has received directly from the consumer either prior consent to use that email address or an email from that email address.

Proposed comment 22(f)(3)–1 notes that, even after providing prior consent directly to a debt collector, a consumer could opt out of receiving emails at a work email address at any time using instructions provided by a debt collector pursuant to proposed § 1006.6(e), or otherwise request not to receive emails at that address pursuant to proposed § 1006.14(h). Proposed comment 22(f)(3)–1 also refers to the commentary to proposed § 1006.6(b)(4)(i) for additional guidance on prior consent.

Proposed comment 22(f)(3)–2 would clarify that a debt collector who receives an email directly from a consumer from an email address provided by the consumer's employer may communicate or attempt to communicate with the consumer at that email address, even if the consumer's email does not provide prior consent to the debt collector. Proposed comment 22(f)(3)–2 also provides an example of such a situation.

Proposed comment 22(f)(3)–3 provides examples of email addresses that a debt collector knows or should know are provided to the consumer by the consumer's employer. Proposed comment 22(f)(3)–3 also states that, in the absence of contrary information, a debt collector neither would know nor should know that an email address is provided to the consumer by the consumer's employer if the email address's domain name is one commonly associated with a provider of non-work email addresses. Examples of domain names that are commonly associated with a provider of non-work email addresses would include *gmail.com, yahoo.com, hotmail.com, aol.com*, or *msn.com*, among others.[360]

During the SBREFA process, small entity representatives sought guidance on how they would know whether an email address is provided to a consumer by an employer and also suggested that a consumer's consent to use a work email should transfer from the creditor to the debt collector.[361] Proposed comment 22(f)(3)–3, which addresses when a debt collector knows or should

[358] S. Rept. No. 382, *supra* note 70, 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. Rept. 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 (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). The State of New York prohibits a debt collector from corresponding with a consumer by email unless, among other things, the consumer voluntarily provided the email address to the debt collector and has affirmed that the email is not ''furnished or owned by the consumer's employer.'' 23 N.Y. Comp. Codes R. & Regs. tit. 23, sec. 1.6(a) (2018).

[359] *Evon* v. *Law Offices of Sidney Mickell,* 688 F.3d 1015, 1025–26 (9th Cir. 2012) (holding that a letter addressed ''in care of [consumer's] employer'' and delivered to her at work, ''manifestly constitutes a violation [of the FDCPA because the debt collector] knew or could reasonably anticipate that a letter sent to a class member's employer might be opened and read by someone other than the debtor as it made its way to him/her. This is exactly what happened to [the consumer], causing her stress and embarrassment, precisely what the Act is designed to prevent.''); *see also* Fed. Trade Comm'n, Staff Commentary on the Fair Debt Collection Practices Act, 53 FR 50097–02, 50104 (Dec. 13, 1988) (''*Accessibility by third party.* A debt collector may not send a written message that is easily accessible to third parties. For example, he may not use a computerized billing statement that can be seen on the envelope itself. A debt collector may use an 'in care of' letter only if the consumer lives at, or accepts mail at, the other party's address.'').

[360] *See, e.g., Email-Verify.My.Addr.com, List of Most Popular Email Domains (By Number of Live Emails), https://email-verify.my-addr.com/list-of-most-popular-email-domains.php* (last visited May 6, 2019) (listing the most popular email domain names, ranked by number of live emails).

[361] These comments were similar to ANPRM comments submitted by several industry members, who noted that debt collectors may not be able to determine accurately whether an email address is provided by an employer because, among other things, the domain name may not signify that it is a work email or the consumer may consolidate multiple email accounts.

know that an email address is provided by a consumer's employer, is designed to provide such guidance. In addition, proposed § 1006.22(f)(3) would not apply a strict liability standard, so a debt collector would not violate the rule if the debt collector neither knew nor should have known that the debt collector used a consumer's work email address. The Bureau does not propose, however, that a consumer's prior consent to receive email on the consumer's work account from a creditor would transfer to a debt collector. A consumer may enter into a transaction with, and consent to receiving emails on their work account from, a creditor based on the characteristics of that particular creditor; in contrast, consumers generally have no ability to choose which debt collector attempts to collect their debt.

One small entity representative recommended that emails to a consumer's work address be presumptively prohibited only if the debt collector knows or should know that the employer prohibits such contact (*i.e.,* applying the FDCPA section 805(a)(3) framework to work email accounts).[362] As discussed above, workplace email communications present a particularly high risk of third-party disclosure because many employers have a legal right to read messages sent or received by employees on their work email accounts. For this reason, the prohibition in proposed § 1006.22(f)(3) does not apply the FDCPA section 805(a)(3) framework. Rather, to protect consumers from loss of employment and risk of embarrassment, the Bureau proposes to require that a debt collector obtain prior consent to use that email address directly from the consumer, or have received an email sent from the consumer's work email account, before using the consumer's work email account.

The Bureau requests comment on all aspects of proposed § 1006.22(f)(3). In particular, the Bureau requests comment on whether FDCPA section 805(a)(3)'s framework should apply to emails to a consumer's work account, so that such emails are presumptively prohibited only when a debt collector knows or should know that a consumer's employer prohibits the consumer from receiving such communications. The Bureau also requests comment on whether more clarification is necessary regarding when a debt collector knows or should know that the debt collector is communicating using a consumer's work email address and, if so, what circumstances should indicate to a debt collector that an email address is provided by a consumer's employer. The Bureau further requests comment on the scope of proposed § 1006.22(f)(3). As proposed, it would apply only to email contacts with the person obligated or allegedly obligated to pay a debt (*i.e.,* a person defined as a consumer under proposed § 1006.2(e)). The Bureau requests comment on whether it should be broadened to apply to email contacts with a consumer as defined in proposed § 1006.6(a).

22(f)(4)

Proposed § 1006.22(f)(4) provides that a debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of a debt by a social media platform that is viewable by a person other than the consumer or other person described in proposed § 1006.6(d)(1)(i) through (vi).

The FDCPA contains numerous provisions that guard against the disclosure of the consumer's financial affairs to individual third parties or the broader public.[363] For example, FDCPA section 805(b) generally prohibits communicating with third parties in connection with the collection of a debt; FDCPA section 806(3) prohibits publishing public ''shame lists'' of consumers who allegedly refuse to pay their debts;[364] and FDCPA section 808(7) and (8) prohibits communicating with a consumer regarding a debt by postcard or using most language or symbols on the outside of an envelope. The Bureau believes that communications or attempts to communicate by social media platforms that are viewable by a person other than a person with whom a debt collector may communicate under FDCPA section 805(b) similarly risk exposing a consumer's affairs to the public. For example, a debt collector's message to a consumer posted on a public-facing social media page may be viewed by many of the consumer's social or professional contacts, who may interpret a widely distributed message asking that the consumer return a call as an indication that the consumer is delinquent on an obligation. Accordingly, a debt collector may engage in an unfair or unconscionable act by, in connection with the collection of a debt, communicating or attempting to communicate with a consumer by publicly viewable social media platform.

Such conduct also may have the natural consequence of harassing, oppressing, or abusing the consumer. Although some social media contacts, such as a limited-content message, may not convey information regarding a debt directly or indirectly to any person, given the many other ways a debt collector could attempt to communicate with a consumer that are not viewable by a potentially wide array of the consumer's social or professional colleagues—such as by telephone, text message, postal mail, email, or private message through the same social media platform—a debt collector may have no legitimate purpose in contacting a consumer by publicly viewable social media. As a result, such conduct may serve only to harass, oppress, or abuse.

For these reasons, and pursuant to its authority under FDCPA section 814(d) and to interpret FDCPA sections 806 and 808, proposed § 1006.22(f)(4) provides that a debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of a debt by a social media platform that is viewable by a person other than a person described in proposed § 1006.6(d)(1)(i) through (vi). Proposed comment 22(f)(4)–1 provides examples illustrating the proposed rule.

The Bureau requests comment on all aspects of proposed § 1006.22(f)(4), including on whether debt collectors anticipate that they will use social media platforms to contact consumers. The Bureau also requests comment on whether debt collectors have any non-harassing purpose for attempting to communicate with consumers using public-facing social media platforms and, if so, whether proposed § 1006.22(f)(4) should have an exception for attempts to communicate such as limited-content messages. The Bureau further requests comment on the scope of proposed § 1006.22(f)(4). As proposed, it would apply only to social media contacts with the person obligated or allegedly obligated to pay a debt (*i.e.,* a person defined as a consumer under proposed § 1006.2(e)). The Bureau requests comment on

[362] See the section-by-section analysis of proposed § 1006.6(b)(3).

[363] Invasion of individual privacy appears to have been one of the primary harms that Congress sought to eliminate through the FDCPA. FDCPA section 802(a), (e); 15 U.S.C. 1692(a), (e); S. Rept. No. 382, *supra* note 70, 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.''); *see also Douglass* v. *Convergent Outsourcing,* 765 F.3d 299, 303 (3d Cir. 2014) (describing ''the invasion of privacy'' as ''a core concern animating the FDCPA'').

[364] S. Rept. No. 382, *supra* note 70, at 1696.

whether it should be broadened to apply to social media contacts with any person described as a consumer in proposed § 1006.6(a).

22(g) Safe Harbor for Certain Emails and Text Messages Relating to the Collection of a Debt

FDCPA section 808 contains certain provisions designed to protect consumer privacy. As noted, FDCPA section 808(7) prohibits a debt collector from communicating with a consumer regarding a debt by postcard, and FDCPA section 808(8) generally prohibits a debt collector from using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by postal mail. As courts have recognized, these provisions aim to protect consumer privacy by limiting public disclosure of a consumer's debts.[365] The examples in FDCPA section 808(7) and (8) apply to postal mail practices. In pre-proposal feedback, industry groups noted that uncertainty about how similar prohibitions might be applied to emails and text messages discourages the use of those technologies to communicate with consumers.

To mitigate such uncertainty while also protecting consumer privacy, proposed § 1006.22(g) provides 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 proposed § 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) are 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. 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 pre-proposal feedback raised the possibility that a third party could read an electronic communication on, for example, the consumer's mobile telephone by looking over the consumer's shoulder. However, this feedback did not include any actual evidence of the prevalence of such behavior. Moreover, consumers generally should be able to manage over-the-shoulder risk by choosing where and when to read electronic communications and how to configure their devices.

Proposed § 1006.22(g) would provide a safe harbor only as to claims that a debt collector violated § 1006.22 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 proposed provision would not provide a safe harbor as to claims that a debt collector's email or text message violated the FDCPA or Regulation F in other ways. The Bureau requests comment on proposed § 1006.22(g).

In the Small Business Review Panel Outline, the Bureau described a proposal under consideration to prohibit a debt collector from sending an email message to a consumer if the "from" or "subject" lines contained information revealing that the email was about a debt.[366] The Bureau's concern was that such information could reveal to others that the communication related to a debt.[367] The Bureau does not propose this restriction described in the Small Business Review Panel Outline. In pre-proposal feedback, debt collectors suggested that the restriction would make electronic communication generally more difficult. Some industry participants predicted that, if debt collectors were required to exclude from an email's "from" or "subject" lines all information suggestive of debt collection, consumers would be less likely to understand the email's purpose and more likely to treat the email like spam and delete or ignore it. This is consistent with research suggesting that the most important factors in whether a consumer will open an email are whether they recognize the sender and the content of the subject line.[368] Proposed § 1006.6(d)(3), which, as noted above, describes procedures for obtaining and using an email address or a telephone number that is unlikely to lead to a third-party disclosure, may be a more effective initial step to minimize the risk of third-party disclosure.

Section 1006.26 Collection of Time-Barred Debts

Proposed § 1006.26 contains interventions related to the collection of time-barred debts. Proposed § 1006.26(a) would define several terms, and proposed § 1006.26(b) would prohibit debt collectors from suing or threatening to sue consumers to collect time-barred debts. The Bureau proposes § 1006.26 pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors.

26(a) Definitions

Proposed § 1006.26(a) would define several terms used in § 1006.26 but not defined in the FDCPA. These definitions would facilitate compliance with proposed § 1006.26(b), which would interpret FDCPA section 807 to prohibit debt collectors from suing and threatening to sue consumers to collect time-barred debts.

26(a)(1) Statute of Limitations

Proposed § 1006.26(a)(2), discussed below, would define the term time-barred debt to mean a debt for which the applicable statute of limitations has expired. Proposed § 1006.26(a)(1), in turn, would define the term statute of limitations to mean the period prescribed by applicable law for bringing a legal action against the consumer to collect a debt.

Statutes of limitations typically are established by State law and provide time limits for bringing suit on legal claims.[369] They reflect a public policy determination that it is unjust to subject defendants to suit after a specified period.[370] For debt collection claims, the length of the applicable statute of limitations often varies by State and, within each State, by debt type.[371] Most statutes of limitations applicable to debt collection claims are between three and six years, although some are as long as 15 years.[372]

[365] *See, e.g., Douglass* v. *Convergent Outsourcing,* 765 F.3d 299, 302 (3d Cir. 2014) ("Section 1692f evinces Congress's intent to screen from public view information pertinent to the debt collection.").

[366] Small Business Review Panel Outline, *supra* note 56, at appendix H.

[367] *Id.*

[368] Direct Marketing Ass'n, *Consumer Email Tracker 2017,* at 18 (2017), *https://dma.org.uk/uploads/misc/5a1583ff3301a-consumer-email-tracking-report-2017-(2)_5a1583ff32f65.pdf.*

[369] Federal law sometimes establishes the statute of limitations. For example, legal actions to recover certain telecommunications debt are subject to a statute of limitations set by Federal law. *See* 47 U.S.C. 415(a).

[370] *See, e.g., United States* v. *Kubrick,* 444 U.S. 111, 117 (1979) ("Statutes of limitations . . . represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that the right to be free of stale claims in time comes to prevail over the right to prosecute them." (internal citation and quotation marks omitted)).

[371] *See* Fed. Trade Comm'n, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration,* at 24 (July 2010) (hereinafter FTC Litigation Report).

[372] *See* FTC Debt Buying Report, *supra* note 14, at 42.

Debt collectors generally are familiar with the concept of statutes of limitations, and the proposed definition generally should be consistent with debt collectors' understanding of the term. The Bureau requests comment on the proposed definition and whether any additional clarification is needed.

26(a)(2) Time-Barred Debt

Proposed § 1006.26(a)(2) would define the term time-barred debt to mean a debt for which the applicable statute of limitations has expired. Debt collectors generally are familiar with the concept of time-barred debt, and the definition of time-barred debt in proposed § 1006.26(a)(2) is consistent with debt collectors' understanding of the term.

Many debt collectors already determine whether the statute of limitations applicable to a debt has expired. Some do so to comply with State and local disclosure laws that require them to inform consumers when debts are time barred.[373] Others do so to assess whether they can sue to collect the debt, which may affect their collection strategy. The information that debt buyers generally receive when bidding on and purchasing debts, and the information that other debt collectors generally receive at placement, should allow them to determine whether the applicable statute of limitations has expired.[374] The Bureau requests comment on the proposed definition and on whether any additional clarification is needed.

26(b) Suits and Threats of Suit Prohibited

Under the laws of most States, expiration of the applicable statute of limitations, if raised by the consumer as an affirmative defense, precludes the debt collector from recovering on the debt using judicial processes, but it does not extinguish the debt itself.[375] In other words, in most States, a debt collector may use non-litigation means to collect a time-barred debt, as long as those means do not violate the FDCPA or other laws. If a debt collector does sue to collect a time-barred debt and the consumer proves the expiration of the statute of limitations as an affirmative defense, the court will dismiss the suit. Multiple courts have held that suits and threats of suit on time-barred debt violate the FDCPA, reasoning that such practices violate FDCPA section 807's prohibition on false or misleading representations, FDCPA section 808's prohibition on unfair practices, or both.[376] The FTC has also concluded that the FDCPA bars actual and threatened suits on time-barred debt.[377] In addition, at least one industry group requires its members to refrain from suing or threatening to sue on time-barred debts.[378] Nevertheless, the Bureau's enforcement experience suggests that some debt collectors may continue to sue or threaten to sue on time-barred debts.[379]

A debt collector who sues or threatens to sue a consumer on a time-barred debt may explicitly or implicitly misrepresent to the consumer that the debt is legally enforceable, and that misrepresentation likely is material to consumers because it may affect their conduct with regard to the collection of that debt, including, for example, whether to pay it.[380] In response to the Bureau's ANPRM, some consumer advocacy groups and State Attorneys General observed that consumers are often uncertain about their rights concerning time-barred debt. The Bureau's consumer testing to date is consistent with those observations.[381] In addition, as courts have recognized, the passage of time ''dulls the consumer's memory of the circumstances and validity of the debt'' and ''heightens the probability that [the consumer] will no longer have personal records detailing the status of the debt.'' [382] Consumers sued or threatened with suit on a time-barred debt may not recognize that the debt is time barred, that time-barred debts are unenforceable in court, or that generally they must raise the expiration of the statute of limitations as an affirmative defense.

Suits and threats of suit on time-barred debts can harm consumers in multiple ways. A debt collector's threat to sue on a time-barred debt may prompt some consumers to pay or prioritize that debt over others in the mistaken belief that doing so is necessary to forestall litigation. Similarly, suits on time-barred debts may lead to judgments against consumers on claims for which those consumers had meritorious defenses, including, but not limited to, a statute-of-limitations defense. Such judgments may be especially likely given that few consumers sued for allegedly unpaid debts—whether time-barred or not—actually defend themselves in court, and those who do often are unrepresented. As a result, the vast majority of judgments on unpaid debts, including on time-barred debts, are default judgments, entered solely on the representations contained in the debt collector's complaint.[383]

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

[374] *See* FTC Debt Buying Report, *supra* note 14, at 49 (''The data the Commission received from debt buyers suggests that debt buyers usually are likely to know or be able to determine whether the debts on which they are collecting are beyond the statute of limitations.''); CFPB Debt Collection Operations Study, *supra* note 45, at 23 (noting that the majority of respondents reported always or often receiving, among other things, debt balance at charge off, account agreement documentation, and billing statements).

[375] In Mississippi and Wisconsin, debts are extinguished when the applicable statute of limitations expires. *See* Miss. Code Ann. § 15–1–3 (''The completion of the period of limitation prescribed to bar any action, shall defeat and extinguish the right as well as the remedy.''); Wis. Stat. Ann. § 893.05 (''When the period within which an action may be commenced on a Wisconsin cause of action has expired, the right is extinguished as well as the remedy.'').

[376] *See, e.g., Pantoja* v. *Portfolio Recovery Assocs., LLC,* 852 F.3d 679, 683–84 (7th Cir. 2017); *McMahon* v. *LVNV Funding, LLC,* 744 F.3d 1010, 1020 (7th Cir. 2014); *Phillips* v. *Asset Acceptance, LLC,* 736 F.3d 1076, 1079 (7th Cir. 2013); *Huertas* v. *Galaxy Asset Mgmt.,* 641 F.3d 28, 33 (3d Cir. 2011); *Goins* v. *JBC & Assocs., P.C.,* 352 F. Supp. 2d 262, 273 (D. Conn. 2005); *Kimber* v. *Fed. Fin. Corp.,* 668 F. Supp. 1480, 1487–89 (M.D. Ala. 1987).

[377] FTC Litigation Report, *supra* note 371, at 23.

[378] Receivables Mgmt. Ass'n Int'l, *Receivables Management Certification Program,* at 32 (Jan. 2018), *https://rmassociation.org/wp-content/uploads/2018/02/Certification-Policy-version-6.0-FINAL-20180119.pdf* (''A Certified Company shall not knowingly bring or imply that it has the ability to bring a lawsuit on a debt that is beyond the applicable statute of limitations, even if state law revives the limitations period when a payment is received after the expiration of the statute.''); *see also* David E. Reid, *Out-of-Statute Debt: What is a Smart, Balanced, and Responsible Approach,* at 8 (Receivables Mgmt. Ass'n Int'l, White Paper, 2015), *https://rmassociation.org/wp-content/uploads/2017/04/RMA_Whitepaper_OOS.pdf* (''Although, as noted, the statute of limitations is an affirmative defense that, in almost all states, must be raised by the defendant or it is waived, it is improper to knowingly file OSD [*i.e.,* out-of-statute debt] suits and wait to see if the defense is pled.'').

[379] Consent Order at ¶¶ 65–69, *In re Encore Capital Group, Inc.,* No. 2015–CFPB–0022 (Sept. 9, 2015), *http://files.consumerfinance.gov/f/201509_cfpb_consent-order-encore-capital-group.pdf*; Consent Order at ¶¶ 56–59, *In re Portfolio Recovery Assocs. LLC,* No. 2015–CFPB–0023 (Sept. 9, 2015), *http://files.consumerfinance.gov/f/201509_cfpb_consent-order-portfolio-recovery-associates-llc.pdf.*

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

[381] *See* FMG Focus Group Report, *supra* note 38, at 9–10; FMG Cognitive Report, *supra* note 40, at 36–37; FMG Summary Report, *supra* note 42, at 35–36; *see also* FTC Litigation Report, *supra* note 371, at iii, 26.

[382] *Phillips,* 736 F.3d at 1079 (quoting *Kimber,* 668 F. Supp. at 1487).

[383] *See* FTC Debt Buying Report, *supra* note 14, at 45 (observing that ''90 percent or more of consumers sued in [debt collection actions] do not appear in court to defend,'' which ''creates a risk that consumer will be subject to a default judgment on a time-barred debt''); Peter A. Holland, *The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases,* 6 J. Bus. & Tech. L. 259, 265 (2011) (''In the majority of debt buyer cases, the courts grant the debt buyer a default judgment because the consumer has failed to appear for trial. . . . Debtors

According to the small entity representatives who participated in the SBREFA process, debt collectors generally do not sue on debt they know to be time barred. Similarly, a trade association representing debt buyers has reported that, in a poll of its members, not one responded that they knowingly or intentionally file lawsuits after the applicable statute of limitations has expired.[384] During the SBREFA process, however, several small entity representatives stated that determining whether the statute of limitations has expired can be complex. The determination may involve analyzing which statute of limitations applies, when the statute of limitations began to run, and whether the statute of limitations has been tolled or reset. The Bureau believes that, in many cases, a debt collector will know, or can readily determine, whether the statute of limitations has expired. In some instances, however, a debt collector may be genuinely uncertain even after undertaking a reasonable investigation; this could occur, for example, when the case law in a State is unclear as to which statute of limitations applies to a particular type of debt.

For these reasons, the Bureau proposes to interpret FDCPA section 807 to provide that a debt collector must not bring or threaten to bring a legal action against a consumer to collect a debt that the debt collector knows or should know is a time-barred debt. FDCPA section 807 generally prohibits debt collectors from using ''any false, deceptive, or misleading representation or means in connection with the collection of any debt,'' and FDCPA section 807(2)(A) specifically prohibits falsely representing ''the character, amount, or legal status of any debt.'' The Bureau interprets FDCPA section 807 and 807(2)(A) to prohibit debt collectors from suing or threatening to sue consumers on debts they know or should know are time-barred debts because such suits and threats of suit explicitly or implicitly misrepresent, and may cause consumers to believe, that the debts are legally enforceable. In addition, threats to sue consumers on time-barred debts are similar to threats to take actions that cannot legally be taken, which FDCPA section 807(5) specifically prohibits, because both involve the threat of action to which the consumer has a complete legal defense. The Bureau's proposed interpretation of FDCPA section 807 is generally consistent with well-established case law holding that lawsuits and threats of lawsuits on time-barred debt violate FDCPA section 807.[385] The proposed rule may provide debt collectors with greater certainty as to what the law prohibits while also protecting consumers and enabling them to prove legal violations without having to litigate in each case whether lawsuits and threats of lawsuits on time-barred debt violate the FDCPA.

The Bureau requests comment on proposed § 1006.26(b) and on whether any additional clarification is needed. In particular, the prohibitions in proposed § 1006.26(b) would apply only if the debt collector knows or should know that the applicable statute of limitations has expired. It sometimes may be difficult, however, to determine whether a ''know or should have known'' standard has been met. Such uncertainty could increase litigation costs and make enforcement of proposed § 1006.26(b) more difficult. In part to address this concern, the Small Business Review Panel Outline described an alternative strict-liability standard pursuant to which a debt collector would be liable for suing or threatening to sue on a time-barred debt even if the debt collector neither knew nor should have known that the debt was time barred.[386] The Bureau specifically requests comment on using a ''knows or should know'' standard in proposed § 1006.26(b) and on the merits of using a strict liability standard instead.

26(c) Reserved

The Bureau is likely to propose that debt collectors must provide disclosures to consumers when collecting time-barred debts. The Bureau currently is completing its evaluation of whether consumers take away from non-litigation collection efforts that they can or may be sued on a debt and, if so, whether that take-away changes depending on the age of the debt. In many States, a consumer's partial payment on a time-barred debt or acknowledgment of a time-barred debt in writing restarts the statute of limitations period and ''revives'' the debt collector's right to sue for the full amount. The Bureau is also completing its evaluation of how a time-barred debt disclosure might affect consumers' understanding of whether debts can be revived. The disclosures under consideration include a disclosure that would inform a consumer that, because of the age of the debt, the debt collector cannot sue to recover it. They also include, where applicable, a disclosure that would inform a consumer that the right to sue on a time-barred debt can be revived in certain circumstances. The Small Business Review Panel Outline discussed certain such disclosures, and the Bureau has received feedback from stakeholders about both the need for, and the content of, such disclosures.[387]

The Bureau plans to conduct additional consumer testing of possible time-barred debt and revival disclosures, and expects this additional testing to further inform the Bureau's evaluation of any time-barred debt disclosures. At a later date, the Bureau intends to issue a report on such testing and any disclosure proposals related to the collection of time-barred debt. Stakeholders will have an opportunity to comment on such testing if the Bureau intends to use it to support disclosure requirements in a final rule. The Bureau reserves § 1006.26(c) and appendix B of the regulation for any such proposals.

Section 1006.30 Other Prohibited Practices

Proposed § 1006.30 contains several measures designed to protect consumers from certain harmful debt collection practices. Specifically, proposed § 1006.30(a) would regulate debt collectors' furnishing practices under certain circumstances; proposed § 1006.30(b) would limit the transfer of certain debts; and proposed § 1006.30(c), (d), and (e) would generally restate statutory provisions regarding allocation of payments, venue, and the furnishing of certain deceptive forms, respectively.

30(a) Communication Prior to Furnishing Information

Debt collectors may actively attempt to collect debts about which they furnish information to consumer reporting agencies by, for example,

who do receive notice usually appear without legal representation.''); CFPB Debt Collection Operations Study, *supra* note 45, at 18 (observing that respondents reported obtaining default judgments in 60 to 90 percent of their filed suits); *cf. Kimber,* 668 F. Supp. at 1487 (''Because few unsophisticated consumers would be aware that a statute of limitations could be used to defend against lawsuits based on stale debts, such consumers would unwittingly acquiesce to such lawsuits. And, even if the consumer realizes that she can use time as a defense, she will more than likely still give in rather than fight the lawsuit because she must still expend energy and resources and subject herself to the embarrassment of going into court to present the defense; this is particularly true in light of the costs of attorneys today.'').

[384] *See* David E. Reid, *Out-of-Statute Debt: What is a Smart, Balanced, and Responsible Approach,* at 8, (Receivables Mgmt. Ass'n Int'l, White Paper, 2015), *https://rmassociation.org/wp-content/uploads/2017/04/RMA_Whitepaper_OOS.pdf.*

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

[386] Small Business Review Panel Outline, *supra* note 56, at 20.

[387] *Id.* at 20–21.

calling or writing to consumers. However, some debt collectors engage in ''passive'' collections by furnishing information to consumer reporting agencies for inclusion in consumer reports without first communicating with consumers.[388] Debt collectors may attempt to collect debts passively where the expected return from that technique exceeds the cost of attempting to collect the debt by communicating with consumers.[389]

A consumer may suffer harm if a debt collector furnishes information to a consumer reporting agency without first communicating with the consumer. If debt collectors do not communicate with consumers prior to furnishing, consumers are likely to be unaware that they have a debt in collection unless they obtain and review their consumer report. In turn, many consumers may not obtain and review their consumer reports until they apply for credit, housing, employment, or another product or service provided by an entity that reviews consumer reports during the application process. At that point, consumers may face pressure to pay debts that they otherwise would dispute, including debts that they do not owe,[390] in an effort to remove the debts from their consumer reports and more quickly obtain a mortgage or job or desired product or service. Consumers unaware of the debt before a financial institution, landlord, employer, or other similar person makes a decision also may face the denial of an application, a higher interest rate, or other negative consequences.[391] If the debt collector had instead communicated with the consumer prior to furnishing by, for example, sending the consumer a validation notice, then the consumer would have been more likely to have information about the debt and to have the opportunity to resolve the debt with the debt collector by either paying or disputing it.

These consumer harms could be avoided if debt collectors communicated with consumers before furnishing information about debts in collection. The Bureau thus proposes § 1006.30(a), which provides that a debt collector must not furnish to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (FCRA),[392] information regarding a debt before communicating with the consumer about the debt. Taken together with proposed § 1006.34—which generally would require debt collectors to provide consumers important information about debts at the outset of collection, including consumers' options for resolving them—proposed § 1006.30(a) should reduce the harms that result from consumers being unaware of or uninformed about their debts in collection.

During the SBREFA process, small entity representatives expressed concern over the potential burden to a debt collector of documenting, such as by using certified mail, that a consumer received a communication. The Small Business Review Panel recommended that the Bureau consider clarifying the type of communication that would be sufficient to satisfy the requirement, including clarifying that debt collectors do not need to send the validation notice by certified mail.

Proposed comment 30(a)–1 is designed to address the Panel's recommendation. Proposed comment 30(a)–1 would clarify that a debt collector would satisfy proposed § 1006.30(a)'s requirement to communicate if the debt collector conveyed information regarding a debt directly or indirectly to the consumer through any medium, but a debt collector would not satisfy the communication requirement if the debt collector attempted to communicate with the consumer but no communication occurred. For example, a debt collector communicates with the consumer if the debt collector provides a validation notice to the consumer, but a debt collector does not communicate with the consumer by leaving a limited-content message for the consumer. Proposed comment 30(a)–1 also would clarify that a debt collector may refer to proposed § 1006.42 for more information on how to provide disclosures in a manner that is reasonably expected to provide actual notice to consumers. The Bureau requests comment on proposed § 1006.30(a) and its related commentary.

The Bureau proposes § 1006.30(a) pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors; its authority to interpret FDCPA section 806 regarding harassment, oppression, or abuse in connection with the collection of a debt; and its authority to interpret FDCPA section 808 regarding unfair or unconscionable means to collect or attempt to collect any debt. As discussed in part IV, a debt collector violates FDCPA section 806 if the debt collector engages in conduct that has the natural consequence of harassing, oppressing, or abusing any person in connection with the collection of a debt. A debt collector violates FDCPA section 808 if the debt collector uses unfair or unconscionable means to collect or attempt to collect any debt.

Courts have interpreted FDCPA sections 806 and 808 to prohibit certain coercive collection methods that may cause consumers to pay debts not actually owed.[393] Passive collection practices are similar to these other types of prohibited conduct because, as discussed above, they exert significant pressure in circumstances that undermine the ability of consumers to decide whether to pay debts, sometimes resulting in them paying debts they do not owe or would have otherwise disputed. The Bureau thus proposes § 1006.30(a) to prohibit a debt collector from furnishing information about a debt to consumer reporting agencies prior to communicating with the consumer about that debt, on the basis that subjecting a consumer to pressure by furnishing information to a consumer reporting agency without first providing notice to the consumer constitutes conduct that may have the natural consequence of harassment, oppression, or abuse in violation of FDCPA section 806, and that is an unfair or unconscionable means to collect or attempt to collect a debt under FDCPA section 808.

### 30(b) Prohibition on the Sale, Transfer, or Placement of Certain Debts

### 30(b)(1) In General

The sale, transfer, and placement for collection of debts that have been paid or settled or discharged in bankruptcy,

[388] *See* CFPB Medical Debt Report, *supra* note 20, at 36.

[389] *See id.*

[390] In some cases, the information furnished to consumer reporting agencies may be inaccurate. *See id.* at 51 (''Significant questions exist as to the accuracy of collections tradeline reporting.'').

[391] Such consumers generally would receive adverse action notices alerting them to the negative item on their consumer report, but these notices would occur too late to prevent the initial harm from passive collection practices. *See* 15 U.S.C. 1681m(a). Consumers who obtained credit from financial institutions also generally would have received notices that the financial institutions furnish negative information to nationwide consumer reporting agencies. *See* 15 U.S.C. 1681s–2(a)(7).

[392] 15 U.S.C. 1681a(f).

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

or that are subject to an identity theft report creates risk of consumer harm. If a debt is paid or settled, or discharged in bankruptcy, the debt is either extinguished or uncollectible. If a debt is listed on an identity theft report, the debt likely resulted from fraud, in which case the consumer may not have a legal obligation to repay it. Identity theft frequently results in fraudulent use of credit and often is discovered only after unauthorized account activity has occurred.[394]

Because debts that have been paid or settled or discharged in bankruptcy are either extinguished or uncollectible, and because consumers likely do not owe debts that are subject to an identity theft report, debt collectors seeking to collect such debts almost inevitably will make an express or implied false claim that consumers owe the debts. For example, in response to the ANPRM, consumer advocates noted that debt collectors who sue consumers to recover debts that were paid or settled with previous creditors may rely on an incomplete account history that does not reflect a consumer's prior payment or settlement. The FDCPA in many places reflects a concern with debt collectors collecting or attempting to collect debts that consumers likely do not owe.[395]

When the FDCPA became law in 1977, debt sales and related transfers were not common. In subsequent years, debt sales and transfers have become more frequent.[396] The general growth in debt sales and transfers may have increased the likelihood that a debt that has been paid, settled, or discharged in bankruptcy may be transferred or sold.[397] Moreover, identity theft, which has emerged as a major consumer protection concern, may increase the number of debts that are created if consumers' identities are stolen and their personal information misused.[398]

Other Federal regulators have raised similar concerns about the risk of consumer harm from the sale, transfer, and placement of these categories of debt. The FTC has considerable expertise with respect to the debt buying industry[399] and has identified a risk of consumer harm if a debt collector purchases and seeks to collect discharged debt.[400] The Office of the Comptroller of the Currency (OCC) has advised its supervised institutions that certain categories of debt—including settled debts, debts belonging to borrowers seeking bankruptcy protection, and debts incurred as a result of fraudulent activity—are not appropriate for sale because of the reputational risk and the threat of legal liability related to the unlawful tactics employed to collect these debts.[401]

Segments of the debt collection industry also appear to recognize the risks of transferring these categories of debt. Some debt collectors have adopted policies to identify and exclude certain debts from sale or transfer. For example, a trade association representing debt buyers administers a certification program that prohibits the sale of debts that have been settled in full, paid in full, or are the result of identity theft or fraud.[402]

For these reasons, proposed § 1006.30(b)(1)(i) generally would 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.[403] The Bureau understands that debt collectors may be required to sell or transfer such debts for non-debt collection purposes and proposes certain exceptions in § 1006.30(b)(2) to accommodate those situations. Proposed comment 30(b)(1)(i)(C)–1 provides an example clarifying that a debt collector knows or should know that an identity theft report was filed with respect to a debt if, for example, the debt collector has received a copy of the identity theft report.

The Bureau proposes § 1006.30(b)(1)(i) 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 proposes 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 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. Further, the sale, transfer or placement of such debts is unfair under section 1031 of the Dodd-Frank Act because it is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers where the substantial injury is not outweighed by countervailing benefits to consumers or to competition. Prohibiting the sale, transfer, or placement of such debts is reasonably designed to prevent this unfair practice.

With respect to a debt collector who is collecting a consumer financial product or service debt, as defined in proposed § 1006.2(f), the Bureau also proposes § 1006.30(b)(1)(i) pursuant to its authority under section 1031(b) of the Dodd-Frank Act to prescribe rules to identify and prevent the commission of unfair acts or practices by Dodd-Frank Act covered persons, and the Bureau

[394] In 2014, approximately 86 percent of identity theft victims reported that their most recent incident involved unauthorized charges on an existing credit card or bank account. More than 60 percent of victims learned of the identity theft when either a financial institution notified them of suspicious activity in an account or the victim noticed fraudulent charges on an account statement. Erika Harrell, Bureau of Justice Stats., *Victims of Identity Theft, 2014,* at 2, 5, U.S. Dep't of Justice, (revised Nov. 13, 2017), *https://www.bjs.gov/content/pub/pdf/vit14.pdf.*

[395] *See, e.g.,* 15 U.S.C. 1692f(1) (prohibiting ''[t]he collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law''); *see also Jacobson* v. *Healthcare Fin. Servs., Inc.,* 516 F.3d 85, 89 (2d Cir. 2008) (quoting S. Rept. No. 382, *supra* note 70, at 4); *Fox* v. *Citicorp Credit Servs., Inc.,* 15 F.3d 1507, 1517 (9th Cir. 1994) (reversing grant of summary judgment to debt collector in part because ''a jury could rationally find'' that filing writ of garnishment was unfair or unconscionable under section 808 when debt was not delinquent); *Ferrell* v. *Midland Funding, LLC,* No. 2:15–cv–00126–JHE, 2015 WL 2450615, at *3–4 (N.D. Ala. May 22, 2015) (denying debt collector's motion to dismiss section 806 claim where debt collector allegedly initiated collection lawsuit even though it knew plaintiff did not owe debt); *Pittman* v. *J.J. Mac Intyre Co. of Nev., Inc.,* 969 F. Supp. 609, 612–13 (D. Nev. 1997) (denying debt collector's motion to dismiss claims under sections 807 and 808 where debt collector allegedly attempted to collect fully satisfied debt).

[396] In 2009, the FTC stated that the ''most significant change in the debt collection business in recent years has been the advent and growth of debt buying.'' FTC Modernization Report, *supra* note 176, at 4.

[397] *See, e.g.,* Bureau of Consumer Fin. Prot., *Supervisory Highlights, Issue No. 12,* at 6–7 (Summer 2016), *https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-issue-no-12-summer-2016/* (discussing examinations finding that debt sellers failed to code accounts to reflect that they were in bankruptcy, the product of fraud, or settled in full).

[398] *See generally* Kristin Finklea, *Identity Theft: Trends and Issues,* Cong. Research Serv., RL40599 (2014), *https://fas.org/sgp/crs/misc/R40599.pdf.*

[399] *See generally, e.g.,* FTC Debt Buying Report, *supra* note 14.

[400] FTC Modernization Report, *supra* note 176, at 64–65.

[401] *See* Off. of the Comptroller of the Currency, Bulletin 2014–37, *Description: Risk Management Guidance* (Aug. 4, 2014), *http://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-37.html.*

[402] *See* Receivables Mgmt. Ass'n Int'l, *Receivables Management Certification Program, Certification Governance Document,* at 43 (2018), *https://rmassociation.org/wp-content/uploads/2018/02/Certification-Policy-version-6.0-FINAL-20180119.pdf.* A large debt buyer also indicated in preproposal feedback that it has adopted policies to exclude certain debts from debt sales transactions.

[403] Proposed § 1006.30(b) would define ''identity theft report'' as defined in the FCRA, 15 U.S.C. 1681a(q)(4).

proposes § 1006.30(b)(1)(ii) to identify this unfair act or practice.[404] As discussed in part IV.B, to declare an act or practice unfair under Dodd-Frank Act section 1031(b), the Bureau must have a reasonable basis to conclude that: (1) The act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and (2) such substantial injury is not outweighed by countervailing benefits to consumers or to competition. Selling, transferring, or placing for collection debts described in proposed § 1006.30(b)(1)(i) likely causes substantial injury to consumers because the collection of such debts likely results in deceptive claims of indebtedness and the unfair collection of amounts not owed.[405] Consumers cannot reasonably avoid this harm because they have no control over debt sales, transfers, or placements or collection activity arising subsequent to those sales, transfers or placements. The collection of debts that are either not owed or likely not owed does not benefit consumers or competition.

The Bureau requests comment on all aspects of proposed § 1006.30(b)(1). In particular, the Bureau requests comment on whether additional categories of debt, such as debt currently subject to litigation and debt lacking clear evidence of ownership, should be included in any prohibition adopted in a final rule. The Bureau also requests comment on how frequently consumers identify a specific debt when filing an identity theft report, and on how frequently debt collectors learn that an identity theft report was filed in error and proceed to sell or transfer the debt. The Bureau also requests comment on any potential disruptions that proposed § 1006.30(b)(1)(i) would cause for secured debts, such as by preventing servicing transfers or foreclosure activity related to mortgage loans. Finally, the Bureau requests comment on whether any of the currently proposed categories of debts should be clarified and, if so, how; and on whether additional clarification is needed regarding the proposed ''know or should know'' standard.

30(b)(2) Exceptions

Allowing the sale, transfer, or placement of the debts described in proposed § 1006.30(b)(1)(i) for certain bona fide business purposes other than debt collection may not create a significant risk of deceptive or unfair collections activity. Proposed § 1006.30(b)(2) sets forth four narrow exceptions to proposed § 1006.30(b)(1) to accommodate such circumstances.

Proposed § 1006.30(b)(2)(i) would allow a debt collector to transfer a debt described in proposed § 1006.30(b)(1)(i) to the debt's owner. This exception would permit a third-party debt collector who identifies such a debt among its collection accounts to return that debt to the debt's owner. Allowing a debt collector to return a debt to the debt's owner likely would not raise the risk of deceptive or unfair collections activity. Debts frequently are returned to a debt's owner after unsuccessful collections efforts.[406] Moreover, unlike a debt collector, whose overriding economic incentive is to secure a debt's repayment, certain debt owners may have other priorities that make it less likely that the owner will place the debt with another debt collector or try to collect the debt itself.[407] For creditors in particular, these moderating factors include general reputational concerns and a desire to preserve the specific customer relationship. Proposed comment 30(b)(2)(i)–1 would clarify that a debt collector may not engage in an otherwise prohibited transfer with any other entity on behalf of a debt's owner unless another exception applies.

The Bureau proposes three additional exceptions that parallel the exceptions in the FCRA to the prohibition on the sale, transfer, or placement of debt caused by identity theft.[408] Section 615(f) of 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.[409] Because proposed § 1006.30(b)(1) also would prohibit the sale, transfer, or placement of debts subject to an identity theft report, the Bureau proposes to adopt the exceptions under FCRA section 615(f)(3) regarding the repurchase, securitization, or transfer of a debt as the result of a merger or acquisition, since these exceptions would appear to be equally relevant and provide some consistency between proposed Regulation F and the FCRA's existing identity theft requirements. Further, the FCRA's exceptions may provide debt collectors with sufficient flexibility to transfer debts for bona fide non-debt collection business purposes.

Proposed § 1006.30(b)(2)(ii) would allow a debt collector to transfer a debt described in proposed § 1006.30(b)(1)(i) to a previous owner if transfer is authorized by contract. Creditors may include provisions in debt sales contracts that authorize repurchase or transfer when certain issues, such as consumer disputes or identity theft, surface.[410] Such agreements may benefit debt collectors by removing non-performing debts from collection portfolios, which allows debt collectors to focus their efforts on accounts with higher recovery rates. These agreements also may benefit consumers because interactions with creditors may be less adversarial and offer speedier and fuller resolution than interactions with debt collectors.[411] The Bureau proposes § 1006.30(b)(2)(ii) to avoid impeding these agreements in debt sales contracts.

Proposed § 1006.30(b)(2)(iii) would permit a debt collector to securitize a debt described in proposed § 1006.30(b)(1)(i), or to pledge a portfolio of such debt as collateral in connection with a borrowing. The Bureau understands that, if a debt collector securitizes or pledges a portfolio of debt, the debt collector may be unable to exclude the debts described in proposed § 1006.30(b)(1)(i) from the portfolio. The Bureau proposes § 1006.30(b)(2)(iii) to allow a debt collector to securitize or pledge portfolios in connection with its own commercial borrowing without violating Regulation F.

Proposed § 1006.30(b)(2)(iv) would allow a debt collector to transfer a debt

[404] See part IV.B for a discussion of the Bureau's framework for interpreting Dodd-Frank Act section 1031(b).

[405] *Cf. Fed. Trade Comm'n* v. *Neovi, Inc.,* 604 F.3d 1150, 1157 (9th Cir. 2010) (holding that the defendant engaged in an unfair practice by creating a website that fraudsters predictably used to injure consumers).

[406] CFPB Debt Collection Operations Study, *supra* note 45, at 13.

[407] When passing the FDCPA, Congress determined that creditors ''generally are restrained by their desire to protect their good will when collecting past due accounts,'' unlike debt collectors. S. Rept. No. 382, *supra* note 70, at 2.

[408] *See* 15 U.S.C. 1681m(f)(3).

[409] *See* 15 U.S.C. 1681m(f).

[410] Creditors may include such repurchase provisions in debt sales agreements based on compliance and reputational concerns. For national banks and Federal savings associations in particular, regulatory guidance may incentivize this practice. *See, e.g.,* Off. of the Comptroller of the Currency, *Bulletin* 2014–37, *Description: Risk Management Guidance* (Aug. 4, 2014), *http://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-37.html.*

[411] *See* CFPB Debt Collection Consumer Survey, *supra* note 18, at 46–47 (''Consumers reported more favorable experiences with creditors than debt collectors along many of the dimensions surveyed. About three-quarters (77 percent) of consumers who reported being contacted by a creditor, for example, said that the creditor provided accurate information compared with 49 percent of consumers contacted by a debt collector. Consumers contacted by creditors similarly were more likely to say that the creditor provided options to pay the debt, addressed their questions, and was polite. Finally, those contacted by creditors were less likely than those contacted by debt collectors to agree with less-favorable characterization of interactions such as reporting that the creditor threatened them.'').

described in proposed § 1006.30(b)(1)(i) as a result of a merger, acquisition, purchase and assumption transaction, or transfer of substantially all of the debt collector's assets. Transfers in these circumstances are not likely to raise the risk of unlawful collections activities because the transfers are for a bona fide non-debt collection business purpose. Further, excluding the categories of debt in proposed § 1006.30(b)(1)(i) from a business acquisition may be impracticable.

The Bureau requests comment on proposed § 1006.30(b)(2), including on whether additional exceptions are necessary to allow for transfers of debts for non-debt collection business purposes, and on whether the proposed exceptions should be more narrowly tailored or clarified. The Bureau also requests comment on the costs and benefits to consumers of allowing debts to be transferred under the proposed exceptions.

30(c) Multiple Debts

FDCPA section 810 provides that, if any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, that debt collector must not apply the consumer's payment to any debt which is disputed by the consumer and must apply the payment in accordance with the consumer's directions, if any.[412] Pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors, the Bureau proposes § 1006.30(c) to implement FDCPA section 810. Proposed § 1006.30(c) mirrors the statute, except that minor changes have been made for organization and clarity. The Bureau requests comment on proposed § 1006.30(c), including on whether additional clarification is needed.

30(d) Legal Actions by Debt Collectors

FDCPA section 811 restricts the venue in which a debt collector may initiate legal action on a debt against a consumer.[413] Pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors, the Bureau proposes § 1006.30(d) to implement FDCPA section 811. Proposed § 1006.30(d) mirrors the statute, except that minor changes have been made for organization and clarity. The Bureau requests comment on proposed § 1006.30(d), including on whether additional clarification is needed.

30(e) Furnishing Certain Deceptive Forms

FDCPA section 812(a) prohibits any person from knowingly designing, compiling, and furnishing any form that would be used to create the false belief in a consumer that a person other than the consumer's creditor is participating in the collection of, or in an attempt to collect, a debt the consumer allegedly owes, if in fact the creditor is not participating.[414] Pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors, the Bureau proposes § 1006.30(e) to implement FDCPA section 812(a). Because the Bureau's rulemaking authority under FDCPA section 814(d) is limited to debt collectors, as that term is defined in the FDCPA, proposed § 1006.30(e)'s coverage is more limited than that of FDCPA section 812(a), which applies to any person. Proposed § 1006.30(e) would not narrow coverage under the statute. Proposed § 1006.30(e) otherwise generally mirrors the statute, except that minor changes have been made for organization and clarity. The Bureau requests comment on proposed § 1006.30(e), including on whether additional clarification is needed.

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.[415]

The requirement to provide validation information is an important component of the FDCPA and was intended to improve the debt collection process by helping consumers to recognize debts that they owe and raise concerns about debts that are unfamiliar. Congress in 1977 considered the requirement a ''significant feature'' of the statute, explaining that it was designed to ''eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid.''[416] Despite the FDCPA's requirement that debt collectors provide validation information, Congress provided the Bureau with rulemaking authority in 2010 apparently to address inadequacies around validation and verification, among other things.[417] In addition, debt collectors have sought clarification about how to provide additional information consistent with the statute. For these reasons, and as discussed in more detail below, the Bureau proposes § 1006.34 to require debt collectors to provide certain validation information to consumers and to specify when and how the information must be provided.

34(a)(1) Validation Information Required

FDCPA section 809(a) provides, in relevant part, that, within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall send the consumer a written notice containing certain information, unless that information is contained in the initial communication or the consumer has paid the debt.[418] Proposed § 1006.34(a)(1) would implement and interpret this general requirement.[419]

Proposed § 1006.34(a)(1)(i) addresses situations in which the debt collector provides the validation information in writing or electronically.[420] Proposed § 1006.34(a)(1)(i) would clarify that, in those situations, a debt collector may provide the validation information by sending the consumer a validation notice either in the initial communication or within five days of that communication.[421] In either case,

[412] 15 U.S.C. 1692h.

[413] 15 U.S.C. 1692i.

[414] 15 U.S.C. 1692j.

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

[416] S. Rept. No. 382, *supra* note 70, at 4; *see also Jacobson* v. *Healthcare Fin. Servs., Inc.,* 516 F.3d 85, 95 (2d Cir. 2008) (validation notices ''make the rights and obligations of a potentially hapless debtor as pellucid as possible''); *Wilson* v. *Quadramed Corp.,* 225 F.3d 350, 354 (3d Cir. 2000); *Miller* v. *Payco-Gen. Am. Credits, Inc.,* 943 F.2d 482, 484 (4th Cir. 1991); *Swanson* v. *S. Oregon Credit Serv., Inc.,* 869 F.2d 1222, 1225 (9th Cir. 1988).

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

[418] *See* 15 U.S.C. 1692g(a). FDCPA section 809(a) provides that a debt collector need not send the written notice if the consumer pays the debt before the time that the notice is required to be sent. Proposed § 1006.34(a)(2) would implement that exception.

[419] Proposed § 1006.34(c) describes the validation information that proposed § 1006.34(a)(1) would require debt collectors to provide.

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

[421] Proposed § 1006.34(b)(2) provides that, with limited exceptions, initial communication means

Continued

the debt collector would be required to provide the validation notice in a manner that satisfies the delivery requirements in § 1006.42(a).[422]

Proposed § 1006.34(a)(1)(ii) would clarify that a debt collector could provide the validation information orally in the initial communication.[423] The Bureau requests comment on whether clarification regarding content and formatting requirements is needed for a debt collector who provides the validation information orally.

Proposed comment 34(a)(1)–1 would clarify the provision of validation notices if the consumer is deceased. As described in the section-by-section analysis of proposed § 1006.2(e), the failure to provide a validation notice to a person who is authorized to act on behalf of the deceased consumer's estate, such as the executor, administrator, or personal representative, may cause difficulty or delay in resolving the estate's debts. Proposed comment 34(a)(1)–1 explains that, if the debt collector knows or should know that the consumer is deceased, and if the debt collector has not previously provided the deceased consumer the validation information, a person who is authorized to act on behalf of the deceased consumer's estate operates as the consumer for purposes of providing a validation notice under § 1006.34(a)(1).[424] As explained in the section-by-section analysis of proposed § 1006.2(e), the Bureau proposes to interpret the term consumer to include deceased consumers.

The Bureau's interpretation of FDCPA section 809 in proposed § 1006.34(a)(1) would require a debt collector to provide the validation information when collecting debt from a deceased consumer if the debt collector has not previously provided the consumer the validation information. In such circumstances, under proposed comment 34(a)(1)–1, the debt collector must provide the validation information to an individual that the debt collector identifies by name who is authorized to act on behalf of the deceased consumer's estate. If a debt collector knows or should know that the consumer is deceased, it may be unclear whether the debt collector should continue to address the validation notice to the deceased consumer, or whether the debt collector instead should address the notice to the individual who is authorized to act on behalf of the deceased consumer's estate. In light of this uncertainty, the Bureau proposes to interpret sending the validation information to a deceased consumer (*i.e.,* the deceased consumer's estate) to mean providing the validation information to an individual that the debt collector identifies by name who is authorized to act on behalf of the deceased consumer's estate. As explained below, this interpretation may be preferable to addressing the validation information using the name of the deceased consumer or using ''the estate of'' with the name of the deceased consumer.

Accordingly, just as a debt collector attempting to collect a debt from a living consumer generally would provide a validation notice to the consumer within five days after the initial communication with such consumer (where the validation information was not contained in the initial communication), the proposal generally would require a debt collector attempting to collect a debt from a deceased consumer's estate to provide the validation notice to the named person who is authorized to act on behalf of the deceased consumer's estate. The validation notice would have to be provided within five days after the initial communication with such person.

In its Policy Statement on Decedent Debt, the FTC expressed concern about debt collectors addressing substantive written communications to the decedent's estate, or to an unnamed executor or administrator.[425] In the FTC's experience, individuals who lack the authority to resolve the estate but who wish to be helpful are likely to open these communications, which makes such communications insufficiently targeted to a consumer with whom the debt collector may generally discuss the debt. Therefore, according to the FTC, ''communication[s] addressed to the decedent's estate, or an unnamed executor or administrator, [are] location communication[s] and must not refer to the decedent's debts.''[426] The FTC also noted that letters addressed to deceased consumers raised similar concerns, although there may be circumstances where a debt collector neither knows nor has reason to know that the consumer has died. The Bureau agrees with these concerns. The requirement in proposed comment 34(a)(1)–1 to send any required validation notice to a named person who is authorized to act on behalf of the deceased consumer's estate would limit the practice of addressing validation notices to deceased consumers or unnamed executors, administrators, or personal representatives because a debt collector would be required to identify a person who is authorized to act on behalf of the deceased consumer's estate in order to properly direct any communication to that individual. The Bureau requests comment on the effects of any potential inconsistency between proposed comment 34(a)(1)–1 and the consumer protections that the FTC sought to achieve when it published its Policy Statement on Decedent Debt.

The Bureau proposes § 1006.34(a)(1) to implement and interpret FDCPA section 809(a) and pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors. The Bureau requests comment on proposed § 1006.34(a)(1) and its related commentary.

34(a)(2) Exception

FDCPA section 809(a) contains a limited exception that provides that, if required information is not contained in the initial communication, a debt collector need not send the consumer a written notice within five days of the debt collector's initial communication with the consumer in connection with the collection of the debt if the consumer has paid the debt prior to the time that the notice is required to be sent.[427] Pursuant to its authority to implement and interpret FDCPA section 809(a) and its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors, the Bureau proposes § 1006.34(a)(2) to implement this exception. Proposed § 1006.34(a)(2) provides that a debt collector who

the first time that, in connection with the collection of a debt, a debt collector conveys information, directly or indirectly, to the consumer regarding the debt.

[422] As discussed in the section-by-section analysis of proposed § 1006.42, the proposed rule would provide a general standard for the delivery of required disclosures, including the validation notice, in writing or electronically, and would clarify, among other things, how debt collectors may provide required notices to consumers by email or text message.

[423] While FDCPA section 809(a) does not prohibit a debt collector from providing validation information orally in the debt collector's initial communication, it may be impractical for debt collectors to do so given that proposed § 1006.34(c) would require a significant amount of validation information that debt collectors may not currently provide. In addition, debt collectors providing the validation information orally would not be able to use Model Form B–3 in appendix B to receive a safe harbor for compliance with § 1006.34(a).

[424] This interpretation is supported by the proposed definition of consumer, which, as discussed in the section-by-section analysis of proposed § 1006.2(e), is defined to include ''[a]ny natural person, whether living or deceased, who is obligated or allegedly obligated to pay any debt.''

[425] FTC Policy Statement on Decedent Debt, *supra* note 192.

[426] *Id.* at 44920.

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

otherwise would be required to send a validation notice pursuant to proposed § 1006.34(a)(1)(i)(B) is not required to do so if the consumer has paid the debt prior to the time that proposed § 1006.34(a)(1)(i)(B) would require the validation notice to be sent. Proposed § 1006.34(a)(2) generally restates the statute, except for minor changes for organization and clarity.

34(b) Definitions

To facilitate compliance with § 1006.34, proposed § 1006.34(b) would define several terms that appear throughout the section. Except as discussed otherwise below, the Bureau proposes these definitions to implement and interpret FDCPA section 809(a) and pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors.

34(b)(1) Clear and Conspicuous

To facilitate compliance with proposed § 1006.34(d)(1), which would require that the validation information described in § 1006.34(c) be clear and conspicuous, proposed § 1006.34(b)(1) would define the term clear and conspicuous. The Bureau proposes to define the term clear and conspicuous for purposes of Regulation F consistent with the standards used in other consumer financial services laws and their implementing regulations, including Regulation E, subpart B (Remittance Transfers).[428] Proposed § 1006.34(b)(1) thus provides that disclosures are clear and conspicuous if they are readily understandable and, in the case of written and electronic disclosures, the location and type size are readily noticeable to consumers. Oral disclosures are clear and conspicuous if they are given at a volume and speed sufficient for a consumer to hear and comprehend them. The Bureau proposes to adopt this standard to help ensure that required disclosures, including disclosures containing validation information, are readily understandable and noticeable to consumers. Disclosures that are not clear and conspicuous will not be effective, defeating the purpose of the disclosures.

The Bureau requests comment on proposed § 1006.34(b)(1), including on whether basing the clear and conspicuous standard on existing regulations, such as Regulation E, presents any consumer protection or compliance issues, including for validation information delivered electronically or orally. The Bureau also requests comment on whether additional clarification about the meaning of clear and conspicuous would be useful in the context of the specific information that proposed § 1006.34(a)(1) would require.

34(b)(2) Initial Communication

As discussed above, FDCPA section 809(a) requires debt collectors to provide consumers with certain validation information either in the debt collector's initial communication with the consumer in connection with the collection of the debt, or within five days after that initial communication. FDCPA section 803(2) defines the term communication broadly to mean the conveying of information regarding a debt directly or indirectly to any person through any medium.[429] FDCPA section 809(d) and (e) identifies particular communications that are not initial communications with the consumer in connection with the debt for purposes of FDCPA section 809(a) and that therefore do not trigger the validation notice requirement.[430] Pursuant to FDCPA section 809(d), an initial communication excludes a communication in the form of a formal pleading in a civil action. Pursuant to FDCPA section 809(e), an initial communication also excludes the sending or delivery of any form or notice that does not relate to the collection of the debt and is expressly required by the Internal Revenue Code of 1986, title V of the Gramm-Leach-Bliley Act, or any provision of Federal or State law relating to notice of a data security breach or privacy, or any regulation prescribed under any such provision of law.

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

The Bureau requests comment on proposed § 1006.34(b)(2) and on whether additional clarification about the term initial communication would be helpful. The Bureau specifically requests comment on the scenario in which a debt collector's first attempt to communicate with a consumer is through an electronic communication method, such as an email or a text message, and the consumer provides no response. For example, as proposed, if a debt collector sends a consumer an email notifying the consumer that a debt has been placed with the debt collector but includes no other information, the debt collector would be required to send the consumer a validation notice within five days, even if the consumer did not reply to the debt collector's email. The Bureau requests comment about the risks, costs, and benefits to industry and consumers of treating these types of debt collection communications as initial communications that would trigger § 1006.34(a)(1).

34(b)(3) Itemization Date

FDCPA section 809(a)(1) requires debt collectors to disclose to consumers, either in the debt collector's initial communication in connection with the collection of the debt, or within five days after that communication, the amount of the debt.[431] In proposed § 1006.34(c)(2)(vii) through (ix), the Bureau would interpret the phrase ''amount of the debt'' to mean that debt collectors must disclose information about the amount of the debt as of a particular ''itemization date.''[432] To facilitate compliance with § 1006.34(c)(2)(vii) through (ix), proposed § 1006.34(b)(3) would define the term itemization date.

Account information available to debt collectors may vary by debt type because some account information is not universally tracked or used across product markets. For example, the Bureau understands that charge off is fundamental account information for credit card debt, but appears not to be applicable for some other debt types. To ensure that debt collectors working in a variety of product markets can comply with proposed § 1006.34(c)(2)(vii) through (ix), the Bureau proposes to define the term itemization date to mean any one of four reference dates for which a debt collector can ascertain the amount of the debt: (1) The last statement date, (2) the charge-off date, (3) the last payment date, or (4) the

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

[429] *See* 15 U.S.C. 1692a(2). See also the section-by-section analysis of proposed § 1006.2(d).

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

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

[432] Proposed § 1006.34(c)(2)(vii) and (viii) would require debt collectors to disclose, respectively, the itemization date and the amount of the debt on the itemization date. Proposed § 1006.34(c)(2)(ix) would require debt collectors to disclose an itemization of the debt reflecting interest, fees, payments, and credits since the itemization date. For additional discussion of these provisions, see the section-by-section analysis of proposed § 1006.34(c)(2)(vii) through (ix).

transaction date.[433] As discussed further in the section-by-section analysis of proposed § 1006.34(b)(3)(i) through (iv), the proposed definition is designed to allow the use of dates that debt collectors could identify with relative ease because they reflect routine and recurring events and that correspond to notable events in the debt's history that consumers may recall or be able to verify with records. The proposed definition also is designed to include dates for which debt collectors typically may receive account information from debt owners and that, therefore, debt collectors should be able to use to provide the disclosures described in § 1006.34(c)(vii) through (ix).

Proposed comment 34(b)(3)–1 explains that a debt collector may select any of the potential reference dates listed in proposed § 1006.34(b)(3) as the itemization date to comply with § 1006.34. Once a debt collector uses one of the reference dates for a specific debt in a communication with an individual consumer, however, the debt collector would be required to use that reference date for that debt consistently when providing disclosures as proposed by § 1006.34 to that consumer. If a debt collector provides the consumer with validation information based on different reference dates for the same debt, the consumer may have difficulty recognizing the debt and be less likely to engage with the debt collector. Thus, a debt collector who used reference dates inconsistently for the same debt could undermine the purpose of proposed § 1006.34.

The Bureau's Small Business Review Panel Outline described a proposal under consideration that would have required a debt collector to provide an itemization of the debt based on a single reference date, the date of default.[434] Multiple small entity representatives expressed concern with that proposal, noting both that default has no established definition and that the default concept may be inapplicable to some debt types, such as medical debt.[435] Small entity representatives also noted that determining a date of default can involve State law interpretations that impose significant costs. Consistent with these concerns, the Small Business Review Panel Report recommended that the Bureau consider alternatives to the date of default and suggested the charge-off date, last payment date, or date of service instead.[436] Based in part on this feedback, the Bureau believes that it may be difficult to identify a single reference date that applies to all debt types across all relevant markets and, as a result, proposes to define itemization date as one of the four potential reference dates.

The Bureau requests comment on proposed § 1006.34(b)(3) and on comment 34(b)(3)–1, including on whether the itemization date definition will facilitate compliance with the requirement to disclose the validation information in § 1006.34(c)(vii) through (ix), and on whether additional clarification regarding the itemization date definition is needed. The Bureau also requests comment on whether the proposed itemization date definition would not capture certain debt types, such as mortgage debt where coupon books are provided instead of periodic statements, and on whether additional or alternative reference dates should be considered. The Bureau also requests comment on whether creditors' data management systems capture information related to the reference dates that the proposed itemization date definition would incorporate. Further, the Bureau requests comment on whether the proposed definition should mandate a single reference date, which would standardize validation notices across all relevant markets, and if so, what reference date might be suitable for all types of debt. In addition, the Bureau requests comment on how the proposed definition should function with respect to a debt that multiple debt collectors have attempted to collect. For example, the Bureau requests comment on whether a subsequent debt collector should be permitted to use a different itemization date than a prior debt collector used for the same debt.

Finally, the Bureau requests comment on whether the proposed itemization date definition should be structured as a prescriptive ordering of potential reference dates, such as a hierarchy. For example, this alternative approach could require a debt collector to determine the itemization date by identifying the first date in a hierarchy of four reference dates set forth in proposed § 1006.34(b)(3)(i) through (iv) for which a debt collector could ascertain the amount of the debt using readily available information. With respect to this alternative approach, the Bureau requests comment on whether the use of any particular reference date, such as the last statement date, is more likely than other reference dates, such as the charge-off date, to improve consumer understanding of the required disclosures. The Bureau also requests comment on whether, for purposes of a hierarchy, any particular reference date would be more likely than others to impose costs or burdens on debt collectors.

The Bureau proposes § 1006.34(b)(3), including the specific dates described in proposed § 1006.34(b)(3)(i) through (iv), pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors. The Bureau also proposes § 1006.34(b)(3) pursuant to its authority under section 1032(a) of the Dodd-Frank Act to prescribe rules to ensure that the features of consumer financial products and services are disclosed to consumers fully, accurately, and effectively.

34(b)(3)(i)

When placing a debt for collection, creditors frequently may provide debt collectors with the last periodic or written account statements provided to consumers. Therefore, in many cases, last statement information should be readily available to debt collectors. In addition, many consumers may recall the amount of the debt on the last statement because this figure may be the most recent amount of the debt the consumer has seen, or the consumer may be able to verify that amount with their records.

For these reasons, proposed § 1006.34(b)(3)(i) would permit debt collectors to use the last statement date as the itemization date. Pursuant to proposed § 1006.34(b)(3)(i), last statement date would mean the date of the last periodic statement or written account statement or invoice provided to the consumer. Proposed comment 34(b)(3)(i)–1 explains that a statement provided by a creditor or a third party acting on the creditor's behalf, including a creditor's service provider, may constitute the last statement provided to the consumer for purposes of § 1006.34(b)(3)(i). The Bureau requests comment on proposed § 1006.34(b)(3)(i) and on comment 34(b)(3)(i)–1, including on how often creditors provide periodic statements, written statements, and invoices to debt collectors, and on whether there are specific debt types for which creditors may not provide such statements. In addition, the Bureau requests comment on whether a validation notice that a previous debt collector provided to the consumer should constitute a last statement for purposes of proposed § 1006.34(b)(3)(i).

[433] The four reference dates are set forth in proposed § 1006.34(b)(3)(i) through (iv). See the section-by-section analysis of proposed § 1006.34(b)(3)(i) through (iv).

[434] *See* Small Business Review Panel Outline, *supra* note 56, at appendix F.

[435] *See* Small Business Review Panel Report, *supra* note 57, at 18.

[436] *Id.*

34(b)(3)(ii)

When placing credit card accounts for collection, creditors frequently may provide debt collectors with account information at charge off, including the charge-off date. For this reason, some small entity representatives suggested during the SBREFA process that, for credit card debt, the Bureau should define the itemization date to mean the charge-off date.[437] Charge off is relevant to debt types other than credit cards, as well, and consumers may approximately recognize the amount of a debt due at charge off because charge off often occurs shortly after a last account statement is provided.

For these reasons, proposed § 1006.34(b)(3)(ii) would permit debt collectors to use the charge-off date—*i.e.,* the date that the debt was charged off—as the itemization date. The Bureau requests comment on proposed § 1006.34(b)(3)(ii). The Bureau generally requests comment on how often creditors provide charge-off information to debt collectors and on whether there are specific debt types for which charge off is not a relevant concept. In addition, the Bureau requests comment on whether creditors assess fees or penalties at charge off, which would cause the amount the consumer owed at charge off to differ significantly from the amount that appeared on the last periodic statement, invoice, or other written statement that the consumer received.

34(b)(3)(iii)

In some cases, creditors may provide debt collectors with account information related to a consumer's last payment. For this reason, some small entity representatives suggested during the SBREFA process that the Bureau define the itemization date to mean the last payment date.[438] Consumers also may recognize the amount of a debt that reflects the balance after the consumer's last payment.[439] Proposed § 1006.34(b)(3)(iii) thus would permit debt collectors to use the last payment date—*i.e.,* the date the last payment was applied to the debt—as the itemization date. The Bureau requests comment on proposed § 1006.34(b)(3)(iii), including on how often creditors provide debt collectors with last payment date information. The Bureau also requests comment on how proposed § 1006.34(b)(3)(iii) should be applied if a third party made the last payment on the debt. For example, such a third-party payment might include a partial payment on a consumer's medical debt by an insurance provider.

34(b)(3)(iv)

For some debt types, including for medical debt, creditors may provide debt collectors with account information related to the transaction date (*e.g.,* the date a service or good was provided to a consumer). Some small entity representatives thus suggested during the SBREFA process that the Bureau define the itemization date for medical debt to mean the date of service.[440] In addition, consumers may recognize the amount of a debt on the transaction date, which may be reflected in a copy of a contract or a bill provided by a creditor. For these reasons, proposed § 1006.34(b)(3)(iv) would permit debt collectors to use the transaction date—*i.e.,* the date of the transaction that gave rise to the debt—as the itemization date.

Proposed comment 34(b)(3)(iv)–1 explains that the transaction date is the date that a creditor provided, or made available, a good or service to a consumer and includes examples of transaction dates. The comment also explains that, if a debt has more than one potential transaction date, a debt collector may use any such date as the transaction date but must use whichever transaction date it selects consistently, as described in comment 34(b)(3)–1. The Bureau requests comment on proposed § 1006.34(b)(3)(iv) and on comment 34(b)(3)(iv)–1, including on how often creditors provide transaction date information to debt collectors and on whether the transaction date concept is inapplicable to certain debt types.

34(b)(4) Validation Notice

As already discussed, FDCPA section 809(a) provides, in relevant part, that, within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall send the consumer a written notice containing certain information, unless that information is contained in the initial communication or the consumer has paid the debt.[441] If debt collectors have provided the validation information in writing, whether in the initial communication or within five days after that communication, debt collectors and others commonly have referred to the document containing the information as a ''validation notice,'' or ''g notice.'' The Bureau understands that most debt collectors do not currently send validation notices electronically. As discussed in the section-by-section analysis of proposed § 1006.42, the Bureau proposes to clarify how debt collectors may send validation notices electronically in compliance with applicable law.

To facilitate compliance with proposed § 1006.34, as well as to account for the possibility that more debt collectors may begin providing the validation information electronically, proposed § 1006.34(b)(4) would define validation notice to mean a written or electronic notice that provides the validation information described in proposed § 1006.34(c). The Bureau requests comment on proposed § 1006.34(b)(4).

34(b)(5) Validation Period

FDCPA section 809(b) contains certain requirements that a debt collector must satisfy if a consumer disputes a debt or requests the name and address of the original creditor. If a consumer disputes a debt in writing within 30 days of receiving the validation information, a debt collector must stop collection of the debt until the debt collector obtains verification of the debt or a copy of a judgment against the consumer and mails it to the consumer.[442] Similarly, if a consumer requests the name and address of the original creditor in writing within 30 days of receiving the validation information, FDCPA section 809(b) requires the debt collector to cease collection of the debt until it obtains and mails such information to the consumer.[443] FDCPA section 809(b) also prohibits a debt collector, during the 30-day period consumers have to dispute a debt or request information about the original creditor, from engaging in collection activities and communications that overshadow, or are inconsistent with, the disclosure of the consumer's rights to dispute the debt and request original-creditor information, which are sometimes referred to as ''verification rights.''[444]

As described in the section-by-section analysis of § 1006.34(c)(3)(i) through (iii), the proposed rule would require debt collectors to disclose to a consumer the date certain on which the consumer's FDCPA section 809(b) verification rights expire. Without additional clarification, debt collectors may be uncertain how to calculate this

[437] *Id.*

[438] *Id.*

[439] *See* FMG Focus Group Report, *supra* note 38, at 20–21.

[440] Small Business Review Panel Report, *supra* note 57, at 18.

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

[442] 15 U.S.C. 1692g(b).

[443] *See id.* The Bureau refers to the consumer's rights to dispute the validity of the debt and to request original-creditor information collectively as the consumer's ''verification rights.''

[444] *Id.*

date certain. First, debt collectors may be unsure how to reliably determine when a consumer has received the validation information (*i.e.,* the event that triggers the running of the 30-day period). In addition, some debt collectors may honor disputes and original-creditor information requests that a consumer provides after the 30-day period to dispute a debt or request information about the original creditor set forth in the FDCPA expires and may benefit from clarification about how to specify a longer period.

To facilitate compliance with the proposed requirement to provide the date certain on which the consumer's verification rights expire, proposed § 1006.34(b)(5) would define the term validation period to mean the period starting on the date that a debt collector provides the validation information described in § 1006.34(c) and ending 30 days after the consumer receives or is assumed to receive the validation information. To clarify how to calculate the end of the validation period—including how debt collectors may disclose a period that provides consumers additional time to exercise their validation rights—proposed § 1006.34(b)(5) also would provide that a debt collector may assume that a consumer receives validation information on any day that is at least five days (excluding legal public holidays, Saturdays, and Sundays) after the debt collector provides it. Proposed § 1006.34(b)(5) is designed to provide a debt collector with a straightforward yet flexible way to determine the last date of the validation period referenced in § 1006.34(c)(3)(i) through (iii). The Bureau proposes § 1006.34(b)(5) on the basis that consumers will typically receive a validation notice no more than five days (excluding legal public holidays, Saturdays, and Sundays) after the debt collector provides it. Further, proposed § 1006.34 would not prohibit a debt collector from honoring a consumer's request to exercise verification rights after the date certain that appears in the validation notice pursuant to § 1006.34(c)(3)(i) through (iii).

Proposed comment 34(b)(5)–1 would clarify that, if a debt collector sends a subsequent validation notice to a consumer because the consumer did not receive the original validation notice, and the consumer has not otherwise received the validation information, the debt collector must calculate the end of the validation period based on the date the consumer receives or is assumed to receive the subsequent validation notice. In other words, proposed comment 34(b)(5)–1 would clarify that, if a debt collector sends an initial validation notice that was not received and then sends a subsequent validation notice, the validation period ends 30 days after the consumer receives or is assumed to receive the subsequent validation notice.

The Bureau requests comment on proposed § 1006.34(b)(5) and on comment 34(b)(5)–1. In particular, the Bureau requests comment on debt collectors' current practices for determining the end of the validation period. The Bureau also requests comment on whether the length of the five-day timing presumption should be modified and on whether different timing presumptions should apply depending on whether a validation notice is delivered by mail or electronically, for example by email or text message. Finally, the Bureau requests comment on whether a different timing presumption should apply if validation information is provided orally.

34(c) Validation Information

Proposed § 1006.34(c) sets forth the validation information that debt collectors would be required to disclose under § 1006.34(a)(1). As described below, the validation information that proposed § 1006.34(c) would require consists of four general categories: Information to help consumers identify debts (including the information specifically referenced in FDCPA section 809(a)); information about consumers' protections in debt collection; information to facilitate consumers' ability to exercise their rights with respect to debt collection; and certain other statutorily required information.

34(c)(1) Debt Collector Communication Disclosure

FDCPA section 807(11) requires a debt collector to disclose in its initial written communication with a consumer—and if the initial communication is oral, in that oral communication as well—that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. FDCPA section 807(11) also requires a debt collector to disclose in each subsequent communication that the communication is from a debt collector.[445] As discussed above, the Bureau proposes the § 1006.18(e) disclosure to implement FDCPA section 807(11). If a debt collector provides validation information, the debt collector engages in a debt collection communication and must make an appropriate FDCPA section 807(11) disclosure.[446] The Bureau proposes § 1006.34(c)(1) to provide that the § 1006.18(e) disclosure is validation information that must be provided to the consumer pursuant to § 1006.34(a)(1). The Bureau requests comment on proposed § 1006.34(c)(1).

34(c)(2) Information About the Debt

While validation notices in use today typically contain the specific information required under FDCPA section 809(a), the Bureau understands that debt collectors often do not include any other information to help consumers identify debts.[447] As a result, validation notices in use today may lack sufficient information to enable some consumers to exercise their FDCPA section 809 rights. For example, the Bureau's qualitative consumer research indicates that certain information that appears to help consumers to recognize a debt—including a debt's original account number or an itemization of interest and fees—may not consistently appear on validation notices.[448] Complaints about insufficient information to verify debts consistently rank among the most frequent types of consumer debt collection complaints received by the Bureau.[449] Further, validation notices in use today may not be written in plain language that promotes consumer understanding. Thus, in some cases, consumers may not understand information about the debt that appears on the validation notice.

The Bureau's understanding is consistent with FTC findings, as well as with consumer advocate and industry feedback. According to the FTC, debt collectors do not provide sufficient information to allow consumers to determine whether they owe a debt in question or to exercise their FDCPA rights.[450] Observing that validation notices lack sufficient detail for consumers to recognize whether a debt belongs to them, the FTC has suggested that more information about the debt

[445] See the section-by-section analysis of proposed § 1006.18(e).

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

[447] *See* Small Business Review Panel Outline, *supra* note 56, at 15.

[448] *See* FMG Cognitive Report, *supra* note 40, at 8–11.

[449] In its 2019 FDCPA Annual Report, the Bureau noted that 72 percent of consumers who complain about written notifications about debt stated that they did not receive enough information to verify the debt. 2019 FDCPA Annual Report, *supra* note 11, at 17. Consumers have consistently complained to the Bureau about receiving insufficient information to verify debts. *See* 2018 FDCPA Annual Report, *supra* note 16, at 15–16; 2017 FDCPA Annual Report, *supra* note 21, at 16.

[450] FTC Modernization Report, *supra* note 176, at 21.

should appear in validation notices.[451] In response to the Bureau's ANPRM, consumer advocates stated that many validation notices contain insufficient information for consumers to evaluate whether they owe a debt. Industry commenters also identified additional information for validation notices that would help consumers recognize debts, such as the date of the consumer's last payment and itemization information.

The lack of information about the debt currently provided in validation notices—combined with limited disclosure of consumers' rights with respect to debt collection, which is discussed in the section-by-section analysis of proposed § 1006.34(c)(3)—may disadvantage both consumers and debt collectors. If a consumer receives a validation notice for an unfamiliar debt, the consumer may experience uncertainty, which may lead to the consumer disputing a debt that is owed. If a consumer disputes a debt the consumer owes but does not recognize, the debt collector must spend time and resources responding to a dispute that could have been avoided had the consumer initially received more complete information. Participants in the Bureau's consumer testing also reported that the inability to recognize a debt is a major concern because of the risk of potential fraud or identity theft.[452] In addition, a consumer may, in some instances, pay an unfamiliar debt that the consumer did not owe.[453]

In light of these concerns, proposed § 1006.34(c)(2) would describe the information about the debt and the parties related to the debt that debt collectors must provide to the consumer under § 1006.34(a)(1).[454] The section-by-section analysis of proposed § 1006.34(c)(2)(i) through (x) discusses the specific items of information, which would include existing statutory disclosures, designed to help consumers recognize debts. Except where noted—for example, in the case of merchant brand information for credit card debt under proposed § 1006.34(c)(2)(iii)—the information described in proposed § 1006.34(c) is not conditioned on availability. Thus, if a debt collector does not have a piece of information for a debt, the debt collector would be unable able to comply with proposed § 1006.34(a)(1) for that debt.

The Bureau requests comment on proposed § 1006.34(c)(2), including on whether any of the proposed items should be excluded or any additional items should be added. The Bureau also requests comments on whether proposed § 1006.34(c)(2)'s content requirements risk overwhelming consumers and decreasing their understanding, thereby making the proposed disclosures less effective.

Except with respect to § 1006.34(c)(2)(iv), the Bureau proposes § 1006.34(c)(2) pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors and, as described more fully below, its authority to implement and interpret FDCPA section 809. Except with respect to § 1006.34(c)(2)(vi) and (x), the Bureau also proposes § 1006.34(c)(2) pursuant to its authority under section 1032(a) of the Dodd-Frank Act, on the basis that the validation information describes the debt, which is a feature of debt collection. Requiring disclosure of validation information may help to ensure that the features of debt collection are fully, accurately, and effectively disclosed to consumers, such that consumers may better understand whether they owe particular debts and, consequently, the costs, benefits, and risks associated with paying or not paying those debts.

34(c)(2)(i)

FDCPA section 809(b) provides that a consumer may notify a debt collector in writing, within 30 days after receipt of the information required by FDCPA section 809(a), that the consumer is exercising certain verification rights, including the right to dispute the debt. FDCPA section 809(a)(3) through (5), in turn, requires debt collectors to disclose how consumers may exercise their verification rights. To notify a debt collector in writing that the consumer is exercising the consumer's verification rights, the consumer must have the debt collector's name and address.[455] For this reason, and pursuant to its authority to interpret FDCPA section 809(a)(3) through (5) and (b), as well as its authority under Dodd-Frank Act section 1032(a), the Bureau proposes § 1006.34(c)(2)(i) to provide that the debt collector's name and mailing address is validation information that must be provided to the consumer under § 1006.34(a)(1). The Bureau requests comment on proposed § 1006.34(c)(2)(i) and on whether additional clarification would be useful.

34(c)(2)(ii)

FDCPA section 809(a) requires debt collectors to disclose information about the debt itself that helps consumers identify the debt and facilitate resolution of the debt. Like the information specifically referenced in FDCPA section 809(a), the consumer's name and address is essential information about the debt that may help a consumer determine whether the consumer owes a debt and is the intended recipient of a validation notice. For this reason, and pursuant to its authority to interpret FDCPA section 809(a), as well as its authority under Dodd-Frank Act section 1032(a), the Bureau proposes § 1006.34(c)(2)(ii) to provide that the consumer's name and mailing address is validation information that must be provided to the consumer under § 1006.34(a)(1).[456]

To avoid confusing or misleading consumers, the consumer's name and mailing address used by the debt collector in a validation notice would be the most complete information that the debt collector obtained from the creditor or another source. For example, a consumer advocate has noted that including the consumer's complete name in the validation notice would help senior consumers who may be contacted about a debt owed by a spouse or an adult child. Because a consumer may share the same last name as a spouse or an adult child, the consumer may need complete name information—for example, a name suffix such as ''Junior'' or ''Senior''—to determine whether the consumer is the

[451] *Id.* at 29.

[452] FMG Focus Group Report, *supra* note 38, at 13.

[453] Academic research and agency experience offer insight into why some consumers may pay debts that they do not owe in response to debt collection efforts. In one study of how consumers would react to a validation notice concerning a debt that they did not owe, 3 percent of respondents stated that they would pay the debt rather than dispute it. The study's authors hypothesized that fear of negative credit reporting may explain this behavior. *See* Jeff Sovern et al., *Validation and Verification Vignettes: More Results from an Empirical Study of Consumer Understanding of Debt Collection Validation Notices,* Rutgers L. Rev. (forthcoming) (manuscript at 46–47), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3219171.* In a settlement agreement with a debt collector, the FTC alleged that many consumers paid purported debts that they did not owe because they believed that the debts were real, or because they wanted to stop harassing debt collection efforts. *See* Complaint at ¶ 22, *Fed. Trade Comm'n* v. *Lombardo Daniels & Moss, LLC.* No. 3:17–CV–503–RJC (W.D.N.C. Aug. 21, 2017), *https://www.ftc.gov/system/files/documents/cases/lombardo_complaint_8-29-17.pdf.*

[454] Proposed § 1006.34(c)(5) would establish a special rule for information about the debt for certain residential mortgage debt.

[455] Participants in the Bureau's consumer testing reported that contact information for debt collectors, including the debt collector's mailing address, is important. FMG Focus Group Report, *supra* note 38, at 15–16.

[456] As discussed in part VI, debt collectors may already include the consumer's complete name information available on validation notices, so proposed § 1006.34(c)(2)(ii) may not pose significant operational challenges.

validation notice's intended recipient, or whether the consumer received the validation notice in error. Proposed comment 34(c)(2)(ii)–1 therefore would clarify that the consumer's name should reflect what the debt collector reasonably determines is the most complete version of the name information about which the debt collector has knowledge, whether obtained from the creditor or another source. Proposed comment 34(c)(2)(ii)–1 further explains that a debt collector would not be able to omit name information in a manner that would create a false, misleading, or confusing impression about the consumer's identity.

The Bureau requests comment on proposed § 1006.34(c)(2)(ii) and on comment 34(c)(2)(ii)–1, including on whether additional clarification would be useful. The Bureau specifically requests comment on how debt collectors currently determine the complete version of a consumer's name if creditors or third parties, such as a skip tracing vendors, provide conflicting name information. The Bureau also requests comment on what a debt collector should be required to do to reasonably determine the consumer's complete name information.

34(c)(2)(iii)

The purpose of FDCPA section 809 is to ''eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid.'' [457] Consistent with this purpose, FDCPA section 809(a) requires debt collectors to disclose to consumers certain information, including the name of the creditor, to help consumers identify debts and determine whether they owe them. For credit card debts, the merchant brand appears to be an integral part of the name of the creditor that helps consumers identify debts and determine whether they owe them. Merchant brands appear to be salient information for debts arising from use of co-branded or private-label credit cards because consumers may associate such debts more closely with merchant brands than with credit card issuers.[458] For example, the Bureau's consumer focus group findings indicate consumers use merchant brands to recognize credit card debts.[459]

For this reason, and pursuant to its authority to interpret FDCPA section 809(a), as well as its authority under Dodd-Frank Act section 1032(a), the Bureau proposes § 1006.34(c)(2)(iii) to provide that the merchant brand, if any, associated with a credit card debt, to the extent available to the debt collector, is validation information that must be provided to the consumer under § 1006.34(a)(1). Proposed comment 34(c)(2)(iii)–1 provides an example of merchant brand information that the Bureau believes would be available to a debt collector and must be included on a validation notice. The Bureau requests comment on proposed § 1006.34(c)(2)(iii) and on comment 34(c)(2)(iii)–1. In particular, the Bureau requests comment on whether merchant brand or similar information should be required for debts other than credit card debts.

34(c)(2)(iv)

FDCPA section 809(a)(2), which requires debt collectors to disclose to consumers the name of the creditor to whom the debt is owed, typically is understood to refer to the current creditor.[460] When the original creditor (or the creditor as of the itemization date) and the current creditor are the same, a consumer is more likely to recognize the creditor's name. If they are different, however, a consumer may be less likely to recognize the current creditor. For example, after the itemization date, a creditor may have sold a debt to a debt buyer, or may have changed its corporate identity following a merger or acquisition, and the consumer may not have had any contact with the new entity before collections began. In these cases, the consumer may be more likely to recognize the name of the creditor as of the itemization date than the name of the current creditor. This is because (as discussed in the section-by-section analysis of proposed § 1006.34(b)(3)) the itemization date is intended to reflect a notable event in a debt's history that the consumer may recall, or for which the consumer may have records. A consumer may be more likely to recognize the creditor as of that date than the current creditor, with whom the consumer may have no prior relationship.

For these reasons, and pursuant to its authority under Dodd-Frank Act section 1032(a), the Bureau proposes § 1006.34(c)(2)(iv) to provide that, if a debt collector is collecting a consumer financial product or service debt, as that term is defined in § 1006.2(f), the name of the creditor to whom the debt was owed on the itemization date is validation information that the debt collector must provide to the consumer under § 1006.34(a)(1). The Bureau requests comment on proposed § 1006.34(c)(2)(iv).

34(c)(2)(v)

The purpose of FDCPA section 809 is to ''eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid.'' [461] The Bureau believes that the problem of debt collectors attempting to collect debts from consumers who do not owe the debts continues today. For example, ''attempts to collect debt not owed'' is consistently the most common type of debt collection complaint consumers provide to the Bureau.[462]

Consistent with the FDCPA's purpose, FDCPA section 809(a) requires debt collectors to disclose to consumers certain information, such as the amount of the debt itself, to help consumers identify debts. An account number associated with a debt on the itemization date may be integral information that a consumer uses to identify the debt itself. For example, the Bureau's consumer testing suggests that a validation notice that includes an account number appears to ease concerns that a debt is fraudulent because the consumer may recognize the number or be able to verify the debt with their records.[463] In addition, in response to the Bureau's ANPRM, State attorneys general, consumer advocates, and industry stakeholders all provided feedback that the account number associated with a debt may help a consumer recognize the debt. For these reasons, and pursuant to its authority to interpret FDCPA section 809(a), as well as its authority under Dodd-Frank Act section 1032(a), the Bureau proposes § 1006.34(c)(2)(v) to provide that the account number, if any, associated with the debt on the itemization date, or a

[457] S. Rept. No. 382, *supra* note 70, at 4.

[458] The Bureau believes that merchant brand information is unique to credit card debt. Other types of debt do not typically involve an entity like a merchant, whom the consumer may associate with the debt but who did not provide the credit, product, or service that gave rise to the debt.

[459] FMG Focus Group Report, *supra* note 38, at 13–14; FMG Usability Report, *supra* note 41, at 43–44.

[460] See the section-by-section analysis of proposed § 1006.34(c)(2)(vi) regarding FDCPA section 809(a)(2)'s requirement to disclose the name of the creditor to whom the debt is owed.

[461] S. Rept. No. 382, *supra* note 70, at 4.

[462] *See* 2019 FDCPA Annual Report, *supra* note 11, at 16 (40 percent of consumer complaints about debt collection involve attempts to collect debt not owed); 2018 FDCPA Annual Report, *supra* note 16, at 15 (39 percent of consumer complaints about debt collection involve attempts to collect debt not owed).

[463] FMG Focus Group Report, *supra* note 38, at 19.

truncated version of that number, is validation information that the debt collector must provide to the consumer under § 1006.34(a)(1).

Debt collectors may wish to truncate account numbers to prevent disclosure of consumer account information, or to comply with applicable privacy rules, such as the FTC Safeguards Rule.[464] Proposed comment 34(c)(2)(v)–1 explains that debt collectors may do so provided that the account number remains recognizable. For example, in lieu of disclosing a complete account number, debt collectors may disclose only the last four digits of the number. The Bureau requests comment on proposed § 1006.34(c)(2)(v) and on comment 34(c)(2)(v)–1, including on whether the Bureau should mandate truncation of account numbers rather than making truncation optional. Further, the Bureau requests comment on whether additional clarification about truncation would be helpful. For example, such clarification might explain when a truncated account number is recognizable, or how debt collectors may indicate that digits have been omitted from a truncated account number.

34(c)(2)(vi)

FDCPA section 809(a)(2) requires debt collectors to disclose to consumers the name of the creditor to whom the debt is owed. By using the present tense ''is owed,'' the statute appears to refer to the creditor to whom the debt is owed when the debt collector makes the disclosure. For this reason, and pursuant to its authority to implement and interpret FDCPA section 809(a)(2), the Bureau proposes § 1006.34(c)(2)(vi) to provide that the name of the current creditor is validation information that the debt collector must provide to the consumer under § 1006.34(a)(1).

34(c)(2)(vii)

FDCPA section 809(a)(1) requires debt collectors to disclose to consumers the amount of the debt. In § 1006.34(c)(2)(viii), the Bureau proposes to interpret FDCPA section 809(a)(1), and to use its authority under Dodd-Frank Act section 1032(a), to provide that the amount of the debt on the itemization date is validation information that the debt collector must disclose under § 1006.34(a)(1).[465] Consistent with proposed § 1006.34(c)(2)(viii)—and for the same reasons and pursuant to the same authority discussed in the section-by-section analysis thereof—the Bureau proposes § 1006.34(c)(2)(vii) to provide that the itemization date, as defined in § 1006.34(b)(3), also is validation information that must be provided to the consumer under § 1006.34(a)(1).[466] The itemization date would indicate the beginning of the time period that the itemization of the debt in proposed § 1006.34(c)(2)(ix) is intended to capture. The Bureau requests comment on proposed § 1006.34(c)(2)(vii).

34(c)(2)(viii)

FDCPA section 809(a)(1) requires debt collectors to disclose to consumers the amount of the debt. The phrase ''the amount of the debt'' is ambiguous; it does not specify which debt amount is being referred to, even though the debt amount may change over time. For example, because of accrued interest or fees, the current amount of the debt (*i.e.,* the amount on the date that the validation information is provided) may be more than the amount of the debt at origination. Because of applied payments or credits, the current amount of the debt also may be less than the amount of the debt the consumer originally incurred. If the amount of the debt has changed over time, consumers may not recognize the debt or the current amount of the debt. By contrast, consumers may recognize the amount of the debt as of the itemization date. As discussed in the section-by-section analysis of proposed § 1006.34(b)(3), the itemization date reflects a notable event in a debt's history that a consumer may recall or be able to verify with records, particularly if that amount is itemized as described in § 1006.34(c)(ix).

Because the amount of the debt on the itemization date may help a consumer recognize a debt and determine whether the amount of a debt is accurate, the Bureau proposes to interpret FDCPA section 809(a)(1), and to use its authority under Dodd-Frank Act section 1032(a), to provide in § 1006.34(c)(2)(viii) that the amount of the debt on the itemization date is validation information that the debt collector must provide to the consumer under § 1006.34(a)(1).[467] Proposed comment 34(c)(2)(viii)–1 explains that this amount includes any fees, interest, or other charges owed as of the itemization date. The Bureau requests comment on proposed § 1006.34(c)(2)(viii) and on comment 34(c)(2)(viii)–1.

34(c)(2)(ix)

FDCPA section 809(a)(1) requires a debt collector to disclose to consumers the amount of the debt. This disclosure is intended to help consumers recognize debts that they owe and raise concerns about debts that are unfamiliar or inaccurate. For the reasons discussed in the section-by-section analysis of proposed § 1006.34(c)(2)(viii) and (x), the Bureau proposes to implement and interpret FDCPA section 809(a)(1) to provide that debt collectors must disclose to consumers both the amount of the debt on the itemization date and the current amount of the debt (*i.e.,* the amount of the debt on the date that the validation information is provided).

In conjunction with the amount of the debt on the itemization date and the current amount of the debt, an itemization of how the amount of the debt changed between those dates may be an integral part of the amount of the debt. Specifically, consumers may be better positioned to recognize whether they owe a debt and to evaluate whether the current amount alleged due is accurate if they understand how the amount changed over time due, for example, to interest, fees, payments, and credits that have been assessed or applied to the debt.

The Bureau's qualitative consumer testing indicates that an itemization appears to improve consumer understanding about and recognition of the debt.[468] In particular, some testing participants emphasized that an itemization in a tabular format helped them understand specific fees and charges.[469] The FTC has also suggested that the validation notice should contain an itemization that includes principal, interest, and fees.[470] Some State debt collection laws also require that the validation notice include an itemization.[471]

Courts have also observed that an itemization may enhance consumer understanding. Some courts have opined that an itemized accounting helps a consumer assess the validity of

[464] *See* 16 CFR part 314.

[465] See the section-by-section analysis of proposed § 1006.34(c)(2)(viii).

[466] As discussed in the section-by-section analysis of proposed § 1006.34(b)(3) and (c)(2)(viii) and (ix), the itemization date is the reference date for, among other things, the itemization of the debt, which the Bureau believes may help a consumer identify an alleged debt. For additional discussion of these provisions, see the section-by-section analysis of proposed § 1006.34(c)(2)(iv) and (v).

[467] Proposed § 1006.34(c)(2)(x) separately provides that the current amount of the debt also is validation information that must be disclosed under § 1006.34(a)(1). See the section-by-section analysis of proposed § 1006.34(c)(2)(x).

[468] FMG Usability Report, *supra* note 41, at 16–19.

[469] FMG Cognitive Report, *supra* note 40, at 10.

[470] FTC Modernization Report, *supra* note 176, at v.

[471] *See* Cal. Civ. Code sec. 1788.52(a)(2); NYCRR § 1.2(b)(2).

an alleged debt.[472] Further, some courts have held that a debt collector's failure to properly disclose interest and fees—or to disclose that a debt may increase in the future due to interest and fees—may violate the FDCPA.[473]

An itemization also may discourage debt collectors from engaging in unfair, deceptive, or abusive practices by ensuring that consumers have, as a matter of course, sufficient information to evaluate claims of indebtedness presented in validation notices. For example, requiring a debt collector to disclose an itemization of the debt may help a consumer identify erroneous or fabricated fees that a creditor or debt collector may have added that inflated the amount of an alleged debt. An itemization requirement also may help debt collectors disclose interest and fees in a manner that provides essential information to consumers and reduces debt collectors' legal risk when providing validation notices.

For these reasons, and pursuant to its authority to interpret FDCPA section 809(a)(1), as well as its authority under Dodd-Frank Act section 1032(a), the Bureau proposes § 1006.34(c)(2)(ix) to provide that an itemization of the current amount of the debt, in a tabular format reflecting interest, fees, payments, and credits since the itemization date, is validation information that must be provided to the consumer under § 1006.34(a)(1). Proposed comment 34(c)(2)(ix)–1 would clarify how debt collectors can disclose that no interest, fees, payments, or credits were assessed or applied to a debt.

The Bureau requests comment on proposed § 1006.34(c)(2)(ix) and on comment 34(c)(2)(ix)–1. In particular, the Bureau requests comment on whether the itemization should be more detailed—for example, by reflecting each fee charged and each payment received—or whether certain itemization categories, such as credits and payments, should be combined. The Bureau also requests comment on whether the itemization proposal is practicable across all categories of debt or conflicts with disclosure requirements established by other applicable law, such as State case law, statutory law, and regulatory law, as well as disclosures required by judicial opinions or orders.

34(c)(2)(x)

FDCPA section 809(a)(1) requires debt collectors to disclose to consumers the amount of the debt. As noted, however, the phrase ''the amount of the debt'' is ambiguous; it does not specify which debt amount is being referred to, even though the debt amount may change over time. One reasonable interpretation of FDCPA section 809(a)(1) is that ''amount of the debt'' refers to the current amount of the debt, which is the amount of the debt on the date that the validation information is provided. For this reason, and pursuant to its authority to implement and interpret FDCPA section 809(a)(1), proposed § 1006.34(c)(2)(x) provides that the current amount of the debt is validation information that the debt collector must provide to the consumer under § 1006.34(a)(1).

Proposed comment 34(c)(2)(x)–1 explains that, for residential mortgage debt subject to § 1006.34(c)(5), a debt collector may comply with § 1006.34(c)(2)(x) by including in the validation notice the total balance of the outstanding mortgage, including principal, interest, fees, and other charges. The Bureau proposes this to accommodate debt collectors collecting mortgage debt, who sometimes disclose to consumers the total balance of the outstanding mortgage, rather than the current amount due on a given date when providing the amount of the debt pursuant to FDCPA section 809(a)(1).[474] The Bureau requests comment on proposed § 1006.34(c)(2)(x) and on comment 34(c)(2)(x)–1.

34(c)(3) Information About Consumer Protections

The disclosures in FDCPA section 809(a) help consumers determine if a particular debt is theirs and facilitate action in response to a collection attempt. The Bureau understands, however, that debt collectors typically may disclose only the information that FDCPA section 809(a) specifically references and may provide the FDCPA section 809 information using statutory language, rather than plain language that consumers can more easily comprehend.

Consumer advocates, State agencies, and State attorneys general provided ANPRM feedback that validation notices do not contain enough information about a consumer's rights with respect to debt collection.[475] The FTC similarly has asserted that debt collectors generally do not provide enough information about the actions consumers may take under the FDCPA, which makes it difficult for some consumers to exercise those rights.[476] The Bureau's consumer focus group findings also indicate that consumers often are unfamiliar with or have erroneous beliefs about their FDCPA rights.[477] Many testing participants responded favorably to sample validation notices that disclosed additional rights and protections.[478] Consumer testing also suggests that consumers generally prefer disclosures written in plain language, as opposed to statutory language.[479]

To address these concerns, proposed § 1006.34(c)(3) would deem certain information about a consumer's rights with respect to debt collection to be validation information that must be provided to the consumer under § 1006.34(a)(1). This information, which is discussed in the section-by-section analysis of proposed § 1006.34(c)(3)(i) through (vi), would include disclosures specifically referenced in FDCPA

[472] *See, e.g., Haddad* v. *Alexander, Zelmanski, Danner & Fioritto, PLLC,* 758 F. 3d 777, 785 (6th Cir. 2015).

[473] *See Avila* v. *Riexinger & Associates, LLC,* 817 F.3d 72, 76 (2d Cir. 2016) (holding that 15 U.S.C. 1692e requires debt collectors to disclose when the amount of a debt may increase due to interest and fees); *Miller* v. *McCalla, Raymer, Padrick, Cobb, Nichols, and Clark, LLC,* 214 F.3d 872, 875–76 (7th Cir. 2000) (finding that a validation notice's omission of accrued interest and fees violated 15 U.S.C. 1692g(a)(1)'s requirement to disclose the amount of the debt); *Wood* v. *Allied Interstate, LLC* (17 C 4921), 2018 WL 2967061, at *2–3 (N.D. Ill. June 13, 2018) (holding that an itemization that listed ''$0.00'' due in interest and fees, when interest and fees were not allowed, could violate 15 U.S.C. 1692e and 1692f).

[474] Under Regulation Z, 12 CFR 1026.41(d)(3), certain mortgage servicers are required to provide a past-payment breakdown that may be functionally equivalent to, and as useful for the consumer, as the disclosures that would be required by proposed § 1006.34(c)(2)(vii) through (ix). As discussed in the section-by-section analysis of proposed § 1006.34(c)(5), the Bureau proposes a special rule that would allow servicers of certain residential mortgage debt to satisfy the requirements of proposed § 1006.34(c)(2)(vii) through (ix) by providing disclosures required by Regulation Z, 12 CFR 1026.41(d)(3).

[475] Consumer complaints received by the Bureau tend to corroborate this feedback. In its 2019 FDCPA Annual Report, the Bureau noted that 25 percent of consumers who complained about written notifications about debt stated that they did not receive a notice of their right to dispute. *See* 2019 FDCPA Annual Report, *supra* note 11, at 17.

[476] FTC Modernization Report, *supra* note 176, at v. The notion that some consumers may have difficulty exercising FDCPA verification rights is supported by one academic study that found a substantial proportion of survey respondents did not understand they would need to dispute a debt in writing to trigger certain FDCPA protections. According to the study, 75 percent of consumers who were shown a court-approved validation notice believed that they could orally exercise their verification rights, even though the notice expressly stated that disputes must be in writing. *See* Jeff Sovern & Kate E. Walton, ''Are Validation Notices Valid? An Empirical Evaluation of Consumer Understanding of Debt Collection Validation Notices,'' 70 SMU L. Rev. 63, at 94–98 (2017).

[477] FMG Focus Group Report, *supra* note 38, at 6–8.

[478] FMG Cognitive Report, *supra* note 40, at 27–33.

[479] *Id.* at 26–27; FMG Summary Report, *supra* note 42, at 25–26.

section 809(a)(4) and (5), as well as additional disclosures intended to help consumers understand their debt collection rights.[480] The Bureau requests comment on proposed § 1006.34(c)(3) generally, including on whether any of the proposed items should be excluded or any additional items should be added.

The Bureau proposes § 1006.34(c)(3)(i) through (iii) and (v) pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors and, as described more fully below, its authority to implement and interpret FDCPA section 809. The Bureau also proposes § 1006.34(c)(3) pursuant to its authority under section 1032(a) of the Dodd-Frank Act, on the basis that a consumer's rights are a feature of debt collection. Requiring disclosure of information about these rights may help to ensure that the features of debt collection are fully, accurately, and effectively disclosed to consumers, such that consumers may better understand the costs, benefits, and risks associated with debt collection.

34(c)(3)(i)

FDCPA section 809(a)(4) requires debt collectors to disclose to consumers their right under FDCPA section 809(b) to dispute the validity of the debt within 30 days after receipt of the validation information (*i.e.,* during the validation period). As discussed in the section-by-section analysis of proposed § 1006.38, if a consumer disputes a debt in accordance with FDCPA section 809(b), a debt collector must cease collecting the debt until the debt collector provides verification to the consumer; this is sometimes referred to as the collections pause. FDCPA section 809(a)(4) does not expressly indicate that a debt collector must disclose to consumers that a dispute triggers FDCPA section 809(b)'s collections pause, or whether a debt collector must disclose the end date of the validation period.

FDCPA section 809(b)'s collections pause is an integral feature of the dispute right disclosure required by FDCPA section 809(a)(4). Unless debt collectors disclose the collections pause, consumers may not fully appreciate their FDCPA dispute right. Participants in the Bureau's consumer testing reported that knowing about the collections pause was important and would encourage them to exercise their dispute right if they question a debt's validity.[481] This is consistent with the FTC's observation that consumers are generally unaware of the collections pause, even though it may benefit them.[482]

The validation period end date similarly is an integral feature of a consumer's dispute right. Unless debt collectors disclose the end date of the validation period, consumers may be uncertain about the time period during which they are entitled to dispute the debt under FDCPA section 809(b).

For these reasons, and pursuant to its authority to interpret FDCPA section 809(a)(4) and (b), as well as its authority under Dodd-Frank Act section 1032(a), the Bureau proposes § 1006.34(c)(3)(i) to provide that validation information includes a statement that specifies the end date of the validation period and states that, if the consumer notifies the debt collector in writing before the end of the validation period that the debt, or any portion of the debt, is disputed, the debt collector must cease collection of the debt until the debt collector sends the consumer either the verification of the debt or a copy of a judgment. The Bureau requests comment on proposed § 1006.34(c)(3)(i).

34(c)(3)(ii)

FDCPA section 809(a)(5) requires debt collectors to disclose to consumers their right under FDCPA section 809(b) to request, within 30 days after receipt of the validation information, the name and address of the original creditor, if different than the current creditor. FDCPA section 809(a)(5) does not expressly indicate that a debt collector must disclose to consumers that an original-creditor information request invokes FDCPA section 809(b)'s collections pause, or whether a debt collector must disclose the end date of the validation period.

FDCPA section 809(b)'s collections pause is an integral feature of the consumer's right to request original-creditor information under FDCPA section 809(a)(5). Unless debt collectors disclose the collections pause, consumers may not fully appreciate their right to request original-creditor information under FDCPA section 809(b).

The validation period end date similarly is an integral feature of a consumer's right to request original-creditor information. Unless debt collectors disclose the validation period end date, consumers may be uncertain about the time period during which they are entitled to request original-creditor information under FDCPA section 809(b).

For these reasons, and pursuant to its authority to interpret FDCPA section 809(a)(5) and (b), as well as its authority under Dodd-Frank Act section 1032(a), the Bureau proposes § 1006.34(c)(3)(ii) to provide that validation information includes a statement that specifies the end date of the validation period and states that, if the consumer requests in writing before the end of the validation period the name and address of the original creditor, the debt collector must cease collection of the debt until the debt collector sends the consumer the name and address of the original creditor, if different from the current creditor. The Bureau requests comment on proposed § 1006.34(c)(3)(ii). In particular, the Bureau notes that the proposed § 1006.34(c)(3)(ii) disclosure language that appears on proposed Model Form B–3 omits the statutory phrase, ''if different from the current creditor.'' The Bureau intentionally omitted this phrase to achieve a plain language disclosure that enhances consumer understanding. The Bureau requests comment on whether omitting this phrase on proposed Model Form B–3 would enhance consumer understanding by simplifying the statutory language, or whether it might lead consumers incorrectly to conclude that a debt collector always would need to cease collection upon request for original-creditor information, even if the original creditor and the current creditor were the same.

34(c)(3)(iii)

FDCPA section 809(a)(3) requires a debt collector to disclose to a consumer that, unless the consumer disputes the validity of the debt within 30 days of receipt of the validation information, the debt collector will assume the debt to be valid. The Bureau is aware that courts in various jurisdictions have reached different conclusions about whether FDCPA section 809(a)(3) requires debt collectors to recognize oral disputes, received within 30 days of a consumer's receipt of the validation information, about the validity of the debt.[483] These differing decisions

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

[481] FMG Cognitive Report, *supra* note 40, at 30; *see also* FMG Summary Report, *supra* note 42, at 25.

[482] FTC Modernization Report, *supra* note 176, at 26–27.

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

Continued

principally arise from the fact that, whereas FDCPA section 809(a)(4) and (5) explicitly require a consumer to submit a written dispute to invoke the FDCPA's verification rights, FDCPA section 809(a)(3) specifies no writing requirement. In the absence of an express writing requirement in FDCPA section 809(a)(3), the majority of circuit courts that have considered this issue have determined that a consumer's oral dispute triggers certain FDCPA protections, including, for example, FDCPA section 810's payment application requirement.[484] These decisions have created uncertainty for debt collectors in some jurisdictions when seeking to comply with FDCPA section 809(a)'s disclosure requirements.[485]

Consistent with the position articulated by the majority of circuit courts, and pursuant to its authority to implement and interpret FDCPA section 809(a)(3) as well as its authority under Dodd-Frank Act section 1032(a), the Bureau proposes to interpret FDCPA 809(a)(3) to allow oral disputes. The Bureau believes that this may be the most persuasive interpretation of Congressional intent, given the lack of the words ''in writing'' in FDCPA 809(a)(3), as compared to the presence of those words throughout FDCPA 809(a)'s other provisions. Accordingly, the Bureau proposes § 1006.34(c)(3)(iii) to provide that validation information includes a statement that specifies the end date of the validation period and states that, unless the consumer contacts the debt collector to dispute the validity of the debt, or any portion of the debt, before the end of the validation period, the debt collector will assume that the debt is valid. Model Form B–3 would inform consumers that they have the option to ''call'' or ''write'' a debt collector to dispute the validity of a debt during the validation period. While Model Form B–3 would alert consumers to an oral dispute option, the form would clarify that only a written dispute would invoke verification rights pursuant to FDCPA sections 809(a)(4) and (5).[486] As discussed in the section-by-section analysis of proposed § 1006.34(d)(2), the use of Model Form B–3 would provide debt collectors with a safe harbor for compliance with FDCPA section 809(a)'s disclosure requirements.[487] The Bureau requests comment on whether debt collectors require additional clarification about how to comply with FDCPA section 809(a)(3).

34(c)(3)(iv)

As discussed in the section-by-section analysis of proposed § 1006.34(c)(3), consumers may not receive sufficient information about their rights and protections in debt collection. While validation information helps consumers determine if a particular debt is theirs and facilitates action in response to a collection attempt, consumers could benefit if validation information included additional information about consumer protections in debt collection. The Bureau makes such information available on its website and intends to develop additional resources to enhance consumer understanding of these protections and the debt collection process in general. The Bureau is developing a reference document that would describe certain legal protections relevant to debt collection. This reference document was initially conceived as a mandatory disclosure that debt collectors would be required to provide to consumers along with the validation notice. Although the Bureau does not propose to require debt collectors to provide the reference document to consumers, if the Bureau finalizes proposed § 1006.34(c)(3)(iv), the Bureau would publish a version of the document as a consumer resource on the Bureau's website before the final rule's effective date.[488]

To enhance consumer understanding of protections available during the debt collection process, and pursuant to its authority under Dodd-Frank Act section 1032(a), the Bureau proposes § 1006.34(c)(3)(iv) to provide that, if a debt collector is collecting a consumer financial product or service debt, as defined in § 1006.2(f), then validation information includes a statement that informs the consumer that additional information regarding consumer rights in debt collection is available on the Bureau's website at *https://www.consumerfinance.gov*.[489] The Bureau proposes this requirement on the basis that this information informs consumers how to exercise their FDCPA rights and protections and therefore is a feature of debt collection. The Bureau requests comment on proposed § 1006.34(c)(3)(iv).

34(c)(3)(v)

As discussed below, proposed § 1006.34(c)(4) would provide that validation information includes information that a consumer can use to take certain actions, which generally include disputing a debt or requesting original-creditor information.[490] As discussed in the section-by-section analysis of proposed § 1006.34(c)(3)(i) and (ii), FDCPA section 809(b) provides that consumers must notify a debt collector ''in writing'' to dispute a debt or request original-creditor information. As discussed in the section-by-section analysis of proposed § 1006.38, the Bureau would interpret FDCPA section 809(b)'s writing requirement as being satisfied when a consumer submits a dispute or request for original-creditor information to the debt collector via a medium of electronic communication through which a debt collector accepts electronic communications from consumers, such as email or a website portal. Thus, debt collectors only would be required to give legal effect to consumer disputes or requests for original-creditor information submitted electronically where a debt collector chooses to accept electronic communications from consumers. This would apply regardless of whether the validation notice itself is delivered electronically.

Further, FDCPA section 809(b) prohibits debt collector communications during the validation period that are inconsistent with the disclosure of a consumer's verification rights. If debt collectors refuse to accept consumers' disputes or requests for original-creditor information through a medium of electronic communication after

*Recovery Assocs., LLC,* (No. 18–2335), 2019 WL 121197, at *3–4 (E.D. Pa. Jan. 7, 2019) (holding that a validation notice that ''mirror[ed] the language'' of the FDCPA section 809 still violated the FDCPA because disputes must be in writing).

[484] *See* 15 U.S.C. 1692i; *Camacho,* 430 F.3d at 1081–82 (holding that oral disputes trigger certain FDCPA protections, including under FDCPA sections 807(8) and 810).

[485] *See, e.g., Caprio* v. *Healthcare Revenue Recovery Grp.,* 709 F.3d 142, 151–52 (3d Cir. 2013) (holding that a collection letter encouraging a consumer to ''please call'' the debt collector violated FDCPA section 809(a)); *Riggs* v. *Prober & Raphael,* 681 F.3d 1097, 1103–04 (9th Cir. 2012) (holding that a validation notice that implied a written dispute requirement—but that did not expressly require a written dispute—did not violate FDCPA section 809(a)(3)); *Homer* v. *Law Offices of Frederic I. Weinberg & Assocs., P.C.,* 292 F. Supp. 3d 629, 633–34 (E.D. Pa. 2017) (holding that a validation notice that used ''hears from you'' language was deceptive because it suggested that disputes could be made orally).

[486] See the section-by-section analysis of proposed § 1006.34(c)(3)(i) and (ii).

[487] See the section-by-section analysis of proposed § 1006.34(d)(2).

[488] For additional detail about information that may appear on the reference document, refer to appendix G of the Small Business Review Panel Outline, *supra* note 56.

[489] To the extent that the Bureau develops a more specific landing page for information about consumer protections during the debt collection process, the Bureau would include the website address for that landing page in a final rule.

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

providing an electronic validation notice through that same medium, consumers may become confused about how to exercise their verification rights. While the FDCPA does not directly address electronic debt collection communications, a reasonable consumer could expect to be able to respond to a debt collector through the same medium of electronic communication that the debt collector used to contact the consumer. Because of the potential for confusion, a debt collector's refusal to accept a dispute or request for original-creditor information electronically after providing a validation notice electronically may be inconsistent with the effective disclosure of the consumer's verification rights.

For these reasons, and pursuant to its authority to interpret FDCPA section 809(a) and (b), as well as its authority under Dodd-Frank Act section 1032(a), the Bureau proposes § 1006.34(c)(3)(v) to provide that validation information includes a statement explaining how a consumer can take the actions described in § 1006.34(c)(4) electronically, if the debt collector sends the validation notice electronically. Proposed comment 34(c)(3)(v)–1 explains that a debt collector may provide the information described in proposed § 1006.34(c)(3)(v) by including the statements, ''We accept disputes electronically,'' using that phrase or a substantially similar phrase, followed by an email address or website portal that a consumer can use to take the action described in § 1006.34(c)(4)(i), and ''We accept original creditor information requests electronically,'' using that phrase or a substantially similar phrase, followed by an email address or website portal that a consumer can use to take the action described in § 1006.34(c)(4)(ii). Proposed comment 34(c)(3)(v)–1 also would clarify that, if a debt collector accepts electronic communications from consumers through more than one medium, such as by email and through a website portal, the debt collector is only required to provide information regarding one of these media but may provide information about additional media.

During the SBREFA process, small entity representatives supported the Bureau's proposal to clarify how debt collectors could use newer communication technologies, such as email and text messages, which some consumers may prefer.[491] Consistent with this feedback, the Small Business Review Panel Report recommended that the Bureau consider whether the debt collection rule should promote newer communication technologies, and, if so, establish guidelines for the appropriate use of such technologies.[492] Proposed § 1006.34(c)(3)(v) is responsive to this feedback. The Bureau requests comment on proposed § 1006.34(c)(3)(v) and on comment 34(c)(3)(v)–1.

34(c)(3)(vi)

As discussed elsewhere in this proposed rule—for example, in the section-by-section analysis of proposed § 1006.42—the use of electronic media such as email and text messages for debt collection communications may further the interests of both consumers and debt collectors, but communications sent by such media may require tailored protections for consumers. One such protection, as proposed in § 1006.6(e), would require 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 a text message, or other electronic-medium address to include in such communication or attempt to communicate a clear and conspicuous statement describing one or more ways the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number.

Consistent with proposed § 1006.6(e), and pursuant to the legal authorities discussed in the section-by-section analysis thereof, the Bureau proposes § 1006.34(c)(3)(vi) to provide that, for a validation notice delivered in the body of an email pursuant to § 1006.42(b)(1) or (c)(2)(i), validation information includes the opt-out statement required by § 1006.6(e). Proposed comment 34(c)(3)(vi)–1 explains that, if a validation notice is delivered on a website pursuant to § 1006.42(c)(2)(ii), the validation notice need not contain the opt-out statement because the statement will be required in any email or text message that provides a hyperlink to the website where the notice is placed. Proposed comment 34(c)(3)(vi)–1 further explains that delivery of a validation notice that a debt collector previously provided pursuant to § 1006.42(b)(1) or (c)(2)(i) or (ii) is not rendered ineffective because a consumer opts out of future electronic communications. The Bureau requests comment on proposed § 1006.34(c)(3)(vi) and on comment 34(c)(3)(vi)–1.

34(c)(4) Consumer Response Information

The FTC has noted that some consumers do not receive sufficient information explaining how they may exercise their FDCPA rights.[493] This observation is consistent with at least one academic study, which found that many consumers did not understand how to properly exercise their FDCPA verification rights even after reviewing a typical validation notice.[494]

During the development of this proposal, the Bureau tested validation notices that included information about how consumers could exercise their FDCPA verification rights using a separate section of the notice, which consumers could detach and return to the debt collector. For purposes of this section-by-section analysis, the Bureau refers to this information as consumer response information. The Bureau's usability testing indicated that consumers understood that they could use the consumer response information to dispute a debt, or to communicate that information about the debt in the validation notice was incorrect.[495] The usability testing findings thus indicated that the consumer response information enhanced consumers' comprehension of their dispute rights.[496]

The Bureau's testing suggests that requiring debt collectors to disclose consumer response information, segregated from other validation information, appears to help consumers exercise their FDCPA section 809(b) rights to dispute the validity of a debt and to request original-creditor information. Further, the consumer response information may facilitate a debt collector's ability to process and understand a consumer's response to a validation notice. For example, by requiring the consumer response information section to include statements describing specific reasons for disputes, proposed § 1006.34(c)(4) could reduce the burden of responding to generic or ambiguous disputes. While the proposal would not require consumers to indicate a specific dispute

[491] *See* Small Business Review Panel Report, *supra* note 57, at 16–17; *see also* CFPB Debt Collection Consumer Survey, *supra* note 18, at 37 (finding that email was the most preferred contact method for 11 percent of consumers contacted about a debt in collection).

[492] Small Business Review Panel Report, *supra* note 57, at 38.

[493] *See* FTC Modernization Report, *supra* note 176, at v.

[494] *See* Jeff Sovern & Kate E. Walton, *Are Validation Notices Valid? An Empirical Evaluation of Consumer Understanding of Debt Collection Validation Notices,* 70 SMU L. Rev. 63, 94–98 (2017).

[495] *See* FMG Usability Report, *supra* note 41, at 59–60.

[496] *See id.*

description listed in the consumer response information, consumers may be likely to do so, thereby lessening the number of generic disputes (*e.g.,* a communication that only contains the statement ''I dispute'' with no further detail) sent to debt collectors.[497]

For these reasons, the Bureau proposes requiring a consumer response information section on the validation notice. Specifically, proposed § 1006.34(c)(4) provides that the validation information that must be disclosed under § 1006.34(a)(1) includes certain consumer response information situated next to prompts that the consumer could use to indicate that action or request. The information, which is discussed in the section-by-section analysis of proposed § 1006.34(c)(4)(i) through (iii), would include statements describing certain actions that a consumer could take, including submitting a dispute, identifying the reason for the dispute, providing additional detail about the dispute, and requesting original-creditor information.[498]

Proposed § 1006.34(c)(4) provides that the consumer response information section must be segregated from the validation information described in § 1006.34(c)(1) through (3) and from any optional information included pursuant to § 1006.34(d)(3)(i), (ii), (iv), or (v) and, if the validation information is provided in writing or electronically, located at the bottom of the notice and under the headings, ''How do you want to respond?'' and ''Check all that apply:''. Requiring the consumer response information section to be presented in this manner may help consumers respond to the disclosures required under § 1006.34(a)(1). Specifically, requiring the information to be located at the bottom of a validation notice may enable consumers to use the bottom section of the notice to reply to the debt collector while retaining the required disclosures located in the validation notice's upper section. Proposed comment 34(c)(4)–1 would clarify that, if the validation information is provided in writing or electronically, a prompt described in § 1006.34(c)(4) may be formatted as a checkbox, as in Model Form B–3.

The Bureau requests comment on proposed § 1006.34(c)(4). The Bureau specifically requests comment on whether validation information should include consumer response information, and, if so, on whether any of the proposed items should be excluded or any additional items should be added.

The Bureau proposes § 1006.34(c)(4) pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors and, as described more fully below, its authority to implement and interpret FDCPA section 809. The Bureau also proposes § 1006.34(c)(4) pursuant to its authority under section 1032(a) of the Dodd-Frank Act, on the basis that the information in proposed § 1006.34(c)(4)(i) through (iii) informs consumers how to exercise their rights under FDCPA section 809(b) and therefore is a feature of debt collection. Requiring disclosure of the information may help to ensure that the features of debt collection are fully, accurately, and effectively disclosed to consumers, such that consumers may better understand the costs, benefits and risks associated with debt collection.

34(c)(4)(i) Dispute Prompts

FDCPA section 809(a)(4) requires a debt collector to disclose to consumers their right under FDCPA section 809(b) to dispute the validity of the debt within 30 days after receipt of the validation notice. As discussed in the section-by-section analysis of proposed § 1006.34(c)(3)(i), which would implement and interpret FDCPA section 809(a)(4), some consumers may not adequately understand this FDCPA dispute right or may face challenges when attempting to exercise it. Providing consumers with prepared dispute statements may assist consumers by helping them articulate the nature of their disputes. Enabling consumers to communicate specific information about their disputes also may reduce the number of burdensome, generic disputes received by debt collectors and may allow debt collectors to provide more relevant information in response.

For this reason, and pursuant to its authority to implement and interpret FDCPA section 809(a)(4), as well as its authority under Dodd-Frank Act section 1032(a), the Bureau proposes § 1006.34(c)(4)(i) to provide that consumer response information includes statements, situated next to prompts, that the consumer can use to dispute the validity of a debt and to specify a reason for that dispute. Proposed § 1006.34(c)(4)(i), which is designed to work in tandem with proposed § 1006.34(c)(3)(i), would provide that consumer response information includes the following four statements, listed in the following order, using the following phrasing or substantially similar phrasing,[499] each next to a prompt: ''I want to dispute the debt because I think:''; ''This is not my debt''; ''The amount is wrong''; and ''Other: (please describe on reverse or attach additional information).'' The first three proposed dispute categories appear to capture the vast majority of consumer disputes about the validity of a debt.

During the SBREFA process, small entity representatives suggested that including dispute prompts in the validation notice could increase dispute volume and frequency, which could cause debt collectors to incur more costs investigating and responding to disputes. Some small entity representatives particularly were concerned that the consumer response information might increase the number of generic disputes that lack enough detail for debt collectors to provide responsive information to consumers. Several small entity representatives also objected to a potential dispute prompt that would state, ''You are not the right person to pay,'' noting that this statement would not provide debt collectors enough information to respond effectively to the dispute and would require the debt collector to re-contact the consumer, imposing costs on both debt collectors and consumers. The Small Business Review Panel Report recommended that the Bureau consider further its proposed consumer response information, including soliciting more specific disputes.

In response to this feedback, the proposed rule omits the dispute prompt, ''You are not the right person to pay.'' However, the proposed rule retains the consumer response information concept. Proposed § 1006.34(c)(4)(i) may facilitate consumers' ability to exercise their dispute right, which is an important FDCPA protection. In addition, proposed § 1006.34(c)(2), by requiring more information about the debt, may help consumers recognize debts that they owe, reducing the number of disputes arising from lack of consumer recognition and, thereby, limiting overall dispute volume. Further, any information that consumers provide in response to the free-form dispute prompt in proposed § 1006.34(c)(4)(i)(D) could help debt collectors better understand the nature of a consumer's dispute and respond

[497] Usability testing findings suggested that consumers generally understood how to use the consumer response information section to indicate a specific reason for a dispute. *See id.* at 59–61.

[498] As discussed in the section-by-section analysis of proposed § 1006.34(d)(3)(iii)(B) and (vi)(B), a debt collector also could choose to include a payment disclosure and Spanish-language validation notice request disclosure as consumer response information.

[499] To provide debt collectors with greater flexibility, the Bureau does not propose to require a debt collector to use the exact phrasing set forth in proposed § 1006.34(c)(4)(i).

more efficiently than if consumers had provided generic disputes.

The Bureau requests comment on proposed § 1006.34(c)(4)(i), including on whether any dispute prompts should be added, revised, or removed. In addition, the Bureau requests comment on the potential risks, costs, and benefits of the dispute prompts for both consumers and industry, including on whether proposed § 1006.34(c)(4)(i) will impact dispute volumes or affect the proportion of specific disputes that debt collectors receive as compared to generic disputes.

As discussed in the section-by-section analysis of proposed § 1006.38, the Bureau would interpret FDCPA section 809(b) to require a debt collector to honor disputes that a consumer provides via a medium of written electronic communication [500] accepted by the debt collector, such as a dispute portal accessed on or through a hyperlink in an electronic communication. The Bureau declines to propose requirements related to debt collector website communications, including the content or formatting of dispute information accessible via website or hyperlink.[501] The Bureau requests comment on whether the Bureau should propose rules concerning website communications. In particular, the Bureau requests comment about the risks, costs, and benefits to consumers and industry related to prescribing requirements for the content and formatting of debt collector website communications.

34(c)(4)(ii) Original-Creditor Information Prompt

FDCPA section 809(a)(5) requires a debt collector to disclose to consumers their right under FDCPA section 809(b) to request the name and address of the original creditor, if different from the current creditor.[502] As discussed in the section-by-section analysis of proposed § 1006.34(c)(3)(ii), which would implement and interpret FDCPA section 809(a)(5), some consumers may not adequately understand their right to request original-creditor information or how to exercise it. Providing consumers with a prepared statement that they could use to request original-creditor information could help to address this concern.

For this reason, and pursuant to its authority to interpret FDCPA section 809(a)(5), as well as its authority under Dodd-Frank Act section 1032(a), the Bureau proposes § 1006.34(c)(4)(ii) to provide that consumer response information includes the statement, ''I want you to send me the name and address of the original creditor,'' using that phrase or a substantially similar phrase, next to a prompt the consumer could use to request original-creditor information. Proposed § 1006.34(c)(4)(ii) is intended to work in tandem with proposed § 1006.34(c)(3)(ii). The Bureau requests comment on proposed § 1006.34(c)(4)(ii).

34(c)(4)(iii) Mailing Addresses

FDCPA section 809(b) assumes that a consumer has the ability to write to a debt collector to exercise the consumer's verification rights. Requiring a debt collector to include mailing addresses for the consumer and the debt collector, which would include the consumer's and the debt collector's names, along with the consumer response information described in proposed § 1006.34(c)(4)(i) and (ii), may facilitate consumers' use of that address information to exercise their debt collection rights. For example, for mailed validation notices, a debt collector may choose to format the addresses to appear in a return envelope's glassine window, which the Bureau understands is industry practice. Alternatively, the mailing address may be useful in the event the consumer loses the upper portion of the validation notice containing the debt collector's contact information. In this scenario, the consumer also could review the mailing address in the consumer response information section to confirm that the consumer was the intended recipient of the validation notice. For these reasons, and pursuant to its authority to implement FDCPA section 809(a), as well as its authority under Dodd-Frank Act section 1032(a), the Bureau proposes § 1006.34(c)(4)(iii) to provide that consumer response information includes mailing addresses for the consumer and the debt collector.

The Bureau requests comment on proposed § 1006.34(c)(4)(iii). The Bureau understands that some debt collectors use letter vendors to mail validation notices and that, in some cases, the letter vendor's mailing address may appear on validation notices in lieu of the debt collector's mailing address. The Bureau requests comment on whether proposed § 1006.34(c)(4)(iii) would be consistent with current practices related to debt collectors' use of letter vendors to mail validation notices.

34(c)(5) Special Rule for Certain Residential Mortgage Debt

FDCPA section 809(a)(1) requires a debt collector to disclose to consumers the amount of the debt. As discussed in the section-by-section analysis of proposed § 1006.34(c)(2)(vii) through (ix), the Bureau interprets FDCPA section 809(a)(1) to require debt collectors to disclose three pieces of itemization-related information: The itemization date; the amount of the debt on the itemization date; and an itemization of the debt reflecting interest, fees, payments, and credits since the itemization date.[503] The Bureau proposes to establish a special rule that would replace these disclosure requirements for debt collectors collecting certain residential mortgage debt.

For certain residential mortgage debt subject to 12 CFR 1026.41, 12 CFR 1026.41(b) generally requires that a periodic statement be delivered or placed in the mail within a reasonably prompt time after the payment due date or the end of any courtesy period provided for the previous billing cycle. The Bureau believes that most residential mortgage debt is subject to this requirement, although exceptions exist.[504] The Bureau understands that a consumer is provided with such a periodic statement every billing cycle, even when a loan is transferred between

[500] For ease of reference, the Bureau uses the phrase ''written electronic communications'' to refer to emails, text messages, and other electronic communications that are readable. The Bureau's use of this phrase has no bearing on the Bureau's interpretation of the terms ''written'' or ''in writing'' under any law or regulation, including the FDCPA or the E–SIGN Act.

[501] While the Bureau does not propose rules specifically addressing debt collector website communications, such communications are subject to existing legal requirements, including those under the FDCPA and the Dodd-Frank Act. For example, debt collectors may be liable for website communications that violate the Dodd-Frank Act's prohibition on unfair, deceptive, or abusive practices, or the overshadowing prohibition under FDCPA section 809(b).

[502] Proposed § 1006.34(c)(2)(iv) also would require that the validation notice include the name of the creditor to whom the debt was owed on the itemization date, if the debt collector is collecting a consumer financial product or service debt, as defined in proposed § 1006.2(f).

[503] Proposed § 1006.34(c)(2)(x) would require debt collectors also to disclose the current amount of the debt.

[504] The periodic statement requirement pursuant to 12 CFR 1026.41(b) does not apply to open-end consumer credit transactions, such as a home equity line of credit. *See* 12 CFR 1026.41(a)(1). Pursuant to 12 CFR 1026.41(e), certain types of transactions are exempt from § 1026.41(b)'s periodic statement requirement, including reverse mortgages, timeshare plans, certain charged-off mortgage loans, mortgage loans with certain consumers in bankruptcy, and fixed-rate mortgage loans where a servicer provides the consumer with a coupon book for payment. Further, small servicers as defined by 12 CFR 1026.41(e)(4)(ii) are entirely exempt from the periodic statement requirement. Where the § 1026.41(b) periodic statement was not provided, a debt collector collecting debts related thereto would not be able to satisfy proposed § 1006.34(c)(2)(vii) through (ix) by providing a consumer, at the same time as the validation notice, a copy of the most recent periodic statement provided to the consumer under § 1026.41(b).

servicers. Pursuant to Regulation Z, 12 CFR 1026.41(d)(3), such a periodic statement must include a past payment breakdown, which shows the total of all payments received since the last statement, including a breakdown showing the amount, if any, that was applied to principal, interest, escrow, fees, and charges, and the amount, if any, sent to any suspense or unapplied funds account.

The Bureau believes that these periodic statement disclosures may be functionally equivalent to, and as useful for the consumer as, the information described in proposed § 1006.34(c)(2)(vii) through (ix). For example, 12 CFR 1026.41(d)(3) requires that the past payment breakdown reflect payments, interest, and other charges since the last periodic statement. This requirement is consistent with the proposed rule: Pursuant to proposed § 1006.34(b)(3)'s itemization date definition, a debt collector may use the date of the last periodic statement as the reference date for the itemization-related information required by proposed § 1006.34(c)(2)(vii) through (ix). Further, the periodic statement required by 12 CFR 1026.41(b) is tailored to disclose mortgage information effectively. For example, the periodic statement under 12 CFR 1026.41(d) specifically addresses disclosure of escrow and suspense account information. Proposed § 1006.34(c)(2)(vii) through (ix), which applies to debts more generally, is silent with respect to these mortgage-specific concepts.

For these reasons, proposed § 1006.34(c)(5) would establish that, for debts subject to Regulation Z, 12 CFR 1026.41, a debt collector need not provide the validation information described in § 1006.34(c)(2)(vii) through (ix) if the debt collector provides the consumer, at the same time as the validation notice, a copy of the most recent periodic statement provided to the consumer under 12 CFR 1026.41(b), and refers to that periodic statement in the validation notice. Proposed comment 34(c)(5)–1 provides examples clarifying how debt collectors may comply with § 1006.34(c)(5).

The Bureau proposes § 1006.34(c)(5) to implement and interpret the FDCPA section 809(a)(1) requirement that the validation notice include the amount of the debt, and pursuant to its FDCPA section 814(d) authority to prescribe rules with respect to the collection of debts by debt collectors. The Bureau also proposes this requirement under section 1032(a) of the Dodd-Frank Act to prescribe rules to ensure that the features of consumer financial products and services are disclosed fully, accurately, and effectively. The Bureau proposes this requirement on the basis that the information otherwise required to be disclosed under § 1006.34(c)(2)(vii) through (ix) is a feature of debt collection and the alternative information that proposed § 1006.34(c)(5) would permit is equally effective and accurate for the collection of debts subject to 12 CFR 1026.41. For the reasons described above, the Bureau proposes § 1006.34(c)(5) to ensure that the debt, which is a feature of debt collection, is fully, accurately, and effectively disclosed in a manner that permits the consumer to understand the costs, benefits, and risks associated with debt collection.

The Bureau requests comment on proposed § 1006.34(c)(5) and on comment 34(c)(5)–1. In particular, the Bureau requests comment on the application of proposed § 1006.34(c)(5) to mortgage debt for which consumers were provided coupon books. For instance, the Bureau believes that for mortgage debt for which consumers were provided coupon books, debt collectors could comply with proposed § 1006.34(c)(5) because servicers generally have a practice of providing periodic statements to delinquent consumers, even if coupon books were previously provided. The Bureau also requests comment on the extent to which creditors, assignees, and servicers for transaction types that are exempt from 12 CFR 1026.41(b)'s periodic statement requirement pursuant to § 1026.41(e) nevertheless provide periodic statements voluntarily and, if so, whether the Bureau should clarify how proposed § 1006.34(c)(5) would apply in those circumstances. The Bureau also requests comment on the application of proposed § 1006.34(c)(5) to servicers exempt from 12 CFR 1026.41(b)'s periodic statement requirement pursuant to § 1026.41(e), such as small servicers or servicers servicing mortgage loans that have been charged off, and servicers who provide modified periodic statements pursuant to 12 CFR 1026.41(f) where a consumer on the mortgage loan is a debtor in bankruptcy. Finally, the Bureau also requests comment on whether there are other debt types, such as student loan debt, for which the information described in proposed § 1006.34(c)(vii) through (ix) may duplicate existing disclosure requirements.

34(d) Form of Validation Information

34(d)(1) In General

34(d)(1)(i)

FDCPA section 809(a)'s required disclosures will be ineffective unless a debt collector discloses them in a manner that is readily understandable to consumers. For this reason, the Bureau proposes § 1006.34(d)(1) to require that the validation information described in § 1006.34(c) be conveyed in a clear and conspicuous manner. As discussed in the section-by-section analysis of § 1006.34(b)(1), the Bureau proposed to define the term clear and conspicuous consistent with the standards used in other consumer financial services laws and their implementing regulations. The clear and conspicuous standard would apply to written, electronic, and oral disclosures.

The Bureau proposes § 1006.34(d)(1)(i) to implement and interpret FDCPA section 809(a), and pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors. The Bureau also proposes § 1006.34(d)(1)(i) pursuant to its authority under section 1032(a) of the Dodd-Frank Act to prescribe rules to ensure that the features of consumer financial products and services are disclosed fully, accurately, and effectively. The Bureau proposes this requirement on the basis that validation information is a feature of debt collection and this information must be readily understandable to be effectively and accurately disclosed. The Bureau requests comment on proposed § 1006.34(d)(1)(i).

34(d)(1)(ii)

As discussed in the section-by-section analysis of proposed § 1006.34(d)(2), the Bureau proposes Model Form B–3 in appendix B as a model validation notice form that debt collectors could use to comply with the disclosure requirements of proposed § 1006.34(a)(1) and (d)(1). Model Form B–3 was developed over multiple rounds of consumer testing and through additional feedback and consideration, as described in part III.B above. The Bureau believes that this form effectively discloses the information described in proposed § 1006.34(c). For the same reasons and pursuant to the same authority discussed in the section-by-section analysis of proposed § 1006.34(d)(1)(i), proposed § 1006.34(d)(1)(ii) would require that, if provided in a validation notice, the content, format, and placement of the information described in proposed § 1006.34(c) and the optional disclosures permitted by proposed § 1006.34(d)(3) must be substantially similar to proposed Model Form B–3 in appendix B.

Proposed comment 34(d)(1)(ii)–1 explains that a debt collector may make certain changes to the content, format, and placement of the validation information described in § 1006.34(c) as long as the resulting disclosures are substantially similar to Model Form B–3 in appendix B of the regulation. Proposed comment 34(d)(1)(ii)–1 also provides an example of a change that debt collectors may make to the validation notice if the consumer is deceased. As described in the section-by-section analyses of §§ 1006.2(e) and 1006.6(a)(4), the proposal includes interpretations of the term consumer designed to clarify communications between debt collectors and individuals attempting to resolve the debts of a deceased consumer, including provision of the validation notice to such individuals. Although the validation notice will contain the name of the deceased consumer, some persons who are authorized to act on behalf of the deceased consumer's estate may be misled by the use of second person pronouns such as ''you'' in the validation notice. For example, the model validation notice states that ''you owe'' the debt collector.

While nothing in the proposed rule would prohibit a debt collector from including a cover letter to explain the nature of the validation notice, proposed comment 34(d)(1)(ii)–1 also would clarify that a debt collector may modify inapplicable language in the validation notice that could suggest that the recipient of the notice is liable for the debt. For example, if a debt collector sends a validation notice to a person who is authorized to act on behalf of the deceased consumer's estate, and if that person is not liable for the debt, the debt collector may use the deceased consumer's name instead of ''you.'' In other contexts, such as mortgage servicing, the Bureau has allowed servicers to include an explanatory notice and acknowledgement form, add an affirmative disclosure, or adjust language in required notices to reduce the risk of confusion to successors in interest.[505] The Bureau proposes a similar approach in § 1006.34 and comment 34(d)(1)(ii)–1. The Bureau requests comment on proposed comment 34(d)(1)(ii)–1, on the risk of confusion or deception caused by the second-person framing of the model validation notice in the deceased-consumer context, and on options for reducing any possible confusion or deception.

34(d)(2) Safe Harbor

A model validation notice form that provides a safe harbor may benefit both consumers and debt collectors. A model validation notice form may effectively disclose validation information required by § 1006.34(a)(1) in a manner that permits consumers to understand the costs, benefits, and risks associated with debt collection. Further, a model form may afford debt collectors protection from liability that could arise if they developed and used their own forms. During the SBREFA process, small entity representatives asserted that a model form that provided protection from liability would promote efficiency and predictability for debt collectors by reducing legal risk.[506] Because of these potential benefits, the Bureau has developed a model validation notice—Model Form B–3 in appendix B.

Model Form B–3 was evaluated over multiple rounds of consumer testing, as described in part III.B above, as well as through additional feedback and consideration.[507] Based on this testing, the Bureau believes that Model Form B–3 effectively discloses the validation information required by § 1006.34(a)(1). Because of Model Form B–3's effectiveness, and pursuant to its authority under section 1032(b) of the Dodd-Frank Act, the Bureau proposes § 1006.34(d)(2) to permit a debt collector to comply with § 1006.34(a)(1)(i) and (d)(1) by using Model Form B–3 in appendix B.

Proposed comment 34(d)(2)–1 explains that, although the use of Model Form B–3 in appendix B is not required, a debt collector who uses the model form, including a debt collector who delivers the model form electronically, will be in compliance with the disclosure requirements of § 1006.34(a)(1)(i) and (d)(1) and the requirements of FDCPA section 809(a). Proposed comment 34(d)(2)–1 also explains that a debt collector who includes on Model Form B–3 the optional disclosures described in proposed § 1006.34(d)(3) continues to be in compliance as long as those disclosures are made consistent with the instructions in § 1006.34(d)(3). Further, proposed comment 34(d)(2)–1 explains that a debt collector may embed hyperlinks in Model Form B–3 if delivering the form electronically and continue to be in compliance as long as the hyperlinks are included consistent with § 1006.34(d)(4)(ii).

The Bureau requests comment on proposed § 1006.34(d)(2) and on proposed comment 34(d)(2)–1. In particular, the Bureau requests comment on whether the Bureau should provide additional clarification about how to deliver Model Form B–3 electronically in a manner that affords protection from liability pursuant to proposed § 1006.34(d)(2). For example, the Bureau requests comment on whether to prescribe or define additional formatting requirements (*e.g.,* type size) or delivery standards for validation notices delivered electronically. The Bureau also requests comment on the risks, costs, and benefits to consumers and industry of extending the protection from liability pursuant to proposed § 1006.34(d)(2) to validation notices delivered electronically.

34(d)(3) Optional Disclosures

Proposed § 1006.34(d)(3) provides that a debt collector may include the optional information described in proposed § 1006.34(d)(3)(i) through (vi) if providing the validation information required by § 1006.34(a)(1). These optional disclosures may assist debt collectors and consumers by providing additional information about the debt and consumers' rights with respect to debt collection in a manner that does not violate FDCPA section 809(b)'s overshadowing prohibition, a prohibition implemented by § 1006.38(b). Under the proposal, providing the disclosures in proposed § 1006.34(d)(3) would not be regarded as overshadowing or inconsistent with the disclosure about the consumer's right to dispute the debt or request the name and address of the original creditor. The Bureau proposes § 1006.34(d)(3) to implement and interpret FDCPA section 809(a) and (b) and pursuant to its FDCPA section 814(d) authority to prescribe rules with respect to the collection of debts by debt collectors and pursuant to its authority under section 1032(a) of the Dodd-Frank Act to prescribe rules to ensure that the features of consumer financial products

[505] 81 FR 72160, 72182 (Oct. 19, 2016).

[506] Small Business Review Panel Report, *supra* note 57, at 22; *see also Johnson* v. *Revenue Mgmt. Corp.,* 169 F.3d 1057, 1059–60 (7th Cir. 1999) (holding that where a validation notice included demands for ''prompt payment'' and that the consumer call the debt collector ''immediately,'' such statements may confuse a consumer or overshadow their verification rights); *Adams* v. *Law Offices of Stuckert & Yates,* 926 F.Supp. 521, 527 (E.D. Pa. 1996) (holding that a validation notice threatening a lawsuit violated the FDCPA); *Vaughn* v. *CSC Credit Servs., Inc.* (No. 93–4151), 1995 WL 51402, at *3 (N.D. Ill. Feb. 3, 1995) (holding that a statement on a validation notice about a debt's potential negative impact on consumer's credit score violated FDCPA section 809(b) because it overshadowed the verification rights disclosures).

[507] *See generally* FMG Cognitive Report, *supra* note 40; FMG Usability Report, *supra* note 41; FMG Summary Report, *supra* note 42.

and services are disclosed fully, accurately, and effectively.

34(d)(3)(i) Telephone Contact Information

Telephone communications may benefit both debt collectors and consumers by providing a low-cost and convenient communication method. Debt collectors routinely contact consumers by telephone and currently include their telephone numbers in validation notices. Also, some consumers may prefer to engage with debt collectors by telephone rather than by other communication methods.[508] For these reasons, proposed § 1006.34(d)(3)(i) would permit a debt collector to include the debt collector's telephone contact information, including telephone number and the times that the debt collector accepts consumer telephone calls, along with the validation information. The Bureau requests comment on proposed § 1006.34(d)(3)(i).

34(d)(3)(ii) Reference Code

Many debt collectors currently include reference codes on validation notices for administrative purposes. Proposed § 1006.34(d)(3)(ii) would accommodate this practice by permitting a debt collector to include, along with the validation information, a number or code that the debt collector uses to identify the debt or the consumer. The Bureau requests comment on proposed § 1006.34(d)(3)(ii).

34(d)(3)(iii) Payment Disclosures

Payment disclosures that provide a method to easily send payment to a debt collector may benefit both consumers and debt collectors. For consumers who recognize and choose to repay all or part of a debt, payment disclosures may make the transaction more efficient and convenient. For consumers who determine that they owe a debt but may not be ready to repay all of it at that time, payment disclosures may facilitate a discussion that can lead to repayment, settlement, or a payment plan.[509] Consumer testing suggests that consumers believe that a payment option is an important disclosure that should appear in the validation notice.[510] The Bureau also received feedback from debt collectors requesting the ability to request payment from consumers when providing validation information. For example, during the SBREFA process, small entity representatives requested the ability to include payment options in the consumer response information that § 1006.34(c)(4) would require.[511]

Consumer advocates recommended that the Bureau prohibit debt collectors from including payment disclosures along with validation information. Consumer advocates expressed concerns that a consumer who desires to dispute a debt might misconstrue the disclosure to require the consumer to submit a payment in order to exercise the FDCPA dispute right. The Bureau's proposal does not treat these concerns as persuasive. While some formulations of a payment disclosure could create a false sense of urgency or exaggerate the consequences of non-payment,[512] the Bureau believes that payment disclosures can be designed to articulate payment requests in a neutral, non-threatening manner. Moreover, the Bureau's consumer testing indicates that consumers who encounter a payment disclosure on a validation notice understand that a payment is not required to dispute a debt.[513]

For these reasons, the Bureau proposes to allow debt collectors to include certain payment disclosures along with the validation information. Proposed § 1006.34(d)(3)(iii) would permit a debt collector to include certain payment disclosures in the validation notice. Proposed § 1006.34(d)(3)(iii) would require that these optional payment disclosures be no more prominent than any of the validation information described in proposed § 1006.34(c). Proposed § 1006.34(d)(3)(iii)(A) would allow the debt collector to include in the validation notice the statement ''Contact us about your payment options,'' using that phrase or a substantially similar phrase. Proposed § 1006.34(d)(3)(iii)(B) would allow the debt collector to include in the consumer response information section that would be required by proposed § 1006.34(c)(4) the statement, ''I enclosed this amount,'' using that phrase or a substantially similar phrase, payment instructions after that statement, and a prompt. The Bureau requests comment on proposed § 1006.34(d)(3)(iii), including on whether the payment disclosures should be permitted and, if so, whether the payment disclosures should be modified.

34(d)(3)(iv) Disclosures Required by Applicable Law

Some States require specific disclosures to appear on the validation notice. The Small Business Review Panel Report recommended that the Bureau consider how to reconcile the Bureau's model validation notice and such required State law disclosures.[514] The Bureau also understands that some courts have prescribed additional validation notice disclosure requirements, or have fashioned optional disclosures that offer a safe harbor to debt collectors providing information required by the FDCPA. For example, several courts have crafted language that debt collectors may use to comply with FDCPA section 809(a)(1) by disclosing that the amount of a debt may vary because of accruing interest and fees.[515] In response to these judicial opinions, industry commenters have requested that the Bureau address how debt collectors may disclose that the amount of a debt may vary because of accruing interest and fees.

To enable debt collectors to comply both with § 1006.34(a)(1) and with other applicable disclosure requirements, the Bureau proposes § 1006.34(d)(3)(iv) to permit a debt collector to include, on the front of the validation notice, a statement that other disclosures required by applicable law appear on the reverse of the form and, on the reverse of the validation notice, any such legally required disclosures. Proposed comment 34(d)(3)(iv)–1 provides examples of disclosure requirements that proposed § 1006.34(d)(3)(iv) would cover, including disclosures required by State statutes or regulations and disclosures required by judicial opinions or orders.

The Bureau requests comment on proposed § 1006.34(d)(3)(iv) and on comment 34(d)(3)(iv)–1. The Bureau requests comment on conflicts that might arise between the Bureau's model validation notice and other disclosures required by applicable law. In particular, the Bureau requests comment on whether proposed § 1006.34(d)(3)(iv) would allow debt collectors to comply with applicable law, including on

[508] A Bureau survey found that 30 percent of consumers who had been contacted about a debt in the prior year would most prefer to be contacted about a debt in collection at a non-work telephone number, as compared to a work telephone number, postal mail, email, or in-person visits. *See* CFPB Debt Collection Consumer Survey, *supra* note 18, at 36–37.

[509] FMG Focus Group Report, *supra* note 38, at 9.

[510] FMG Cognitive Report, *supra* note 40, at 17–19.

[511] Small Business Review Panel Report, *supra* note 57, at 22–23.

[512] FMG Focus Group Report, *supra* note 38, at 11–12.

[513] FMG Usability Report, *supra* note 41, at 59–61.

[514] Small Business Review Panel Report, *supra* note 57, at 34.

[515] *See, e.g., Avila* v. *Riexinger & Associates, LLC*, 817 F.3d 72, 77 (2d Cir. 2016); *Miller* v. *McCalla, Raymer, Padrick, Cobb, Nichols, and Clark, LLC*, 214 F.3d 872, 876 (7th Cir. 2000).

whether any disclosures required by applicable law must be included on the front of the validation notice. The Bureau also requests comment on whether proposed § 1006.34(d)(3)(iv) should cover a debt collector who includes on the reverse of the model form disclosures that are permitted, but not required, by applicable law.

34(d)(3)(v) Information About Electronic Communications

Despite the advent of new technologies, the bulk of debt collection communication continues to occur by telephone and mail. Promoting newer technologies may be beneficial both to consumers and debt collectors. During the SBREFA process, small entity representatives supported the Bureau's proposal to clarify how debt collectors could use newer communication technologies, such as email and text messages, and some consumers may prefer electronic communications to traditional communication methods.[516] Consistent with this feedback, the Small Business Review Panel Report recommended that the Bureau consider whether the debt collection rule should promote newer communication technologies, and, if so, establish guidelines for their appropriate use.[517]

For these reasons, proposed § 1006.34(d)(3)(v) would permit certain information about electronic communications to appear along with the validation information. First, proposed § 1006.34(d)(3)(v)(A) would permit debt collectors to provide the debt collector's website and email address. Second, as discussed above, proposed § 1006.34(c)(3)(v) provides that, if a debt collector sends a validation notice electronically, the debt collector must include a statement explaining how a consumer can take the actions described in proposed § 1006.34(c)(4) electronically. Proposed § 1006.34(d)(3)(v)(B) would permit a debt collector to include the statement described in proposed § 1006.34(c)(3)(v) for validation notices not provided electronically. The Bureau requests comment on proposed § 1006.34(d)(3)(v).

34(d)(3)(vi) Spanish-Language Translation Disclosures

Validation information includes important information about the debt and the consumer's rights with respect to debt collection. Consumers with limited English proficiency may benefit from translations of the validation notice in some circumstances, and Spanish speakers represent the second-largest language group in the United States after English speakers.[518] Spanish-speaking consumers with limited English proficiency may benefit from a Spanish-language disclosure informing them of their ability to request a Spanish-language translation, if a debt collector chooses to make such a translation available. Further, debt collectors may wish to provide validation information in Spanish, as doing so may facilitate their communications with consumers. For these reasons, proposed § 1006.34(d)(3)(vi) would allow debt collectors to include along with the validation information optional Spanish-language disclosures that consumers may use to request a Spanish-language validation notice.

34(d)(3)(vi)(A)

Proposed § 1006.34(d)(3)(vi)(A) would permit a debt collector to provide a statement in Spanish informing a consumer that the consumer can request a Spanish-language validation notice. Specifically, proposed § 1006.34(d)(3)(vi)(A) would allow the statement, ''Póngase en contacto con nosotros para solicitar una copia de este formulario en español,'' using that phrase or a substantially similar phrase in Spanish. In English, this phrase means, ''You may contact us to request a copy of this form in Spanish.'' If providing this optional disclosure, a debt collector may include supplemental information in Spanish that specifies how a consumer may request a Spanish-language validation notice. Proposed comment 34(d)(3)(vi)(A)–1 explains that, for example, a debt collector may provide a statement in Spanish that a consumer can request a Spanish-language validation notice by telephone or email.

The Bureau requests comment on proposed § 1006.34(d)(3)(vi)(A) and on comment 34(d)(3)(vi)(A)–1. The Bureau specifically requests comment on: (1) Debt collectors' current collections activities conducted in Spanish, as well as other non-English languages, including whether debt collectors provide validation notices in non-English languages; (2) any benefits, costs, or risks posed for consumers and industry by the disclosure described in proposed § 1006.34(d)(3)(vi)(A); (3) examples of supplemental Spanish-language instructions for requesting a translated validation notice that debt collectors may wish to provide pursuant to proposed § 1006.34(d)(3)(vi)(A); and (4) the benefits or risks this supplemental language disclosure may present, including whether such supplementary information would make the proposed § 1006.34(d)(3)(vi)(A) disclosure less effective.

34(d)(3)(vi)(B)

Proposed § 1006.34(d)(3)(vi)(B) would permit debt collectors to provide a statement in Spanish in the consumer response information section that a consumer can use to request a Spanish-language validation notice. Proposed § 1006.34(d)(3)(vi)(B) would permit the consumer response information section required by § 1006.34(c)(4) to include the statement, ''Quiero esta forma en español,'' using that phrase or a substantially similar phrase in Spanish. In English, this phrase means ''I want this form in Spanish.'' Proposed § 1006.34(d)(3)(vi)(B) would require this statement to be next to a prompt, which the consumer could use to request a Spanish-language validation notice. The Bureau requests comment on proposed § 1006.34(d)(3)(vi)(B).

34(d)(4) Validation Notices Delivered Electronically

As discussed in the section-by-section analysis of proposed § 1006.42, promoting electronic communications may benefit consumers and debt collectors. Allowing debt collectors to make certain formatting modifications to validation notices delivered electronically may help consumers exercise their verification rights under FDCPA section 809. Certain formatting modifications also may facilitate a debt collector's ability to process and understand a consumer's response to a validation notice delivered electronically. Accordingly, the Bureau proposes § 1006.34(d)(4) to permit a debt collector to, at its option, format a validation notice delivered electronically in the manner described in proposed § 1006.34(d)(4)(i) and (ii).[519]

The Bureau proposes § 1006.34(d)(4) to implement and interpret FDCPA section 809(a) by establishing formatting requirements that facilitate the consumer's right to dispute a debt and

[516] Small Business Review Panel Report, *supra* note 57, at 16–17; CFPB Debt Collection Consumer Survey, *supra* note 18, at 37 (finding that email was the most preferred contact method for 11 percent of consumers contacted about a debt in collection).

[517] Small Business Review Panel Report, *supra* note 57, at 38.

[518] As of 2016, 40 million residents in the United States aged five and older spoke Spanish at home. *See* U.S. Census Bureau, *Profile America for Facts for Features CB17–FF.17: Hispanic Heritage Month 2017,* at 4 (Oct. 17, 2017), *https://www.census.gov/newsroom/facts-for-features/2017/hispanic-heritage.html.*

[519] As described in proposed § 1006.42(b)(4), the Bureau proposes additional formatting requirements applicable to validation notices delivered electronically.

request original-creditor information, and pursuant to its FDCPA section 814(d) authority to prescribe rules with respect to the collection of debts by debt collectors. The Bureau also proposes these requirements under section 1032(a) of the Dodd-Frank Act to prescribe rules to ensure that the features of consumer financial products and services are disclosed fully, accurately, and effectively. The Bureau requests comment on proposed § 1006.34(d)(4).

34(d)(4)(i) Prompts

Proposed § 1006.34(d)(4)(i) would permit a debt collector delivering a validation notice electronically pursuant to § 1006.42 to display any prompt required by § 1006.34(c)(4)(i) or (ii) or (d)(3)(iii)(B) or (vi)(B) as a fillable field. Allowing a debt collector to design a validation notice delivered electronically so that a consumer can take the actions described in proposed § 1006.34(c)(4) by clicking a prompt would benefit consumers and industry. The Bureau believes that this design modification would help consumers exercise their FDCPA verification rights. Further, the Bureau believes this design modification would improve consumer engagement and facilitate a debt collector's ability to process and understand a consumer's response to the validation notice. The Bureau requests comment on proposed § 1006.34(d)(4)(i).

34(d)(4)(ii) Hyperlinks

Proposed § 1006.34(d)(4)(ii) would permit a debt collector delivering a validation notice electronically to embed hyperlinks into the validation notice that, when clicked, connect consumers to the debt collector's website or permit consumers to take the actions described in proposed § 1006.34(c)(4). This formatting modification may help consumers exercise their FDCPA verification rights when they are already engaging with the validation notice in an online setting. This modification also may improve consumer engagement and facilitate a debt collector's ability to process and understand a consumer's response to the validation notice. The Bureau requests comment on proposed § 1006.34(d)(4)(ii).

34(e) Translations Into Other Languages

Consumers with limited English proficiency may benefit from translated disclosures, and some debt collectors may want to respond to the needs of consumers with limited English proficiency using translated disclosures, if doing so is consistent with the debt collector's individual debt collection practices and preferences. At the same time, some consumers who receive translated disclosures may also desire to receive English-language disclosures, either because they are fluent in English, or because they wish to share the disclosures with an English-speaking spouse or assistance provider. English-language disclosures may also allow consumers to confirm the accuracy of the translation.

For these reasons, the Bureau proposes § 1006.34(e) to provide that a debt collector may send a consumer the validation notice completely and accurately translated into any language, if the debt collector also sends an English-language validation notice in the same communication that satisfies proposed § 1006.34(a)(1). If a debt collector already has provided a consumer an English-language validation notice that satisfies proposed § 1006.34(a)(1) and subsequently provides the consumer a validation notice translated into any other language, the debt collector need not provide an additional copy of the English-language notice. Proposed comment 34(e)–1 would clarify that the language of a validation notice obtained from the Bureau's website is considered a complete and accurate translation, although debt collectors are permitted to use other validation notice translations so long as they are accurate and complete.

Consumer advocacy groups have commented that debt collectors should be required to provide validation notices translated into other languages, in particular Spanish, at a consumer's request. For example, some consumer advocacy groups suggested that debt collectors should be required to provide a Spanish-language translation on the reverse of every English-language validation notice.[520] The Bureau declines to propose a mandatory requirement that debt collectors provide translated validation notices to consumers. Requiring debt collectors to provide a translation on a separate page with each validation notice could result in significant cost on a cumulative, industry-wide basis, especially for smaller debt collectors and for languages whose use is not prevalent in the United States. Proposed § 1006.34(e) may strike an appropriate balance by allowing a debt collector to provide translated validation notices if they are complete and accurate and doing so is consistent with the debt collector's individual debt collection practices and preferences in a manner that does not impose undue burden.

The Bureau requests comment on proposed § 1006.34(e) and on comment 34(e)–1. The Bureau also requests comment on whether debt collectors should be required to provide a validation notice translated into a non-English language at a consumer's request.

The Bureau proposes § 1006.34(e) pursuant to its authority under section 1032(a) of the Dodd-Frank Act to prescribe rules to ensure that the features of consumer financial products and services are disclosed fully, accurately, and effectively. The Bureau proposes § 1006.34(e) to ensure that the features of debt collection are fully, accurately, and effectively disclosed.

Section 1006.38 Disputes and Requests for Original-Creditor Information

FDCPA section 809(b) requires debt collectors both to refrain from taking certain actions during the 30 days after the consumer receives the validation information or notice described in FDCPA section 809(a) (*i.e.,* during the validation period) and to take certain actions if a consumer either disputes the debt in writing, or requests the name and address of the original creditor in writing, during the validation period.[521] 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.[522] Proposed § 1006.38 would implement and interpret FDCPA section 809(b) and (c) as discussed below. Except as otherwise noted, the Bureau proposes § 1006.38 pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors.

Proposed comment 38–1 would clarify the applicability of § 1006.38 in the decedent debt context. As described in the section-by-section analysis of § 1006.2(e), the Bureau proposes to interpret the term consumer in FDCPA section 803(3) to include deceased consumers.[523] This interpretation would apply to FDCPA section 809(b), as implemented by § 1006.38, so that a deceased consumer (*i.e.,* that consumer's estate) would have the same rights under FDCPA section 809(b) as

[520] The Bureau raised such an alternative approach as a proposal under consideration in the Small Business Review Panel Outline. *See* Small Business Review Panel Outline, *supra* note 56, at appendix F.

[521] 15 U.S.C. 1692g(b).

[522] 15 U.S.C. 1692g(c).

[523] The Bureau proposes to define the term consumer to include ''any natural person, whether living or deceased, obligated or allegedly obligated to pay any debt.'' See the section-by-section analysis of proposed § 1006.2(e).

any living consumer. Accordingly, proposed comment 38–1 would clarify that, if the debt collector knows or should know that the consumer is deceased, and if the debt collector has not previously sent the deceased consumer a written validation notice, then a person who is authorized to act on behalf of the deceased consumer's estate [524] operates as the consumer for purposes of § 1006.38. Proposed comment 38–1 provides that, if such a person submits either a written request for original-creditor information or a written dispute to the debt collector during the validation period, then § 1006.38(c) or (d)(2)(i), respectively, would require the debt collector to respond to that request or dispute. In addition, just as with living consumers, the proposal would require a debt collector attempting to collect a debt from a deceased consumer's estate to cease collection of the debt until, where appropriate, the debt collector has mailed the name and address of the original creditor or provided verification of the debt.

Proposed comment 38–2 also applies generally to proposed § 1006.38. Proposed comment 38–2 notes that proposed § 1006.38 contains requirements related to a dispute or request for original-creditor information timely submitted in writing by the consumer. Proposed comment 38–2 lists three examples of forms of communication that the consumer can use for these purposes. The second example is a medium of electronic communication; the Bureau proposes this example in light of section 101 of the E-SIGN Act.[525]

The E-SIGN Act could affect whether a consumer satisfies the ''in writing'' requirement of FDCPA section 809(b) by submitting a dispute or request for original-creditor information electronically. 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.[526] 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.[527] Section 104(b)(1)(A) of the E-SIGN Act permits a Federal agency with rulemaking authority under a statute to interpret by regulation the application of E-SIGN Act section 101 to that statute.[528]

The Bureau proposes to interpret the applicability of the E-SIGN Act as it relates to FDCPA section 809(b)'s writing requirement for consumer disputes or requests for original-creditor information. Specifically, the Bureau would interpret FDCPA section 809(b)'s writing requirement as being 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.[529] Thus, debt collectors would be required to give legal effect to consumer disputes or requests for original-creditor information submitted electronically only if a debt collector chooses to accept electronic communications from consumers. The Bureau proposes to codify this interpretation of the E-SIGN Act in comment 38–3. The Bureau requests comment on proposed comments 38–1 through 3.

### 38(a) Definitions

### 38(a)(1) Duplicative Dispute

The Bureau proposes to define the term duplicative dispute in § 1006.38(a)(1). The Bureau proposes § 1006.38(a)(1) as an interpretation of FDCPA section 809(b) and to facilitate compliance with proposed § 1006.38(d)(2)(ii), which would establish an alternative to proposed § 1006.38(d)(2)(i) [530] applicable if a debt collector reasonably has determined that a dispute is a duplicative dispute. Proposed § 1006.38(a)(1) would 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 is that 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 already has satisfied the requirements of § 1006.38(d)(2)(i). The second criterion is that the dispute does not include new and material supporting information.

Proposed comment 38(a)(1)–1 would clarify that, for purposes of § 1006.38(a)(1), 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. Proposed comment 38(a)(1)–2 would clarify that, for purposes of § 1006.38(a)(1), information is new if the consumer did not provide the information when submitting an earlier dispute, and 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. Proposed comment 38(a)(1)–2 also provides an example of new and material information.

The Bureau requests comment on proposed § 1006.38(a)(1) and its related commentary. In particular, the Bureau requests comment on whether to specify criteria for determining whether one dispute is substantially similar to another dispute, and, if so, what those criteria should be. In addition, the Bureau requests comment on the estimated percentage of current repeat disputes that would qualify as duplicative disputes under the definition in proposed § 1006.38(a)(1), including whether and how that figure is likely to vary by debt type.

### 38(a)(2) Validation Period

To facilitate compliance in responding to disputes or requests for original-creditor information, proposed § 1006.38(a)(2) provides that the term validation period as used in § 1006.38 has the same meaning given to it in § 1006.34(b)(5).

### 38(b) Overshadowing of Rights To Dispute or Request Original-Creditor Information

FDCPA section 809(b) provides that, for 30 days after the consumer receives the validation information or notice 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.[531] Proposed § 1006.38(b)

[524] See the section-by-section analysis of proposed § 1006.6(a)(4) and comment 6(a)(4)–1.

[525] 15 U.S.C. 7001(a).

[526] 15 U.S.C. 7001(a)(1).

[527] 15 U.S.C. 7001(b)(2).

[528] 15 U.S.C. 7004(b)(1)(A).

[529] This interpretation is responsive to consumer advocates' feedback recommending that, if a debt collector makes an electronic means of communication available to consumers, electronic communications received from consumers through that channel should satisfy FDCPA section 809(b).

[530] Proposed § 1006.38(d)(2)(i) would implement the requirements in FDCPA section 809(b) regarding disputes and verification. See the section-by-section analysis of proposed § 1006.38(d)(2)(i).

[531] 15 U.S.C. 1692g(b). This language was added to the FDCPA by the Financial Services Regulatory Relief Act of 2006, Public Law 109–351, section 802(c), 120 Stat. 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

Continued

would implement this prohibition and generally restates the statute, with only minor changes for style and clarity.

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 information or notice 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.[532] Proposed § 1006.38(c) would implement and interpret this requirement.

In general, proposed § 1006.38(c) mirrors the statute, with minor changes for style and clarity. However, to accommodate various electronic media through which a debt collector could send original-creditor information under proposed § 1006.42, proposed § 1006.38(c) would interpret 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. As described above, the Bureau proposes this interpretation to harmonize FDCPA section 809(b)'s writing requirement with the E-SIGN Act. The Bureau requests comment on proposed § 1006.38(c) and on whether to clarify further how to interpret proposed §§ 1006.38(c) and 1006.42 together.

38(d) Disputes

38(d)(1) Failure To Dispute

FDCPA section 809(c) provides that a consumer's failure to dispute a debt may not be construed by any court as an admission of liability by the consumer.[533] Proposed § 1006.38(d)(1) would implement FDCPA section 809(c) and generally restates the statute, with only minor changes for style.

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 validation information or notice described in 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.[534] Proposed § 1006.38(d) would implement and interpret this requirement as follows.

38(d)(2)(i)

Proposed § 1006.38(d)(2)(i) would implement FDCPA section 809(b)'s general requirements regarding disputes and verification. Proposed § 1006.38(d)(2)(i) generally mirrors the statute, with minor changes for style and clarity. However, 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) would interpret 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. As described above, the Bureau proposes this interpretation to harmonize FDCPA section 809(b)'s writing requirement with the E-SIGN Act. The Bureau requests comment on proposed § 1006.38(d)(2)(i) and on whether to clarify further how to interpret proposed §§ 1006.38(d)(2)(i) and 1006.42 together. The Bureau also requests comment on whether to clarify that a debt collector who ceases collection of a debt in response to a consumer's written dispute may communicate with the consumer one additional time to inform the consumer that the debt collector is ceasing collection of the debt.[535]

38(d)(2)(ii)

Proposed § 1006.38(d)(2)(ii) would establish an alternative way for debt collectors to respond to disputes that they reasonably conclude are duplicative disputes, as that term is defined in proposed § 1006.38(a)(1).

Some members of the debt collection industry have described being overwhelmed by the number of repeat disputes they receive. In response to the Bureau's ANPRM, some industry commenters estimated that between 10 and 20 percent of consumer disputes reiterate, without providing any new supporting information, earlier disputes to which debt collectors have already responded.[536] An industry commenter also estimated that, for medical debts, the percentage of repeat disputes may be as high as 50 or 60 percent of all disputes. Members of the debt collection industry have also expressed uncertainty about how FDCPA section 809(b)—which, as discussed above, requires a debt collector who receives a written dispute within the validation period to cease collecting the debt, or any disputed portion of the debt, until it provides the consumer with a copy either of verification of the debt or of a judgment—applies to repeat disputes. This uncertainty may drive up costs for debt collectors and harm consumers. Some debt collectors, for example, may spend time and resources re-investigating identical disputes and resending identical verification before continuing with collections. This may leave debt collectors with fewer resources to investigate and respond to non-repeat disputes. It may also impede the collection of legitimate debts.[537]

The challenges that repeat disputes can pose to industry and consumers are not unique to the debt collection market, and the Bureau has clarified the treatment of repeat disputes in other contexts. Under Regulation X, 12 CFR 1024.35(g)(1)(i), for example, a mortgage servicer is not required to comply with certain error resolution requirements when the asserted error is substantially the same as an error previously asserted by the borrower for which the servicer has previously complied with its obligations under the rule, unless the borrower provides new and material information to support the notice of error. Similarly, under Regulation V, 12 CFR 1022.43(f)(1)(ii), a furnisher of information to a consumer reporting

insist that the 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).'').

[532] *Id.*

[533] 15 U.S.C. 1692g(c).

[534] 15 U.S.C. 1692g(b).

[535] Such a clarification would be consistent with the FTC's position in its October 5, 2007 advisory opinion regarding the same topic. *See* Fed. Trade Comm'n, Advisory Opinion to ACA International (Oct. 5, 2007), *https://www.ftc.gov/sites/default/files/documents/public_statements/debt-collector-informing-consumer-who-has-disputed-debt-its-collection-efforts-have-ceased-would-not./p064803fairdebt.pdf.*

[536] These figures appear to include both repeat disputes filed within the 30-day validation period and repeat disputes filed outside of the 30-day validation period. As noted in the section-by-section analysis of proposed § 1006.38(a)(1), the definition of duplicative disputes would include only disputes filed within the validation period. As also noted in that section-by-section analysis, the Bureau requests comment on the percentage of repeat disputes that would qualify as duplicative disputes under the proposed definition of duplicative dispute.

[537] *See, e.g., Hawkins-El* v. *First Am. Funding, LLC,* 891 F. Supp. 2d 402, 410 (E.D.N.Y. 2012) (''Plaintiff cannot forestall collection efforts by repeating the same unsubstantiated assertions and thereby contend that the debt is 'disputed.' If Plaintiff were permitted to do so, debtors would be able to prevent collection permanently by sending letters, regardless of their merit, stating that the debt is in dispute. Such a result is untenable, as it would make debts effectively uncollectable.''); *Derisme* v. *Hunt Leibert Jacobson P.C.,* 880 F. Supp. 2d 339, 370–71 (D. Conn. 2012) (''To allow a consumer to [repeatedly dispute a debt and repeatedly receive verification] would lead to the illogical result that a consumer could avoid paying its debt by repeatedly disputing the debt.'').

agency is not required to investigate a direct dispute if the dispute is substantially the same as a previous dispute with respect to which the furnisher has already satisfied the applicable reinvestigation requirements, unless the dispute includes certain information not previously provided to the furnisher. Just as the Bureau's regulations outline a process for responding to repeat disputes in the mortgage servicing and credit reporting context, the Bureau proposes to outline a process pursuant to which debt collectors may respond to duplicative disputes in a less burdensome way.

Consumers may submit repeat disputes for various reasons. Some may do so to avoid paying debts they owe or because they disagree with the outcome of the earlier dispute. Others may do so because they are unfamiliar with the dispute process. For example, some consumers who submit repeat disputes may not know that they can include supporting documentation with their disputes. Knowing if and why debt collectors might regard a dispute as duplicative may help consumers prepare clearer, more specific disputes. Those disputes, in turn, could improve the accuracy of the information in the debt collection system and help to ensure that debt collectors collect the right amounts from the right consumers. This could be achieved, for example, through a consumer notice requirement.

Other Bureau rules that address repeat disputes contain consumer notice provisions. Under Regulation X, 12 CFR 1024.35(g)(2), for example, a mortgage servicer who determines that a notice of error is substantially the same as an error previously asserted by the borrower for which the servicer has previously complied with its error resolution obligations under the rule must notify the borrower of its determination and provide the basis for that determination. Similarly, under Regulation V, 12 CFR 1022.43(f)(2), a furnisher who determines that a direct dispute is substantially the same as a previous dispute for which the furnisher has already satisfied the applicable reinvestigation requirements must notify the consumer of its determination, provide the reasons for that determination, and identify any information required to investigate the disputed information.

For these reasons, proposed § 1006.38(d)(2)(ii) would provide that, upon receipt of a duplicative dispute, as defined in § 1006.38(a)(1), 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). The Bureau proposes § 1006.38(d)(2)(ii) to clarify that debt collectors are not required to expend resources conducting repetitive dispute investigations unless there is a reasonable basis for re-opening a prior investigation because of new and material information.

Proposed comment 38(d)(2)(ii)–1 explains that a debt collector complies with the requirement to provide a brief statement of the reasons for its determination that the dispute is duplicative 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. Proposed comment 38(d)(2)(ii)–1 also explains that 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.

The Bureau requests comment on proposed § 1006.38(d)(2)(ii) and proposed comment 38(d)(2)(ii)–1, including on whether any additional clarification is needed. In particular, the Bureau requests comment on how debt collectors currently handle repeat disputes and the costs to debt collectors of doing so, distinguishing, to the extent possible, between repeat disputes filed during the validation period and repeat disputes filed after the validation period. The Bureau also requests comment on whether, in responding to disputes that would qualify as duplicative disputes under the proposed rule, debt collectors expect to use the method in proposed § 1006.38(d)(2)(i) or the method in proposed § 1006.38(d)(2)(ii), as well as the expected costs and benefits of using each method. In addition, the Bureau requests comment on the risks to consumers, if any, posed by proposed § 1006.38(d)(2)(ii).

The Bureau proposes § 1006.38(d)(2)(ii) to implement and interpret FDCPA section 809(b). In particular, proposed § 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 circumstances where a consumer submits 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 debt or a judgment, 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 proposes the notice requirement of proposed § 1006.38(d)(2)(ii) pursuant to its authority under Dodd-Frank 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 proposes § 1006.38(d)(2)(ii)'s notice requirement on the basis that a debt collector's decision to treat a dispute as a duplicative dispute under proposed § 1006.38(d)(2)(ii) is a feature of debt collection. Knowing that a debt collector has determined that a dispute is a duplicative dispute, and the reasons for that determination, may help a consumer understand the costs, benefits, and risks associated with filing additional disputes and deciding whether to pay a debt.

## Section 1006.42 Providing Required Disclosures

### 42(a) Providing Required Disclosures

#### 42(a)(1) In General

The proposed rule would require debt collectors to provide certain disclosures to consumers. Proposed § 1006.42(a)(1) would require a debt collector who provides such required disclosures 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. The first prong of proposed § 1006.42(a)(1) would not require a debt collector to ensure a consumer's actual receipt of required disclosures; it would require instead a reasonable expectation of actual notice. The second prong would require a debt collector, when providing a required disclosure in writing or electronically, to provide it, for example, in a form that the consumer could print or, in the case of disclosures provided by hyperlink to a website, in a form that consumers could access for a reasonable period of time.[538]

Proposed comment 42–1 explains how a debt collector could comply with the general delivery standard in the decedent debt context. The proposed comment provides that, if a debt collector knows or should know that a consumer is deceased, a person who is authorized to act on behalf of the deceased consumer's estate operates as the consumer for purposes of § 1006.42.[539]

Proposed comment 42(a)(1)–1 would clarify that a debt collector who provides a required disclosure in writing or electronically and who receives a notice that the disclosure was not delivered has not provided the disclosure in a manner that is reasonably expected to provide actual notice under § 1006.42(a)(1).

Proposed § 1006.42(a)(1) would apply only if a debt collector provides required disclosures in writing or electronically; it would not apply if a debt collector provides required disclosures orally. Apart from disclosures that a communication is from a debt collector or is for a debt collection purpose—which proposed § 1006.42(a)(2) would exclude from the general delivery standard [540]—the Bureau has not identified widespread instances of debt collectors providing required disclosures, such as the validation information, orally. In addition, the Bureau's proposal would require debt collectors to include more information in validation notices than they may currently provide, which may further decrease the likelihood that debt collectors would deliver such disclosures orally. For these reasons, the Bureau's proposal focuses on clarifying general delivery requirements only for required disclosures delivered electronically or in writing. The Bureau requests comment on this approach, including on whether the Bureau should address oral delivery of required disclosures and, if so, what standards should apply, including how an oral disclosure could be provided in a form that the consumer may keep and access later. The Bureau also requests comment on the frequency with which debt collectors provide required disclosures orally today and the frequency with which debt collectors would expect to provide disclosures orally under the proposed rule.

Proposed § 1006.42(a)(1) also would not apply to any non-required debt collection communications, such as emails that contain only a request for payment. The Bureau requests comment on proposed § 1006.42(a)(1) and on proposed comments 42–1 and 42(a)(1)–1, including on whether any additional clarification is needed as to this general standard and on its costs to debt collectors and benefits to consumers. In particular, the Bureau requests comment on the current practices of debt collectors upon learning that a consumer has not received a required disclosure—for example, because the disclosure has been returned as undeliverable—as well as the risks, costs, and benefits that these practices pose to consumers and industry. The Bureau also requests comment on whether a delivery method that does not satisfy proposed § 1006.42(a)(1)'s notice requirement should be permitted as long as the debt collector confirms that the consumer received actual notice.

The Bureau proposes § 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. Under FDCPA section 809(a), a debt collector must ''send the consumer'' a written validation notice unless the information is ''contained in the initial communication'' with the consumer, and under FDCPA section 809(b), a debt collector must ''mail[ ] to the consumer'' any original-creditor or verification information the debt collector provides. The Bureau proposes to require a form of delivery that is reasonably expected to provide actual notice on the basis that such a requirement is implicit in the concepts of ''send[ing] the consumer a written notice,'' information being ''contained in'' the initial communication, and ''mail[ing]'' information to the consumer.[541] Similarly, the Bureau proposes to require a form of delivery that the consumer may keep and access later on the basis that such a requirement is also implicit in the concepts of ''send[ing] the consumer a written notice,'' information being ''contained in'' the initial communication, and ''mail[ing]'' information to the consumer—requirements traditionally satisfied through sending a paper document but that the Bureau is now adapting to electronic communications.

The Bureau also proposes § 1006.42(a)(1) as an interpretation of FDCPA section 808's prohibition on using unfair or unconscionable means to collect a debt. 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. If debt collectors deliver disclosures in a manner that does not meet these standards, consumers may not receive required information or have it available for future reference, potentially leading them to take different actions with respect to debts than they otherwise would have. A debt collector's decision to provide a required disclosure in a manner not reasonably expected to provide actual notice or in a form that the consumer cannot keep and access later is outside of a consumer's control; therefore, a consumer cannot reasonably avoid the injury caused by a debt collector who provides a required disclosure in such a manner or form. In addition, as noted, providing required disclosures in a manner not reasonably expected to provide actual notice or in a form that the consumer cannot keep and access later could effectively thwart FDCPA section 809's validation notice, original-creditor, and dispute-verification provisions. Thus, whatever benefits debt collectors may receive from such conduct do not appear to be outweighed by the costs to consumers.

42(a)(2) Exceptions

Although proposed § 1006.42(a)(1) generally requires that debt collectors

[538] See the section-by-section analysis of proposed § 1006.42(c)(2)(ii). For ease of reference, throughout the section-by-section analysis of proposed § 1006.42, the Bureau uses the shorthand term ''retainability'' to refer to the consumer's ability to keep and access a disclosure later.

[539] Proposed comment 42–1 is consistent with proposed comments 34(a)(1)–1 and 38–1, which also would clarify delivery standards in the decedent debt context.

[540] See the section-by-section analysis of proposed § 1006.42(a)(2).

[541] There is support for this interpretation in court decisions. *See, e.g., Lavallee* v. *Med-1 Solutions, LLC,* No. 1:15–cv–01922–DML–WTL, 2017 WL 4340342, at *4 (S.D. Ind. Sept. 29, 2017) (''[I]f notice is not sent in a manner in which receipt should be presumed as a matter of logic and common experience, then it cannot be considered to have been 'sent'.''); *Johnson* v. *Midland Credit Mgmt. Inc.,* No. 1:05 CV 1094, 2006 WL 2473004, at *12 (N.D. Ohio Aug. 24, 2006) (''[W]hen a written notice is returned as undeliverable, it has not actually been *sent* to the *consumer.* Rather, it has been *sent* to an *improper address* for the consumer. . . . If the debt collector knows the validation notice was sent to the wrong address, the debt collector has not complied with the plain language of the statute.'').

provide required disclosures in a manner reasonably expected to provide actual notice and in a form consumers can keep and access later, proposed § 1006.42(a)(2) identifies two circumstances in which a debt collector would not need not to comply with proposed § 1006.42(a)(1) in providing required disclosures. The first circumstance involves the disclosure required by proposed § 1006.6(e); the second circumstance involves the disclosure required by proposed § 1006.18(e).

Proposed § 1006.6(e) would require a debt collector who communicates or attempts to communicate with a consumer electronically using a particular email address, telephone number for text messages, or other electronic-medium address to include in each such communication or attempt to communicate a clear and conspicuous statement describing how the consumer can opt out of further electronic communications or attempts to communicate to that address or telephone number. Proposed § 1006.18(e) would require a debt collector to disclose in its initial communication with a consumer that the debt collector is attempting to collect a debt and that any information obtained with be used for that purpose, and to disclose in each subsequent communication that the communication is from a debt collector.

The disclosures that would be required by proposed §§ 1006.6(e) and 1006.18(e) would accompany all electronic debt collection communications. Thus, absent an exception for these provisions, proposed § 1006.42(a)(1) would apply to all electronic debt collection communications. This, in turn, would mean that all electronic debt collection communications effectively would have to meet the notice and retainability requirements of § 1006.42(a)(1)—including even relatively routine communications, such as ones that convey settlement offers, payment requests, scheduling messages, and other information not required by the FDCPA or Regulation F. The Bureau believes that requiring all such communications to be provided in a manner reasonably expected to provide actual notice and in a form consumers can keep and access later is likely to impose an unnecessary burden on debt collectors with little corresponding benefit to consumers.

As discussed above, the Bureau proposes § 1006.42(a)(1) as an interpretation of certain terms in FDCPA section 809 and pursuant to FDCPA section 808. Because the disclosures in proposed §§ 1006.6(e) and 1006.18(e) do not arise under FDCPA section 809, and because they may not implicate FDCPA section 808's prohibition on using unfair or unconscionable means to collect or attempt to collect any debt, the Bureau proposes generally to except them from the requirements of § 1006.42(a)(1). For this reason, proposed § 1006.42(a)(2) provides that a debt collector need not comply with § 1006.42(a)(1) when providing the disclosure required by § 1006.6(e) or § 1006.18(e) in writing or electronically, unless the disclosure is included on a notice required by § 1006.34(a)(1)(i) or § 1006.38(c) or (d)(2), or in an electronic communication containing a hyperlink to such a notice. Any disclosure provided pursuant to proposed § 1006.6(e) or § 1006.18(e), however, would need to be provided clearly and conspicuously. This clear-and-conspicuous requirement would apply even where proposed § 1006.42(a)(1) would not. The Bureau requests comment on proposed § 1006.42(a)(2), including whether the exceptions identified in proposed § 1006.42(a)(2) are underinclusive or overinclusive.

42(b) Requirements for Certain Disclosures Provided Electronically

The FDCPA requires three disclosures to be provided in writing. As the Bureau proposes to implement them in Regulation F, these disclosures are: (1) The validation notice described in proposed § 1006.34(a)(1)(i)(B); (2) the original-creditor disclosure described in proposed § 1006.38(c); and (3) the validation-information disclosure described in proposed § 1006.38(d)(2).[542] The Bureau interprets the FDCPA's writing requirement to permit these disclosures to be provided electronically.[543] If provided electronically, however, they are subject to the E-SIGN Act, the Federal statute that provides standards for when 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 to a consumer in writing.[544] Proposed § 1006.42(b) lists the requirements that debt collectors would need to follow to satisfy proposed § 1006.42(a)(1) and, relatedly, the E-SIGN Act, when providing these disclosures electronically. As discussed below, each requirement described in proposed § 1006.42(b) addresses either the actual notice or retainability aspect of proposed § 1006.42(a), or both. Unless otherwise noted, the Bureau proposes § 1006.42(b) for the same reasons and pursuant to the same authority discussed in the section-by-section analysis of proposed § 1006.42(a)(1).

The Bureau requests comment on proposed § 1006.42(b), including on the frequency with which debt collectors currently provide required disclosures electronically, and the proportion of such disclosures provided by email, text message, and other electronic means. To the extent debt collectors do not currently provide required disclosures electronically, the Bureau requests comment on why that is so. The Bureau also requests comment on whether to require that debt collectors who provide required disclosures electronically maintain reasonable written policies and procedures designed to ensure that debt collectors comply with the requirements of proposed § 1006.42(b).[545] Several Bureau rules include similar policies-and-procedures requirements.[546] Requiring such policies and procedures may facilitate compliance with proposed § 1006.42(b) by debt collectors who provide required disclosures electronically, and may promote effective and efficient enforcement and supervision by the Bureau and other Federal agencies. However, requiring such policies and

[542] For ease of reference, throughout the section-by-section analysis of proposed § 1006.42, the Bureau refers to these three disclosures as the ''required disclosures.'' The disclosure required by FDCPA section 807(11) must be in writing only if the debt collector otherwise is communicating with the consumer in writing. As discussed in the section-by-section analysis of proposed § 1006.42(a)(2), the Bureau proposes to exclude FDCPA section 807(11) written disclosures from meeting the delivery requirements in proposed § 1006.42(a)(1) unless the disclosures are included on a notice required by §§ 1006.34(a)(1)(i) or 1006.38(c) or (d)(2), or in an electronic communication containing a hyperlink to such a notice.

[543] See the section-by-section analyses of proposed §§ 1006.34 and 1006.38.

[544] *See* 15 U.S.C. 7001–7006.

[545] Such a requirement could be based on the Bureau's authority under Dodd-Frank Act sections 1022(b)(1) or 1024(b)(7) or both.

[546] *See, e.g.,* Regulation E, 12 CFR 1005.33(g) (requiring remittance transfer providers to ''develop and maintain written policies and procedures that are designed to ensure compliance with the error resolution requirements applicable to remittance transfers under this section''); Regulation X, 12 CFR 1024.38(a) (requiring mortgage servicers to ''maintain policies and procedures that are reasonably designed to achieve'' certain objectives); Regulation Z, 12 CFR 1026.36(j) (requiring depository institutions to ''establish and maintain written policies and procedures reasonably designed to ensure and monitor the compliance of the depository institution, its employees, its subsidiaries, and its subsidiaries' employees'' with certain requirements of the rule); *id.* 1026.51 (requiring card issuers to ''establish and maintain reasonable written policies and procedures to consider the consumer's ability to make the required minimum payments under the terms of the account based on a consumer's income or assets and a consumer's current obligations'').

procedures could impose costs on debt collectors, which, if passed on to creditors, could ultimately reduce consumers' access to credit. The Bureau therefore requests comment on the expected costs and benefits of requiring debt collectors who provide required disclosures electronically to maintain reasonable written policies and procedures designed to comply with the requirements of proposed § 1006.42(b).

42(b)(1)

The proposed rule would provide debt collectors with a choice between two general options for providing the required disclosures electronically. The first option would be to comply with the E-SIGN Act after the consumer provides affirmative consent directly to the debt collector. The second option would be to comply with the alternative procedures described in proposed § 1006.42(c). As explained in this section-by-section analysis (discussing the proposed E-SIGN Act option) and the section-by-section analysis of proposed § 1006.42(c) (discussing the proposed alternative procedures), a debt collector who satisfies the requirements of either option has taken necessary but not sufficient actions to support a finding that the debt collector has provided the electronic disclosure in a manner that is reasonably expected to provide actual notice and in a form that the consumer may keep and access later.[547]

Regarding the E-SIGN Act option, E-SIGN Act section 101(c) sets forth a detailed process for ensuring the consumer's informed, affirmative consent before delivering disclosures electronically.[548] Before a consumer may consent to electronic delivery, the consumer must receive a clear and conspicuous statement of: (1) The consumer's right not to consent and to withdraw consent; (2) the scope of the consumer's consent, including whether it applies only to the particular transaction which gave rise to the obligation to provide the disclosure or to identified disclosures that may be provided or made available during the course of the parties' relationship; (3) the procedures for withdrawing consent; (4) how the consumer may obtain paper copies of electronic records; and (5) any hardware and software requirements for access to and retention of electronic records.[549] The consumer must consent electronically, or confirm the consumer's consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent.[550] In light of these requirements, a debt collector who delivers required disclosures electronically in accordance with E-SIGN Act section 101(c) (and who satisfies § 1006.42(b)(2) through (4)) may reasonably expect to have provided the consumer with actual notice in a form that the consumer may keep and access later.

The proposed rule would clarify that, to deliver disclosures electronically in accordance with E-SIGN Act section 101(c), a debt collector must obtain affirmative consent directly from the consumer. The Bureau proposes this requirement as an interpretation of E-SIGN Act section 101(c), pursuant to its authority under E-SIGN Act section 104(b)(1)(A) to interpret the E-SIGN Act through regulations.[551] E-SIGN Act section 101(c) permits electronic delivery of required disclosures if, among other things, the consumer ''has affirmatively consented to such use and has not withdrawn such consent.'' The E-SIGN Act does not state that, in the debt collection context, a debt collector may rely on E-SIGN Act consent provided by the consumer to the original creditor or person to whom the debt is owed. Rather, the E-SIGN Act generally limits the consumer's consent to ''records provided or made available during the course of the parties' relationship'' or ''only to the particular transaction which gave rise to the obligation to provide the record.'' [552]

In the debt collection context, the Bureau interprets ''the parties' relationship'' to exclude a debt collector with whom the creditor may eventually place the account, because the consumer and the debt collector typically have no relationship at the time the consumer provides E-SIGN Act consent to the creditor. Indeed, the consumer likely does not know the identity of the debt collector the creditor may hire, and the creditor may not know either. In the debt collection context, the Bureau also interprets ''only the particular transaction which gave rise to the obligation to provide the record'' to exclude interactions between the consumer and the debt collector with whom the creditor may eventually place the account. The statute uses the word ''only'' before referring to ''the particular transaction,'' suggesting that the relevant transaction is limited and occurs within the confines of the ''parties' relationship.'' Accordingly, the Bureau does not propose to interpret a consumer's affirmative consent to receive electronic disclosures from a creditor under the E-SIGN Act as affirmative consent to receive electronic disclosures from a debt collector under the E-SIGN Act. Instead, the Bureau proposes to interpret E-SIGN Act section 101(c) to require that a consumer's consent be given directly to the debt collector. The Bureau's proposed interpretation is consistent with several FDCPA provisions pertaining to consumer consent for certain debt collection communications,[553] as well as the ANPRM comments of several industry participants and consumer advocates.

For these reasons, proposed § 1006.42(b)(1) would, except as provided in § 1006.42(c), require a debt collector to provide the required disclosures in accordance with section 101(c) of the E-SIGN Act after the consumer provides affirmative consent directly to the debt collector. The Bureau proposes to codify this interpretation of the E-SIGN Act in comment 42(b)(1)–1. The Bureau requests comment on proposed § 1006.42(b)(1) and on proposed comment 42(b)(1)–1, including on the extent to which debt collectors currently obtain E-SIGN Act consent directly from the consumer. If debt collectors currently do not obtain such consent, the Bureau requests comment on the reasons why not and on any specific circumstances in which debt collectors rely instead upon consent the consumer originally provided to the creditor under the E-SIGN Act. The Bureau also requests comment on whether to permit such reliance, or transfer of consent, in

[547] The debt collector still would need to satisfy the requirements in proposed § 1006.42(b)(2) through (4).

[548] 15 U.S.C. 7001(c).

[549] *Id.*

[550] *Id.* Further, after providing consent, if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record must provide the consumer with new disclosures and the consumer must provide new consent. *Id.*

[551] *See* 15 U.S.C. 7004(b)(1). The Bureau's proposed interpretation of E-SIGN Act section 101(c) is ''with respect to'' the FDCPA within the meaning of E-SIGN Act section 104(b). The proposed interpretation is therefore limited to disclosures required under Regulation F, which must be provided in the name of and on behalf of the FDCPA-covered debt collector. The Bureau does not propose to issue an interpretation applicable to disclosures required by other statutes or regulations, including where third parties may provide disclosures in the name of or on behalf of the creditor.

[552] 15 U.S.C. 7001(c)(1)(B)(ii).

[553] *See* 15 U.S.C. 1692c(a) (permitting certain communications with ''the prior consent of the consumer given directly to the debt collector''); 15 U.S.C. 1692c(b) (same).

certain specific circumstances and, if so, what those circumstances should be.

42(b)(2)

Proposed § 1006.42(b)(2) provides that, to comply with § 1006.42(a)(1) when providing the required disclosures electronically, a debt collector also must identify the purpose of the communication. Proposed § 1006.42(b)(2) seeks to increase the likelihood that a consumer who receives an electronic debt collection disclosure can distinguish the communication from junk mail or ''spam.'' [554] Reports estimate that over 200 billion emails are sent and received worldwide each day [555] and that spam accounts for over half of all email traffic.[556] Given the volume of information, including spam, transmitted by email, the likelihood that consumers will receive actual notice of emailed debt collection disclosures may depend, in part, on their ability to distinguish between the debt collector's communication transmitting the disclosure and spam.

According to one recent study, the two most important factors in a consumer's decision to open an email are whether the consumer recognizes the sender and whether the email includes a relevant subject line.[557] At the outset of collections, a consumer may not recognize the name of a debt collector who sends an email or text message. The subject line of an email, or the first line of a text message, may therefore be an especially important means of alerting consumers to important debt collection communications. To address the spam problem, many email providers and third parties have developed sophisticated filters to help consumers identify and segregate potential spam messages.[558] There may be a risk that such filters will erroneously identify a legitimate debt collection communication as spam. Using a specific, informative subject line may decrease that risk.[559]

For these reasons, proposed § 1006.42(b)(2) would require a debt collector to identify the purpose of the communication by including, in the subject line of an email or in the first line of a text message transmitting the required 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. Including limited but relevant information about the creditor and the debt in the subject line of an email, or in the first line of a text message, may improve a consumer's ability to distinguish the communication from spam or junk, and therefore may increase the likelihood that the consumer will receive actual notice within the meaning of proposed § 1006.42(a)(1).[560]

Because the amount of the debt may change over time as interest and fees accrue, including the current amount of the debt in the subject line of an email or the first line of a text message, without further itemization, may not help the consumer recognize a debt that belongs to the consumer or that the communication pertains to debt collection. Proposed comment 42(b)(2)–1 provides examples of information identifying the debt, other than the amount, that a debt collector could use to comply with proposed § 1006.42(b)(2). These include 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 address on the account.

The Bureau requests comment on proposed § 1006.42(b)(2) and on proposed comment 42(b)(2)–1. In particular, the Bureau requests comment on the risk that an email provider's spam filter may prevent a debt collector's email from reaching a consumer's inbox, including on whether any particular words or phrases in the subject line of an email are likely to cause a spam filter to identify a legitimate debt collection communication as spam and on whether debt collectors should be required to take any other steps to decrease the likelihood that an email will be filtered as spam. The Bureau also requests comment on whether any particular words or phrases in the subject line of an email or in the first line of a text message are likely to help consumers distinguish between spam and debt collection communications. In addition, the Bureau requests comment on the risks to consumers, if any, of including the name of the creditor to whom the debt is owed, a truncated account number, the date of sale of a product or service giving rise to the debt, the physical address of service, the billing address, or any other particular item of information in the subject line of an email or in the first line of a text message. The Bureau also requests comment on how consumers handle emails marked as spam, including on the frequency with which consumers review their spam folders to identify emails they should read, and the extent to which major email providers delete unread emails in spam folders.

42(b)(3)

Proposed § 1006.42(b)(3) describes a third requirement that a debt collector would need to satisfy to comply with proposed § 1006.42(a)(1) when providing the required disclosures electronically. Just as a debt collector who sends a paper letter by postal mail may receive notice that the letter was undeliverable, a debt collector who sends an email or a text message may receive notice from a communications carrier that the email or text message was undeliverable. This notice often takes the form of an automated message. Proposed § 1006.42(b)(3) would require a debt collector 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.

The Bureau proposes this requirement because it appears unreasonable for a debt collector to expect that a consumer has actual notice of an electronic disclosure if that disclosure has been returned as undelivered. There is support for this interpretation in court decisions. For example, in a similar context, courts have held that a paper validation notice sent to the consumer by postal mail but returned to the debt collector as undeliverable was not actually sent to the consumer within the

[554] The term ''spam'' generally refers to unsolicited commercial email. *See, e.g.,* 15 U.S.C. 7701(a)(2) (finding, in connection with CAN–SPAM Act of 2003, that ''[t]he convenience and efficiency of electronic mail are threatened by the extremely rapid growth in the volume of unsolicited commercial electronic mail.'').

[555] Radicati Grp., Inc., *Email Statistics Report, 2015–19, Executive Summary,* at 3–4 (Mar. 2015), *https://www.radicati.com/wp/wp-content/uploads/2015/02/Email-Statistics-Report-2015-2019-Executive-Summary.pdf.*

[556] Symantec, *internet Security Threat Report,* at 24 (Apr. 2017), *https://www.symantec.com/content/dam/symantec/docs/reports/istr-22-2017-en.pdf.*

[557] Direct Mktg. Ass'n, *Consumer Email Tracker 2017,* at 18 (2017),*https://dma.org.uk/uploads/misc/5a1583ff3301a-consumer-email-tracking-report-2017-(2)_5a1583ff32f65.pdf.*

[558] *See, e.g.,* Todd Jackson, *How Our Spam Filter Works,* Official Gmail Blog (Oct. 31, 2007), *https://gmail.googleblog.com/2007/10/how-our-spam-filter-works.html.*

[559] *See, e.g.,* IBM, *Which keywords or characters can trigger spam filters?,* IBM Knowledge Ctr., *https://www.ibm.com/support/knowledgecenter/en/SSWU4L/Email/imc_Email/List_of_Keywords-Characters_Which_Can_Tr190.html* (last visited May 6, 2019).

[560] As explained in the section-by-section analysis of proposed § 1006.42(b)(1), (c)(1), and (e)(2), the email or text message can only be sent to an email address or telephone number that satisfies certain criteria. Those criteria are designed to ensure that the email address or telephone number is one the consumer actually used, thereby limiting privacy concerns.

meaning of FDCPA section 809(a).[561] The Bureau requests comment on proposed § 1006.42(b)(3), including on how a debt collector who attempts to deliver a required disclosure electronically may become aware that the disclosure has not been delivered. The Bureau also requests comment on whether debt collectors should be required to take any steps in addition to those described in proposed § 1006.42(b)(3).

42(b)(4)

Proposed § 1006.42(b)(4) describes an additional step that a debt collector must take to comply with proposed § 1006.42(a)(1). Proposed § 1006.42(b)(4) would apply only when a debt collector provides electronically the validation notice described in proposed § 1006.34(a)(1)(i)(B). Proposed § 1006.42(b)(4) seeks to ensure that debt collectors provide the validation notice in a format that is compatible with the range of commercially available electronic devices a consumer may use to view the disclosure.

According to recent research, smartphone ownership has doubled since 2011, and today a larger share of consumers own a smartphone (77 percent) than a desktop or laptop computer (73 percent).[562] In addition, roughly half of all consumers own a tablet computer.[563] As a result, consumers may view disclosures on a variety of screen sizes. A disclosure that automatically adjusts to the size of the consumer's screen is sometimes called a ''responsive'' disclosure. If a consumer views a disclosure using a device to which the disclosure is not responsive, the disclosure may appear in small text with truncated margins; in some cases, the disclosure may be difficult for the consumer to read and navigate. In addition, some research suggests that mobile-friendly design may improve consumer attention to digital information.[564] Consistent with these considerations, the Bureau's 2016 final rule concerning prepaid accounts under Regulations E and Z (2016 Prepaid Final Rule) requires financial institutions to provide electronic disclosures required by that rule in a form that is responsive to different screen sizes.[565]

Given the prevalence of mobile technology, it may be unreasonable for a debt collector to expect that a consumer has actual notice of an electronic disclosure that does not adjust to the screen size of the consumer's mobile device. On smaller screens, such a disclosure may be illegible if viewed in its entirety. As a result, some information may be lost to consumers. This may be especially true as to disclosures, such as the validation notice described in proposed § 1006.34(a)(1)(i)(B), with formatting elements meant to draw a consumer's attention to particularly important information when the entirety of the disclosure is in view. For example, the validation notice's presentation of information in a tabular format could be lost to consumers using mobile devices if the validation notice is not in a responsive format viewable on smaller screens.

In addition, graphical representations of textual content generally cannot be accessed by assistive technology used by the blind and visually impaired, such as screen readers. Providing electronically-delivered disclosures in machine-readable text may help ensure that consumers who use screen readers can access the information. Thus, unless a debt collector knows that a consumer does not use a screen reader, it also may be unreasonable for a debt collector to expect that a consumer has actual notice of an electronic disclosure that is not machine readable. The Bureau's 2016 Prepaid Final Rule requires financial institutions to provide electronic disclosures required by that rule using machine-readable text that is accessible on screen readers.[566]

To address concerns about readability on mobile devices and accessibility for persons with disabilities, proposed § 1006.42(b)(4) would require a debt collector who provides electronically the validation notice described in § 1006.34(a)(1)(i)(B) 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.[567] Proposed § 1006.42(b)(4) would apply only to the validation notice described in proposed § 1006.34(a)(1)(i)(B). It would not apply to the original-creditor disclosure described in proposed § 1006.38(c) because that disclosure typically is brief and does not feature standardized information or formatting. It also would not apply to the verification disclosures described in proposed § 1006.38(d)(2). Those disclosures may include images of original paper documents, and it does not appear that commercially available file formats for delivering images electronically could comply with proposed § 1006.42(b)(4). It may therefore be impractical to require debt collectors to provide the verification disclosures in accordance with proposed § 1006.42(b)(4).

Proposed comment 42(b)(4)–1 provides examples of how to satisfy proposed § 1006.42(b)(4). The comment explains that a debt collector provides the validation notice in a responsive format accessible on a screen of any commercially available size if, for example, the notice adjusts to different screen sizes by stacking elements in a manner that accommodates consumer viewing on smaller screens while still meeting the other applicable formatting requirements in proposed § 1006.34. It also explains that a debt collector provides the validation notice in a manner accessible via commercially available screen readers if, for example, the validation notice is machine readable.

The Bureau requests comment on proposed § 1006.42(b)(4) and on proposed comment 42(b)(4)–1. In particular, the Bureau requests comment on the cost to debt collectors of developing and using a validation notice that is responsive to screen size and accessible via screen readers, including the one-time costs of designing such a disclosure and the ongoing costs of populating such a disclosure with information about individual debts. The Bureau also requests comment on how those costs might change if the Bureau provides debt collectors with source code for a version of the validation notice that would comply with proposed § 1006.42(b)(4). In addition, the Bureau requests comment on whether the original-creditor disclosure described in

[561] *See, e.g., Johnson* v. *Midland Credit Mgmt. Inc.,* No. 1:05 CV 1094, 2006 WL 2473004, at *12–13 (N.D. Ohio Aug. 24, 2006) (''[W]hen a written notice is returned as undeliverable, it has not actually been *sent* to the *consumer.* Rather, it has been *sent* to an *improper address* for the consumer. . . . If the debt collector knows the validation notice was sent to the wrong address, the debt collector has not complied with the plain language of the statute.'').

[562] internet & Tech, *Mobile Fact Sheet,* Pew Res. Ctr. (Feb. 5, 2018), *http://www.pewinternet.org/fact-sheet/mobile.*

[563] *Id.*

[564] For example, a 2014 marketing study found that optimizing email messages to be read on a variety of devices boosted the rate at which consumers clicked on hyperlinks. *See* Lauren Smith, *The Science of Email Clicks: The Impact of Responsive Design & Inbox Testing,* Litmus (Dec. 8, 2014), *https://litmus.com/blog/the-science-of-email-clicks-the-impact-of-responsive-design-inbox-testing.*

[565] 12 CFR 1005.18(b)(6)(i)(B); comment 18(b)(6)(i)(B)–2.

[566] 12 CFR 1005.18(b)(6)(i)(B); comment 18(b)(6)(i)(B)–3.

[567] In connection with this proposal, the Bureau intends to make available on its website the source code for a version of the validation notice that would comply with proposed § 1006.42(b)(4). Based on its own feasibility testing of a mail merge process, the Bureau believes that the burden on debt collectors of populating an email based on this source code with transaction data may be low.

proposed § 1006.38(c) and the validation-information disclosure described in proposed § 1006.38(d)(2) should be subject to proposed § 1006.42(b)(4).

42(c) Alternative Procedures for Providing Certain Disclosures Electronically

Under proposed § 1006.42(b)(1), a debt collector who provides the required disclosures electronically must, except as provided in § 1006.42(c), comply with section 101(c) of the E-SIGN Act as interpreted by the Bureau in the proposed rule. Proposed § 1006.42(c) would allow for electronic delivery of the required disclosures outside of the E-SIGN Act's consent process. The Bureau proposes this alternative because debt collectors and consumers may benefit from greater flexibility as to electronic disclosures.

According to industry commenters to the Bureau's ANPRM and to the small entity representatives who participated in the SBREFA process, it is often infeasible for debt collectors to send electronic disclosures for two reasons. First, debt collectors are concerned about violating FDCPA section 805(b)'s limitations on third-party communications when they engage in electronic communications with consumers, an issue the Bureau proposes to address in § 1006.6(d)(3).[568] Second, the process for obtaining E-SIGN Act consent is particularly cumbersome in the debt collection context, where consumers and debt collectors typically lack a pre-existing relationship.

The process for obtaining consumer consent under the E-SIGN Act may impose a substantial burden on electronic commerce in the unique context of debt collection. Most communication between debt collectors and consumers continues to take place by telephone and postal mail, neither of which is well-suited to obtaining E-SIGN Act consent. Section 101(c) of the E-SIGN Act requires that the consumer receive certain disclosures before consenting to electronic delivery. These disclosures may be more than 1,000 words long and, although a debt collector could provide them over the telephone, they could take a considerable amount of time to recite to the consumer. Moreover, on a telephone call, it may be challenging for a consumer to ''reasonably demonstrate[ ]'' the ability to ''access information in the electronic form that will be used to provide the information that is the subject of the consent,'' as required by E-SIGN Act section 101(c)(1)(C)(ii).[569] Similarly, although a debt collector could provide E-SIGN disclosures by postal mail, it is not clear how a consumer could, by postal mail, ''reasonably demonstrate'' the ability to access electronic information.

Thus, even if a debt collector incorporates some elements of the E-SIGN Act consent process into an initial telephone or postal mail communication, the debt collector likely still must rely on the consumer to take the further step of demonstrating the ability to access electronic information. A debt collector may be uncertain whether and when the consumer will take this further step. Such uncertainty may be particularly challenging in connection with delivering the validation notice. Under FDCPA section 809(a) and proposed § 1006.34(a)(1)(i)(B), the debt collector must send the validation notice within five days of the debt collector's initial communication with the consumer, leaving little time for the debt collector to arrange an alternative delivery method if the consumer does not complete the E-SIGN Act consent process soon after receiving the initial communication. While a debt collector could, by introductory letter, ask the consumer to complete the entire E-SIGN Act consent process online, a consumer may be unlikely to respond quickly to such a request from a debt collector with whom the consumer lacks a prior relationship.

Further, it may not be effective for debt collectors to adopt the practice that creditors often use of sending emails or text messages with hyperlinks directing consumers to websites requesting E-SIGN Act consent. Even if the creditor previously identified the debt collector for the consumer,[570] the debt collector would need to send the validation notice within five days of the initial communication, again leaving little time for the debt collector to arrange an alternate delivery method if the consumer does not consent to electronic delivery quickly.[571]

The Bureau is not aware of instances in which a debt collector has delivered a validation notice electronically pursuant to E-SIGN Act consent provided directly to the debt collector. Industry commenters to the Bureau's ANPRM generally stated that debt collectors do not send validation notices electronically. Similarly, a consumer advocate commenter stated that a survey of its members did not find any evidence that debt collectors currently deliver validation notices electronically. However, the consumer advocate commenter also stated that, given the consent requirements of the E-SIGN Act and the timing requirements of the FDCPA, it is conceivable that electronic delivery of validation notices could occur under current law. More recently, the consumer advocate commenter noted that several debt collectors may be delivering validation notices electronically.[572] However, it is unclear how widespread this practice is and whether it involves consumer consent provided directly to the debt collector.[573]

For these reasons, the Bureau proposes § 1006.42(c), which describes procedures a debt collector may use to provide the required disclosures electronically without the need to comply with section 101(c) of the E-SIGN Act. As discussed below, proposed § 1006.42(c)(1) would require a debt collector to send an electronic communication to a particular email address or, in the case of a text message, a particular telephone number. Proposed § 1006.42(c)(2) would provide two methods from which debt collectors could choose for placing a required disclosure in such an electronic communication. A debt collector who follows the procedures described in proposed § 1006.42(c) would satisfy proposed § 1006.42(a)(1)'s requirement to provide the required disclosures in a manner that is reasonably expected to provide actual notice and in a form that the consumer may keep and access later, provided that the debt collector also satisfies proposed § 1006.42(b)(2) through (4).

The Bureau proposes § 1006.42(c) pursuant to its authority, under section 104(d)(1) of the E-SIGN Act, to exempt a specified category or type of record from the requirements relating to

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

[569] *Id.*

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

[571] As discussed in the section-by-section analysis of proposed § 1006.42(b)(1), the Bureau proposes to interpret the E-SIGN Act to require consent to be provided directly from the consumer to the debt collector.

[572] Similarly, an association of State regulators stated that many technologically sophisticated debt collectors provided disclosures electronically, but it did not provide further details.

[573] Direct consent may be easier to obtain for required disclosures other than the validation notice. For example, in response to the ANPRM, one industry trade association reported that 20 percent of members that responded to a survey delivered verification materials by email and fax. However, this commenter did not identify the proportion sent by email, and it did not indicate whether these debt collectors obtained E-SIGN Act consent directly from the consumer before doing so. Another industry trade association commenting on the ANPRM stated that electronic delivery of verification materials occurs rarely.

consent in section 101(c) of the E-SIGN Act if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.[574] The Bureau proposes the exemption on the basis that requiring debt collectors to comply with the consent requirements in section 101(c) E-SIGN Act may impose a substantial burden on electronic commerce by potentially reducing opportunities for consumers and debt collectors to communicate and resolve debts more quickly; for consumers to submit disputes more easily; and for consumers to make online payments in response to notices delivered electronically. Further, as discussed in part VI, the Bureau estimates that as many as 140 million validation notices are sent annually, almost all by postal mail. As also discussed in part VI, electronic delivery costs may be substantially lower than the costs of printing disclosures and delivering them by postal mail.[575] Given the number of validation notices sent annually, and the unique challenges in the debt collection context of obtaining E-SIGN Act consent to receive them electronically, these printing and mailing costs also may impose a substantial burden on the debt collection industry, which may, in turn, result in increased cost and decreased availability of credit.

The procedures described in proposed § 1006.42(c) are designed so as not to increase the material risk of harm to consumers. Consumers are exposed to a materially increased risk of harm when electronic delivery of the required disclosures by the alternative method would make consumers less likely to receive, identify, open, read, or understand the disclosures, or would increase the likelihood of an unintended third-party disclosure. Pursuant to its E-SIGN Act exemption authority, the Bureau designed each component of proposed § 1006.42(c) to prevent an increase in these risks. For example, as discussed below, the procedures in proposed § 1006.42(c) are designed to help ensure that, among other things, the email address or telephone number to which a debt collector sends a required disclosure or a hyperlink to such a disclosure belongs to the consumer; the consumer is prepared to receive electronic disclosures at that email address or telephone number; the consumer is prepared to view required disclosures electronically, including when provided on a website; and the consumer can retain electronic disclosures.

The Bureau requests comment on proposed § 1006.42(c), including on whether the requirements relating to consent in section 101(c) of the E-SIGN Act—including as the Bureau proposes to interpret them—impose a substantial burden on electronic commerce in the debt collection context, and on whether proposed § 1006.42(c) is necessary and sufficient to eliminate those burdens. With respect to possible burdens on electronic commerce, the Bureau requests information on the costs of delivering required disclosures electronically, how those costs compare to delivering required disclosures on paper, and the broader impacts of increased electronic delivery in the debt collection context. The Bureau also requests comment on whether the procedures described in proposed § 1006.42(c) increase the material risk of harm to consumers and, if so, any adjustments that can be made to mitigate that risk.

42(c)(1)

To help ensure that a consumer receives a required disclosure provided electronically when a debt collector uses the alternative procedures, proposed § 1006.42(c)(1) would require a debt collector to provide the disclosure by sending an electronic communication to an email address or, in the case of a text message, a telephone number that the creditor or a prior debt collector could have used to provide electronic disclosures related to that debt in accordance with section 101(c) of the E-SIGN Act. This may include, for example, an email address or telephone number covered by the consumer's unwithdrawn E-SIGN Act consent provided directly to the creditor or a prior debt collector. The Bureau proposes to exercise its E-SIGN Act exemption authority to limit the email addresses and telephone numbers to which a debt collector may send required disclosures under proposed § 1006.42(c)(1) on the basis that, if a consumer has not provided unwithdrawn E-SIGN Act consent for a particular email address or telephone number to the creditor or a prior debt collector, a new debt collector should not presume that the consumer is able or prepared to receive electronic disclosures at that email address or telephone number.

Proposed comment 42(c)(1)–1 would clarify that, if a consumer has opted out of debt collection communications to a particular email address or telephone number by, for example, following instructions provided pursuant to § 1006.6(e), then a debt collector cannot use that email address or telephone number to deliver disclosures under § 1006.42(c). This would be the case even if the consumer provided unwithdrawn E-SIGN Act consent allowing the creditor or an earlier debt collector to use that email address or telephone number.

The Bureau requests comment on proposed § 1006.42(c)(1) and on proposed comment 42(c)(1)–1, including on the risks and benefits of allowing debt collectors to use an email address or telephone number with respect to which the consumer provided to the creditor or a prior debt collector unwithdrawn E-SIGN Act consent related to the debt. The Bureau also requests comment on how often creditors obtain E-SIGN Act consent from consumers and how often consumers withdraw any such consent.

42(c)(2)

Proposed § 1006.42(c)(2) would provide two methods from which debt collectors could choose for placing a required disclosure in an electronic communication. The first method, described in proposed § 1006.42(c)(2)(i), would be to place the disclosure in the body of an email. The second method, described in proposed § 1006.42(c)(2)(ii), would be 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 are met.

42(c)(2)(i)

Proposed § 1006.42(c)(2)(i) would allow a debt collector to place the disclosure in the body of an email sent to an email address described in § 1006.42(c)(1). Proposed comment 42(c)(2)(i)–1 would clarify that a debt collector places a disclosure in the body of an email if the disclosure's content is viewable within the email itself. Some pre-proposal feedback suggested that creditors rarely provide required disclosures within the body of an email if those disclosures include transaction-specific information. This may be because email has not traditionally been viewed as a secure form of communication. It may also be because creditors prefer to provide required disclosures in a PDF or similar format. On the other hand, many creditors now send email alerts to consumers, and these alerts often include transaction-specific information. In addition, the use of technology that protects

[574] 15 U.S.C. 7004(d)(1).

[575] As discussed in part VI, the Bureau estimates that it costs between $0.50 and $0.80 to send a validation notice by postal mail, whereas the marginal cost of sending a validation notice electronically is approximately zero.

consumer privacy by encrypting emails while in transit appears to be increasing.[576] For these reasons, providing a disclosure in the body of an email may pose no more risk of third-party interception than delivery by mail.[577]

The Bureau requests comment on proposed § 1006.42(c)(2)(i) and on proposed comment 42(c)(2)(i)–1, including on the risks and benefits of allowing a debt collector to place a required disclosure in the body of an email without first providing the consumer with notice and an opportunity to opt out. In addition, the Bureau requests comment on whether creditors or debt collectors currently provide required disclosures bearing transaction-specific information in the body of emails and, if not, the reasons why not. The Bureau also requests comment on the prevalence of ''in-transit'' encryption technology and whether that technology has reduced any concerns about the security of emails. The Bureau also requests comment on the prevalence of technology that would allow a consumer to save or print a text message.

42(c)(2)(ii)

Proposed § 1006.42(c)(2)(ii) provides that, in lieu of placing a disclosure in the body of an email, a debt collector who is delivering a required disclosure electronically pursuant to the alternative procedures may place the disclosure on a secure website that is accessible by clicking on a clear and conspicuous hyperlink included within an electronic communication sent to an email address or a telephone number described in § 1006.42(c)(1). However, this method would be available only if three additional conditions, described in proposed § 1006.42(c)(2)(ii)(A) through (C), are satisfied.

First, proposed § 1006.42(c)(2)(ii)(A) would require that the disclosure be accessible on the website for a reasonable period of time and be capable of being saved or printed. The Bureau proposes these requirements because a disclosure that is only briefly accessible, like a disclosure that cannot be saved or printed, may be unlikely to provide notice in a form the consumer can keep and access later.

Second, proposed § 1006.42(c)(2)(ii)(B) would require that the consumer receive notice and an opportunity to opt out of hyperlinked delivery as described in proposed § 1006.42(d). Placing a required disclosure on a secure website and sending the consumer an electronic communication containing a hyperlink may be more convenient for some debt collectors than including the required disclosure in the body of an email. However, because debt collectors and consumers typically lack a pre-existing relationship, delivering a required disclosure by hyperlink without first alerting the consumer by separate means may not be reasonably expected to provide actual notice. Federal agencies have advised consumers against clicking on hyperlinks provided by unfamiliar senders.[578] According to recent reports, some scams have used fake debt collection emails to lure consumers into clicking on hyperlinks.[579] To address these risks, some consumer email services can be configured to block hyperlinks from unrecognized senders.[580] Consumers may be likely to follow safe browsing habits and not click on a hyperlink in an initial communication from an unfamiliar debt collector.[581] Therefore, it may be unreasonable for a debt collector to expect that a consumer has actual notice of an electronic disclosure delivered by hyperlink if the consumer does not expect to receive a hyperlinked disclosure from that particular debt collector. Proposed § 1006.42(d), discussed below, describes consumer notice-and-opt-out processes meant to ensure that, before a debt collector sends a required disclosure by hyperlink, the consumer expects to receive it and does not object to such receipt. By helping the consumer identify the sender in advance, a notice-and-opt-out process may also reduce the risk that the consumer will treat an email containing a hyperlink as spam.

Third, proposed § 1006.42(c)(2)(ii)(C) would require that the consumer not have opted out during the opt-out period. The Bureau proposes this requirement because a debt collector may not reasonably expect that a consumer has actual notice of a hyperlinked disclosure if the consumer has opted out of receiving disclosures in that manner.

The Bureau requests comment on proposed § 1006.42(c)(2)(ii), including on the risks and benefits of allowing a debt collector to place a required disclosure on a secure website accessible by hyperlink, particularly compared to placing a required disclosure in the body of an email. The Bureau also requests comment on whether to clarify further what it means for a hyperlink to be clear and conspicuous and, if so, what factors may be relevant to determining whether a hyperlink is clear and conspicuous. In addition, the Bureau requests comment on whether to clarify further what it means for a disclosure to remain available on a website for a reasonable time and, if so, the length of time that should qualify as reasonable. In addition, the Bureau requests comment on the prevalence of anti-virus software and other technologies that identify whether a hyperlink included in an email or text message is safe, and whether consumers using such technologies are likely click on hyperlinks from unrecognized debt collectors. The Bureau also requests comment on whether debt collectors who wish to provide required disclosures electronically would be more likely to do so in the body of an email under proposed § 1006.42(c)(2)(i) or on a secure website that is accessible by clicking on a hyperlinked included within an electronic communication under proposed § 1006.42(c)(2)(ii), and the reasons why.

42(d) Notice and Opportunity To Opt Out of Hyperlinked Delivery

Proposed § 1006.42(d) describes two processes for providing consumers with notice and an opportunity to opt out of

[576] For example, at least one major email provider reports that a growing number of email providers encrypt messages sent to and from their services using Transport Layer Security encryption, and that use of ''in transit'' encryption continues to increase. *See* Google, *Email Encryption in Transit,* Google Transparency Rep., *https://transparencyreport.google.com/safer-email/overview* (last visited May 6, 2019).

[577] In pre-proposal feedback, several industry stakeholders and a small entity representative who participated in the SBREFA process requested that the Bureau clarify how to deliver required disclosures by text message. As described in the section-by-section analysis of proposed § 1006.42(c)(2)(ii), the Bureau's proposal would, subject to certain conditions, permit a debt collector to use a text message to deliver a hyperlink to a disclosure placed on a secure website.

[578] 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, *Phishing* (July 2017), *https://www.consumer.ftc.gov/articles/0003-phishing;* 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. Comm'n, *Beware of Malware: Think Before You Click, https://www.fdic.gov/consumers/consumer/news/cnwin16/malware.html* (last updated Mar. 8, 2016).

[579] *See, e.g.,* Claer Barrett, *Beware Fake Debt Collection Emails, Says Action Fraud,* Fin. Times, Apr. 8, 2016, *https://www.ft.com/content/43fdbb30-fce4-11e5-b3f6-11d5706b613b.*

[580] *See* Microsoft Off. Support, *Help Keep Spam and Junk Email Out of Your Inbox in Outlook.com,* Microsoft, *https://support.office.com/en-us/article/help-keep-spam-and-junk-email-out-of-your-inbox-in-outlook-com-a3ece97b-82f8-4a5e-9ac3-e92fa6427ae4* (last visited May 6, 2019).

[581] In comments to the Bureau's ANPRM, a large debt collector agreed that consumers may view disclosures from unknown collectors with suspicion, such as when the consumer has not received advance information about the debt collector from a creditor.

hyperlinked delivery of required disclosures, as required by proposed § 1006.42(c)(2)(ii)(B). A debt collector who wishes to place a required disclosure on a website that is accessible by clicking on a hyperlink included within an electronic communication would be required to choose between these notice-and-opt-out processes. One process, described in proposed § 1006.42(d)(1), would involve a communication between the debt collector and the consumer before the required disclosure is provided; the other process, described in proposed § 1006.42(d)(2), would involve a communication between the creditor and the consumer before the required disclosure is provided.

Proposed comment 42(d)–1 would clarify that a debt collector's or a creditor's communication with a consumer pursuant to § 1006.42(d)(1) or (2), respectively, applies to all disclosures covered by § 1006.42(a) that the debt collector thereafter sends regarding that debt, unless the consumer later designates that email address or, in the case of text messages, that telephone number as unavailable for the debt collector's use, such as by opting out pursuant to the instructions required by § 1006.6(e). The Bureau proposes § 1006.42(d) for the same reasons and pursuant to the same authority discussed in the section-by-section analysis of proposed § 1006.42(c).

42(d)(1) Communication by the Debt Collector

Under proposed § 1006.42(d)(1), a debt collector must inform the consumer, in a communication with the consumer before providing the required disclosure, of the information in proposed § 1006.42(d)(1)(i) through (vi). Proposed § 1006.42(d)(1)(i) and (ii) would require the debt collector to inform the consumer of the name of the consumer who owes or allegedly owes the debt, and the name of the creditor to whom the debt currently is owed or allegedly owed. The Bureau proposes to require this information to help the consumer identify whether the debt belongs to the consumer. Proposed § 1006.42(d)(1)(iii) and (iv) would require the debt collector to inform the consumer of the email address or telephone number from which and to which the debt collector intends to send the electronic communication containing the hyperlink. The Bureau proposes to require this information to help the consumer ensure that an electronic communication containing the hyperlink is directed to an appropriate email address or telephone number, and to help the consumer identify any such electronic communication once the communication reaches the consumer's inbox. Finally, proposed § 1006.42(d)(1)(v) and (vi) would require 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. The Bureau proposes to require this information to enable the consumer to choose whether to opt out of hyperlinked electronic disclosures from the debt collector—a choice the consumer would not have had the opportunity to make when providing E-SIGN Act consent originally to the creditor because the consumer likely would not have known the identity of any future debt collector.[582]

Proposed comment 42(d)(1)–1 would clarify that, for purposes of a debt collector's communication with the consumer under § 1006.42(d)(1), the term ''name of the consumer'' has the same meaning as the term ''consumer's name'' under § 1006.34(c)(2)(ii). The comment also includes a cross-reference to proposed comment 34(c)(2)(ii)–1, which explains that the consumer's name is what the debt collector reasonably determines is the most complete version of the name about which the debt collector has knowledge, whether obtained from the creditor or another source. Proposed comment 42(d)(1)–2 would clarify that, if a debt collector's communication with the consumer under § 1006.42(d)(1) applies to multiple debts, § 1006.42(d)(1)(i) and (ii) require the debt collector to identify the consumer and the creditor for each debt to which the communication applies.[583]

Proposed comment 42(d)(1)–3 would clarify how the requirement to communicate with the consumer before providing a hyperlinked disclosure works together with the requirement to provide the consumer a reasonable period within which to opt out. The comment explains 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, a written or electronic communication that requires the consumer to make an opt-out decision within a period of five or fewer days does not satisfy proposed § 1006.42(d)(1). The Bureau proposes to require a debt collector 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 an opt-out notice provided in a written or electronic communication. Because no more than five days may elapse between an initial debt collection communication and the time the debt collector sends the validation notice under FDCPA section 809(a) as implemented by proposed § 1006.34(a)(1)(i)(B), a debt collector who wishes to obtain consumer consent to hyperlinked delivery in an initial communication must do so orally.[584] Proposed comment 42(d)(1)–4 would clarify that an opt-out notice provided by a debt collector under § 1006.42(d)(1) may be combined with an opt-out notice provided by the debt collector under § 1006.6(d)(3)(i)(B)(*1*).

The Bureau requests comment on proposed § 1006.42(d)(1) and its related commentary. In particular, the Bureau requests comment on whether, to limit the risk of third-party disclosure of the opt-out notice and to increase the likelihood that a consumer will receive actual notice of a required disclosure delivered by hyperlink, the rule should restrict the email addresses or telephone numbers to which a debt collector may send the opt-out notice that would be required by proposed § 1006.42(d)(1), such as by requiring that the opt-out notice be sent to an email address or telephone number other than the one to which the debt collector intends to send the hyperlink. The Bureau also requests comment on whether the information required to be provided under proposed § 1006.42(d)(1)(i) through (vi) is sufficient to allow a consumer to make an informed decision whether to opt out of receiving hyperlinked delivery of required disclosures. The Bureau also requests comment on whether to clarify further what it means to provide a reasonable opt-out period and, if so, how long an opt-out period should be to qualify as reasonable. In particular, the

[582] As discussed in the section-by-section analysis of proposed § 1006.42(c)(2)(ii), the rule would not permit a debt collector to deliver required disclosures by hyperlink to a consumer who opted out of such delivery.

[583] As discussed in the section-by-section analysis of proposed § 1006.42(c)(1), proposed comment 42(c)(1)–1 would clarify that, if a consumer has opted out of communications by the debt collector to an email address or, in the case of text messages, a telephone number, then that email address or telephone number cannot be used to deliver disclosures under § 1006.42(c).

[584] Under proposed § 1006.6(e), the communication containing the hyperlink would need to include a clear and conspicuous statement describing one or more ways the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number. A consumer who no longer wished to receive hyperlinked delivery of required disclosures could revoke consent by following the opt-out instructions.

Bureau requests comment on whether the requirement to allow a consumer more than five days to make an opt-out decision in response to an opt-out notice delivered electronically, as described in proposed comment 42(d)(1)–3, should be imposed or should be shortened or lengthened. In addition, the Bureau requests comment on how a debt collector could obtain a consumer's oral consent to hyperlinked delivery of required disclosures.

42(d)(2) Communication by the Creditor

Instead of complying with the notice-and-opt-out process described in proposed § 1006.42(d)(1), which would rely on a communication between the debt collector and the consumer, a debt collector could choose to comply with the notice-and-opt-out process described in proposed § 1006.42(d)(2). The notice-and-opt-out process described in proposed § 1006.42(d)(2) would rely on a communication between the creditor and the consumer.

Under proposed § 1006.42(d)(2), a debt collector must, no more than 30 days before the debt collector's electronic communication containing the hyperlink to the disclosure, 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 in proposed § 1006.42(d)(2)(i) through (iv). The Bureau proposes to require the creditor to have communicated using the same email address or telephone number to which the debt collector intends to send the electronic communication containing the hyperlink to help ensure that the email address or telephone number is a valid one. The Bureau proposes the 30-day timing requirement to ensure that the creditor's communication with the consumer occurs shortly before the debt collector's delivery of the electronic communication containing the hyperlink to the consumer.

Proposed § 1006.42(d)(2)(i) and (ii) provide that the creditor must have informed the consumer of the placement or sale of the debt to the debt collector, and of the name the debt collector uses when collecting debts. The Bureau proposes to require this information to help the consumer identify the debt collector and the debt collector's relationship to the creditor and the account. Proposed § 1006.42(d)(2)(iii) provides that the creditor must have informed the consumer of the debt collector's option to use the consumer's email address or, in the case of a text message, the consumer's telephone number to provide any legally required debt collection disclosures in a manner that is consistent with Federal law. The Bureau proposes to require this information to help the consumer expect and recognize an electronic communication from the debt collector containing a hyperlink to a disclosure.

Proposed § 1006.42(d)(2)(iv) provides that the creditor must have informed the consumer of the information described in § 1006.42(d)(1)(iii), (v), and (vi). The Bureau proposes to require this information for the reasons discussed in the section-by-section analysis of proposed § 1006.42(d)(1).[585] Proposed comment 42(d)(2)–1 would clarify that a creditor's communication with the consumer under § 1006.42(d)(2) may apply to multiple debts being placed with or sold to the same debt collector at the same time. Proposed comment 42(d)(2)–2 would clarify how the requirement to communicate with the consumer before providing a hyperlinked disclosure works together with the requirement to provide the consumer a reasonable period within which to opt out. The comment explains that, in an oral communication with the consumer, such as a telephone or in-person conversation, the creditor may require the consumer to make an opt-out decision during that same communication; however, a written or electronic communication that requires the consumer to make an opt-out decision within a period of five or fewer days does not satisfy proposed § 1006.42(d)(2). The Bureau proposes to require a creditor 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 an opt-out notice provided in a written or electronic communication. Proposed comment 42(d)(2)–3 would clarify that an opt-out notice provided by a creditor under § 1006.42(d)(2) may be combined with an opt-out notice provided by the creditor under § 1006.6(d)(3)(i)(B)(*1*).

The Bureau requests comment on proposed § 1006.42(d)(2) and on proposed comment 42(d)(2)–1. In particular, the Bureau requests comment on whether the 30-day timing requirement should be lengthened or shortened. In addition, the Bureau requests comment on whether the information that proposed § 1006.42(d)(2)(i) through (iv) would require is sufficient to allow a consumer to make an informed decision whether to opt out of receiving hyperlinked delivery of required disclosures. The Bureau also requests comment on how often creditors communicate with consumers regarding the placement or sale of a debt. The Bureau also requests comment on whether debt collectors who wish to provide required disclosures electronically pursuant to proposed § 1006.42(c)(2)(ii) would be more likely to choose the notice-and-opt-out process described in proposed § 1006.42(d)(1) (communication by the debt collector) or the notice-and-opt-out process described in proposed § 1006.42(d)(2) (communication by the creditor), and the reasons why.

42(e) Safe Harbors

Proposed § 1006.42(e) would establish two safe harbors, the first covering provision of disclosures by mail and the second covering provision of the validation notice within the body of an email that is a debt collector's initial communication with the consumer. Conduct that falls within these safe harbors would satisfy proposed § 1006.42(a)(1)'s notice and retainability requirements.

The Bureau proposes § 1006.42(e) to implement and interpret FDCPA sections 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. Under FDCPA section 809(a), a debt collector must include certain information in the debt collector's initial communication with the consumer or ''send the consumer'' a ''written'' notice (*i.e.,* the validation notice) containing that information. Under FDCPA section 809(b), a debt collector must ''mail[ ] to the consumer'' any original-creditor or verification information it provides. As discussed in the section-by-section analysis of proposed § 1006.42(a)(1), a form of delivery that is not reasonably expected to provide actual notice may not satisfy FDCPA section 809(a)'s requirement to ''send the consumer'' a notice or FDCPA section 809(b)'s requirement to ''mail[ ]'' original-creditor and verification information to the consumer. In addition, a written or electronic notice that is not retainable may not satisfy FDCPA section 809's writing requirement. Conversely, a debt collector may reasonably expect that conduct falling within the safe harbors described in proposed § 1006.42(e) will provide actual notice to the consumer in a retainable form.

[585] The process described in proposed § 1006.42(d)(2) for ensuring that consumers reasonably expect delivery of hyperlinked disclosures may generally align with some existing industry practices. For example, some creditors may already notify consumers when a debt is placed for collection or sold to a third party. The communications described in proposed § 1006.42(d)(2) could be included in such notices.

42(e)(1) Disclosures Provided by Mail

Proposed § 1006.42(e)(1) would establish a safe harbor for delivery of disclosures by mail. Specifically, proposed § 1006.42(e)(1) provides that a debt collector satisfies § 1006.42(a)(1) if the debt collector mails a printed copy of a required disclosure to the consumer's residential address, unless the debt collector receives notification from the entity or person responsible for delivery that the disclosure was not delivered.

Although proposed § 1006.42(e)(1) mentions the consumer's residential address, mailing a printed disclosure to another address, such as a consumer's post office box, may be reasonably expected to provide actual notice in certain circumstances. The Bureau understands, however, that most debt collectors send paper validation notices to residential addresses and that, in general, it is reasonable to expect that sending a validation notice to a consumer's residential address will provide actual notice. Accordingly, the safe harbor in proposed § 1006.42(e)(1) only covers validation notices sent to residential addresses. The safe harbor in proposed § 1006.42(e)(1) also would not apply if a debt collector receives notification that the disclosure was not delivered. This aspect of proposed § 1006.42(e)(1) is consistent with case law holding that a written notice returned as undeliverable has not actually been sent to the consumer within the meaning of the FDCPA.[586]

Proposed comment 42(e)(1)–1 would clarify that, for purposes of § 1006.42(e)(1), a disclosure is not mailed to a consumer's residential address if the debt collector knows or should know at the time of mailing that the consumer does not currently reside at that location. The Bureau proposes this comment because, in such a circumstance, the debt collector likely lacks a reasonable expectation of actual notice. The Bureau requests comment on proposed § 1006.42(e)(1) and on proposed comment 42(e)(1)–1.

42(e)(2) Validation Notice Contained in the Initial Communication

In pre-proposal feedback, industry stakeholders asked the Bureau to clarify how to deliver the validation notice electronically in a debt collector's initial communication with the consumer. Proposed § 1006.42(e)(2) would provide a safe harbor to debt collectors who deliver a validation notice in the body of an email that is the debt collector's initial communication with the consumer, provided certain other conditions are satisfied.

The E-SIGN Act's consumer consent provisions apply 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.[587] As discussed in the section-by-section analysis of proposed § 1006.34(a)(1), neither FDCPA section 809(a) nor proposed Regulation F prohibit a debt collector from providing the validation information described in proposed § 1006.34(c) orally or electronically in the debt collector's initial communication with the consumer. Accordingly, the E-SIGN Act's consumer consent provisions do not apply to the extent a debt collector provides the validation information in the body of an email that is the debt collector's initial communication with the consumer.[588] However, proposed § 1006.42(a)(1) would apply.[589] Thus, a debt collector who provides the validation notice in the body of an email that is the debt collector's initial communication with the consumer would need to do so in a manner reasonably expected to provide actual notice and in a form that the consumer may keep and access later.

The processes described in proposed § 1006.42(b) may be reasonably expected to provide actual notice in a form that the consumer may keep and access later. Accordingly, a debt collector who provides the validation notice in the body of an email that is the debt collector's initial communication with the consumer would satisfy § 1006.42(a)(1) by complying with § 1006.42(b). Proposed § 1006.42(b)(1) would, except as provided in § 1006.42(c), require a debt collector to provide the disclosure in accordance with the E-SIGN Act after the consumer provides affirmative consent directly to the debt collector. Proposed § 1006.42(c)(1), which describes one element of the alternative procedures, would require a debt collector to provide the disclosure by sending an electronic communication to an email address or, in the case of a text message, a telephone number that the creditor or a prior debt collector could have used to provide electronic disclosures in accordance with section 101(c) of the E-SIGN Act.

When it comes to providing the validation notice in the body of an email that is the initial communication with the consumer, however, it may be appropriate to expand the email addresses to which a debt collector may send the disclosure. In particular, because the E-SIGN Act does not apply to this form of delivery in the first place, it may not be necessary to limit the safe harbor to those email addresses for which a consumer has already provided E-SIGN Act consent to the creditor or a prior debt collector. Proposed § 1006.6(d)(3) identifies procedures for identifying email addresses to which debt collection communications can be sent. As described in the section-by-section analysis of proposed § 1006.6(d)(3), these proposed procedures are designed to ensure that a debt collector who uses a particular email address or telephone number selected through the procedures does not have a reason to anticipate that an unauthorized third-party disclosure may occur. One point of the procedures is to identify an email address or telephone number that the consumer who owes or allegedly owes the debt uses. Thus, if a debt collector includes the validation notice in the body of an email that is its initial communication with the consumer, sending the email to an email address selected through the procedures described in proposed § 1006.6(d)(3) may be reasonably likely to provide actual notice to the consumer.

For these reasons, proposed § 1006.42(e)(2) provides that a debt collector who provides the validation notice described in § 1006.34(a)(1)(i)(A) within the body of an email that is the initial communication with the consumer satisfies § 1006.42(a)(1) if the debt collector satisfies the requirements of § 1006.42(b) for validation notices described in § 1006.34(a)(1)(i)(B).[590] If

[586] *See, e.g., Johnson* v. *CFS II, Inc.,* No. 12–CV–01091, 2013 WL 1809081, at *10 (N.D. Cal. Apr. 28, 2013) (''[I]f a debtor rebuts the presumption of proper delivery by showing that notice was sent to an incorrect address or returned as undeliverable, the language and purpose of the FDCPA require further action by a debt collector.''); *Johnson* v. *Midland Credit Mgmt. Inc.,* No. 1:05 CV 1094, 2006 WL 2473004, at *12 (N.D. Ohio Aug. 24, 2006) (''[W]hile the plain language of the statute does not require the debt collector to ensure actual receipt of the validation notice, the plain language does require the debt collector to send the validation notice to a valid and proper address where the consumer may actually receive it. If the debt collector knows the validation notice was sent to the wrong address, the debt collector has not complied with the plain language of the statute.'').

[587] 15 U.S.C. 7001(c).

[588] Conversely, the E-SIGN Act's consumer consent provisions do apply to the extent a debt collector provides the validation information outside of the initial communication because, under FDCPA section 809(a), that information must be in writing if not contained in the initial communication.

[589] This is because proposed § 1006.42(a)(1) would apply if a debt collector provides in writing or electronically a disclosure that is required by Regulation F.

[590] This means that, among other things, for a debt collector's conduct to fall within the safe harbor that proposed § 1006.42(e)(2) would create,

such a debt collector follows the procedures described in proposed § 1006.42(c), the debt collector may, in lieu of sending the validation notice to an email address that the creditor or a prior debt collector could use for delivery of electronic disclosures in accordance with section 101(c) of the E-SIGN Act (as described in § 1006.42(c)(1)), send the validation notice to an email address selected through the procedures described in proposed § 1006.6(d)(3).

Proposed § 1006.42(e)(2) would create a safe harbor. It would not establish the only way a debt collector may deliver the validation notice in the body of an email that is the debt collector's initial communication with the consumer. Nor would it provide a safe harbor for a debt collector delivering the validation notice as a hyperlink in an email or text message that is the debt collector's initial communication with the consumer. Indeed, for the reasons discussed in the section-by-section analysis of proposed § 1006.42(c)(2)(ii), it may be unreasonable for a debt collector to expect that a consumer has actual notice of a validation notice delivered by hyperlink—no matter the email address or telephone number to which the electronic communication containing the hyperlink is sent—if the consumer does not expect to receive a hyperlinked disclosure from that particular debt collector. Proposed comment 42(e)(2)–1 would clarify 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 deliver disclosures under § 1006.42(e)(2).

The Bureau requests comment on proposed § 1006.42(e)(2) and on proposed comment 42(e)(2)–1. In particular, the Bureau requests comment on whether using an email address selected through the procedures described in proposed § 1006.6(d)(3) is reasonably likely to provide actual notice to the consumer. The Bureau also requests comment on whether a debt collector who wishes to provide the validation notice in the body of an email that is the debt collector's initial communication with the consumer is more likely to send the validation notice to an email address described in proposed § 1006.42(c)(1) or to an email address selected through the procedures described in proposed § 1006.6(d)(3). In addition, the Bureau requests comment on whether a debt collector who wishes to provide a validation notice in the debt collector's initial communication with the consumer is likely to use the safe harbor in proposed § 1006.42(d)(2) and, if not, the reasons why not.

*Subpart C—Reserved*

*Subpart D—Miscellaneous*

Section 1006.100 Record Retention

Proposed § 1006.100 would require a debt collector to retain evidence of compliance with Regulation F. The purpose of a record retention requirement would be to promote effective and efficient enforcement and supervision of Regulation F. Any retention period therefore must be long enough to ensure access to evidence that the debt collector performed the actions and made the disclosures required by the regulation. For ease of compliance, any retention period also should have easily determinable beginning and end dates.

For these reasons, the Bureau proposes § 1006.100 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. Requiring debt collectors to begin retaining evidence of compliance when collection activity begins should provide an easily determinable start date.

In the Small Business Review Panel Outline, the Bureau described a proposal to determine the end of the retention obligation from a debt collector's last communication or attempted communication with the consumer about a debt. Proposed § 1006.100 is not limited to communications or attempted communications with a consumer; a communication with any person may serve as the end date from which the retention period may be calculated. Proposed § 1006.100 also adds that the end of the retention period may be calculated from the time a debt is settled, discharged, or transferred to the debt owner or to another debt collector. This addition is intended to provide debt collectors with a more easily ascertainable date from which to measure their retention obligations, if such a date exists. The proposed three-year retention period should promote effective and efficient enforcement and supervision of Regulation F while not unduly burdening debt collectors; during the SBREFA process, nearly all small entity representatives stated that they already retain many records for at least three years.

Proposed comment 100–1 would clarify that, under proposed § 1006.100, a debt collector must retain evidence that the debt collector performed the actions and made the disclosures required by Regulation F. Proposed comment 100–1 also provides examples of the evidence that a debt collector could retain to show that the debt collector complied with certain sections of the regulation. Proposed comment 100–2 would clarify that proposed § 1006.100 would not require debt collectors to retain paper copies of documents, provided the records are retained by a method that reproduces the records accurately. Proposed comment 100–3 would clarify that proposed § 1006.100 would not require debt collectors to record telephone calls, but that a debt collector who records such calls must retain the recordings if they are evidence of compliance with Regulation F.

The Bureau requests comment on proposed § 1006.100 and on whether any additional clarification is needed. In particular, the Bureau requests comment on the length of the retention period, the date from which the retention obligation should be measured, and the types of records that should be maintained. The Bureau also requests comment on the burden proposed § 1006.100 would impose on debt collectors who may engage in initial attempts to collect a debt and then transition to monitoring the account without engaging in any collection communications but with the intent or option of restarting collection at a later date. The Bureau also requests comment on whether there are scenarios in which it is not possible to determine the last communication or attempted communication, such as when a person contacts the debt collector without outreach from the debt collector. The Bureau further requests comment on the merits of narrowing this prong to the debt collector's last communication or attempted communication with the consumer in connection with the collection of the debt, instead of the debt collector's last communication or attempted communication with any person. The Bureau requests comment on whether the two alternative proposed end dates of the retention period provide sufficient clarity on calculating the retention period.

During the SBREFA process, some small entity representatives stated that

a debt collector would need to comply with the requirement proposed in § 1006.42(b)(4) to provide the validation notice in a responsive form.

they retain some information, such as telephone calls or notes, for less than three years, and they expressed concern about the potential cost of storing additional data. The Small Business Review Panel recommended that the Bureau seek more information to estimate the costs of record retention and request comment about whether the retention of some records, such as telephone calls, poses particularly high costs for any debt collectors. The Bureau requests comment on these topics, on debt collectors' current record retention practices, and on the benefits to consumers of a record retention requirement that applies to all FDCPA-covered debt collectors.

The Bureau proposes § 1006.100 pursuant to its authority under 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 proposes § 1006.100 pursuant to Dodd-Frank Act section 1024(b)(7)(A), which 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; [591] 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 persons and assessing and detecting risks to consumers. For the reasons described above, the Bureau proposes § 1006.100 to facilitate supervision of, and to assess and detect risks to consumers posed by, debt collectors that are larger participants of the consumer debt collection market, as defined by rule, and to enable the Bureau to conduct enforcement investigations to identify and help prevent and deter the abusive, unfair, and deceptive debt collection practices identified in the regulation.

Section 1006.104 Relation to State Laws

FDCPA section 816 provides that the Act does not annul, alter, or affect, or exempt any person subject to the provisions of the Act from complying with the laws of any State [592] with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of the Act, 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 Act if the protection such law affords any consumer is greater than the protection provided by the Act.[593]

The Bureau proposes § 1006.104 to implement FDCPA section 816 and pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors. Proposed § 1006.104 mirrors the statute, except that proposed § 1006.104 refers to both the provisions of the Act and the corresponding provisions of Regulation F.

As discussed in the section-by-section analysis of proposed § 1006.34, some States and localities impose their own disclosure requirements on debt collectors. During the SBREFA process, several small entity representatives expressed concern about possible overlap or inconsistencies between State and local disclosure requirements and the Bureau's proposed disclosure requirements. In its report, the Small Business Review Panel recommended that the Bureau continue to consider State law disclosures, particularly to determine whether there are any specific burdens or costs caused by overlap or conflict between the Bureau's disclosures and State disclosures. The Panel also recommended that the Bureau continue to consider whether clarifications may be necessary in the event that Federal disclosures overlap with State law requirements.[594] Consistent with the Small Business Review Panel's recommendations, proposed comment 104–1 would clarify that a disclosure required by applicable State law that describes additional protections under State law does not contradict the requirements of the Act or the corresponding provisions of the regulation.[595]

The Bureau requests comment on proposed § 1006.104 and proposed comment 104–1, including on whether any additional clarification is needed. In particular, consistent with the Small Business Review Panel's recommendation, the Bureau requests comment on whether disclosures required by specific State or local laws are inconsistent with the Bureau's proposed disclosures, and any specific burdens or costs caused by such overlap or conflict.

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 Act 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 Act, and that there is adequate provision for enforcement.[596] Sections 1006.1 through 1006.8 of current 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.[597] The Bureau proposes to retain these procedures and criteria, reorganized as § 1006.108 and appendix A and with the minor changes for clarity described below, 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.

Consistent with existing § 1006.2, proposed § 1006.108(a) provides 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 that there is adequate provision for State enforcement of such requirements. Proposed § 1006.108(a) would clarify that, to be eligible for an exemption, the class of debt collection practices within that State also would need to be subject to requirements that are substantially similar to, or provide greater protection for consumers than, the provisions of Regulation F corresponding to FDCPA sections 803 through 812.

Proposed § 1006.108(b) provides that the procedures and criteria whereby States may apply to the Bureau for exemption of a class of debt collection

[591] 12 CFR 1090.105 defines larger participants of the consumer debt collection market.

[592] Proposed § 1006.2(*l*) would define State to mean ''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.''

[593] 15 U.S.C. 1692n.

[594] Small Business Review Panel Report, *supra* note 57, at 34.

[595] In response to the Small Business Review Panel's recommendations on this issue, proposed § 1006.34(d)(3)(iv) permits a debt collector to include State law disclosures on the reverse of the validation notice.

[596] 15 U.S.C. 1692o.

[597] 12 CFR part 1006.

practices within the applying State from the provisions of the Act and the corresponding provisions of Regulation F are set forth in appendix A to the regulation. Proposed appendix A, in turn, sets forth the procedures and criteria whereby States may apply to the Bureau for the exemption described in proposed § 1006.108. Proposed appendix A largely mirrors existing §§ 1006.1 through 1006.8, with certain organizational changes and other, minor changes for clarity and to more closely track the statute. The Bureau also proposes to amend the current notice system for acting on State requests for exemption to a proposed and final rule system.

As with proposed § 1006.108(a), proposed appendix A would clarify that, to be eligible for an exemption, the class of debt collection practices within the applying State also would need to be subject to requirements that are substantially similar to, or provide greater protection for consumers than, the provisions of Regulation F corresponding to FDCPA sections 803 through 812. The Bureau also proposes to revise certain phrases in existing §§ 1006.1 through 1006.8 to ensure uniform terminology throughout appendix A. For example, proposed appendix A would use the phrase ''more protective of consumers than'' State law throughout, rather than variations such as ''more extensive than'' and ''more favorable than'' State law, which appear in certain places in existing §§ 1006.3 and 1006.4.

Proposed appendix A would include several additional changes to existing Regulation F.

First, to streamline appendix A, the Bureau proposes to include two new definitions in proposed paragraph I(b). The first, in proposed paragraph I(b)(1), would define ''applicant State law'' to mean 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. The second, in proposed paragraph I(b)(3), would define ''relevant Federal law'' to mean sections 803 through 812 of the Act (15 U.S.C. 1692a through 1692j) and the corresponding provisions of Regulation F. Accordingly, the proposed text of appendix A substitutes these terms throughout where appropriate.

Second, proposed appendix A would strike existing § 1006.3(c) as redundant of proposed paragraph III(a) as revised.

Third, proposed paragraph III(d) of appendix A would repeat existing § 1006.3(e) with certain clarifications. Existing § 1006.3(e) requires the applicant State to submit, among other supporting materials, information regarding the State's fiscal arrangements for administrative enforcement and the number and qualifications of enforcement personnel, along with a description of State enforcement procedures. In assessing the adequacy of State enforcement, however, existing § 1006.4(b)—which is repeated in proposed paragraph IV(b) of appendix A—requires the Bureau to consider three general categories of information: necessary facilities, personnel, and funding. Because the criteria for evaluating the adequacy of State enforcement refers to these general categories of information, the Bureau proposes that paragraph III(d) of appendix A also refer to these general categories of information. Proposed paragraph III(d) of appendix A therefore would require the applicant State to submit information concerning the adequacy of enforcement, including information about necessary facilities, personnel, and funding. Proposed paragraph III(d) of appendix A also would clarify that examples of information relating to adequacy of enforcement that an applicant State must submit include the State's fiscal arrangements for administrative State enforcement, the number and qualifications of enforcement personnel, and a description of the State's enforcement procedures.

Fourth, the Bureau proposes to clarify in proposed paragraph IV(a)(1)(i) of appendix A 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. Existing § 1006.4(a)(1)(i) states that defined terms and rules of construction must be ''the same'' as the FDCPA. The Bureau interprets FDCPA section 817's substantial similarity standard also to apply to defined terms and rules of construction. That standard permits variation from FDCPA defined terms and rules of construction, as long as the State law definitions and rules of construction are substantially similar to or more protective of consumers than the FDCPA. Accordingly, proposed paragraph IV(a)(1)(iv) of appendix A uses the phrase ''substantially similar'' rather than ''the same.''

Fifth, proposed paragraph VI(b) of appendix A would repeat existing § 1006.6(b) with certain clarifications. Existing § 1006.6(b) requires a State that has obtained an exemption to submit such reports to the Bureau as the Bureau may from time to time require. The Bureau proposes to clarify that this provision requires the State to submit to the Bureau, not later than two years after the date the exemption is granted, and every two years thereafter, a written report concerning the manner in which the State has enforced its law in the preceding two years and an update of the information required under proposed paragraph III(d) of appendix A. By requiring such information to be updated every two years, proposed appendix A would ensure that the Bureau is aware of changes that may affect the State's capacity to enforce the laws that qualified the State for the exemption.

The Bureau requests comment on proposed § 1006.108 and proposed appendix A, and on whether any additional clarification is needed. The Bureau also requests comment on whether proposed § 1006.108 should be clarified or broadened to allow for an exemption from provisions of Regulation F that are not based exclusively on FDCPA sections 803 through 812. Similarly, the Bureau requests comment on whether proposed § 1006.108 should be clarified or broadened to allow for an exemption from provisions of Regulation F that are based solely on the Bureau's authority under the Dodd-Frank Act. The Bureau potentially could adopt such a process pursuant to its exemption authority under section 1022(b)(3)(A) of the Dodd-Frank Act.

Further, current Regulation F includes the phrase ''provide greater protection for consumers than,'' which is a concept incorporated from FDCPA section 816. It also provides that ''[a]fter 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.'' The Bureau does not propose to change this language in proposed § 1006.108 or proposed appendix A, as the Bureau does not seek to make additional substantive changes to the requirements for State requests for exemption. The Bureau requests comment on the use of this language in proposed § 1006.108 and proposed appendix A.

*Appendix C to Part 1006—Issuance of Advisory Opinions* [598]

The Bureau proposes 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). Proposed appendix C would clarify 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 includes instructions for requesting an advisory opinion. The Bureau requests comment on whether additional clarification regarding the effect of conformity with Bureau advisory opinions would be helpful.

*Supplement I to Part 1006—Official Interpretations*

The Bureau proposes to add Supplement I to Regulation F to publish official interpretations of the regulation (*i.e.,* commentary). Proposed comment I–1 explains 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 Administrative Procedure Act. Proposed comment I–2 sets forth the procedure for requesting that an official interpretation be added to Supplement I, and proposed comment I–3 describes how the commentary is organized and numbered. Proposed commentary relating to specific sections of the regulation are addressed in the section-by-section analyses of those sections, above. The Bureau requests comment on proposed comments I–1, –2, and –3, including on whether additional clarification regarding either the purpose or organization of Supplement I, or the procedure for requesting official interpretations, would be helpful.

## VI. Dodd-Frank Act Section 1022(b) Analysis

*A. Overview*

In developing the proposed rule, the Bureau has considered the proposal's potential benefits, costs, and impacts.[599] The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts.

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.[600] 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.[601] Because of this, policies that increase protections for consumers with debts in collection involve a tradeoff between the benefits of protections for such 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 proposal would 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.[602] However, as discussed below, it is not clear based on the information available to the Bureau at this time whether the net effect of the proposal's different provisions would be to make it more costly or less costly for debt collectors to recover unpaid amounts, and therefore not clear whether the proposal would tend to increase or decrease the supply of credit. The proposed rule would 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 10,000 to 12,000 lawsuits under the FDCPA each year.[603] The number of disputes settled without litigation has likely been much greater.[604] 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

[598] Proposed appendix A is discussed in the section-by-section analysis of proposed § 1006.108. Proposed appendix B is discussed in the section-by-section analyses of proposed §§ 1006.26 and 1006.34.

[599] 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 proposed 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.

[600] 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 521–525 (Oxford U. Press 2014) (discussing potential sources of market failure and potential problems with some of those arguments).

[601] *See id.* (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 proposal 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).

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

[603] *See* WebRecon LLC, *WebRecon Stats for Dec 2017 & Year in Review, https://webrecon.com/webrecon-stats-for-dec-2017-year-in-review* (last visited May 6, 2019). Greater clarity about legal requirements could reduce unintentional violations and could also reduce lawsuits because, when parties can better predict the outcome of a lawsuit, they may be more likely to settle claims out of court.

[604] Some debt collectors have reported that they receive approximately 10 demand letters for each lawsuit filed. *See* Small Business Review Panel Outline, *supra* note 56, at 69 n.105.

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.[605]

Several provisions of the proposed rule would likely change the way debt collectors communicate with consumers, and the potential impacts of these provisions are likely to interact with each other in ways that are difficult for the Bureau to predict. Most significant of these are the provisions related to frequency limits for telephone calls, limited-content messages, and electronic disclosures, although other provisions such as the proposed model validation notice 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 actual and attempted live telephone calls and postal mail, with no communication by voice message, email, text message, or other electronic media.

It is possible that the net effect of the proposed provisions would be to make debt collection more effective: Debt collectors who currently communicate by live telephone calls in excess of the proposed limits could substitute for some of the excessive call volume by leaving voice messages and sending email, and consumers could respond to this change in communication channels 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 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 calls and from increased revenue. There is some reason to believe this may occur—as noted below, a substantial fraction of consumers prefers to communicate by email, and consumers may well be more likely to return a voice message than to answer their telephones in response to a call from an unknown number.

Alternatively, the proposed provisions might make debt collection less effective: Debt collectors could comply with the frequency limits, reducing outbound calling, but end up not increasing contact with consumers by using voicemail and email as communication channels. This might occur if debt collectors still fear some legal risk from other channels, or if they find the new communication methods 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 proposal on debt collectors would likely lie somewhere in between these two extremes, and the Bureau believes these effects will likely vary by debt collector and type of debt. If the proposed communication provisions were adopted in a final rule, some firms would likely adopt newer communication methods due to the reduced legal risk and find less need for telephone calls, while other firms would not do so or would not experience the same effect. Still other firms might be largely unaffected by the communication-related provisions in the proposal. As discussed below, some debt collectors currently place only one or two calls per week to any consumer, and 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 proposed provisions related to communications would likely reduce the overall number of 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 would benefit directly from a reduction in 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 from potential credit reporting and litigation in the event debt collectors cannot reach them.

Apart from the proposed communication provisions, other provisions of the proposal could make debt collection either more or less costly in ways that are difficult to predict. For example, the proposed validation notice requirements would provide consumers with more information than they currently receive about debts, which could reduce costs to consumers and debt collectors from disputes that arise when consumers do not recognize the debt or understand the basis for the alleged amount due. At the same time, the proposal's clearer explanation of dispute rights could make consumers more likely to dispute, which could provide benefits to consumers while increasing costs for debt collectors. Disputes are costly for debt collectors to process, so these proposed requirements could either increase or decrease debt collector and consumer costs depending on the net effect on dispute rates.

In developing the proposed 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 proposed rule (proposed provisions), which include:

1. Prohibited communications with consumers.
2. Frequency limits for telephone calls and telephone conversations.
3. Limited-content messages.
4. Time-barred debt: prohibiting suits and threats of suit.
5. Communication prior to furnishing information.
6. Prohibition on the sale or transfer of certain debts.
7. Notice for validation of debts.
8. Electronic disclosures and communications.

In addition to the proposed provisions listed above, the Bureau proposes to codify several FDCPA provisions into the rule and to add certain clarifying commentary.

*C. Data Limitations and Quantification of Benefits, Costs, and Impacts*

The discussion in this part VI.C relies on publicly available information as well as information the Bureau has obtained. To better understand consumer experiences with debt collection, the Bureau developed its 2015 Debt Collection Consumer Survey, which provides the first comprehensive and nationally representative data on consumers' experiences and preferences related to debt collection.[606] The Bureau

[605] For example, as discussed further below, many debt collectors currently avoid leaving voice messages for consumers or communicating with consumers by email because sending voice messages or emails may create legal risks.

[606] 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

Continued

also relies on its consumer complaint data, its Consumer Credit Panel, the Credit Card Database,[607] and other sources to understand potential benefits and costs to consumers of the proposed rule.[608] To better understand potential effects of the proposed rule on industry, the Bureau has engaged in significant outreach to industry, including the Operations Survey.[609] 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 proposed rule.[610]

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 proposed rule. The Bureau makes every attempt to provide reasonable estimates of the potential benefits and costs to consumers and covered persons of this proposal. 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 proposed 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 this 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 proposed rule. Where possible, the Bureau has made quantitative estimates based on these principles and the data available. Some benefits and costs, however, are not amenable to quantification, or are not quantifiable given the data available to the Bureau. The Bureau provides a qualitative discussion of those benefits, costs, and impacts. The Bureau requests additional data or studies that could help quantify the benefits and costs to consumers and covered persons of the proposed rule.

*D. Baseline for Analysis*

In evaluating the potential benefits, costs, and impacts of the proposal, 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 would change under the proposal.

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 fully authoritative, 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 proposed 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.

*E. Coverage of Proposal*

The proposed rule would 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 purchase delinquent debt and attempt to collect it, either themselves or through agents, or who may 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 regularly 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 would not be affected directly by the proposal, 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.

*F. Potential Benefits and Costs to Consumers and Covered Persons*

The Bureau discusses the benefits and costs of the proposal to consumers and covered persons (generally FDCPA-covered debt collectors) in detail below.[611] The Bureau believes that an important benefit of many of the proposed 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 proposed provisions discussed below.

1. Prohibited Communications With Consumers

Proposed § 1006.6(b) generally would implement 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 would also expressly prohibit attempts to make

with data necessary to understand 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 18, at 7–10.

[607] 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 May 6, 2019).

[608] For more information about Bureau data sources, see Sources and Uses of Data at the Bureau of Consumer Financial Protection (Sept. 2018), *https://www.consumerfinance.gov/data-research/research-reports/sources-and-uses-data-bureau-consumer-financial-protection/.*

[609] *See* CFPB Debt Collection Operations Study, *supra* note 45.

[610] *See* Small Business Review Panel Report, *supra* note 57.

[611] 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.

such communications, which debt collectors already must avoid given that a successful attempt would be an FDCPA violation. Proposed § 1006.14(h)(1) would interpret 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 consumers through a medium of communication if the consumer has requested that the debt collector not use that medium to communicate with the consumer.

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 proposed provisions regarding communication with attorneys and at the consumer's place of employment track consumer debt collector practices that are already required to comply with 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 are inconvenient. The proposed provisions might benefit consumers and debt collectors by providing further clarity in the application of the requirements of FDCPA section 805(a) and 806, but the Bureau does not expect that the proposed provision would cause significant changes to debt collectors' existing practices.

2. Frequency Limits for Telephone Calls and Telephone Conversations

Proposed § 1006.14(b)(1) would prohibit 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. Proposed § 1006.14(b)(2) provides that, subject to certain exceptions set forth in proposed § 1006.14(b)(3), a debt collector violates proposed § 1006.14(b)(1) if the debt collector places a telephone call to a person in connection with the collection of a particular debt either: (i) More than seven times within seven consecutive days, or (ii) within a period of seven consecutive days after having had a telephone conversation with the person in connection with the collection of such debt. Proposed § 1006.14(b)(4) would clarify the effect of complying with the frequency limits in § 1006.14(b)(2), stating that a debt collector who does not exceed the limits complies with § 1006.14(b)(1) and FDCPA section 806(5), and does not, based on the frequency of its telephone calls, violate § 1006.14(a), FDCPA section 806, or Dodd-Frank Act sections 1031 or 1036(a)(1)(B).

*Potential benefits to consumers.* Calls debt collectors make with intent to annoy, abuse, or harass consumers are likely to cause them harm, and the Bureau has evidence, discussed below and in part V, that many consumers perceive harm from debt collectors' repeated telephone calls.[612] The proposed provision would limit this harm by capping the frequency of telephone calls and telephone conversations.[613] FDCPA section 806 already 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 the proposed frequency limits would permit, there are many debt collectors who place telephone calls to consumers or engage consumers in telephone conversations more frequently than the proposed frequency limits would permit.

To quantify consumer benefits from the proposed 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 borrowers would value this reduction in dollar terms, the discussion below summarizes the data available to the Bureau on these two points.

Data from the CFPB 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.[614] Another 29 percent said that the debt collector had attempted to contact them one to three times per week.[615] 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. Still, the survey responses suggest that it is not uncommon for debt collectors to attempt to telephone 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 the one time per week that generally would be permitted under the proposal.[616] Based on this, it is reasonable to estimate that at least 6.9 million consumers[617] are called by debt collectors more than seven times in one week during a year.

The CFPB Debt Collection Consumer Survey provides evidence that many consumers would benefit if they received fewer calls from debt collectors, although it does not provide

[612] The FDCPA's standard of liability for excessive 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.

[613] The proposed 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.''

[614] CFPB Debt Collection Consumer Survey, *supra* note 18, at 44 n.5.

[615] *Id.*

[616] Information from industry also confirms that debt collectors sometimes attempt to communicate more than seven times per week. See discussion under ''Costs to covered persons'' below.

[617] 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 18, at 13, 40–41.

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 per 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 |

The survey questions did not distinguish between contact attempts and contacts that result in a live communication. They also did not distinguish among different types of contact, and survey responses may have included contacts such as letters or emails that would not be included in the proposed limits.[618] Nonetheless, the results indicate that a large majority of consumers who are contacted at least once per week believe they are being contacted too frequently.

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 the majority of complaints in this category—55 percent, or about 6,000 complaints during 2018—were about frequent or repeated telephone calls.[619]

Although the Bureau does not have evidence that could be used to estimate the monetary value consumers attach to a reduction in 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 cellular telephone charges $1.99 per month for the service and claims over 1,000,000 users. Such services are an imperfect analogy to the proposed frequency limits 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 proposed call frequency limits. 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.[620]

Some of the benefits from the proposed call frequency limits 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. Many consumers may also be unaware of their rights to limit whether and how debt collectors communicate with them. For example, consumers who tell debt collectors to cease communication orally may not benefit because some debt collectors may not respond to consumers' requests to limit 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.[621] These respondents generally did not make the request in writing.[622] Of these consumers, approximately 75 percent reported that the creditor or debt collector did not stop attempting to contact them.[623]

As discussed above, technological solutions are also increasingly available to consumers who want to avoid certain 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 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, credit reporting harms, or lawsuits. 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 frequency limits could extend the period needed to establish contact with a consumer, as further discussed below under ''Potential costs to covered persons.'' If the proposed frequency limits mean that debt collectors are less able to reach some consumers, or that communication with some consumers is delayed, those consumers may be harmed.

To quantify any such harm, the Bureau would need data to estimate how the proposed frequency limits would affect whether and when debt collectors communicate with consumers as well as the harm consumers

[618] The survey suggests that contact attempts from debt collectors other than by telephone or letter are relatively uncommon. *Id.* at 42, table 22. The Bureau understands that debt collectors seldom send letters more than once per week, so the survey responses suggest that a large majority of contact attempts are by telephone.

[619] *See* 2018 FDCPA Annual Report, *supra* note 16, at 16–17, table 1. Also note that consumers can identify only one issue to categorize their complaints, so that the count does not include cases in which a consumer chooses a different issue (such as ''I don't owe the debt'') but still express concern about call frequency.

[620] Another source of indirect evidence on the value to consumers of reduced call frequency is the Bureau's consumer complaints. The Bureau received approximately 6,000 complaints about call frequency during 2018. *See id.* 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* U.S. Dept. of Labor, Bureau of Lab. Stat., *Economic News Release: Employment Situation,* table B–3 (Feb. 1, 2019), *https://www.bls.gov/news.release/empsit.t19.htm.*

[621] CFPB Debt Collection Consumer Survey, *supra* note 18, at 35, table 17.

[622] 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.

[623] *Id.*

experience when they do not communicate with debt collectors. The Bureau discusses the available evidence on how the proposed frequency limits would affect whether debt collectors communicate with consumers below in its discussion of costs to covered persons. As discussed there, the data are limited, but evidence the Bureau does have suggests that the proposed limits 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.

To the extent that some debt collectors currently call less than the proposed frequency limits to avoid legal risks, such debt collectors could increase their calling frequency as a result of the proposal. This would result in costs to some consumers if they find the increase in call frequency harmful.

*Potential benefits to covered persons.* As with several other provisions of the proposed rule, the proposed limits would 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 clear standard for call frequency, the proposed provision would make it easier for debt collectors to know what calling patterns are permitted and avoid the costs of litigation and threats of litigation. To the extent that some debt collectors currently call less than the proposed frequency limits to avoid legal risks, such debt collectors could increase their calling frequency, 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.[624] In seeking payments from consumers, multiple debt collectors compete with each other for consumers' attention, 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.[625] This in turn could make it harder for each debt collector to recover outstanding debt.[626] Thus, one potential benefit to debt collectors of the proposed call frequency limits 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 proposed call frequency limits. In particular, debt collectors who focus on litigation and those who communicate with consumers primarily by means not covered by the proposed limits, such as letters and emails, may be more effective in communicating with consumers relative to debt collectors who are affected by the proposed limits. 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.* The proposed provision would impose at least two categories of costs on debt collectors. First, it would mean that debt collectors must track the frequency of outbound telephone calls, which would require many debt collectors to bear one-time costs to update their systems and train staff, and which would create ongoing costs for some debt collectors. Second, for some debt collectors, the proposed provision would 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 would incur costs to revise their systems to incorporate the proposed call frequency limits. 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.[627] Such debt collectors might need only to revise existing calling restrictions to ensure that existing systems comply with the caps. Larger collection agencies might also need to respond to client requests for additional reports and audit items to verify that they comply with the caps, which could require these agencies to make systems changes to alter the reports and data they 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 are already within the proposed frequency limits.[628] For such debt collectors, existing policies may be sufficient to ensure compliance with the proposed provision.

With respect to ongoing costs of compliance, the Bureau expects that the proposed limit on call attempts in § 1006.14(b)(2)(i) could have an impact on 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 proposed limit of one telephone conversation per week in § 1006.14(b)(2)(ii) is unlikely to affect debt collectors' ability to communicate with consumers in most cases.[629] [630]

[624] 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.

[625] For example, borrowers could simply ignore telephone calls or could adopt call screening or blocking technology.

[626] 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.

[627] *See* CFPB Debt Collection Operations Study, *supra* note 45, at 28–29.

[628] *See id.* at 29.

[629] 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 proposal 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 proposed § 1006.14(b)(3)(ii).

[630] Similarly, the Bureau expects that debt collectors would be largely unaffected by the proposal to apply the frequency limits to location contacts with third parties because the Bureau understands that while location calls may be made

Continued

The proposed limit of placing no more than seven telephone calls per week would 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. Most debt collectors rely heavily on telephone calls as a means of establishing contact with consumers. While debt collectors generally send letters in addition to calling,[631] 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 using the permitted number of telephone calls during the period the owner of the debt permits the debt collector to attempt to collect the debt, then the call frequency limits might prevent a debt collector from reaching the consumer entirely.[632]

Some debt collectors do not place telephone calls frequently enough to be affected by the proposed caps. While the Bureau understands that some debt collectors regularly call consumers two to three times per day or more, others have told the Bureau that they seldom attempt to 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.[633] 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, the proposed frequency limits could affect when and if they establish communication with consumers. The Bureau does not have representative data that would permit it to quantify how the proposed limits on call frequency 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 proposed limits. 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.[634]

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 a ''right-party contact'' (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 the proposed frequency limits. 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 communication attempts.

There are limitations to using the data discussed above to make inferences about how limits on telephone calls 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 subject to frequency limits 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 proposed rule, including the provision that would clarify the legal status of limited-content voice messages, could make it easier for debt collectors to reach consumers with a smaller number of 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 the proposed limits 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 the limits prevent them from

to several numbers, they do not generally involve frequently calling each number.

[631] 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 18, at 29–30, table 14.

[632] 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).

[633] *See, e.g.,* Small Business Review Panel Report, *supra* note 57, at appendix A (letter from Venable).

[634] 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 45, at 7.

establishing 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 proposed frequency limits under specific assumptions about how the call frequency limits affect collections. That is, the Bureau created a ''but-for'' version of the Calling Data in which calls that would not have been permitted under the proposed frequency limits were assumed to have been either delayed or eliminated, and 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 proposed 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 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 the proposed provision on successful contacts and collections. However, the Bureau believes that even the more conservative version of this analysis likely overstates the potential effects of the proposed frequency limits because it cannot reflect any changes the debt collector would make to its calling strategy in response to the frequency limits. That is, one would expect a rational collection firm to strategically choose which calls to eliminate or delay in response to the proposed frequency limits, 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 the frequency limits. The Bureau is not able to identify telephone type (such as mobile vs. landline, or work vs. home) in the data, but the debt collector would generally be able to do so. The Bureau would expect debt collectors in similar situations to omit calls to less promising telephone numbers, rather than call the same telephones and cease calling earlier in the process.

In the first, more conservative version of the simulation (Version 1), the Bureau assumed that all calls in excess of the proposed frequency limit each week were simply shifted to the next week.[635] The Bureau assumed that any successful RPCs that occur after the 25th simulated week would never occur under a frequency limit 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 be above the proposed frequency limit are eliminated, rather than shifted forward. When a consumer's first RPC would have occurred on a call that would not be permitted under the proposed frequency limit in a given week, the Bureau treats the data for that debt as censored as of that week.[636]

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.[637] The Bureau also 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 a payment over the telephone. About one-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 proposed frequency limit would reduce first RPCs by 2.76 percent of the first RPCs and dollars collected by 1 percent.[638] 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 when it calls multiple telephone numbers for a consumer.[639] 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 frequency limit would eliminate more

[635] 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.

[636] 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 percent 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.

[637] 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.

[638] 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.

[639] The Bureau does not observe in the data how many telephone numbers the consumer has, only how many the debt collector chooses to call.

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 proposed 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 proposed call frequency limit | Percent change in RPCs within 25 weeks | Average delay in remaining RPCs (weeks) | Percent change in dollars collected within 25 weeks |
|---|---|---|---|---|
| Version 1 | Calls above limit roll to next week | −2.76 | 0.85 | −1.04 |
| Version 2 | Calls above limit eliminated | −15.7 | 0 | −7.7 |

Overall, the Bureau believes that the simulation analysis overstates the potential effect of the provision because it ignores any changes debt collectors would make to mitigate the effects of the call frequency limit. 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 the proposed frequency limit 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, the proposed frequency limit could reduce payments and revenue by a larger fraction than the simulation suggests (assuming no re-optimization by debt collectors).[640]

Debt collectors could take steps to reduce the number of calls necessary to establish contact and mitigate any lost revenue from the proposed frequency limit. 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.

In addition and as discussed below, the Bureau's proposed rule also includes provisions that could reduce the legal risks associated with other means of communication, such as voice messages or emails, which could enable debt collectors to reach consumers more effectively with fewer calls. This could mitigate the impact of call frequency limits and might mean that the net effect of the proposal would be to increase the likelihood that debt collectors are able to reach consumers. In addition, debt collectors who are unable to reach consumers as a result of frequency limits 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.

The Bureau requests data and other information about the benefits and costs of the proposed frequency limits for both consumers and debt collectors. In particular, the Bureau requests data and other information on current calling practices, how those practices are likely to be affected by the proposed frequency limits, and how those changes are likely to affect debt collectors' ability to contact consumers.

*Alternative approaches to limiting the frequency of communications or communication attempts.* The Bureau considered alternatives to the proposed frequency limits on debt collector telephone calls and telephone conversations. The potential benefits and costs of those alternatives to consumers and covered persons relative to the proposal are discussed briefly below.

The Bureau considered proposing a broader version of proposed § 1006.14(b)(1)(i) that would have prohibited 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 who use such media. However, as discussed in part V, the Bureau is not aware of evidence demonstrating that debt collectors commonly harass consumers or others through repeated or continuous debt collection contacts by media other than telephone calls. The cost of sending letters is much higher than that of placing telephone calls, which likely discourages frequent communication by mail, and the Bureau has received few complaints about debt collectors sending excessive letters. The Bureau understands that few debt collectors currently communicate by email or text message, and stakeholders have suggested that such media may be inherently less harassing than telephone calls because, for example, recipients may have more ability to decide whether or when to engage with an email or a text message than with a debt collection telephone call.

In addition, 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

[640] Another assumption that might reduce the predicted effect of the proposed frequency limits 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 under the frequency limits 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 limits. The Bureau also notes there is an implicit assumption in both versions of the simulation that could lead to overstating the effect of the proposed frequency limits. The simulation assumes that, if all RPCs for a consumer were eliminated by the proposed frequency limits, 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 proposed frequency limits would nonetheless pay something eventually.

track communication by other media would be significantly more expensive.

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 a consumer has multiple telephone numbers. Such an approach could impose smaller costs on debt collectors in some cases 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 proposal 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 to, for example, place telephone calls to less convenient telephone numbers after exhausting their telephone calls to consumers' preferred numbers.

3. Limited-Content Messages

Proposed § 1006.2(j) would define a limited-content message as a 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, proposed § 1006.2(j)(1) provides that a limited-content message must include all of the following: 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 applicable, a disclosure explaining how the consumer can stop receiving messages through a particular medium.[641] Proposed § 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, a generic statement that the message relates to an account, and suggested dates and times for the consumer to reply to the message. Proposed § 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 voice or text 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 proposed limited-content message, the proposed rule would make debt collectors more likely to leave voice or text messages if they are unable to reach consumers by telephone.

In general, an increased use of voice and text 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 proposed rule by leaving messages when a consumer does not answer the telephone, the proposal 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.[642] During the meeting of the Small Business Review Panel, small entity representatives indicated that limited-content messages would reduce the need for frequent calling.[643] Thus, some consumers may experience reduced numbers of calls if more debt collectors leave messages and wait for a return call.

Debt collectors cannot be certain that a voice 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, some third parties who hear the message may discover that the caller is a debt collector, either because they have familiarity with the type of generic messages that debt collectors leave or because they do further research, such as by researching the telephone number. On the other hand, the proposal might lead debt collectors who currently leave more detailed messages that risk revealing the purpose of the call to third parties to switch to messages that reveal no information about the debt. In such instances, the impact of the proposal may be to reduce the likelihood of third-party disclosures.

Survey results indicate that consumers are concerned about third parties overhearing voice 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 voice 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 voice 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.

[641] As discussed below, proposed § 1006.6(e) would require a debt collector who communicates or attempts to communicate with a consumer electronically in connection with the collection of a debt using a particular 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 one or more ways the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number.

[642] insideARM, *Operations Guide: Call Volume* 10 (Nov. 14, 2014).

[643] Small Business Review Panel Report, *supra* note 57, at 25.

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 messages, or leave them only under limited circumstances, because of the legal risk associated with leaving a message. Currently, debt collectors leaving a voice message for a consumer either omit the disclosure stating 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 disclosure 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 proposed provision would 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 would reduce legal risks associated with 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 messages for fear of FDCPA liability.[644] Leaving messages may be a more efficient way of reaching consumers than repeated call attempts without leaving messages. For example, consumers who do not answer calls from callers they do not recognize might return a message. If so, the proposed provision could permit debt collectors to reach such consumers with fewer contact attempts.

The proposal may also reduce the direct costs of voicemail-related litigation, which can be large.[645] 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.[646] The Bureau anticipates that the proposed clarification of the definition of communication would significantly reduce any legal risk to debt collectors of leaving voice messages that fit within the definition of limited-content message.

The proposed provision would generally not require debt collectors to incur new costs because it would 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 would 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.

The Bureau requests data and other information about the benefits and costs to consumers and covered persons of the proposed limited-content messages. In particular, the Bureau requests information that is informative of how consumers would respond to limited-content messages, how the proposed limited-content messages would affect debt collectors' ability to contact consumers, and the one-time and ongoing costs to debt collectors who plan to adopt the practice of leaving limited-content messages.

4. Time-Barred Debt: Prohibiting Suits and Threats of Suit

Proposed § 1006.26(b) would prohibit a debt collector from suing or threatening to sue on a debt that the debt collector knows or should know is time-barred.

As discussed in part V, multiple courts have held that the FDCPA prohibits suits and threats of suit on time-barred debt. In light of this, the Bureau understands that most debt collectors do not knowingly sue or threaten to sue consumers to collect time-barred debts, and therefore the Bureau does not expect this provision of the proposed rule to have a significant effect on most consumers or debt collectors.[647]

To the extent that there are costs to covered persons or benefits to consumers from this provision, they will most likely come from reduced payments on time-barred debts, to the extent that some debt collectors currently use lawsuits or threats to sue on time-barred debts as a strategy to elicit payment.[648] If it is currently true that (1) suing or threatening to sue on debts is an important means of collection for debts for which the statute of limitations is close to expiring, and (2) most debt collectors stop suing or threatening to sue once the statute of limitations for a debt expires, then one

[644] 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. CFPB Debt Collection Operations Study, *supra* note 45, at 29–30.

[645] 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 56, at 69 n.104 (citing data provided by WebRecon, LLC).

[646] 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.

[647] For example, small entity representatives at the meeting of the Small Business Review Panel indicated that it was standard practice in the industry not to knowingly initiate lawsuits to collect time-barred debt. *See* Small Business Review Panel Report, *supra* note 57, at 35. Some industry groups have adopted policies requiring members to refrain from suing or threatening to sue on time-barred debts. *See, e.g.,* Receivables Mgmt. Ass'n, *Receivables Management Certification Program* at 32 (Jan. 19, 2018), *https://rmassociation.org/wp-content/uploads/2018/02/Certification-Policy-version-6.0-FINAL-20180119.pdf*.

[648] As noted above in section V, although multiple courts have held and the FTC has stated that suing or threating to sue on time-barred debts violates the FDCPA, the Bureau's enforcement experience has shown that some debt collectors may continue to sue or threaten to sue on time-barred debts. The proposal could reduce such activity by eliminating any legal uncertainty about whether such suits or threats of suit are permitted and potentially by strengthening enforcement of the prohibition.

would expect repayment rates to drop after the statute of limitations expires, and that drop might be made more significant by the proposed provision. Such a reduction in payments would benefit consumers who owe the debts while imposing costs on debt collectors and creditors and potentially increasing the cost of credit generally.

The Bureau therefore attempted to indirectly measure the potential effect of the provision by examining the behavior of consumers who owe debts that either recently expired or are close to expiring under their state's statutes of limitations. To do so, the Bureau used data from its Consumer Credit Panel (CCP), which contains information from one of the three nationwide CRAs. The Bureau used data from the CCP to attempt to estimate the current effect of State statutes of limitation on the propensity of consumers to pay old debts in collection.

The CCP contains information on collections tradelines—records that were furnished to this nationwide CRA by third-party debt collectors or debt buyers. The Bureau analyzed these data to determine whether the probability of payment declines around the expiration of the statute of limitations in the consumer's State. Specifically, the Bureau followed debts reported in the CCP from the time they were first reported on consumers' credit records until they either showed some record of payment or disappeared from the credit records.[649] In this analysis, the Bureau assumed that the applicable statute of limitations is the one applicable to written contracts in the consumer's State of residence and that the statute of limitations begins for a debt on the date that the debt first appears on the consumer's credit report.[650] The Bureau assumed this starting date because there was no other reasonable basis in the available data to assign the beginning of the statute of limitations. There is likely to be some inaccuracy in this assumption due to a variety of factors, including delays between the beginning of the period defined by the statute of limitations and the first report and cases in which the applicable statute of limitations is not the one in the consumer's State. However, if the estimated expiration of the statute of limitations is at least approximately correct in most cases, then one would expect to observe whether the expiration of the statute of limitations has an effect on the likelihood that a debt is reported to have been paid.

The Bureau calculated the probability of payment occurring after a given number of days, conditional on no payment occurring before—in technical terms, the ''hazard rate'' for payments—for all collections tradelines in the CCP. The Bureau then calculated the average hazard rate based on the number of months before or after the estimated expiration of the applicable statute of limitations. This calculation is plotted in Figure 1, below.[651] The figure shows that the probability of a collections tradeline showing evidence of payment declines steadily for at least one year leading up to the estimated expiration of the statute of limitations, and continues to decline at roughly the same rate afterwards.[652] Thus, while the probability of payment declines over time, the reduced ability to pursue litigation does not seem to materially affect payments on collections tradelines. Combined with the Bureau's understanding that debt collectors generally do not sue on time-barred debt, this suggests that the proposed provision would be unlikely to cause any further reduction in the rate of repayment on time-barred debt.[653]

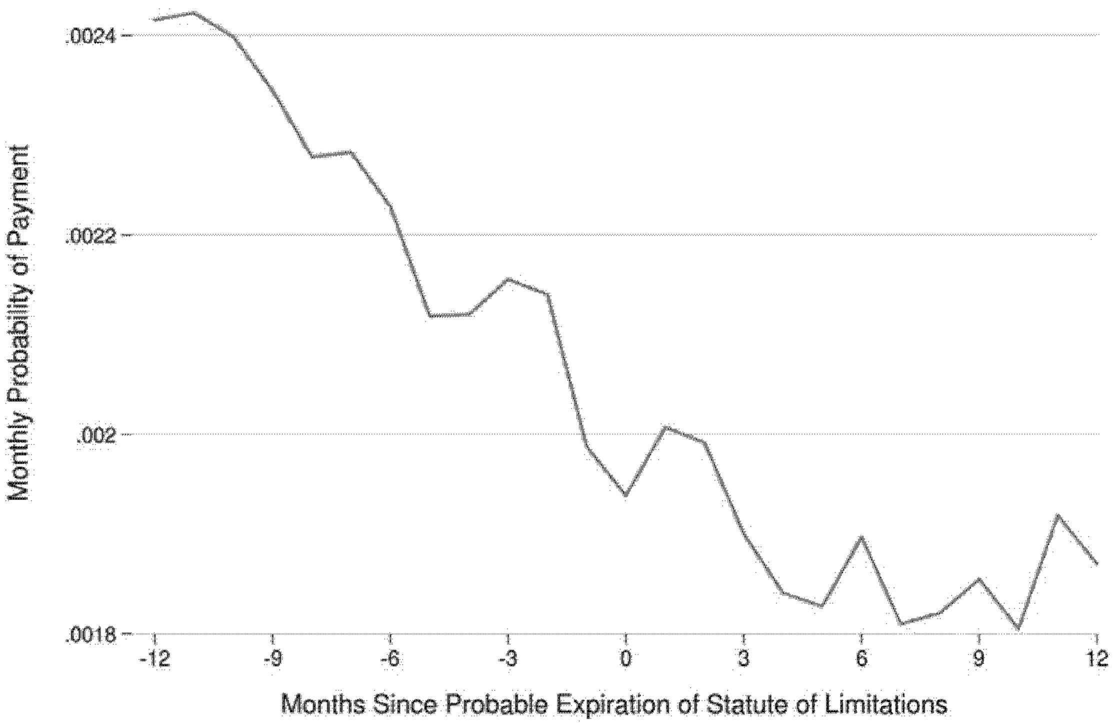
[649] Debts in the CCP that are reported by multiple debt collectors, for instance if the debt is transferred or sold, are not explicitly linked. As in the Bureau's prior quarterly Consumer Credit Trends report on collection of telecommunication debt, tradelines were linked based on the dollar amount and opening dates associated with the tradelines. Bureau of Consumer Fin. Prot., *Quarterly Consumer Credit Trends: Telecommunication Debt Collection* (Aug. 22, 2018), *https://www.consumerfinance.gov/data-research/research-reports/quarterly-consumer-credit-trends-telecommunications-debt-collection/*. For this analysis, a tradeline was considered to be a continuation of a previous debt if it had the same original balance and it was opened on or after the latest balance date for the previous tradeline. Debt collectors do not appear to consistently report payment information when furnishing information to the nationwide CRA. As such, for this analysis, the Bureau considered a debt to have had a payment made if in any month: (1) There is a positive payment amount; (2) there is a populated last payment date, or (3) the account is marked paid in full or settled. With regard to the timing of the first payment, the Bureau's analysis used the earliest value of the last payment date for a debt, if populated, or the earliest balance data associated with a payment amount or paid-in-full flag, as appropriate. The method for determining whether a debt was ever paid is the same as is used in Charles Romeo and Ryan Sandler, *The Effect of Debt Collection Laws on Access to Credit* (Bureau of Consumer Fin. Prot., Office of Research Working Paper No. 2018–01, Feb. 12, 2018), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3124954*.

[650] The collections tradelines in the CCP are primarily medical debts, utility debts, and telecommunications debts, and it is the Bureau's understanding that the statute of limitations for written contracts is the one that would generally apply for these types of debts. Relatively few collection tradelines relate to credit card debt; the Bureau understands that this is because credit card issuers prefer to furnish information to the nationwide CRAs regarding their customers' accounts even when accounts have been charged off and placed with a debt collector.

[651] The overall level of the hazard rate in the figure is quite low—on the order of two-tenths of 1 percent. This is to be expected given the monthly nature of the series—although around 10 percent of all collections tradelines eventually show some evidence of payment, the proportion that do so in any given month is quite low.

[652] While Figure 1 is based on all collections tradelines, regardless of the type of original creditor, the pattern over time looks very similar if the calculation is done separately by type of original creditor.

[653] Alternatively, this result would also be consistent with all debt collectors currently ignoring the statute of limitations and continuing to sue or threaten to sue on time-barred debt. However, as discussed above, the Bureau understands that most debt collectors avoid suits or threats of suits on time-barred debt.




Because the available data do not permit the Bureau to identify the expiration of the statute of limitations precisely, the analysis above may fail to identify some effects. The Bureau requests data and other evidence on how the expiration of the statute of limitations affects debt collection in the current market.

5. Communication Prior To Furnishing Information

Proposed § 1006.30(a) would prohibit a debt collector from furnishing information to a CRA regarding a debt before communicating with the consumer about that debt, a requirement that a debt collector could satisfy by sending a validation notice prior to furnishing information.

*Potential benefits and costs to consumers.* The proposal would help ensure that consumers learn about an alleged debt before a debt collector furnishes adverse information to a CRA. When consumers believe that the information is in error, they will have an opportunity to dispute the debt.

When debt collectors furnish information about unpaid debts to CRAs, that information can appear on consumer credit reports, potentially limiting consumers' ability to obtain credit, employment, or housing. If consumers are unaware that information about a possible unpaid debt is being furnished to a CRA, then they may not realize that their ability to obtain credit, employment or housing may be affected by the debt's presence on their credit reports. They may pay more for credit or lose out on employment or housing because they are unaware that their credit scores have been negatively affected or they may discover the adverse information only when they apply for credit, employment, or housing.

To quantify the potential consumer benefits from the proposal, the Bureau would need to know: (1) How frequently consumers are unaware debt collectors had furnished information about their debts to credit bureaus but would become aware of it if the debt collectors communicated with consumers prior to furnishing data; and (2) the benefit to these consumers of becoming aware they had a debt in collections.

In many cases, consumers would not be affected by the proposed provision because many debt collectors already send validation notices before furnishing information to CRAs. Many other consumers would not be affected because debt collectors do not furnish information to CRAs for some or all debts on which they are seeking to recover.

The Bureau understands that most debt collectors mail validation notices to consumers shortly after they receive accounts for collections.[654] A minority of debt collectors sometimes or always mail validation notices only after speaking with consumers (whether contact was initiated by the debt collector or the consumer).[655] In addition, a number of debt collectors do not furnish information to CRAs, so again in these cases the proposed provision would not affect consumers. The Bureau does not have representative data to estimate how often consumers would be affected by the proposed provision, but the evidence suggests that a relatively small share of debt collectors furnish information to CRAs before providing a validation notice. If this occurs in 5 percent of cases, for example, it could result in approximately 7 million additional validation notices sent each year (assuming that no debt collectors would cease credit reporting in response to the proposed provision).[656]

Learning that a debt is in collections shortly after the collections process begins can help consumers prevent or mitigate harm from adverse information on their credit reports. It can be particularly important if the information

[654] *See* CFPB Debt Collection Operations Study, *supra* note 45, at 28.

[655] In the Bureau's Operations Study, 53 of 58 respondents said that they send a validation notice shortly after debt placement, and of those that do not, three respondents that said that they furnish data to CRAs. CFPB Debt Collection Operations Study, *supra* note 45, at 28. During the meeting of the Small Business Review Panel, only one small entity representative described additional burdens it would face as a result of a requirement to communicate with consumers before furnishing information to credit bureaus.

[656] This estimate assumes 140 million validation notices are sent each year, based on an estimated 49 million consumers contacted by debt collectors each year and an assumption that each receives notices about an average of approximately 2.8 notices during the year.

about the debt is inaccurate because in those cases consumers who learn of the alleged debt can dispute the item under the FCRA. By informing consumers about the collection item before it is furnished to a CRA, the proposal would make it less likely that consumers learn about a collection item when they are in the process of applying for credit or other benefits, at which point they may feel pressure to resolve the item and may not have the opportunity to fully dispute the item.

An FTC report addressed the prevalence of collections-related errors in credit reports.[657] The FTC report analyzed data from a sample of 1,001 consumers and identified errors in the credit records of three nationwide CRAs. The report found collections-related errors in 4.9 percent of credit reports, and credit reports with documented errors contained, on average, 1.8 errors per report. The Bureau's Debt Collection Consumer Survey also suggests that debt collectors made collection errors, finding that 53 percent of consumers who said they had been contacted about one or more debts in collection said that these contacts included at least one debt the consumer thought was in error.[658]

Credit scores are based on a wide variety of information in consumer credit files. While many errors have only small effects on consumers' credit scores,[659] in some cases information in credit files about unpaid debts can have a reasonably large impact on credit scores. For example, analysis of telecommunications collection items in credit reports has shown that, while additional collection items have relatively small effects in some cases, it can have substantial effects for some consumers, with an average reduction in credit score of more than 41 points for super-prime consumers.[660] In some circumstances, these changes could lead to higher interest rates for consumers or denial of credit, in particular for borrowers with otherwise high credit scores.

*Potential benefits and costs to covered persons.* The proposal would affect the practices of debt collectors who sometimes furnish information about consumers' debts to CRAs before the debt collectors have communicated with consumers. The Bureau understands that most debt collectors mail validation notices to consumers shortly after they receive the accounts for collections and before they furnish data on those accounts, and so they already would be in compliance with the proposed requirement.[661] Forty-five out of 58 debt collectors responding to the Bureau's Operations Survey said that they furnish information to credit bureaus.[662] Of these respondents, all but three said that they send a validation notice upon account placement, such that the proposed requirement would be satisfied. These debt collectors likely would need to review their policies to ensure that validation notices always are sent (or validation information is provided in an initial communication) prior to reporting on accounts, which the Bureau expects would involve a small one-time cost. Other debt collectors do not furnish information at all to CRAs and so would not be affected by the proposed requirement.

Debt collectors who furnish information to CRAs but provide validation notices to consumers only after they have been in contact with consumers would need to change their practices and would face increased costs as a result of the proposal. Because these debt collectors are already required to provide validation notices to consumers (unless validation information is provided in an initial communication), the Bureau expects that they already have systems in place for sending notices and would not face one-time compliance costs greater than those of other debt collectors. However, debt collectors would face ongoing costs from sending validation notices to more consumers than they would otherwise, at an estimated cost of $0.50 to $0.80 per debt if sent by postal mail.[663] To the extent debt collectors take advantage of opportunities to send validation notices electronically, an option the proposal elsewhere seeks to make more viable, the marginal cost of sending each notice is likely to be approximately zero. Alternatively, these debt collectors could cease furnishing information to CRAs, which could impact the effectiveness of their collection efforts.[664] Because debt collectors could choose the less burdensome of these options, the additional costs of delivering notices represent an upper bound on the burden of the provision for debt collectors.

The Bureau requests data and other information about the benefits and costs to consumers and covered persons of the proposed requirement. In particular, the Bureau requests information that would help the Bureau to estimate the number of consumers affected by the proposed provision, the benefits for these consumers, and the potential costs to covered persons of complying with the proposed provision.

6. Prohibition on the Sale or Transfer of Certain Debts

Proposed § 1006.30(b)(1) would prohibit a debt collector from selling, transferring, or placing for collection a debt if the debt collector knows or should know that the debt was paid or settled, the debt was discharged in bankruptcy, or an identity theft report was filed with respect to the debt. Proposed § 1006.30(b)(2) would create 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 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, they were settled in bankruptcy, or an identity theft report was filed with respect to them.[665] Therefore, the Bureau expects the benefits and costs of this provision to be minimal.

7. Notice for Validation of Debts

Proposed § 1006.34 would implement and interpret FDCPA section 809(a), (b), (d), and (e). Specifically, proposed § 1006.34(a) provides that, subject to certain exceptions, a debt collector must provide a consumer the validation information described in § 1006.34(c). Proposed § 1006.34(c) would implement FDCPA section 809(a)'s content

[657] Fed. Trade Comm'n, *Report to Congress under Section 319 of the Fair and Accurate Credit Transactions Act of 2003,* (2012).

[658] CFPB Debt Collection Consumer Survey, *supra* note 18, at 24.

[659] *See* Fed. Trade Comm'n, *Report to Congress under Section 319 of the Fair and Accurate Credit Transactions Act of 2003,* at 43 (2012).

[660] *See* Brian Bucks et al., *Collection of Telecommunication Debt,* Bureau of Consumer Fin. Prot. (Aug. 2018).

[661] In the Operations Survey, 53 of 58 respondents said that they send a validation notice shortly after debt placement. CFPB Debt Collection Operations Study, *supra* note 45, at 28.

[662] *Id.* at 19.

[663] *See* CFPB Debt Collection Operations Study, *supra* note 45, at 32–33. One small entity representative on the Bureau's Small Business Review Panel indicated that, for about one-half of its accounts, it currently sends validation notices only after speaking with a consumer, and that, if it were required to send validation notices to all consumers, it would incur additional mailing costs of $0.63 per mailing for an estimated 400,000 accounts per year.

[664] If debt collectors furnish information to CRAs less frequently this could make consumer reports less informative in general, which could have negative effects on the credit system by making it harder for creditors to assess credit risk.

[665] With respect to debts subject to an identity theft report, FCRA section 615(f) already prohibits a debt collector from selling, transferring for consideration, or placing for collection debts if the debt collector has been notified by a consumer reporting agency that the debt resulted from identity theft.

requirements and require that the validation notice include certain information about the debt and the consumer's protections with respect to debt collection that debt collectors do not currently provide on validation notices. Proposed § 1006.34(d) would set forth general formatting requirements and permit debt collectors to comply with these requirements by using the proposed model validation notice in appendix B. Proposed § 1006.34(e) would permit, but not require, debt collectors to provide a consumer the validation notice translated into any language, if the debt collector also sends an English-language validation notice.

*Potential benefits and costs to consumers.* The proposed validation information may benefit consumers in four ways. First, the disclosures would provide more information about the debt, which may help consumers determine whether the debt is theirs and whether the reported amount owed is accurate. Second, the notice would provide a plain-language disclosure of the consumer's rights in debt collection, in particular the right to dispute, which should help consumers to know their rights and be able to exercise them. Third, the validation information would include consumer response information that should make it easier for consumers to take certain actions, including disputing a debt. Finally, the proposed model validation notice form is intended to provide information to consumers in a more appealing and easy-to-read format, making it more likely that consumers read and comprehend the information than with the validation notices currently in use.

To quantify the benefit of providing more and clearer validation information, the Bureau would need to estimate the impact of this additional information on consumers' ability to recognize their debts compared to what is currently provided on validation notices, as well as how consumers would respond to that additional information. Although the Bureau is not aware of data that would permit a full accounting of these benefits, below is a summary of information the Bureau is aware of that is relevant to some factors affecting these benefits.

The Bureau understands that, in general, validation notices currently include little or no information about the debt beyond the information specifically listed in section 809(a) of the FDCPA (*i.e.,* the current amount of the debt and the name of the current creditor). This information may not be sufficient for the consumer to recognize the debt, particularly if: (1) The amount owed has changed over time due to interest, fees, payments, or credits; (2) the debt collector has changed since an original collection attempt; or (3) the creditor's name is not one the consumer associates with the debt (as with some store-branded credit cards issued by third-party financial institutions). Consumers who do not recognize a debt because the information on a validation notice is insufficient may incur costs if they mistakenly dispute a debt they owe, pay a debt they do not owe, or ignore a debt on the assumption that the collection attempt is in error.

Relative to current validation notices, the proposed validation information would include more specific details about the debt, such as the debt's account number and an itemization of the debt. The Bureau believes this information would benefit consumers by making it easier for them to determine whether they owe a debt and, therefore, reducing the likelihood of incurring costs due to mistakes like those noted above. The consumer can also use the consumer response information to request the name and address of the original creditor, which may further help the consumer to recognize the debt.

To fully evaluate the benefits to consumers of disclosing additional information, the Bureau would need representative data to estimate how often consumers would read and understand the additional information on the notice and the extent to which that information increases consumer recognition and understanding compared to a notice without it. For example, the Bureau could further quantify some of the consumer benefits of the notice if the Bureau were able to estimate: (1) How many consumers ignore notices out of a mistaken conclusion that the debt is not theirs; (2) how many consumers dispute correct debts, and subsequently, how much time the proposed validation notice would save by obviating later interactions that result from improper disputes; and (3) how many consumers fail to dispute or make payments on incorrect debts. The Bureau is not aware of a source of information on the number of consumers in these categories or the possible time savings that could result from the proposed validation information. As discussed in the section-by-section analysis in part V, the Bureau currently is conducting additional consumer testing of possible time-barred debt and revival disclosures. This testing may also provide additional evidence about the benefits of the proposed validation information to consumers.

The Bureau's Debt Collection Consumer Survey suggests that the proposed validation information would likely be helpful in recognizing a debt. Specifically, when asked how helpful various pieces of information would be in figuring out whether they owed a debt, consumers were most likely to indicate that the creditor name, type of debt, and an itemization of the amount owed (such as principal, interest, and fees) were especially valuable. These opinions were echoed in focus groups in which consumers noted that after a debt is sold it is more difficult to recognize, and that they wanted as much information as possible to help them recognize the debt as theirs (especially the account number, creditor, and amount due) with the exception of sensitive information like social security numbers.[666]

To quantify the benefits of the proposed provision requiring a clear and conspicuous disclosure of a consumer's right to dispute a debt, the Bureau would need to estimate the number of consumers who fail to dispute debts that they do not owe because they are unaware of, or do not comprehend, their right to dispute. The Bureau cannot precisely quantify this benefit; however, the discussion below identifies several applicable considerations and estimates.

The Bureau estimates that at least 49 million consumers are contacted by debt collectors each year.[667] Twenty-eight percent of consumers who said they had been contacted about one or more debts in collection reported that the contacts included attempts to collect at least one debt that the consumers believed they did not owe.[668] One-third of consumers who had been contacted said the amount the creditor or debt collector was trying to collect was wrong for at least one of these debts, and 16 percent said the contacts included at least one contact about a debt that was instead owed by a family member. Taken together, more than one-half of the consumers (53 percent) who said they had been contacted about one or more debts in collection reported that they thought at least one of the debts they

[666] FMG Focus Group Report, *supra* note 38, at 15–16.

[667] *See* CFPB Debt Collection Consumer Survey, *supra* note 18, at 13, 40–41.

[668] The survey questions concerning consumer beliefs about errors in collections did not ask respondents to distinguish between debts owed to a debt collector and debts owed to a creditor. If consumers are more or less likely to believe there is an error for collection attempts by debt collectors, then this percentage and those below may over- or under-estimate the likelihood that a consumer believes a debt is in error when contacted by a debt collector.

were contacted about was in error. This suggests that there are many consumers who receive the validation notices in use today who might be likely to dispute based on their perception that either the debt is not theirs or is wrong.

Among the 53 percent of consumers who cited one of the issues noted above, 42 percent reported that they disputed a collection in the prior year, and 11 percent of consumers who had not cited one of those issues indicated that they had disputed a debt. The fact that less than one-half of the consumers who questioned a debt about which the creditor or collector contacted them reported disputing a debt is consistent with the possibility that some consumers do not dispute in response to a collection effort because they are not aware of the option to dispute or do not understand the steps required to do so. The proposed clear and conspicuous statement of the dispute right could benefit consumers by making salient the possibility of dispute.

The survey's finding that only 42 percent of consumers who thought they experienced an error with a debt in collection disputed the error suggests consumers are uncertain about how to dispute a debt in collection or that they believe that disputes require too much time and effort relative to the expected benefit. The consumer response information could reduce these impediments to disputing debts that consumers believe are in error. Specifically, the consumer response information would provide a clear means of disputing a debt in a way that triggers the protections provided by the FDCPA and this proposed rule, if finalized. Furthermore, the convenience of the consumer response information could reduce barriers to responding by eliminating or reducing the burden of, for example, deciding what information is relevant and how to phrase the response.[669] This could allow some consumers to save time and avoid other negative consequences, such as lower credit scores due to a debt they may not owe being listed as unpaid in their credit files.

Additionally, the consumer response information includes an option to request information about the original creditor. This additional information may help consumers in determining whether the debt is theirs.

The Bureau has proposed a model validation notice. Several considerations went into the content and design of the model validation notice. First, consumers must have relevant and accurate information to make informed decisions on how to act with regard to the debt; therefore the Bureau conducted consumer testing to identify what pieces of information consumers considered to be important to help them identify whether a debt was theirs, whether the amount stated was correct, and how the amount the debt collector was attempting to collect has changed over time (*e.g.,* due to fees, interest, and payments).[670] However, there is some indication that consumers tend to not read certain types of standard-form disclosures.[671] To try to avoid this result, the Bureau conducted consumer testing exploring how consumers interacted and engaged with the notice and the pieces of information contained therein.[672] This helped the Bureau understand whether consumers were inclined to engage with the document in general, and which pieces of the validation notice received more or less consumer attention.

The Bureau incorporated the findings from this consumer testing in its design of the proposed model validation notice form. To increase both engagement and comprehension of the validation information, the Bureau designed the proposed form to be visually engaging. The proposed form uses plain language wherever possible and conforms to recommendations the SEC set forth in their plain English handbook.[673] To reduce the perceived complexity of the information, the proposed form uses a clear hierarchy of information through positioning in a columnar format, varying type-size, and bold-faced type for subsection headings. It uses shading to highlight the amount due and uses plain language rather than technical terms. Usability testing research using eye-tracking suggests that participants were able to locate relevant information on the proposed form, with most participants able to quickly locate their account number and the contact information of the creditor.[674] The information presented in the proposed form is also concise, presenting consumers with a manageable amount of information about the debt and what they can do in response to the notice. This is important, as the perceived cost to a consumer of reading a disclosure increases with the amount of information provided.[675]

The Bureau expects consumers to experience few costs as a result of the proposed provision.

*Potential benefits to covered persons.* The proposed provision would significantly reduce the litigation risk that debt collectors face when mailing validation notices. This would benefit debt collectors directly, by reducing litigation costs related to validation notices. It could also indirectly benefit debt collectors by adding information to validation notices that would be helpful to debt collectors and consumers but which debt collectors currently do not include for fear that it would increase litigation risk. The proposed validation information may also make consumers more likely to dispute, which could increase costs for debt collectors, as discussed under ''Potential costs to covered persons'' below.

The Bureau understands that debt collectors currently face litigation risk associated with the validation notices they send, reflecting, in part, conflicting court decisions about what language is required and what language is permitted in the notices.[676] The proposal would reduce this risk for debt collectors who use the proposed model form.

The proposed validation information would include specific information about the debt intended to help consumers identify the debt and understand the amount the debt collector claims is owed. The Bureau's qualitative consumer research and the

[669] A 2016 research report by the United Kingdom's Financial Conduct Authority showed that, in a large randomized control trial, a tear off form (with a text or email reminder) led to more consumers switching from a current savings account to one with a better interest rate relative to getting only an informational text and/or email reminder and relative to an informational box with instructions on how to switch. Paul Adams et al., *Attention, Search and Switching: Evidence on Mandated Disclosure from the Savings Market,* (UK Fin. Conduct Authority, Occasional Paper No. 19 2016). *https://www.fca.org.uk/publication/occasional-papers/occasional-paper-19.pdf.*

[670] FMG Summary Report, *supra* note 42.

[671] *See, e.g.,* Ian Ayres & Alan Schwartz, *The No-Reading Problem in Consumer Contract Law,* 66 Stan. L. Rev. 545 (2014); Yannis Bakos et al., *Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts,* 43 J.Legal Studies 1, 1–35 (2014); George R. Milne & Mary J. Culnan, *Strategies for Reducing Online Privacy Risks: Why Consumers Read (or Don't Read) Online Privacy Notices,* 18 J. Interactive Mktg. 3, 15–29 (2004); Jonathan A. Obar & Anne Oeldorf-Hirsch, *The Biggest Lie on the internet: Ignoring the Privacy Policies and Terms of Service Policies of Social Networking Services,* (York U., draft version, 2018), *http://dx.doi.org/10.2139/ssrn.2757465.*

[672] FMG Cognitive Report, supra note 40.

[673] *See* Sec. Exchange Comm'n, *A Plain English Handbook* (Aug. 1998), *https://www.sec.gov/pdf/handbook.pdf.*

[674] FMG Summary Report, *supra* note 42.

[675] The idea that consumers may decrease their engagement with information when more information is provided is somewhat supported by research on ''choice overload.'' This work indicates that if choice sets are large, some people opt to make no choice at all. *See, e.g.,* Sheena Iyengar et al., *How Much Choice is Too Much? Contributions to 401(k) Retirement Plans, in Pension Design and Structure: New Lessons from Behavioral Finance,* at 83 (Oxford U. Press 2004).

[676] *See* Small Business Review Panel Report, *supra* note 57, at 22.

Bureau's complaint data suggest that the information currently included in validation notices is often not sufficient for consumers to identify a debt or whether the amount owed is correct.[677] If consumers are better able to identify debts, they may be less likely to dispute or ignore a debt that they in fact owe, and at the same time may be better able to articulate the basis for a dispute of a debt that they do not owe. These effects could benefit debt collectors by reducing the costs associated with consumer disputes. Although it is possible that debt collectors could currently provide such information on validation notices, the Bureau understands that some debt collectors who would like to provide additional information do not do so largely due to the legal risks associated with including information in the validation notice beyond what is expressly listed in the FDCPA.[678] The proposal would significantly reduce this legal risk.

To quantify the benefits of this provision to covered persons, the Bureau would need data on how frequently consumers do not recognize the debt or amount owed identified in a validation notice, how many consumers would better recognize the debt given the proposed information, and how consumers would act on that information. While the Bureau is not aware of available data that would permit it to estimate these numbers, the Debt Collection Consumer Survey does provide some basis for thinking that the proposed validation information would be helpful to consumers.

The proposed validation information could reduce debt collector costs associated with disputes by preventing some disputes from consumers who are more likely to recognize that they owe a debt and by making disputes that debt collectors receive clearer and easier to resolve. Debt collectors report that processing disputes is a costly activity, and that it can be especially difficult to process disputes if the consumer provides little or no detail about the basis for a dispute. Debt collectors surveyed by the Bureau indicated that most disputes took between five minutes and one hour of staff time to resolve, with 15 to 30 minutes being the most common amount of time.[679] Respondents said that disputes took the longest amount of time to resolve if the basis of the dispute was unclear or if the consumer said the debt was not theirs.[680]

The Bureau does not have a basis to estimate how much the proposed validation information might affect dispute rates. As an illustration of potential cost savings if dispute rates fall, if the proposed information were to reduce the number of consumers who dispute by 1 percent of all validation notices sent, and assuming that there are 140 million validation notices sent per year,[681] the overall number of annual disputes would fall by 1.4 million. Assuming an average time to process each dispute of 0.375 hours, the overall savings to industry would be estimated at 525,000 person-hours, or approximately 250 full-time equivalents. Assuming labor costs for debt collectors of $22 per hour,[682] this would represent industry cost savings of about $11.5 million.

The proposed validation information could also reduce the cost of processing disputes by making it easier for consumers who dispute to provide at least some information about the basis of their disputes. This could reduce the costs to covered persons of processing disputes by making it easier for debt collectors to investigate disputed debts in order to verify the debt.

*Potential costs to covered persons.* Debt collectors already send validation notices to consumers to comply with the FDCPA, so the proposed validation information would generally affect the content of existing disclosures debt collectors are sending rather than require debt collectors to send entirely new disclosures. Nonetheless, debt collectors would incur certain costs to comply with the proposal. These include one-time compliance costs, the ongoing costs of obtaining the required validation information, and potentially ongoing costs of responding to a potential increase in the number of disputes.

The proposed provision would require debt collectors to reformat their validation notices to accommodate the proposed validation information requirements. The Bureau expects that any one-time costs to debt collectors of reformatting the validation notice would be relatively small, particularly for debt collectors who rely on vendors, because the Bureau expects that most vendors would provide an updated notice at no additional cost.[683] The Bureau understands from its outreach that many covered persons currently use vendors to provide validation notices.[684] Surveyed firms, and their vendors, told the Bureau that vendors do not typically charge an additional cost to modify an existing template (although this practice might not apply if the proposal required more extensive changes to validation notices than vendors typically make today).[685] Debt collectors and vendors would bear costs to understand the requirements of the provision and to ensure that their systems generate notices that comply with the requirements, although these costs would be mitigated somewhat by the availability of a model form.

The proposed validation information would require debt collectors to provide certain additional information about the debt, which would require that debt collectors receive and maintain certain data fields and incorporate them into the notices. The Bureau believes that the large majority of debt collectors already receive and maintain most data fields included in the proposed validation information. However, some respondents to the Debt Collection Operations Survey reported that they do not receive information from creditors about post-default interest, fees, payments, and credits.[686] These debt collectors would have to update their systems to track these fields. The Bureau understands that such system updates would be likely to cost less than $1,000 for each debt collector.[687]

If debt collectors adjust their systems to produce notices including the new validation information, the Bureau would not expect there would be an increase in the ongoing costs of printing and sending validation notices. However, there could be ongoing costs related to the validation information requirements if the required data are not always available to debt collectors. The Bureau understands that some creditors do not currently track post-default charges and credits in a way that can be readily transferred to debt collectors.

[677] See *supra* notes 451–52 and accompanying text.

[678] *See* Small Business Review Panel Report, *supra* note 57, at 22 (finding that small entities would benefit from a model notice that reduced litigation risk arising from conflicting court decisions about what information is permitted on a validation notice).

[679] CFPB Debt Collection Operations Study, *supra* note 45, at 31.

[680] *Id.*

[681] The assumption of 140 million validation notices per year is based on an estimated 49 million consumers contacted by debt collectors each year and an assumption that each consumer receives an average of approximately 2.8 notices during the year.

[682] This assumes an hourly wage of $15 and taxes, benefits, and incentives of $7 per hour. *See* CFPB Debt Collection Operations Study, *supra* note 45, at 17 (reporting estimated debt collector wages between $10 and $20 per hour plus incentives).

[683] *See id.* at 33.

[684] In the Operations Study, over 85 percent of debt collectors surveyed by the Bureau reported using letter vendors. *Id.* at 32.

[685] *Id.* at 33

[686] In the Operations Study, 52 of 58 respondents reported receiving itemization of post-charge-off fees on at least some of their accounts. *Id.* at 23.

[687] *Id.* at 26.

Under the proposal, debt collectors would be unable to send validation notices—and therefore unable to collect—if creditors do not provide this information.[688] Some debt collectors might lose revenue as a result of not being able to collect debts if they do not obtain this information from creditors. The Bureau does not have representative data that would permit it to estimate how frequently this would occur.

Other potential costs to debt collectors could arise if changes to the validation information affect how consumers respond, particularly whether they dispute the debt. As discussed above, because the proposed validation information would include more detail, consumers might be more likely to recognize the debt and less likely to mistakenly dispute debts that they owe. On the other hand, the new consumer response information would make it easier to dispute debts or request the name and address of the original creditor. Together with the additional information about consumers' ability to dispute that would be provided, this could increase the number of consumers who dispute or request original-creditor information. The overall impact on dispute rates is unclear.

The Bureau does not believe that any increases in dispute rates would be likely to substantially reduce collection revenue, but increased dispute rates would increase debt collector costs. With respect to collections revenue, the Bureau expects that, with some fairly limited exceptions, consumers who choose to pay a debt are generally those who recognize that they owe the debt and want to pay it, and that in most cases the proposed validation information would be unlikely to cause such consumers to dispute rather than pay.[689] With respect to costs, the disclosures could lead consumers who do not recognize the debt or who believe there is a problem with the amount demanded to dispute the debt rather than ignoring it. Responding to disputes is a costly activity for debt collectors, so an increase in dispute rates would increase these costs. As discussed above, covered persons surveyed by the Bureau indicated that most disputes took between five minutes and one hour of staff time to resolve, with 15 to 30 minutes being the most common amount of time.[690]

The Bureau requests additional information about the benefits and costs to consumers and covered persons of the proposed validation information requirements, including information on whether and to what extent consumers would benefit from the requirements in the proposal, the costs to covered persons of providing the information that the proposal would require, and the likely effects of the proposal on consumer dispute rates.

*Alternative proposals to require Spanish-language disclosures.* The Bureau considered proposals that would require debt collectors to provide a Spanish-language translation of the validation information under certain circumstances, such as on the reverse side of any English-language validation notice or if requested by a consumer. Consumers with limited English proficiency may benefit from translations of the validation information, and Spanish speakers represent the second-largest language group in the United States after English speakers.[691]

Requiring Spanish-language disclosures would impose costs on some debt collectors. A requirement to send a Spanish-language disclosure on the back of each validation notice could increase mailing costs for all validation notices that are sent by mail, because it would require information that would otherwise be printed on the back of validation notices, such as State-mandated disclosures, to be provided on a separate page. A requirement to provide Spanish-language validation notices upon request could lead to a smaller increase in mailing costs but could require debt collectors to develop and maintain systems for tracking a consumer's language preference and responding to that preference.

The Bureau understands that some debt collectors currently send validation notices in Spanish to some consumers. To the extent sending such notices is already prevalent it would limit the consumer benefits of a proposal that required Spanish-language translations as well as the costs to debt collectors of such a proposal, although there would still be costs associated with ensuring that such disclosures were made as required by regulation.

8. Electronic Disclosures and Communications

The proposed rule includes provisions that the Bureau expects would encourage debt collectors to communicate with consumers by email and text message more frequently than they currently do. With respect to the validation notice, which most debt collectors currently provide by postal mail, proposed § 1006.42 specifies methods that debt collectors would be able to use to send notices by email or by hyperlink to a secure website in a way that complies with the FDCPA's validation notice requirements. With respect to any communications about a debt, proposed § 1006.6(d)(3) specifies procedures that debt collectors would be able to use to send an email or text message to a consumer about a debt without risking liability under the FDCPA for disclosure of the debt to a third party.

*Potential benefits and costs to consumers.* Today, debt collectors generally communicate with consumers by letter and telephone. If the proposal were to lead debt collectors to increase their use of emails and text messages, the proposal would 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 postal 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.[692] Because consumers who

[688] For example, the Bureau understands that after New York State began requiring itemization of post-charge-off fees and credits, some creditors were at least initially unable to provide this information and therefore did not place New York accounts for collection.

[689] While there is some evidence that consumers sometimes pay alleged debts even though they do not believe they owe them, such consumers may be motivated by factors, such as concerns about credit reporting, that are not addressed by the validation notice itself. *See* Jeff Sovern et al., *Validation and Verification Vignettes: More Results from an Empirical Study of Consumer Understanding of Debt Collection Validation Notices,* at 46–47 (St. John's U., Working Paper No. 18–0016, 2018), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3219171.*

[690] CFPB Debt Collection Operations Study, *supra* note 45, at 31. The discussion in ''Benefits to covered persons'' above provides an illustration of the potential impact on debt collectors of a change in dispute rates. Using the assumptions in that illustration, if the net impact of the proposal were to increase industrywide disputes by 1 million disputes per year, it could imply increased industry costs totaling around $8.25 million per year.

[691] In 2013, 38.4 million residents in the United States aged five and older spoke Spanish at home. *See* U.S. Census Bureau, *Facts for Features: Hispanic Heritage Month 2015* (Sept. 14, 2015), *https://www.census.gov/newsroom/facts-for-features/2015/cb15-ff18.html.*

[692] 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

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experience debt collection differ from consumers who do not,[693] 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.[694]

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.[695] 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, the available data suggest that a minority of consumers—between 15 and 39 percent—would prefer electronic validation notices, while a majority—as many as 69 percent—might prefer to receive electronic communications (other than the validation notice) instead of or in addition to paper communications or telephone calls.

As discussed above with respect to the proposal's provisions regarding call frequency, most consumers experiencing debt collection report that debt collectors call too often. The proposed provisions regarding electronic communications may have the indirect effect of reducing call frequency. These provisions may cause debt collectors to substitute email or text for telephone calls, and email or text 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 Bureau believes that the proposal's opt-out provisions will reduce any harm to such consumers by making it relatively easy for consumers to stop attempts at electronic communication.

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.[696] 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 the validation notice electronically are likely to experience a benefit or a cost, respectively.

Receiving disclosures electronically rather than in the mail may affect the likelihood that borrowers 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 if sent by email or by hyperlink to a secure website.[697] The requirement that debt collectors provide certain details about the debt in the subject line of an email or the first line of a text message may lower the likelihood that a consumer would miss or ignore the email or text message from the debt collector transmitting the disclosure. The option of providing the disclosure on a secure website, while reducing further the risk of third-party disclosure, may also reduce the likelihood the consumer would read it because more effort is required to obtain the disclosure.

Based on available information, the Bureau does not believe that consumer comprehension of an electronic notice will be different from a paper notice. The proposal includes requirements designed to make electronic disclosures no harder to read than paper notices, including requiring that the proposed electronic disclosure resize to fit the consumer's screen. Some research suggests that shorter disclosures (*e.g.,* one to two pages), such as the proposed notice, would result in similar levels of comprehension regardless of whether they are delivered on paper or electronically.[698] In cases in which differences in performance exist between reading information on paper and electronically, the difference may be due to use of different reading strategies—people tend to scan and jump around more when reading electronic information than they do with paper.[699] Studies of other reading-based tasks (surveys, ratings, and tests or quizzes) find no differences in performance between tasks completed on paper and electronically.[700]

*Potential benefits and costs to covered persons.* Debt collectors who send disclosures by email or hyperlink to a secure website 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

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.

[693] *See* CFPB Debt Collection Consumer Survey, *supra* note 18, at 15–17. Consumers who have experienced debt collection tend to have lower incomes, be under age 62, and be non-white.

[694] 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* 2017 FDIC National Survey of Unbanked and Underbanked Households at 27 & table 4.4 (Oct. 2018), *https://www.fdic.gov/householdsurvey/.*

[695] CFPB Debt Collection Consumer Survey, *supra* note 18, at 23.

[696] *See* CFPB Debt Collection Consumer Survey, *supra* note 18, at 38.

[697] 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 57, 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). 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.

[698] Some recent studies find no differences in comprehension between information displayed on paper and information displayed on computers; many of these use relatively short texts. *See, e.g.,* Robert Ball & Juan Pablo Hourcade, *Rethinking Reading for Age from Paper and Computers,* 27 Int'l J. Human-Computer Interaction 11 (2011). In contrast, many studies using longer texts find comprehension is higher for paper. *See, e.g.,* Lauren Singer & Patricia Alexander, *Reading Across Mediums: Effects of Reading Digital and Print Texts on Comprehension and Calibration,* 85 J. Experimental Educ. 1 (2017) (finding better engagement when undergraduates read from paper); Anne Mangen et al., *Reading Linear Texts on Paper Versus Computer Screen,* 58 Int'l J. Educ. Res. 61–68 (2013) (finding that a small sample of high school students had lower comprehension of electronic information relative to paper); Scott Althaus & David Tewksbury, *Agenda Setting and the ''New'' News: Patterns of Issue Importance Among Readers of the Paper and Online Versions of the New York Times,* 29 Comm. Res. 2 (2002) (randomly assigned participants to read the paper or digital version of the New York Times and found better memory for readers of the paper version).

[699] Ziming Liu, *Reading Behavior in the Digital Environment,* 61 J. Documentation 6 (2005).

[700] *See* Jan Noyes & Kate Garland, *Computer- vs. Paper-based Tasks: Are They Equivalent?,* 51 Ergonomics 9 (2008).

would be approximately zero. The Bureau estimates that approximately 140 million validation notices are mailed each year.[701] Assuming, for example, that 40 percent of validation notices that are currently mailed were sent by email under the proposed rule (the approximate percentage of credit card customers electing paperless disclosures), and assuming average mailing costs of $0.65, this would suggest reduced costs to industry in the range of $36 million per year. To the extent that debt collectors were to provide validation notices by email more or less frequently than this under the proposal, the cost savings would be proportionately higher or lower.

Debt collectors who use electronic communication may also benefit to the extent that some consumers are more likely to engage with debt collectors electronically than by telephone call or letter. During the SBREFA process, several small entity representatives said that communication by email or text message was preferred by some consumers and would be a more effective way to engage with them about their debts.[702] 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 would 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.

The Bureau requests additional information about the benefits and costs to consumers and covered persons of the proposed requirements related to electronic disclosure and communication, including information on whether and to what extent consumers would benefit from the requirements in the proposal and the benefits and costs to covered persons of providing electronic communications as discussed in the proposal.

### *G. Potential Reduction of Access by Consumers to Consumer Financial Products and Services*

This proposal contains a mix of provisions that would 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 proposal, to affect consumers' access to credit. 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.[703] 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 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 proposal might increase or decrease the expected value of creditors' recovery in the event of default, although theory alone gives no indication whether any of these actual effects on recovery would be large enough to have practical significance. The safe harbor for limited-content messages and affirming the legality of email use would tend to increase the expected value of recovery, while call frequency limits may reduce the expected value of recovery. First, to the extent that the proposal would raise 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.[704] Second, the proposed 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 proposed 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 proposed rule might lower costs for debt collectors, increase expected recovery, and decrease the time it takes for debt collectors to recover amounts owed.[705]

If the proposal were to reduce 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 would depend on the specifics of the particular credit market.

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,[706] one by a researcher affiliated

[701] The assumption of 140 million validation notices per year is based on an estimated 49 million consumers contacted by debt collectors each year and an assumption that each receives an average of approximately 2.8 notices during the year.

[702] *See, e.g.,* Small Business Review Panel Report, *supra* note 57, at appendix A.

[703] 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.

[704] 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. Given that many comments on the Small Business Review Panel Outline indicated that debt collectors have little market power in their interactions with creditors, it is likely that there is little pass-through of additional costs. *See, e.g.,* Small Business Review Panel Report, *supra* note 57, at 16–17.

[705] 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 proposal on the costs of recovering unpaid debts.

[706] In addition, earlier empirical research examined the relationship between restrictions on creditor remedies and the supply of credit. *See*

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with the Federal Reserve Bank of Philadelphia (Fedaseyeu Study),[707] another by researchers at the Federal Reserve Bank of New York (Fonseca Study),[708] and a third by researchers at the Bureau (Romeo-Sandler Study).[709] All three 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 1,000 consumers residing in a State. For comparison, the data used for the Fedaseyeu Study showed an average of 120 new accounts per quarter per 1,000 consumers. The Fedaseyeu Study finds no effect of debt collection laws on the average credit card interest rate.[710] However, the Fedaseyeu Study has some important limitations, particularly regarding extrapolating its results to the effects of the proposed 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.[711] Leaving aside the question of whether monetary adjustments under State law are of a comparable magnitude to the proposed regulations under Federal law, the proposed 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 proposed rule than they would be if the legal changes at issue were more comparable. 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 between 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.[712] 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 proposal. 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) [713] and Credit Card Database (CCDB).[714] 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.[715] 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 the effects of the proposal, although the specific changes to State or local laws studied differ considerably from the provisions of the proposed 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 proposal. The Romeo-Sandler Study 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

Thomas A. Durkin et al, Consumer Credit and the American Economy 521–525 (Oxford U. Press 2014) (summarizing this empirical literature).

[707] Viktar Fedaseyeu, *Debt Collection Agencies and the Supply of Consumer Credit* (Fed. Reserve Bank of Phila. Working Paper No. 15–23, 2015).

[708] Julia Fonseca, Katherine Strair & Basit Zafar, *Access to Credit and Financial Health: Evaluating the Impact of Debt Collection* (Fed. Reserve Bank of N.Y. Staff Report No. 814, 2017).

[709] Charles Romeo & Ryan Sandler, *The Effect of Debt Collection Laws on Access to Credit* (Bureau of Consumer Fin. Prot., Off. of Research, Working Paper No. 2018–01, 2018.

[710] 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.

[711] 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.

[712] 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.

[713] 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.

[714] 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.

[715] 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 out.

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.[716] 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 proposed 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 proposed rule. The proposed rule includes some provisions likely to increase debt collector costs, but it 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 proposed rule, 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.

### *H. Potential Specific Impacts of the Proposed Rule*

#### 1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

Depository institutions and credit unions are generally not debt collectors under the FDCPA and therefore would not be covered by the proposal. However, as noted above, creditors could experience indirect effects from the proposal 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 unpaid amounts, but the Bureau does not have data indicating whether such institutions are more or less likely than other creditors to do so. The Bureau requests additional data and other information about potential benefits and costs of the proposal for these institutions.

#### 2. Impact of the Proposed Provisions on Consumers in Rural Areas

Consumers in rural areas may experience benefits from the proposed 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 attempt debt collection calls more frequently than the proposed frequency caps would permit. The proposed frequency caps may therefore have less of an impact on consumers in rural areas.

The Bureau will further consider the impact of the proposed rule on consumers in rural areas. The Bureau therefore asks interested parties to provide data, research results, and other factual information on the impact of the proposed rule on consumers in rural areas.

### *I. Request for Information*

The Bureau will further consider the benefits, costs, and impacts of the proposed provisions and additional proposed modifications before finalizing the proposal. As noted above, there are a number of areas in which additional information would allow the Bureau to better estimate the benefits, costs, and impacts of this proposal and more fully inform the rulemaking. The Bureau asks interested parties to provide comment or data on various aspects of the proposed rule, as detailed in the section-by-section analysis. Information provided by interested parties regarding these and other aspects of the proposed rule may be considered in the analysis of the benefits, costs, and impacts of the final rule. The Bureau specifically requests precise cost or operational data that would permit it to better evaluate the potential impacts on consumers and covered persons, including impacts on collection rates, implementation costs and ongoing operational costs imposed by the proposed provisions. The Bureau also requests comment on the research referenced above, including its use of the Fedaseyeu Study, the Fonseca Study, and the Romeo-Sandler Study.

[716] 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/130211factareport.pdf.*

## VII. Regulatory Flexibility Analysis

Under section 603(a) of the Regulatory Flexibility Act (RFA), an initial regulatory flexibility analysis (IRFA) ''shall describe the impact of the proposed rule on small entities.'' [717] Section 603(b) of the RFA sets forth the required elements of the IRFA. Section 603(b)(1) requires a description of the reasons agency action is being considered.[718] Section 603(b)(2) requires a succinct statement of the objectives of, and the legal basis for, the proposed rule.[719] Section 603(b)(3) requires a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.[720] Section 603(b)(4) requires a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed 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.[721] Section 603(b)(5) requires identifying, to the extent practicable, all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.[722] Section 603(c) requires a description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.[723] Finally, section 603(d)(1) requires a description of any projected increase in the cost of credit for small entities, a description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any increase in the cost of credit for small entities (if such an increase in the cost of credit is projected), and a description of the advice and recommendations of representatives of small entities relating to the cost of credit issues.[724]

### *A. Description of the Reasons Why Agency Action Is Being Considered*

As noted in part I, the Bureau is issuing this proposed rule to implement and interpret the FDCPA, particularly with respect to debt collection communication, disclosure, and other related practices by FDCPA-covered debt collectors, 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.[725] The FDCPA established certain consumer protections, but interpretive questions have arisen since its passage. Some questions, including those related to communication technologies that did not exist at the time the FDCPA was enacted (such as mobile telephones, emails, and text messages), have been the subject of inconsistent court decisions, resulting in legal uncertainty and additional cost for industry and consumers. The Bureau proposes to clarify how debt collectors may employ such technologies in compliance with the FDCPA and to address other communications- and disclosure-related practices that currently pose a risk of harm to consumers, legal uncertainty to industry, or both. The Bureau also proposes that FDCPA-covered debt collectors comply with certain additional disclosure-related and record retention requirements pursuant to the Bureau's Dodd-Frank Act rulemaking authority; these proposed requirements are designed to enhance consumer understanding of the debt collection process and to promote effective and efficient enforcement and supervision of Regulation F.

### *B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule*

As discussed in part IV, the Bureau issues this proposal pursuant to its authority under the FDCPA and the Dodd-Frank Act. The objectives of the proposed 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 to ensuring that debt collectors who refrain from abusive debt collection practices are not competitively disadvantaged.[726] 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 proposes to clarify by rule 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 also proposes to clarify consumer disclosure requirements to provide clarity for both consumers and industry participants. 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.[727]

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.[728] 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.'' [729] ''Federal consumer financial law'' includes title X of the Dodd-Frank Act and the FDCPA. The legal basis for the proposed rule is discussed in detail in the legal authority analysis in part IV and in the section-by-section analysis in part V.

### *C. Description and, Where Feasible, Provision of an Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply*

As discussed in the Small Business Review Panel Report, for the purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small nonprofit organizations, and small government jurisdictions.[730] A ''small business'' is determined by application of SBA regulations in reference to the North American Industry Classification System (NAICS) classifications and size standards.[731] Under such standards, the Small Business Review Panel (Panel) identified four categories of small entities that may be subject to the proposed provisions: Collection agencies (NAICS 561440) with $15 million or less in annual receipts, debt buyers (NAICS 522298) with $38.5 million or less in annual revenues, collection law firms (NAICS 54110) with $11 million or less in annual receipts, and servicers who acquire accounts in default. These servicers include depository institutions (NAICS 522110, 522120, and 522130) with $550 million or less in annual receipts or non-depository institutions (NAICS 522390) with $20.5 million or less in annual receipts. The Panel did not meet

[717] 5 U.S.C. 603(a).

[718] 5 U.S.C. 603(b)(1).

[719] 5 U.S.C. 603(b)(2).

[720] 5 U.S.C. 603(b)(3).

[721] 5 U.S.C. 603(b)(4).

[722] 5 U.S.C. 603(b)(5).

[723] 5 U.S.C. 603(c).

[724] 5 U.S.C. 603(d)(1).

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

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

[727] *See id.*

[728] 15 U.S.C. 1692*l*(d).

[729] 12 U.S.C. 5512(a).

[730] 5 U.S.C. 601(6).

[731] The current SBA size standards are found on SBA's website, *http://www.sba.gov/content/table-small-business-size-standards.*

with small nonprofit organizations or small government jurisdictions.[732]

The following table provides the Bureau's estimate of the number and types of entities that may be affected by the proposed provisions:

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 |
|---|---|---|---|---|
| Collection agencies | 561440 | $15.0 million in annual receipts | 9,000 | 8,800 |
| Debt buyers | 522298 | $38.5 million in annual receipts | 330 | 300 |
| Collection law firms | 541110 | $11.0 million in annual receipts | 1,000 | 950 |
| Loan servicers | 522110, 522120, and 522130 (depositories); 522390 (non-depositories). | $550 million in annual receipts for depository institutions; $20.5 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.'' [733] 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 $15.0 million or less in annual receipts and are therefore small entities.[734] 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.[735] Many debt buyers—particularly those that are small entities—also collect debt on behalf of other debt owners.[736]

*Collection law firms.* The Bureau estimates that there are 1,000 law firms in the United States that either have as their principal purpose the collection of consumer debt or regularly collect consumer debt owed to others, so that the proposed rule would apply to them. The Bureau estimates that 95 percent of such law firms are small entities.[737]

*Loan servicers.* Loan servicers would be covered by the proposed rule if they acquire servicing of loans already in default.[738] 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 proposed rule are small.[739]

*D. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of Classes of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skills Necessary for the Preparation of the Report or Record*

The proposed rule would not impose new reporting requirements, but would impose new recordkeeping and compliance requirements on small entities subject to the proposal. The proposed requirements and the costs associated with them are discussed below.

1. Recordkeeping Requirements

Proposed § 1006.100 would require FDCPA-covered debt collectors 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 Bureau believes that most debt collectors are already maintaining records for three or more years for legal purposes and therefore would not incur significant costs as a result of the proposal's 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 10 years.[740] Some participants said, however, that

[732] Small Business Review Panel Report, *supra* note 57, at 29.

[733] As defined by the Census Bureau, collection agencies include entities that collect only commercial debt, and the proposals under consideration apply only to debt collectors of consumer debt. However, the Bureau understands that relatively few collection agencies collect only commercial debt.

[734] The 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.

[735] 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.

[736] The Bureau understands that debt buyers are generally nondepositories that specialize in debt buying and, in some cases, debt collection. The Bureau expects that debt buyers that are not collection agencies would be classified by the Census Bureau under ''all other nondepository credit intermediation'' (NAICS Code 522298).

[737] 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.

[738] The Bureau expects that loan servicers are generally classified under NAICS code 522390, ''Other Activities Related to Credit Intermediation.'' Some depository institutions (NAICS codes 522110, 522120, and 522130) also service loans for others and may be covered by the proposed rule.

[739] 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.

[740] Small Business Review Panel Report, *supra* note 57, at 28.

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 proposal contains a number of compliance requirements that would 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 proposal 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 proposal will be evaluated.

The Bureau requests comment on the estimated impacts on small entities discussed below and solicits data and analysis that would supplement the quantitative estimates discussed below or provide quantitative estimates of benefits, costs, or impacts for which there are currently only qualitative discussions.

The discussion here is confined to the direct costs to small entities of complying with the requirements of the proposed rule, if finalized. Other impacts, such as the impacts of call frequency limits on debt collectors' ability to contact consumers, are discussed at length in part VI. The Bureau believes that, except where otherwise noted, the impacts discussed in part VI would apply to small entities.

(a) Prohibited Communications With Consumers

Proposed § 1006.6(b) generally would implement 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 would also expressly prohibit attempts to make such communications, which debt collectors already must avoid given that a successful attempt would be an FDCPA violation. Proposed § 1006.14(h)(1) would interpret 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 consumers through a medium of communication if the consumer has requested that the debt collector not use that medium to communicate with the consumer.

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 believes that many 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 these times or places. Similarly, the proposed provisions regarding communication with attorneys and at the consumer's place of employment track debt collector practices that already comply with 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 are inconvenient. For these reasons, the Bureau does not expect that the proposed provisions would significantly impact small entities subject to the proposal.

(b) Frequency Limits for Telephone Calls and Telephone Conversations

Proposed § 1006.14(b)(1) would prohibit a debt collector from, in connection with the collection of a debt, placing telephone calls or engaging in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number. Proposed § 1006.14(b)(2) would provide that, subject to certain exceptions set forth in proposed § 1006.14(b)(3), a debt collector violates proposed § 1006.14(b)(1) if the debt collector places a telephone call to a person in connection with the collection of a particular debt either: (i) More than seven times within seven consecutive days; or (ii) within a period of seven consecutive days after having had a telephone conversation with the person in connection with the collection of such debt. Proposed § 1006.14(b)(4) would clarify the effect of complying with the frequency limits in § 1006.14(b)(2), stating that a debt collector who does not exceed the limits complies with § 1006.14(b)(1) and FDCPA section 806(5), and does not, based on the frequency of its telephone calls, violate § 1006.14(a), FDCPA section 806, or Dodd-Frank Act sections 1031 or 1036(a)(1)(B).

The proposed provision would impose at least two categories of costs on small entities subject to the FDCPA. First, it would mean that debt collectors must track the frequency of outbound telephone calls, which would require many debt collectors to bear one-time costs to update their systems and train staff and create ongoing costs for some debt collectors. Second, for some debt collectors, the proposed provision would 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 would incur costs to revise their systems to incorporate the proposed call frequency limits. 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.[741] Such debt collectors might need only to revise existing calling restrictions to ensure that existing systems comply with the limits. Larger debt collectors might also need to respond to client requests for additional reports and audit items to verify that they comply with the limits, which could require these agencies to make systems changes to alter the reports and data they produce for their clients to review.

Smaller debt collectors and debt 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 are already within the proposed frequency limits.[742] For such debt collectors, existing policies may be

[741] *Id.* at 26.

[742] CFPB Debt Collection Operations Study, *supra* note 45, at 29.

sufficient to ensure compliance with the proposed provision.

(c) Time-Barred Debt: Prohibiting Suits and Threats of Suit

Proposed § 1006.26(b) would prohibit a debt collector from suing or threatening to sue on a debt that the debt collector knows or should know is time-barred.

As discussed in part V, courts have held that the FDCPA prohibits suits and threats of suit on time-barred debt. In light of this, the Bureau understands that most debt collectors do not knowingly sue or threaten to sue consumers to collect time-barred debts, and therefore the Bureau does not expect this provision of the proposed rule to have a significant effect on small entities.[743]

(d) Communication Prior To Furnishing Information

Proposed § 1006.30(a) would prohibit a debt collector from furnishing information to a CRA regarding a debt before communicating with the consumer about that debt, a requirement that debt collectors could satisfy by sending a validation notice prior to furnishing information.

The proposal would affect the practices of debt collectors who sometimes furnish information about consumers' debts to CRAs before the debt collectors have communicated with consumers. The Bureau understands that most debt collectors mail validation notices to consumers shortly after they receive the accounts for collections and before they furnish data on those accounts, and so they already would be in compliance with the proposed requirement.[744] Forty-five out of 58 debt collectors responding to the Debt Collection Operations Survey said that they furnish information to credit bureaus.[745] In all but three of these cases, the respondents said that they send a validation notice upon account placement, such that the proposed requirement would be satisfied. These debt collectors would likely need to review their policies to ensure that validation notices are always sent (or validation information is provided in an initial communication) prior to reporting on the account, which the Bureau expects would involve a small one-time cost. Other debt collectors do not furnish information at all to CRAs and so would not be affected by the proposed requirement.

Debt collectors who furnish information to CRAs but provide validation notices to consumers only after they have been in contact with consumers would need to change their practices and would face increased costs as a result of the proposal. Because these debt collectors are already required to provide validation notices to consumers once they communicate with those consumers (unless validation information is provided in an initial communication or the consumer pays the debt), the Bureau expects that they already have systems in place for sending notices and would not face one-time compliance costs greater than those of other debt collectors. However, debt collectors would face ongoing costs from sending validation notices to more consumers than they would otherwise, at an estimated cost of $0.50 to $0.80 per debt if sent by postal mail.[746] To the extent debt collectors take advantage of opportunities to send validation notices electronically, an option the proposal elsewhere seeks to make more viable, the marginal cost of sending each notice is likely to be approximately zero. Alternatively, these debt collectors could cease furnishing information to CRAs, which could impact the effectiveness of their collection efforts.[747] Because debt collectors could choose the less burdensome of these options, the additional costs of delivering notices represent an upper bound on the burden of the provision on small entities.

(e) Prohibition on the Sale or Transfer of Certain Debts

Proposed § 1006.30(b)(1) would prohibit a debt collector from selling, transferring, or placing for collection a debt if the debt collector knows or should know that the debt was paid or settled, the debt was discharged in bankruptcy, or an identity theft report was filed with respect to the debt. Proposed § 1006.30(b)(2) would create 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 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, they were settled in bankruptcy, or an identity theft report was filed with respect to them. Therefore, the Bureau does not expect this provision to create significant compliance costs for small entities.

(f) Notice for Validation of Debts

Proposed § 1006.34 would implement and interpret FDCPA section 809(a), (b), (d), and (e). Specifically, proposed § 1006.34(a) provides that, subject to certain exceptions, a debt collector must provide a consumer the validation information described in § 1006.34(c). Proposed § 1006.34(c) would implement FDCPA section 809(a)'s content requirements and require that the validation notice include certain information about the debt and the consumer's protections with respect to debt collection that debt collectors do not currently provide on the validation notice. Proposed § 1006.34(d) would set forth general formatting requirements and permit debt collectors to comply with these requirements by using the proposed model validation notice in appendix B.

Debt collectors already send validation notices to consumers to comply with the FDCPA, so the proposed validation information would generally affect the content of existing disclosures debt collectors are already sending rather than require debt collectors to send entirely new disclosures. Nonetheless, debt collectors would incur certain costs to comply with the proposal. These include one-time compliance costs, the ongoing costs of obtaining the required validation information, and potentially ongoing costs of responding to a potential increase in the number of disputes.

The proposed provision would require debt collectors to reformat their validation notices to accommodate the proposed validation information requirements. The Bureau expects that any one-time costs to debt collectors of reformatting the validation notice would

[743] For example, small entity representatives at the meeting of the Small Business Review Panel indicated that it was standard practice in the industry not to knowingly initiate lawsuits to collect time-barred debt. *See* Small Business Review Panel Report, *supra* note 57, at 35. Some industry groups have adopted policies requiring members to refrain from suing or threatening to sue on time-barred debts. *See, e.g.,* Receivables Mgmt. Ass'n, *Receivables Management Certification Program,* at 32 (Jan. 19, 2018), *https://rmassociation.org/wp-content/uploads/2018/02/Certification-Policy-version-6.0–FINAL-20180119.pdf.*

[744] In the Operations Study, 53 of 58 respondents said that they send a validation notice shortly after account placement. CFPB Debt Collection Operations Study, *supra* note 45, at 28.

[745] *Id.* at 19.

[746] One small entity representative on the Bureau's Small Business Review Panel indicated that, for about one-half of its debts, it sends validation notices only after speaking with a consumer and that, if it were required to send validation notices to all consumers, it would incur mailing costs of $0.63 per mailing for an estimated 400,000 accounts per year.

[747] If debt collectors furnish to credit reporting agencies less frequently this could make consumer reports less informative in general, which could have negative effects on the credit system by making it harder for creditors to assess credit risk.

be relatively small, particularly for debt collectors who rely on vendors, because the Bureau expects that most vendors would provide an updated notice at no additional cost.[748] The Bureau understands from its outreach that many debt collectors currently use vendors to provide validation notices.[749] Surveyed firms, and their vendors, told the Bureau that vendors do not typically charge an additional cost to modify an existing template (although this practice might not apply if the proposal required more extensive changes to validation notices than vendors typically make today).[750] Debt collectors and vendors would bear costs to understand the requirements of the proposed provision and to ensure that their systems generate notices that comply with the requirement, although these costs would be mitigated somewhat by the availability of a model form.

The proposed validation information requires debt collectors to provide certain additional information about the debt, which would require that debt collectors receive and maintain certain data fields and incorporate them into the notices. The Bureau believes that the large majority of debt collectors already receive and maintain most data fields included in the proposed validation information. However, some respondents to the Operations Survey reported that they do not receive from creditors information on post-default interest, fees, payments, and credits.[751] These debt collectors would have to update their systems to track these fields. The Bureau understands that such system updates would be likely to cost less than $1,000 for each debt collector.[752]

If debt collectors adjust their systems to produce notices including the new validation information, the Bureau would not expect there would be an increase in the ongoing costs of printing and sending validation notices. However, there could be ongoing costs related to the validation information requirements if the required data are not always available to debt collectors. The Bureau understands that some creditors do not currently track post-default charges and credits in a way that can be readily transferred to debt collectors. Under the proposal, debt collectors would be unable to send validation notices—and therefore unable to collect—if creditors do not provide this information.[753] Some debt collectors might lose revenue as a result of not being able to collect debts if they do not obtain this information from creditors. The Bureau does not have representative data that would permit it to estimate how frequently this would occur.

(g) Electronic Disclosures and Communications

The proposed rule includes provisions that the Bureau expects would encourage debt collectors to communicate with consumers by email and text message more frequently than they currently do. With respect to the validation notice, which most debt collectors currently provide by postal mail, proposed § 1006.42 specifies methods that debt collectors would be able to use to send notices by email or by hyperlink to a secure website in a way that complies with the FDCPA's validation notice requirements. With respect to any communications about a debt, proposed § 1006.6(d)(3) specifies procedures that debt collectors would be able to use to send an email or text message to a consumer about a debt without risking liability under the FDCPA for 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 proposal would require them to provide a method for opting out of such communications and, if providing required disclosures electronically, to provide certain information about the account in the subject line. The Bureau understands that these requirements are common features of services that provide the ability to send email to consumers. The Bureau therefore does not anticipate that these requirements would impose significant costs on small entities that choose to communicate with consumers using electronic means.

*E. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule*

Certain other Federal laws and regulations include requirements that apply to FDCPA-covered debt collectors, as described below. However, consistent with the findings of the Small Business Review Panel, the Bureau is not aware of any other Federal regulations that currently duplicate, overlap, or conflict with the proposed rule.

For example, the Bureau's Mortgage Rules under the Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA) include communication requirements and policies and procedures applicable to mortgage servicers, some of whom may also be subject to the FDCPA. As a result, when the Bureau issued the 2016 Servicing Final Rule, the Bureau concurrently issued an FDCPA interpretive rule to clarify the interaction of the FDCPA and specified mortgage servicing rules in Regulations X and Z.[754]

The Fair Credit Reporting Act (FCRA) also includes certain provisions that apply to debt collectors, including a provision that prohibits any person from selling, transferring for consideration, or placing for collection a debt that the person has been notified resulted from identity theft.[755]

Some Federal laws implemented by other government agencies also include protections and requirements that may apply to debt collection activities. For example, the Telephone Consumer Protection Act (TCPA),[756] which is implemented by the Federal Communications Commission (FCC), affects some debt collection activities by restricting the use of automatic telephone dialing systems and artificial or prerecorded voice messages.[757] In addition, the Servicemembers Civil Relief Act (SCRA)[758] provides certain protections from civil actions against servicemembers in active duty. The SCRA restricts or limits actions against these personnel in a variety of areas related to financial management, including rental agreements, security deposits, evictions, credit card interest rates, judicial proceedings, and income tax payments.[759]

The Bureau requests comment on the intersection between the proposed rule and other Federal laws and regulations. The Bureau specifically requests

[748] *See* CFPB Debt Collection Operations Study, *supra* note 45, at 33.

[749] In the Operations Survey, over 85 percent of debt collectors surveyed by the Bureau reported using letter vendors. *Id.* at 32.

[750] *Id.* at 33.

[751] In the Operations Survey, 52 of 58 respondents reported receiving itemization of post-charge-off fees on at least some of their accounts. *Id.* at table 8.

[752] *See id.* at 26.

[753] For example, the Bureau understands that after New York began requiring itemization of post-charge-off fees and credits, some creditors were at least initially unable to provide this information and therefore did not place New York accounts for collection.

[754] See the section-by-section analysis of proposed § 1006.6(a)(5).

[755] 15 U.S.C. 1681m(f).

[756] 47 U.S.C. 227.

[757] *See ACA Int'l* v. *Fed. Commc'ns Comm'n,* 885 F.3d 687 (DC Cir. 2018).

[758] 50 U.S.C. 3901–4043.

[759] The Bureau also recognizes that other Federal regulations, including those issued by the Department of Education, may relate to debt collection. The Bureau will consult again with other Federal agencies whose regulations may be related to this rulemaking prior to issuing a final rule.

comment on conflicts that may arise between the proposed rule and other Federal laws and regulations and methods to minimize such conflicts to the extent they exist.

*F. Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of the Applicable Statutes and Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities*

Section 603(c) of the RFA requires the Bureau to describe in the IRFA any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.[760] In developing the proposed rule, the Bureau has considered alternative provisions and believes that none of the alternatives considered would be as effective at accomplishing the stated objectives of the FDCPA and the applicable provisions of title X of the Dodd-Frank Act while minimizing the impact of the proposed rule on small entities.

In developing the proposal, the Bureau considered a number of alternatives, including those considered as part of the SBREFA process. Many of the alternatives considered would have resulted in greater costs to small entities than would the proposal. For example, the Bureau considered limiting the frequency of contacts or contact attempts by any media, rather than by telephone calls only, and the Bureau considered requiring debt collectors to provide validation notices in Spanish under certain circumstances. Because such alternatives would result in a greater economic impact on small entities than the proposal, they are not discussed here. The Bureau also considered alternatives that might have resulted in a smaller economic impact on small entities than the proposal. Certain of these alternatives are briefly described and their impacts relative to the proposed provisions are discussed below.

*Limitations on call frequen*cy. 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 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 Bureau also considered alternatives to the proposal's bright-line limit on call frequency. One alternative would be a rebuttable presumption of a violation when debt collectors call more frequently than the proposed limits, paired with a rebuttable presumption of compliance when debt collectors call less frequently. The presumptions could be rebutted based on the facts and circumstances of a particular situation. Another alternative would be to provide only a safe harbor for telephone calls below the frequency limits, with no provision for telephone calls above the frequency limits. Such an approach would provide certainty to both debt collectors and consumers about a per se permissible level of calling, but it would leave open the question of how many telephone calls is too many under the FDCPA and the Dodd-Frank Act. The Bureau decided not to propose such an approach because it appears that it would not provide the clarity that debt collectors and consumers have sought, nor would it appear to provide the same degree of consumer protection as a per se prohibition against telephone calls in excess of a specified frequency. However, the proposal solicits comment on these and other alternatives.

*G. Discussion of Impact on Cost of Credit for Small Entities*

Section 603(d) of the RFA requires the Bureau to consult with small entities regarding the potential impact of the proposed rule on the cost of credit for small entities and related matters.[761] To satisfy these statutory requirements, the Bureau provided notification to the Chief Counsel for Advocacy of the Small Business Administration (Chief Counsel) that the Bureau would collect the advice and recommendations of the same small entity representatives identified in consultation with the Chief Counsel through the SBREFA process concerning any projected impact and the proposed rule on the cost of credit for small entities. The Bureau sought to collect the advice and recommendations of the small entity representatives during the Small Business Review Panel meeting regarding the potential impact on the cost of business credit because, as small debt collectors with credit needs, the small entity representatives could provide valuable input on any such impact related to the proposed rule.

The Bureau's Small Business Review Panel Outline asked small entity representatives to comment on how proposed provisions will affect cost of credit to small entities. The Bureau believes that the proposed 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 proposed 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.[762]

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.

## VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[763] 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

[760] 5 U.S.C. 603(c).

[761] 5 U.S.C. 603(d).

[762] Charles Romeo & Ryan Sandler, *The Effect of Debt Collection Laws on Access to Credit,* (Bureau of Consumer Fin. Prot., Off. of Research, Working Paper No. 2018–01, 2018).

[763] 44 U.S.C. 3501 *et seq.*

to, an information collection unless the information collection displays a valid control number assigned by OMB.

As part of its continuing effort to reduce paperwork and respondent burden, the Bureau conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on the information collection requirements in accordance with the PRA. This helps ensure that the public understands the Bureau's requirements or instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Bureau can properly assess the impact of collection requirements on respondents.

The proposed rule would amend 12 CFR part 1006 (Regulation F), which implements the FDCPA. The Bureau's OMB control number for Regulation F is 3170–0056. This proposed rule would revise the information collection requirements contained in Regulation F that OMB has approved under that OMB control number.

Under the proposal, the Bureau would require nine information collection requirements in Regulation F:

1. State application for exemption (current § 1006.2, proposed § 1006.108).
2. Opt-out notice for electronic communications or attempts to communicate (proposed § 1006.6(e)).
3. Communication with consumers prior to furnishing information (proposed § 1006.30(a)).
4. Validation notices (proposed § 1006.34).
5. Responses to requests for original-creditor information (proposed § 1006.38(c)).
6. Responses to disputes (proposed § 1006.38(d)(2)(ii)).
7. Subject-line information requirements when required disclosures are delivered electronically (proposed § 1006.42(b)(2)).
8. Notice and opt-out requirements for certain types of electronic delivery (proposed § 1006.42(c)(3)).
9. Record retention (proposed § 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 would be to provide protection for consumers and would be mandatory. Because the Bureau does not collect any information in these remaining collections, no issue of confidentiality arises. The likely respondents would be 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 (proposed § 1006.108).

The collections of information contained in this proposed 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. 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:* 1,029,500.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this proposal will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

If applicable, the notice of final rule will display the control number assigned by OMB to any information collection requirements proposed herein and adopted in the final rule.

**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 proposes to revise Regulation F, 12 CFR part 1006, to read as follows:

## PART 1006—DEBT COLLECTION PRACTICES (REGULATION F)

Sec.



**Authority:** 12 U.S.C. 5512, 5514(b), 5531, 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 paragraphs (b)(1) and (d)(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 sets 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) Certain provisions of this part apply to debt collectors only when they are collecting consumer financial product or service debt as defined in § 1006.2(f). These provisions are §§ 1006.14(b)(1)(ii), 1006.34(c)(2)(iv) and (3)(iv), and 1006.30(b)(1)(ii).

**§ 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 with any person through any medium, including by soliciting a response from such person. An attempt to communicate includes providing 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. A debt collector does not convey information regarding a debt directly or indirectly to any person if the debt collector provides only a limited-content message, as defined in paragraph (j) of this section.

(e) *Consumer* means any natural person, whether living or deceased, obligated or allegedly obligated to pay any debt. For purposes of §§ 1006.6 and 1006.14(h), the term *consumer* includes the persons described in § 1006.6(a).

(f) *Consumer financial product or service debt* means any debt related to any consumer financial product or service, as that term is defined in section 1002(5) of the Dodd-Frank Act (12 U.S.C. 5481(5)).

(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,* except for the purpose of paragraph (f) of this section, 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. For the purpose of paragraph (f) of this section, debt means debt as that term is used in the Dodd-Frank Act.

(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 (h)(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 the purpose 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 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 message for a consumer that includes all of the following:

(i) The consumer's name;

(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;

(iv) A telephone number that the consumer can use to reply to the debt collector; and

(v) If applicable, the disclosure required by § 1006.6(e).

(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) A generic statement that the message relates to an account; and

(iv) Suggested dates and times for the consumer to reply to the message.

(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, and Regulation Z, 12 CFR 1026.2(a)(27)(ii).

(b) *Communications with a consumer—in general.* 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 as prohibited by paragraphs (b)(1) through (3) of this section.

(1) *Prohibitions regarding unusual or inconvenient times or places.* 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.* 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 the 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 communicating directly with the consumer.

(3) *Prohibitions regarding consumer's place of employment.* 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) *Prohibitions.* Except as provided in paragraph (c)(2) of this section, 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.

(2) *Exceptions.* The prohibitions in paragraph (c)(1) of this section do not apply when a debt collector communicates or attempts to communicate further with a consumer with respect to the 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 the debt collector, when communicating with a consumer using an email address or, in the case of a text message, a telephone number, maintains procedures that include steps to reasonably confirm and document that:

(i) The debt collector communicated with the consumer using:

(A) An email address or, in the case of a text message, a telephone number that the consumer recently used to contact the debt collector for purposes other than opting out of electronic communications;

(B) A non-work email address or, in the case of a text message, a non-work telephone number, if:

(*1*) The creditor or the debt collector notified the consumer clearly and conspicuously, other than through the specific non-work email address or non-work telephone number, that the debt collector might use that non-work email address or non-work telephone number for debt collection communications by email or text message, where the creditor or debt collector provided the notification no more than 30 days before the debt collector's first such communication, and the notification identified the legal name of the debt collector and the non-work email address or non-work telephone number the debt collector proposed to use, described one or more ways the consumer could opt out of such communications, and provided the consumer with a specified reasonable period in which to opt out before beginning such communications; and

(*2*) The opt-out period specified in the notice described in paragraph (d)(3)(i)(B)(*1*) of this section has expired and the consumer has not opted out of receiving debt collection communications at the specific non-work email address or non-work telephone number, as applicable; or

(C) A non-work email address or, in the case of a text message, a non-work telephone number that the creditor or a prior debt collector obtained from the consumer to communicate about the debt if, before the debt was placed with the debt collector, the creditor or the prior debt collector recently sent communications about the debt to that non-work email address or non-work telephone number, and the consumer did not request the creditor or the prior debt collector to stop using that non-work email address or non-work telephone number to communicate about the debt; and

(ii) The debt collector took additional steps to prevent communications using an email address or telephone number that the debt collector knows has led to a disclosure prohibited by paragraph (d)(1) of this section.

(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 one or more ways 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 email address, telephone number for text messages, or other electronic-medium address subject to the opt out.

**§ 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 the frequency limits in § 1006.14(b), 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 any 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.* (i) *FDCPA prohibition.* 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.

(ii) *Identification and prevention of Dodd-Frank Act unfair act or practice.* With respect to a debt collector who is collecting a consumer financial product or service debt, as defined in § 1006.2(f), it is an unfair act or practice under section 1031 of the Dodd-Frank Act to place telephone calls or engage any person in telephone conversation repeatedly or continuously in connection with the collection of such debt, such that the natural consequence is to harass, oppress, or abuse any person at the called number. To prevent this unfair act or practice, such a debt collector must not exceed the frequency limits in paragraph (b)(2) of this section.

(2) *Frequency limits.* Subject to paragraph (b)(3) of this section, a debt collector violates paragraphs (b)(1)(i) and (ii) of this section, as applicable, by placing a telephone call to a particular person in connection with the collection of a particular debt either:

(i) More than seven times within seven consecutive days; or

(ii) 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.

(3) *Certain telephone calls excluded from the frequency limits.* Telephone calls placed to a person do not count toward, and are permitted in excess of, the frequency limits in paragraph (b)(2) of this section if they are:

(i) Made to respond to a request for information from such person;

(ii) Made with such person's prior consent given directly to the debt collector;

(iii) Not connected to the dialed number; or

(iv) With the persons described in § 1006.6(d)(1)(ii) through (vi).

(4) *Effect of complying with frequency limits.* A debt collector who does not exceed the frequency limits in paragraph (b)(2) of this section complies with paragraph (b)(1) of this section and section 806(5) of the FDCPA (15 U.S.C. 1692d(5)), and does not, based on the frequency of its telephone calls, violate paragraph (a) of this section, section 806 of the FDCPA (15 U.S.C. 1692d), or sections 1031 or 1036(a)(1)(B) of the Dodd-Frank Act (12 U.S.C. 5531 or 5536(a)(1)(B)).

(5) *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 the 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 consumer through a medium of communication if the consumer has requested that the debt collector not use that medium to communicate with the consumer. For purposes of this paragraph, the term "consumer" has the meaning given to it in § 1006.6(a).

(2) *Exceptions.* Notwithstanding the prohibition in paragraph (h)(1) of this section:

(i) 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; or

(ii) 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.

**§ 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.

(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 employer can readily identify any employee using an assumed name.

(g) *Safe harbor for meaningful attorney involvement in debt collection litigation submissions.* A debt collector that is a law firm or who is an attorney complies with § 1006.18 when submitting a pleading, written motion, or other paper submitted to the court during debt collection litigation if an attorney personally:

(1) Drafts or reviews the pleading, written motion, or other paper; and

(2) Reviews information supporting such pleading, written motion, or other paper and determines, to the best of the

attorney's knowledge, information, and belief, that, as applicable:

(i) The claims, defenses, and other legal contentions are warranted by existing law;

(ii) The factual contentions have evidentiary support; and

(iii) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or lack of information.

**§ 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, 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 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 has received directly from the consumer either prior consent to use that email address or an email from that email address.

(4) Communicate or attempt to communicate with a consumer in connection with the collection of a debt by a social media platform that is viewable by a person other than the persons described in § 1006.6(d)(1)(i) through (vi).

(g) *Safe harbor for certain emails and text messages relating to the collection of a debt.* A debt collector who communicates with a consumer using an email address or telephone number and following 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 Collection of time-barred debts.**

(a) *Definitions.* For purposes of this section:

(1) *Statute of limitations* means the period prescribed by applicable law for bringing a legal action against the consumer to collect a debt.

(2) *Time-barred debt* means a debt for which the applicable statute of limitations has expired.

(b) *Suits and threats of suit prohibited.* A debt collector must not bring or threaten to bring a legal action against a consumer to collect a debt that the debt collector knows or should know is a time-barred debt.

(c) [Reserved]

**§ 1006.30 Other prohibited practices.**

(a) *Communication prior to furnishing information.* A debt collector must not furnish to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), information regarding a debt before communicating with the consumer about the debt.

(b) *Prohibition on the sale, transfer, or placement of certain debts.* (1) *In general.* (i) *FDCPA prohibition.* Except as provided in paragraph (b)(2) of this section, a debt collector must not sell, transfer, or place for collection a debt if the debt collector knows or should know that:

(A) The debt has been paid or settled;

(B) The debt has been discharged in bankruptcy; or

(C) An identity theft report, as defined in section 603(q)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681a(q)(4)), was filed with respect to the debt.

(ii) *Identification of Dodd-Frank Act unfair act or practice.* With respect to a debt collector who is collecting a consumer financial product or service debt, as defined in § 1006.2(f), it is an unfair act or practice under section 1031 of the Dodd-Frank Act to sell, transfer, or place for collection a debt described in paragraph (b)(1)(i) of this section.

(2) *Exceptions.* A debt collector may sell, transfer, or place for collection a debt described in paragraph (b)(1)(i) of this section if the debt collector:

(i) Transfers the debt to the debt's owner;

(ii) Transfers the debt to a previous owner of the debt if transfer is authorized under the terms of the original contract between the debt collector and the previous owner;

(iii) Securitizes the debt or pledges a portfolio of such debt as collateral in connection with a borrowing; or

(iv) Transfers the debt as a result of a merger, acquisition, purchase and assumption transaction, or transfer of substantially all of the debt collector's assets.

(c) *Multiple debts.* If a consumer makes any single payment to a debt collector with respect to multiple debts owed by the consumer, the debt collector:

(1) Must apply the payment in accordance with the directions given by the consumer, if any; and

(2) Must not apply the payment to any debt that is disputed by the consumer.

(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 Notice for validation of debts.**

(a)(1) *Validation information required.* Except as provided in paragraph (a)(2) of this section, a debt collector must provide a consumer with the validation information described in paragraph (c) of this section either:

(i) By sending the consumer a validation notice in a manner permitted by § 1006.42:

(A) In the initial communication, as defined in paragraph (b)(2) of this section; or

(B) Within five days of that initial communication; or

(ii) By providing the validation information orally in the initial communication.

(2) *Exception.* A debt collector who otherwise would be required to send a validation notice pursuant to paragraph (a)(1)(i)(B) of this section is not required to do so if the consumer has paid the debt prior to the time that paragraph (a)(1)(i)(B) of this section would require the validation notice to be sent.

(b) *Definitions.* For purposes of this section:

(1) *Clear and conspicuous* means disclosures that are readily understandable. In the case of written and electronic disclosures, the location and type size also must be readily noticeable to consumers. In the case of oral disclosures, the disclosures also must be given at a volume and speed sufficient for the consumer to hear and comprehend them.

(2) *Initial communication* means the first time that, in connection with the collection of a debt, a debt collector conveys information, directly or indirectly, regarding the debt to the consumer, other than a communication in the form of a formal pleading in a civil action, or any form or notice that does not relate to the collection of the debt and is expressly required by:

(i) The Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*);

(ii) Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 through 6827); or

(iii) Any provision of Federal or State law or regulation mandating notice of a data security breach or privacy risk.

(3) *Itemization date* means any one of the following four reference dates for which a debt collector can ascertain the amount of the debt:

(i) The last statement date, which is the date of the last periodic statement or written account statement or invoice provided to the consumer;

(ii) The charge-off date, which is the date the debt was charged off;

(iii) The last payment date, which is the date the last payment was applied to the debt; or

(iv) The transaction date, which is the date of the transaction that gave rise to the debt.

(4) *Validation notice* means a written or electronic notice that provides the validation information described in paragraph (c) of this section.

(5) *Validation period* means the period starting on the date that a debt collector provides the validation information described in paragraph (c) of this section and ending 30 days after the consumer receives or is assumed to receive the validation information. For purposes of determining the end of the validation period, the debt collector may assume that a consumer receives the validation information on any date that is at least five days (excluding legal public holidays, Saturdays, and Sundays) after the debt collector provides it.

(c) *Validation information.* (1) *Debt collector communication disclosure.* The statement required by § 1006.18(e).

(2) *Information about the debt.* Except as provided in paragraph (c)(5) of this section:

(i) The debt collector's name and mailing address.

(ii) The consumer's name and mailing address.

(iii) If the debt is a credit card debt, the merchant brand, if any, associated with the debt, to the extent available to the debt collector.

(iv) If the debt collector is collecting consumer financial product or service debt as defined in § 1006.2(f), the name of the creditor to whom the debt was owed on the itemization date.

(v) The account number, if any, associated with the debt on the itemization date, or a truncated version of that number.

(vi) The name of the creditor to whom the debt currently is owed.

(vii) The itemization date.

(viii) The amount of the debt on the itemization date.

(ix) An itemization of the current amount of the debt in a tabular format reflecting interest, fees, payments, and credits since the itemization date.

(x) The current amount of the debt.

(3) *Information about consumer protections.* (i) A statement that specifies what date the debt collector will consider the end date of the validation period and states that, if the consumer notifies the debt collector in writing before the end of the validation period that the debt, or any portion of the debt, is disputed, the debt collector must cease collection of the debt, or the disputed portion of the debt, until the debt collector sends the consumer either the verification of the debt or a copy of a judgment.

(ii) A statement that specifies what date the debt collector will consider the end date of the validation period and states that, if the consumer requests in writing before the end of the validation period the name and address of the original creditor, the debt collector must cease collection of the debt until the debt collector sends the consumer the name and address of the original creditor, if different from the current creditor.

(iii) A statement that specifies what date the debt collector will consider the end date of the validation period and states that, unless the consumer contacts the debt collector to dispute the validity of the debt, or any portion of the debt, before the end of the validation period, the debt collector will assume that the debt is valid.

(iv) If the debt collector is collecting consumer financial product or service debt as defined in § 1006.2(f), a statement that informs the consumer that additional information regarding consumer protections in debt collection is available on the Bureau's website at *https://www.consumerfinance.gov*.

(v) A statement explaining how a consumer can take the actions described in paragraphs (c)(4) and (d)(3), as applicable, of this section electronically, if the debt collector sends a validation notice electronically.

(vi) For a validation notice delivered in the body of an email pursuant to § 1006.42(b)(1) or (c)(2)(i), the opt-out statement required by § 1006.6(e).

(4) *Consumer response information.* The following information, segregated from the validation information described in paragraphs (c)(1) through (3) of this section and from any optional information included pursuant to paragraphs (d)(3)(i), (ii), (iv), and (v) of this section, and, if provided in a validation notice, located at the bottom of the notice under the headings, ''How do you want to respond?'' and ''Check all that apply:'':

(i) *Dispute prompts.* The following statements, listed in the following order, and using the following phrasing or substantially similar phrasing, each next to a prompt:

(A) ''I want to dispute the debt because I think:;''

(B) ''This is not my debt;''

(C) ''The amount is wrong;'' and

(D) ''Other (please describe on reverse or attach additional information).''

(ii) *Original-creditor information prompt.* The statement, ''I want you to send me the name and address of the original creditor,'' using that phrase or a substantially similar phrase, next to a prompt.

(iii) *Mailing addresses.* Mailing addresses for the consumer and the debt collector, which include the debt collector's and the consumer's names.

(5) *Special rule for certain residential mortgage debt.* For residential mortgage debt subject to Regulation Z, 12 CFR 1026.41, a debt collector need not provide the validation information described in paragraphs (c)(2)(vii) through (ix) of this section if the debt collector:

(i) Provides the consumer at the same time as the validation notice, a copy of the most recent periodic statement provided to the consumer under Regulation Z, 12 CFR 1026.41(b); and

(ii) Refers to that periodic statement in the validation notice.

(d) *Form of validation information.* (1) *In general.* (i) The validation information described in paragraph (c) of this section must be clear and conspicuous.

(ii) If provided in a validation notice, the content, format, and placement of the validation information described in § 1006.34(c) and of the optional disclosures permitted by paragraph (d)(3) of this section must be substantially similar to Model Form B–3 in appendix B of this part.

(2) *Safe harbor.* A debt collector who uses Model Form B–3 in appendix B of this part complies with the requirements of paragraphs (a)(1)(i) and (d)(1) of this section.

(3) *Optional disclosures.* A debt collector may, at its option, include any of the following information if providing the validation information required by paragraph (a)(1) of this section.

(i) *Telephone contact information.* The debt collector's telephone contact information, including telephone number and the times that the debt collector accepts consumer telephone calls.

(ii) *Reference code.* A number or code that the debt collector uses to identify the debt or the consumer.

(iii) *Payment disclosures.* (A) The statement, ''Contact us about your payment options,'' using that phrase or a substantially similar phrase. The optional payment disclosure permitted by this paragraph must be no more prominent than any of the validation information described in paragraph (c) of this section; and

(B) With the consumer response information described in paragraph (c)(4) of this section, the statement ''I enclosed this amount,'' using that phrase or a substantially similar phrase, payment instructions after that statement, and a prompt. The optional payment disclosure permitted by this paragraph must be no more prominent than the validation information described in paragraph (c) of this section.

(iv) *Disclosures required by applicable law.* On the front of a validation notice, a statement that other disclosures required by applicable law appear on the reverse of the validation notice and, on the reverse of the validation notice, any such required disclosures.

(v) *Information about electronic communications.* The following information:

(A) The debt collector's website and email address.

(B) If validation information is not provided electronically, the statement described in paragraph (c)(3)(v) of this section explaining how a consumer can take the actions described in paragraphs (c)(4) and (d)(3) of this section electronically.

(vi) *Spanish-language translation disclosures.* The following disclosures regarding a consumer's ability to request a Spanish-language translation of a validation notice:

(A) The statement, ''Póngase en contacto con nosotros para solicitar una copia de este formulario en español'' (which means ''Contact us to request a copy of the form in Spanish''), using that phrase or a substantially similar phrase in Spanish. If providing this optional disclosure, a debt collector may include supplemental information in Spanish that specifies how a consumer may request a Spanish-language validation notice.

(B) With the consumer response information described in paragraph (c)(4) of this section, the statement ''Quiero esta forma en español'' (which means ''I want this form in Spanish''), using that phrase or a substantially similar phrase in Spanish, next to a prompt.

(4) *Validation notices delivered electronically.* If a debt collector delivers a validation notice electronically pursuant to § 1006.42, a debt collector may, at its option, format the validation notice as follows:

(i) *Prompts.* Any prompt described in paragraphs (c)(4)(i) or (ii) or paragraphs (d)(3)(iii)(B) or (vi)(B) of this section may be displayed electronically as a fillable field.

(ii) *Hyperlinks.* Hyperlinks may be embedded that, when clicked:

(A) Connect consumers to the debt collector's website; or

(B) Permit consumers to respond to the dispute and original-creditor information prompts described in paragraphs (c)(4)(i) and (ii) of this section.

(e) *Translation into other languages.* A debt collector may send the consumer a validation notice completely and accurately translated into any language if the debt collector also sends an English-language validation notice in the same communication that satisfies paragraph (a)(1) of this section. If a debt collector has already provided an English-language validation notice that satisfies paragraph (a)(1) of this section and subsequently provides the consumer a validation notice translated into any another language, the debt collector need not provide an additional copy of the English-language notice.

**§ 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* has the same meaning given to it in § 1006.34(b)(5).

(b) *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.

(c) *Requests for original-creditor information.* Upon receipt of a request for the name and address of the original creditor submitted by the consumer in writing within the validation period, a debt collector must cease collection of the debt until the debt collector provides the name and address of the original creditor to the consumer in writing or electronically in a manner permitted by § 1006.42.

(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) Provides a copy either of verification of the debt or of a judgment to the consumer in writing or electronically in a manner permitted 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 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

(B) Satisfies paragraph (d)(2)(i) of this section.

**§ 1006.42 Providing required disclosures.**

(a) *Providing required disclosures.* (1) *In general.* A debt collector who provides disclosures required by 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 providing the disclosure required by § 1006.6(e) or § 1006.18(e) in writing or electronically, unless the disclosure is included on a notice required by § 1006.34(a)(1)(i) or § 1006.38(c) or (d)(2), or in an electronic communication containing a hyperlink to such notice.

(b) *Requirements for certain disclosures provided electronically.* To comply with paragraph (a) of this section, a debt collector who provides the validation notice described in § 1006.34(a)(1)(i)(B), or the disclosures described in § 1006.38(c) or (d)(2), electronically must:

(1) Except as provided in paragraph (c) of this section, provide the disclosure 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)) after the consumer provides affirmative consent directly to the debt collector;

(2) Identify the purpose of the communication by including, in the subject line of an email or in the first line of a text message 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;

(3) 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; and

(4) When providing the validation notice described in § 1006.34(a)(1)(i)(B), provide the disclosure 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.

(c) *Alternative procedures for providing certain disclosures electronically.* A debt collector who provides the validation notice described in § 1006.34(a)(1)(i)(B), or the disclosures described in § 1006.38(c) or (d)(2), electronically need not comply with paragraph (b)(1) of this section if the debt collector:

(1) Provides the disclosure by sending an electronic communication to an email address or, in the case of a text message, a telephone number that the creditor or a prior debt collector could have used to provide electronic disclosures related to that debt in accordance with section 101(c) of the E-SIGN Act; and

(2) Places the disclosure either:

(i) In the body of an email sent to an email address described in paragraph (c)(1) of this section; or

(ii) On a secure website that is accessible by clicking on a clear and conspicuous hyperlink included within an electronic communication sent to an email address or a telephone number described in paragraph (c)(1) of this section, provided that:

(A) The disclosure is accessible on the website for a reasonable period of time and can be saved or printed;

(B) The consumer receives notice and an opportunity to opt out of hyperlinked delivery as described in paragraph (d) of this section; and

(C) The consumer, during the opt-out period, has not opted out.

(d) *Notice and opportunity to opt out of hyperlinked delivery.* For a consumer to receive notice and an opportunity to opt out of hyperlinked delivery as required by paragraph (c)(2)(ii)(B) of this section, the debt collector must, before providing the disclosure, either:

(1) *Communication by the debt collector.* Inform the consumer, in a communication with the consumer, of:

(i) The name of the consumer who owes or allegedly owes the debt;

(ii) The name of the creditor to whom the debt currently is owed or allegedly owed;

(iii) The email address or telephone number from which the debt collector intends to send the electronic communication containing the hyperlink to the disclosure;

(iv) The email address or telephone number to which the debt collector intends to send the electronic communication containing the hyperlink to the disclosure;

(v) The consumer's ability to opt out of hyperlinked delivery of disclosures to such email address or telephone number; and

(vi) Instructions for opting out, including a reasonable period within which to opt out; or

(2) *Communication by the creditor.* Confirm that, no more than 30 days before the debt collector's electronic communication containing the hyperlink to the disclosure, the creditor 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 informed the consumer of:

(i) The placement or sale of the debt to the debt collector;

(ii) The name the debt collector uses when collecting debts;

(iii) The debt collector's option to use the consumer's email address or, in the case of a text message, the consumer's telephone number to provide any legally required debt collection disclosures in a manner that is consistent with Federal law; and

(iv) The information in paragraphs (d)(1)(iii), (v), and (vi) of this section.

(e) *Safe harbors.* (1) *Disclosures provided by mail.* A debt collector satisfies paragraph (a) of this section if the debt collector mails a printed copy of a disclosure to the consumer's residential address, unless the debt collector receives a notification from the entity or person responsible for delivery that the disclosure was not delivered.

(2) *Validation notice contained in the initial communication.* A debt collector who provides the validation notice described in § 1006.34(a)(1)(i)(A) within the body of an email that is the initial communication with the consumer satisfies paragraph (a)(1) of this section if the debt collector satisfies the requirements of paragraph (b) of this section for validation notices described in § 1006.34(a)(1)(i)(B). If such a debt

collector follows the procedures described in paragraph (c) of this section, the debt collector may, in lieu of sending the validation notice to an email address that the creditor or a prior debt collector could use for delivery of electronic disclosures in accordance with section 101(c) of the E-SIGN Act (as described in paragraph (c)(1) of this section), send the validation notice to an email address selected through the procedures described in § 1006.6(d)(3).

## Subpart C—[Reserved]

## Subpart D—Miscellaneous

### § 1006.100 Record retention.

(a) A debt collector must retain evidence of compliance with this part starting on the date that the debt collector begins collection activity on a debt until 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.

### § 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, or provide greater protection for consumers than, 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, or provide greater protection for consumers than, the requirements that relevant Federal law imposes on that class of debt collection practices, and that 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, or provide greater protection to consumers than, 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 applicant State law is substantially similar to, or provides greater protection to consumers than, 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, or more protective of consumers than, 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, or more protective of consumers than, those prescribed by relevant Federal law under substantially similar or more protective conditions and within the substantially similar or more protective time periods as are prescribed under relevant Federal law;

(iv) Debt collectors abide by prohibitions that are substantially similar to or more protective of consumers than 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, or more protective of consumers than, those provided by relevant Federal law under conditions or within time periods that are substantially similar to, or more protective of consumers than, 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, or that provide greater protection to consumers than, 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, or that provide greater protection to consumers than, 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—Model Forms and Clauses

**B–1 [Reserved]**

**B–2 [Reserved]**

**B–3 Model Form for Validation Notice § 1006.34**

BILLING CODE 4810–AM–P

North South Group
P.O. Box 121212
Pasadena, CA 91111-2222
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.example.com

To: Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

**Reference: 584-345**

**North South Group is a debt collector.** We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

**Our information shows:**

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

| | | | |
|---|---|---|---|
| As of January 2, 2017, you owed: | | $ | 2,234.56 |
| Between January 2, 2017 and today: | | | |
| You were charged this amount in interest: | + | $ | 75.00 |
| You were charged this amount in fees: | + | $ | 25.00 |
| You paid or were credited this amount toward the debt: | – | $ | 50.00 |
| **Total amount of the debt now:** | | **$** | **2,284.56** |

**How can you dispute the debt?**

- **Call or write to us by November 12, 2019, to dispute all or part of the debt.** If you do not, we will assume that our information is correct. If you write to us by November 12, 2019, we must stop collection on any amount you dispute until we send you information that shows you owe the debt.
- You may use the form below or you may write to us without the form. You may also include supporting documents. We accept disputes electronically at www.example.com/dispute.

**What else can you do?**

- **Write to ask for the name and address of the original creditor.** If you write by November 12, 2019, we will stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at www.example.com/request.
- **Learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you. Go to www.consumerfinance.gov.
- Contact us about your payment options.
- Review state law disclosures on reverse side, if applicable.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

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**Mail this form to:**
North South Group
P.O. Box 121212
Pasadena, CA 91111-2222

Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

**How do you want to respond?**

*Check all that apply:*

☐ **I want to dispute the debt because I think:**
  ☐ This is not my debt.
  ☐ The amount is wrong.
  ☐ Other (please describe on reverse or attach additional information).

☐ **I want you to send me the name and address of the original creditor.**

☐ **I enclosed this amount:** $

Make your check payable to *North South Group*. Include the reference number 584-345.

☐ **Quiero esta forma en español.**

BILLING CODE 4810–AM–C

## 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 should be in writing and addressed to the Associate Director, Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. The request should contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents. Designated officials will review and respond to requests for advisory opinions.

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, and has been issued under the Bureau's authority to prescribe rules under 15 U.S.C. 1692*l*(d) in accordance with the notice-and-comment procedures for informal rulemaking under the Administrative Procedure Act. 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, 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. Interpretations that are adopted will be incorporated in this 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 § 1006.34(b)(3) are further divided by subparagraph, such as comment 34(b)(3)(i)–1 and comment 34(b)(3)(iv)–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 with any person through any medium, including by soliciting a response from such person. An act to initiate a communication or other contact 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. Attempts to communicate include, but are not limited to, the following:

i. Placing a telephone call to a person, regardless of whether the debt collector speaks to any person at the called number; or

ii. Transmitting a limited-content message, as defined in § 1006.2(j), to a consumer by voicemail or text message sent directly to the consumer or by an oral message left with a third party who answers the consumer's home or mobile telephone number.

*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(j) Limited-content message.*

1. *In general.* Section 1006.2(j) provides that a limited-content message is a 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 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, including but not limited to any information that indicates that the message relates to the collection of a debt, the message is a communication, as defined in § 1006.2(d). For example, a message that includes the consumer's account number is not a limited-content message because it includes more than a generic statement that the message relates to an account.

2. *Examples.* i. The following example illustrates a limited-content message that includes only the content described in § 1006.6(j)(1): ''This is Robin Smith calling for Sam Jones. Sam, please contact me at 1–800–555–1212.''

ii. The following example illustrates a limited-content message that includes the content described in both § 1006.6(j)(1) and (2): ''Hi, this message is for Sam Jones. Sam, this is Robin Smith. I'm calling to discuss an account. It is 4:15 p.m. on Wednesday, September 1. You can reach me or, Jordan Johnson, at 1–800–555–1212 today until 6:00 p.m. eastern, or weekdays from 8:00 a.m. to 6:00 p.m. eastern.''

3. *Message for a consumer.* A debt collector may transmit a limited-content message to a consumer by, for example, leaving a voicemail at the consumer's telephone number, sending a text message to the consumer's mobile telephone number, or leaving a message orally with a third party who answers the consumer's home or mobile telephone. Other provisions of this part may, in certain circumstances, restrict a debt collector from transmitting 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.

4. *Meaningful disclosure of identity.* A debt collector who places a telephone call and leaves only a limited-content message for a consumer does not violate § 1006.14(g) with respect to that telephone call.

*Paragraph 2(j)(1)(iv).*

1. *Telephone number that the consumer can use to respond.* Section 1006.2(j)(1)(iv) provides that a limited-content message includes a telephone number that the consumer can use to reply to the debt collector. A voicemail or text message that spells out, rather than enumerates numerically, a vanity telephone number is not a limited-content message.

*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 assets extrajudicially.

*6(b) Communications with a consumer—in general.*

*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. The debt collector may know, or should know, that a time or place is inconvenient if the consumer uses the word ''inconvenient'' to notify the debt collector. In addition, depending on the facts and circumstances, the debt collector may know, or should know, that a time or place is inconvenient even if the consumer does not use the word ''inconvenient'' to notify the debt collector. Further, if the consumer initiates a communication with the debt collector at a time or from a place that the consumer previously designated as inconvenient, the debt collector may respond once to that consumer-initiated communication at that time or place. After that response, 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. For example (unless an exception in § 1006.6(b)(4) applies):

i. Assume that a consumer tells a debt collector that the consumer ''is busy'' or ''cannot talk'' on weekdays from 3:00 p.m. to 5:00 p.m. Based on these facts, the debt collector knows or should know that, on weekdays, the time period between 3:00 p.m. and 5:00 p.m. is inconvenient to the consumer and, thereafter, the debt collector must not communicate or attempt to communicate with the consumer between those times.

ii. Assume the same facts as in comment 6(b)(1)–1.i, except that, after the consumer tells the debt collector that the consumer ''is busy'' or ''cannot talk'' on weekdays from 3:00 p.m. to 5:00 p.m., the consumer initiates a communication with the debt collector at 4:30 p.m. on a weekday. Based on these facts, § 1006.6(b)(1)(i) does not prohibit the debt collector from responding once to the consumer. Unless the consumer otherwise informs the debt collector, however, § 1006.6(b)(1)(i) prohibits the debt collector from future communications or attempts to communicate with the consumer between 3:00 p.m. and 5:00 p.m. on weekdays.

iii. Assume that a consumer tells a debt collector not to communicate with the consumer at school. Based on these facts, 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.

iv. 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 school, the consumer initiates a communication with the debt collector from school. Based on these facts, § 1006.6(b)(1)(ii) does not prohibit the debt collector from responding once to the consumer. Unless the consumer otherwise informs the debt collector, however, § 1006.6(b)(1)(ii) prohibits the debt collector from future communications or attempts to communicate with the consumer at school.

*Paragraph 6(b)(1)(i).*

1. *Time of electronic communication.* Under § 1006.6(b)(1)(i), a debt collector is prohibited from communicating or attempting to communicate electronically, such as through email or text message, at a time the debt collector knows or should know is inconvenient to the consumer. 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.

2. *Consumer's location.* Under § 1006.6(b)(1)(i), in the absence of the 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 is unable to determine 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 street 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).

*6(b)(3) Prohibitions regarding consumer's place of employment.*

1. *Work email.* 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. For special rules regarding a consumer's work email, see § 1006.22(f)(3).

*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) on a debt collector 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 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 a consumer at an inconvenient time or place, the debt collector may ask the consumer what time or place would be convenient. However, the debt collector cannot during that communication ask the consumer to consent to the continuation of the communication with the consumer at the inconvenient time or place.

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 the original 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 in electronic form 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.

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, section 101(b) of the E-SIGN Act is not contravened because the consumer may only satisfy the writing requirement using a medium of electronic communication through which a debt collect accepts electronic communications from consumers.

*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)).

*6(d) Communications with third parties.*

*6(d)(1) Prohibitions.*

1. *Limited-content message.* Section 1006.2(j) provides, in part, that a limited-content message is not a communication, as defined in § 1006.2(d). 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 with a third party who answers the consumer's home or mobile telephone. Such a message is an attempt to communicate, as defined in § 1006.2(b), with the consumer. However, if, during the course of the interaction with the third party, the debt collector conveys content other than the specific items described in § 1006.2(j)(1) and (2), and such other content directly or indirectly conveys any information regarding a debt, the message is a communication, as defined in § 1006.2(d), subject to the prohibition on third-party communications in § 1006.6(d)(1). See § 1006.2(j) and its related commentary for further guidance concerning limited-content messages.

*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)(i).*

1. *Non-work email address and telephone number.* For purposes of § 1006.6(d)(3)(i)(B) and (C), an email address is a non-work email address unless the debt collector knows or should know that the email address is provided to the consumer by the consumer's

employer. For purposes of § 1006.6(d)(3)(i)(B) and (C), a telephone number is a non-work telephone number unless the debt collector knows or should know that the telephone number is provided to the consumer by the consumer's employer. See § 1006.22(f)(3) and its related commentary for clarification regarding when a debt collector knows or should know that an email address is provided by a consumer's employer.

*Paragraph 6(d)(3)(i)(B).*

*Paragraph 6(d)(3)(i)(B)(1).*

1. *Format of notice.* The opt-out notice described in § 1006.6(d)(3)(i)(B)(*1*) may be provided orally, in writing, or electronically. The notice must be provided clearly and conspicuously, as defined in § 1006.34(b)(1). If the notice is provided in writing or electronically, it must comply with the requirements of § 1006.42(a).

2. *Reasonable period for consumer to opt out in an oral communication.* If a creditor or a debt collector provides the opt-out notice described in § 1006.6(d)(3)(i)(B)(*1*) to the consumer in an oral communication, such as a telephone or in-person conversation, the creditor or the debt collector may require the consumer to make an opt-out decision during that same communication.

3. *Combined notice concerning electronic communications and hyperlinked delivery of notices.* A debt collector or a creditor may include the opt-out notice described in § 1006.6(d)(3)(i)(B)(*1*) in the same communication as the opt-out notice described in § 1006.42(d)(1) or (2), as applicable.

*Paragraph 6(d)(3)(i)(B)(2).*

1. *Expiration of opt-out period.* Pursuant to § 1006.6(d)(3)(i)(B)(*2*), a debt collector may obtain a safe harbor from liability for making a disclosure that violates § 1006.6(d)(1) if, among other things, the debt collector communicates with a consumer using a specific non-work email address or non-work telephone number after the expiration of a specified opt-out period, if the consumer has not opted out. However, if the consumer requests after the expiration of the opt-out period that the debt collector not use the specific non-work email address or non-work telephone number, § 1006.14(h) prohibits the debt collector from communicating or attempting to communicate with the consumer using that email address or telephone number. Likewise, if the consumer requests after the expiration of the opt-out period that the debt collector not communicate with the consumer by email or text message, § 1006.14(h) prohibits the debt collector from communicating or attempting to communicate with the consumer by email or text message, including by using the specific non-work email address or non-work telephone number. See § 1006.14(h).

*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 one or more ways the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number. Clear and conspicuous has the same meaning as in § 1006.34(b)(1). The following examples illustrate the rule.

i. Assume that a debt collector sends a text message to a consumer's mobile telephone number. Pursuant to § 1006.6(e), the text message must contain a clear and conspicuous statement describing how the consumer can opt out of receiving further text messages from the debt collector to that telephone number. For example, a text message would comply with this requirement by including the following instruction: ''Reply STOP to stop texts to this telephone number.''

ii. Assume that a debt collector sends the consumer an email message. Pursuant to § 1006.6(e), the email message must contain a clear and conspicuous statement describing how the consumer can opt out of receiving further email messages from the debt collector to that email address. For example, an email would comply with this requirement by including instructions in a textual format in the email, in a type size no smaller than the other text in the email, 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.

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.

*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.

Section 1006.14—Harassing, Oppressive, or Abusive Conduct

*14(b) Repeated or continuous telephone calls or telephone conversations.*

*14(b)(1) In general.*

1. *In general.* Section 1006.14(b)(1)(i) provides 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. Section 1006.14(b)(1)(ii) provides that, with respect to a debt collector who is collecting a consumer financial product or service debt, as defined in § 1006.2(f), it is an unfair act or practice under section 1031 of the Dodd-Frank Act to place telephone calls or engage any person in telephone conversation repeatedly or continuously in connection with the collection of such debt, such that the natural consequence is to harass, oppress, or abuse any person at the called number. For purposes of § 1006.14(b)(1)(i) and (ii), 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) to a mobile telephone.

*14(b)(2) Frequency limits.*

*Paragraph 14(b)(2)(i).*

1. *Examples.* Section 1006.14(b)(2)(i) provides that, subject to § 1006.14(b)(3), a debt collector must not place a telephone call to a particular person more than seven times within seven consecutive days in connection with the collection of a particular debt. The following examples illustrate the rule.

i. On Wednesday, March 1, a debt collector first attempts to communicate with a consumer in connection with the collection of a debt by placing a telephone call and leaving a limited-content message on the consumer's voicemail. Between Thursday and Sunday, the debt collector places six more telephone calls to the consumer, all of which go unanswered. As of Sunday, 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, March 1. Subject to § 1006.14(b)(3), the debt collector may place another telephone call to the consumer in connection with collection of the debt on Wednesday, March 8 but not before that date.

ii. On Tuesday, October 5, a debt collector first attempts to communicate with a particular third party for the purpose of obtaining location information about a consumer by placing a telephone call to that third party that goes unanswered. Subject to §§ 1006.10 and 1006.14(b)(3), the debt collector may place up to six more telephone calls to that third party for the purpose of obtaining location information about that consumer through Monday, October 11, unless the debt collector engages in a telephone conversation with the third party before that day. 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. *Misdirected telephone calls.* Section 1006.14(b)(2)(i) limits the number of times a debt collector may place telephone calls to a particular person within seven consecutive days in connection with the collection of a particular debt. 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 calls that the debt

collector made to that number are not considered to have been calls to that person during that seven-day period for purposes of § 1006.14(b)(2)(i). For example:

i. Assume that a debt collector attempts to communicate with a consumer on Monday and 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 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-day period.

*Paragraph 14(b)(2)(ii).*

1. *Examples.* Section 1006.14(b)(2)(ii) provides that, subject to § 1006.14(b)(3), a debt collector must not place a telephone call to a particular person in connection with the collection of a particular debt within a period of seven consecutive days after having had a telephone conversation with the person in connection with the collection of such debt. Section 1006.14(b)(2)(ii) also states that the date of the telephone conversation is the first day of the seven-consecutive-day period. The following examples illustrate the rule.

i. On Tuesday, April 11, a debt collector first attempts to communicate with a consumer in connection with the collection of a debt by placing a telephone call to the consumer that the consumer does not answer. On Friday, April 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 § 1006.14(b)(3), the debt collector may not place a telephone call to the consumer in connection with the collection of that debt again until Friday, April 21.

ii. On Thursday, August 13, a consumer initiates a telephone conversation with a debt collector regarding a debt. Subject to § 1006.14(b)(3), the debt collector may not place a telephone call to the consumer in connection with the collection of that debt again until Thursday, August 20.

*14(b)(3) Certain telephone calls excluded from the frequency limits.*

*Paragraph 14(b)(3)(i).*

1. *Responsive calls.* Section 1006.14(b)(3)(i) provides that telephone calls placed to a person to respond to the person's request for information do not count toward, and are permitted in excess of, the frequency limits in § 1006.14(b)(2). Once the debt collector provides a response to a person's request for information, the exception in § 1006.14(b)(3)(i) does not apply to subsequent telephone calls placed by the debt collector to the person, unless the person makes another request.

2. *Example.* On Wednesday, October 4, 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 requests additional information about the debt that the debt collector does not have at the time of the call. While § 1006.14(b)(2) otherwise would prohibit the debt collector from placing a telephone call to the consumer again until Wednesday, October 11, § 1006.14(b)(3)(i) provides that the debt collector may place telephone calls to respond to the consumer's request for information before the following Wednesday. Assume further that the debt collector provides a response to the consumer's request on Friday, October 6. Thereafter, the exception in § 1006.14(b)(3)(i) does not apply to subsequent telephone calls placed by the debt collector to the consumer, unless the consumer makes another request.

*Paragraph 14(b)(3)(ii).*

1. *Prior consent.* See the commentary to § 1006.6(b)(4)(i) for guidance concerning a person giving prior consent directly to a debt collector.

2. *Example.* On Friday, April 5, 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 requests that the debt collector call back at a later time. While § 1006.14(b)(2) otherwise would prohibit the debt collector from placing a telephone call to the consumer again until Friday, April 12, § 1006.14(b)(3)(ii) provides that the debt collector may place telephone calls pursuant to the consumer's prior consent before the following Friday. Assume further that the debt collector calls the consumer back on Monday, April 8, and that they have a telephone conversation on that date. Thereafter, the exception in § 1006.14(b)(3)(ii) does not apply to subsequent telephone calls placed by the debt collector to the consumer, unless the consumer again provides prior consent directly to the debt collector.

*Paragraph 14(b)(3)(iii).*

1. *Unconnected telephone calls.* Section 1006.14(b)(3)(iii) provides that telephone calls placed to a person do not count toward, and are permitted in excess of, the frequency limits in § 1006.14(b)(2) 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 debt collector's telephone call connects to the dialed number if, for example, the call causes a telephone to ring at the dialed number but no one answers the call, or the call does not cause a telephone to ring but is connected to a voicemail or other recorded message.

2. *Example.* Section 1006.14(b)(3)(iii) provides that telephone calls placed to a person do not count toward, and are permitted in excess of, the frequency limits in § 1006.14(b)(2) if they do not connect to the dialed number. For example, on Thursday, February 2, a debt collector places a telephone call to a consumer about a credit card debt in response to which the debt collector receives a busy signal or an indication that the dialed number is not in service. That telephone call does not count toward the frequency limits in § 1006.14(b)(2). Subject to § 1006.14(b)(3), the debt collector may place seven more telephone calls to the consumer about that credit card debt through Wednesday, February 8, unless the debt collector engages in a telephone conversation with the consumer in connection with the collection of the debt before that day.

*14(b)(5) Definition.*

1. *Particular debt.* Section 1006.14(b)(2) limits the frequency with which a debt collector may place telephone calls to, or engage in telephone conversation with, a person in connection with the collection of a particular debt. Section 1006.14(b)(5) 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)(5) 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 the debt collector. The following examples illustrate the rule.

i. A debt collector is attempting to collect a medical debt and a credit card debt from the same consumer. Subject to § 1006.14(b)(3), the debt collector may, within a period of seven consecutive days, place seven unanswered telephone calls to the consumer in connection with the collection of the medical debt, and seven unanswered telephone calls to the consumer in connection with the collection of the credit card debt.

ii. 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 engages in a telephone conversation with the consumer solely in connection with the collection of the medical debt, but the debt collector does not place any telephone calls to the consumer in connection with the collection of the credit card debt. Subject to § 1006.14(b)(3), the debt collector may not place a telephone call to the consumer in connection with the collection of the medical debt again until Monday, November 16. Subject to § 1006.14(b), however, the debt collector may place telephone calls to, and engage in a telephone conversation with, the consumer in connection with the collection of the credit card debt before Monday, November 16.

iii. 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 the 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). Subject to § 1006.14(b)(3), the debt collector may place seven telephone calls within seven days to the consumer in connection with the collection of the debts. If, however, the debt collector engages the consumer in a telephone conversation in connection with the collection of any of the debts, the debt collector may not place a telephone call to the consumer again during the same seven-day period in connection with the collection of any of the debts.

*14(h) Prohibited communication media.*

*14(h)(1) In general.*

1. *Communication media.* Section 1006.14(h) prohibits a debt collector from communicating or attempting to communicate with a consumer in connection with the collection of any debt through a medium of communication if the consumer has requested that the debt collector not use that medium to communicate with the

consumer. See comment 2(d)–1 for examples of communication media.

2. *Specific address or telephone number.* Within a medium of communication, a consumer may request that a debt collector not use a specific address or telephone number. For example, if a debt collector has two mobile telephone numbers on file for a consumer, the consumer may request that the debt collector not use either or both mobile telephone numbers.

Section 1006.18—False, Deceptive, or Misleading Representations or Means

*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 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 which 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 messages.''

*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 whether that communication is written or oral, 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), in the consumer's voicemail. 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.

Section 1006.22—Unfair or Unconscionable Means

*22(f) Restrictions on use of certain media.*

*Paragraph 22(f)(3).*

1. *Consent to use employer-provided email address.* Section 1006.22(f)(3) prohibits a debt collector 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, unless the debt collector has received directly from the consumer either prior consent to use that email address or an email from that email address. The consumer could at any time, however, opt out of receiving emails at that address using instructions provided by a debt collector pursuant to § 1006.6(e), or otherwise request not to receive emails at that address pursuant to § 1006.14(h). See the commentary to § 1006.6(b)(4)(i) for additional guidance concerning a consumer giving prior consent directly to a debt collector.

2. *Receipt of email from employer-provided email address.* Section 1006.22(f)(3) prohibits a debt collector 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, unless the debt collector has received directly from the consumer either prior consent to use that email address or an email from that email address. A debt collector who receives an email directly from a consumer from an email address provided by the consumer's employer may communicate or attempt to communicate with the consumer at that email address, even if the consumer's email does not provide prior consent to the debt collector. For example, assume a debt collector has provided to a consumer a validation notice pursuant to § 1006.34 but has not otherwise communicated or attempted to communicate with the consumer. Assume further that the consumer subsequently sends an email directly to the debt collector from an email address that the debt collector knows or should know is provided to the consumer by the consumer's employer; that the consumer's email requests additional information about the debt but does not give prior consent to the debt collector's use of that email address; and that the debt collector neither knows nor has reason to know that the consumer's employer prohibits the consumer from receiving communications in connection with the collection of a debt. Section 1006.22(f)(3) permits the debt collector to communicate or attempt to communicate with the consumer using that email address. The consumer could, however, subsequently opt out or request not to receive messages at that email address pursuant to §§ 1006.6(e) or 1006.14(h).

3. *Knowledge of employer-provided email address.* For purposes of § 1006.22(f)(3), a debt collector knows or should know an email address is provided to the consumer by the consumer's employer if, for example, the email address's top-level domain name is one ordinarily associated with work email addresses (*e.g.,* .gov or .mil), the email address's domain name includes a corporate name that is not commonly associated with non-work email addresses (*e.g., springsidemortgage.com*), or the debt collector knows the identity of the consumer's employer and the email address's domain name includes the employer's name or an abbreviation of the employer's name (*e.g.,* the debt collector knows that the consumer works at Example Mortgage Company and the email address is *examplemortgagecompany.com* or exmoc.com). In the absence of contrary information, a debt collector neither would know nor should know that an email address is provided to the consumer by the consumer's employer if the email address's domain name is one commonly associated with a provider of non-work email addresses.

*Paragraph 22(f)(4).*

1. *Social media.* Section 1006.22(f)(4) prohibits a debt collector from communicating or attempting to communicate with a consumer in connection with the collection of a debt by a social media platform that is viewable by a person other than the persons described in § 1006.6(d)(1)(i) through (vi). For example, § 1006.22(f)(4) prohibits a debt collector from posting, in connection with the collection of a debt, any message, including a limited-content message, for a consumer on a social media web page if that web page is viewable by the general public or the consumer's social media contacts. If a social media platform enables a debt collector to send a private message to the consumer that is not viewable by a person other than the persons described in § 1006.6(d)(1)(i) through (vi), however, § 1006.22(f)(4) does not prohibit a debt collector from communicating or attempting to communicate with a consumer in connection with the collection of a debt by sending such a private message to the consumer, including by sending a limited-content message, although §§ 1006.6(b) or 1006.14(h) nonetheless may prohibit the debt collector from sending such a private message if, for example, the consumer has requested that the debt collector not use that medium to communicate with the consumer.

Section 1006.30—Other Prohibited Practices

*30(a) Communication prior to furnishing information.*

1. *Communication.* Section 1006.30(a) prohibits a debt collector from furnishing information to a consumer reporting agency about a debt before communicating with the consumer about that debt. Pursuant to § 1006.2(d), a debt collector has communicated with the consumer about the debt if the debt collector conveys information regarding a debt directly or indirectly to the consumer through any medium. Pursuant to § 1006.2(d), a debt collector has not communicated with the consumer about the debt if the debt collector attempts to communicate with the consumer but no communication occurs. For example, a debt collector communicates with the consumer if the debt collector provides a validation notice to the consumer; a debt collector does not communicate with the consumer by leaving a limited-content message for the consumer. For additional clarification on providing disclosures in a manner that is reasonably expected to provide actual notice to consumers, see § 1006.42.

*30(b) Prohibition on the sale, transfer, or placement of certain debts.*

*30(b)(1) In general.*

*30(b)(1)(i) FDCPA prohibition.*

*Paragraph 30(b)(1)(i)(C).*

1. *Identity theft report filed.* Under § 1006.30(b)(1)(i)(C), a debt collector may not sell, transfer, or place for collection a debt if the debt collector knows or should know that an identity theft report was filed with respect to the debt. A debt collector knows or should know that an identity theft report was filed if, for example, the debt collector has received a copy of the identity theft report.

*30(b)(2) Exceptions.*

*Paragraph 30(b)(2)(i).*

1. *In general.* Under § 1006.30(b)(2)(i), a debt collector who is collecting a debt described in § 1006.30(b)(1)(i) 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 1006.34—Notice for Validation of Debts

*34(a)(1) Validation information required.*

1. *Deceased consumers.* Section 1006.34(a)(1) generally requires a debt collector to provide the validation information described in § 1006.34(c) either by sending the consumer a validation notice in a manner that satisfies § 1006.42(a), or by providing the information orally in the debt collector's initial communication. If the debt collector knows or should know that the consumer is deceased, and if the debt collector has not previously provided the validation information to the deceased consumer, a person who is authorized to act on behalf of the deceased consumer's estate operates as the consumer for purposes of § 1006.34(a)(1). In such circumstances, to comply with § 1006.34(a)(1), a debt collector must provide the validation information to an individual that the debt collector identifies by name who is authorized to act on behalf of the deceased consumer's estate.

*34(b) Definitions.*

*34(b)(3) Itemization date.*

1. *In general.* Section 1006.34(b)(3) defines itemization date for purposes of § 1006.34. Section 1006.34(b)(3) states that the itemization date is any one of four potential references dates for which a debt collector can ascertain the amount of the debt. The four potential reference dates are the last statement date, the charge-off date, the last payment date, and the transaction date. A debt collector may select any of these dates as the itemization date to comply with § 1006.34. Once a debt collector uses a reference date for a specific debt in a communication with an individual consumer, the debt collector must use that reference date for that debt consistently when providing disclosures required by § 1006.34 to that consumer. For example, if a debt collector uses the last statement date to determine and disclose the account number associated with the debt pursuant to § 1006.34(c)(2)(v), the debt collector may not use the charge-off date to determine and disclose the amount of the debt pursuant to § 1006.34(c)(2)(viii).

*Paragraph 34(b)(3)(i).*

1. *Last statement date.* Under § 1006.34(b)(3)(i), the last statement date is the date of the last periodic statement or written account statement or invoice provided to the consumer. For purposes of § 1006.34(b)(3)(i), a statement provided by a creditor or a third party acting on the creditor's behalf, including a creditor's service provider, may constitute the last statement provided to the consumer.

*Paragraph 34(b)(3)(iv).*

1. *Transaction date.* Section 1006.34(b)(3)(iv) provides that the itemization date may be the date of the transaction that gave rise to the debt. The transaction date is the date that a creditor provided, or made available, a good or service to a consumer. For example, the transaction date for a debt arising from a medical procedure may be the date the medical procedure was performed, and the transaction date for a consumer's gym membership may be the date the membership contract was executed. In some cases, a debt collector may identify more than one potential transaction date. For example, a debt may have two transaction dates if a contract for a service is executed on one date and the service is performed on another date. If a debt has more than one transaction date, a debt collector may use any such date as the transaction date for purposes of § 1006.34(b)(3)(iv) but must use whichever transaction date it selects consistently, as described in comment 34(b)(3)–1.

*34(b)(5) Validation period.*

1. *Updated validation period.* Section 1006.34(b)(5) defines the validation period as the period starting on the date that a debt collector provides the validation information required by § 1006.34(a)(1) and ending 30 days after the consumer receives or is assumed to receive those disclosures. Section 1006.34(c)(3)(i) through (iii) requires statements that specify the end date of the validation period. If a debt collector sends a subsequent validation notice to a consumer because the consumer did not receive the original validation notice and the consumer has not otherwise received the validation information described in § 1006.34(c), the debt collector must calculate the end date of the validation period specified in the § 1006.34(c)(3) disclosures based on the date the consumer receives or is assumed to receive the subsequent validation notice. For example, assume a debt collector sends a consumer a validation notice on January 1, and that notice is returned as undeliverable. After obtaining accurate location information, the debt collector sends the consumer a subsequent validation notice on January 15. Pursuant to § 1006.34(b)(5), the end date of the validation period specified in the § 1006.34(c)(3) disclosures should be based on the date the consumer receives or is assumed to receive the validation notice sent on January 15.

*34(c) Validation information.*

*34(c)(2) Information about the debt.*

*Paragraph 34(c)(2)(ii).*

1. *Consumer's name.* Section 1006.34(c)(2)(ii) provides that validation information includes the consumer's name and mailing address. The consumer's name is what the debt collector reasonably determines is the most complete version of the name about which the debt collector has knowledge, whether obtained from the creditor or another source. It would be unreasonable for a debt collector to determine the consumer's name is the most complete version of the consumer's name if the debt collector has omitted name information in a manner that created a false, misleading, or confusing impression about the consumer's identity. For example, if the creditor provides the consumer's first name, middle name, last name, and name suffix to the debt collector, it would be unreasonable for the debt collector to not provide all of that information to the consumer.

*Paragraph 34(c)(2)(iii).*

1. *Merchant brand.* Section 1006.34(c)(2)(iii) provides that validation information includes the merchant brand, if any, associated with a credit card debt, to the extent that such information is available to the debt collector. For example, assume that a debt collector is attempting to collect a consumer's credit card debt. The credit card was issued by ABC Bank and was co-branded XYZ Store, and this information is available to the debt collector. The debt collector must provide the ''XYZ Store'' merchant brand information to the consumer.

*Paragraph 34(c)(2)(v).*

1. *Account number truncation.* Section 1006.34(c)(2)(v) provides that validation information includes the account number associated with the debt on the itemization date, or a truncated version of that number. If a debt collector uses a truncated account number, the account number must remain recognizable. For example, a debt collector may truncate a credit card account number so that only the last four digits appear on a validation notice.

*Paragraph 34(c)(2)(viii).*

1. *Amount of the debt on the itemization date.* Section 1006.34(c)(2)(viii) provides that validation information includes the amount of the debt on the itemization date. The amount of the debt on the itemization date includes any fees, interest, or other charges owed as of that date.

*Paragraph 34(c)(2)(ix).*

1. *Itemization of the debt.* Section 1006.34(c)(2)(ix) provides that validation information includes an itemization of the current amount of the debt in a tabular format reflecting interest, fees, payments, and credits since the itemization date. When providing a validation notice, a debt collector must include fields in the notice for all of these items even if none of the items have been assessed or applied to the debt since the itemization date. A debt collector may indicate that the value of a required field is ''0'' or ''N/A,'' or may state that no interest, fees, payments, or credits have been assessed or applied to the debt.

*Paragraph 34(c)(2)(x).*

1. *Current amount of the debt.* Section 1006.34(c)(2)(x) provides that validation information includes the current amount of the debt (*i.e.,* the amount as of when the validation information is provided). For residential mortgage debt subject to Regulation Z, 12 CFR 1026.41, a debt collector may comply with the requirement to provide the current amount of the debt by providing the consumer the total balance of the outstanding mortgage, including principal, interest, fees, and other charges.

*34(c)(3) Information about consumer protections.*

*Paragraph 34(c)(3)(v).*

1. *Electronic communication media.* Section 1006.34(c)(3)(v) provides that validation information includes a statement explaining how a consumer can take the actions described in § 1006.34(c)(4) and (d)(3), as applicable, electronically, if the debt collector provides the validation notice electronically. A debt collector may provide the information described by § 1006.34(c)(3)(v) by including the

statements, ''We accept disputes electronically at,'' using that phrase or a substantially similar phrase, followed by an email address or website portal that a consumer can use to take the action described in § 1006.34(c)(4)(i), and ''We accept original creditor information requests electronically,'' using that phrase or a substantially similar phrase, followed by an email address or website portal that a consumer can use to take the action described in § 1006.34(c)(4)(ii). If a debt collector accepts electronic communications from consumers through more than one medium, such as by email and through a website portal, the debt collector is only required to provide information regarding one of these media but may provide information on any additional media.

*Paragraph 34(c)(3)(vi).*

1. *In general.* Section 1006.34(c)(3)(vi) provides that, for a validation notice delivered in the body of an email pursuant to § 1006.42(b)(1) or (c)(2)(i), validation information includes the opt-out statement required by § 1006.6(e). If a validation notice is delivered on a website pursuant to § 1006.42(c)(2)(ii), the validation notice need not contain the opt-out instructions because the consumer would have already received the opt-out instructions since those instructions are required for any email or text message that provides a hyperlink to the website where the notice is placed. Delivery of a validation notice that a debt collector previously provided pursuant to § 1006.42(b)(1) or (c)(2)(i) or (ii) is not rendered ineffective because a consumer opts out of future electronic communications.

*34(c)(4) Consumer response information.*

1. *Prompts.* If the validation information is provided in writing or electronically, a prompt described in § 1006.34(c)(4) may be formatted as a checkbox as in Model Form B–3 in appendix B.

*34(c)(5) Special rule for certain residential mortgage debt.*

1. *In general.* Section 1006.34(c)(5) provides that, for debts subject to Regulation Z, 12 CFR 1026.41, a debt collector need not provide the validation information described in § 1006.34(c)(2)(vii) through (ix) if the debt collector provides the consumer at the same time as the validation notice a copy of the most recent periodic statement provided to the consumer under 12 CFR 1026.41(b), and the debt collector refers to that periodic statement in the validation notice. A debt collector may comply with the requirement to provide a copy of the most recent periodic statement and the validation notice at the same time by, for example, including both documents in the same mailing. A debt collector may comply with the requirement to refer to the periodic statement in the validation notice by, for example, including in the validation notice the statement, ''See the enclosed periodic statement for an itemization of the debt,'' situated next to the information about the current amount of the debt required by § 1006.34(c)(2)(x). For debt subject to § 1006.34(c)(5), a debt collector need not include the itemization table described in § 1006.34(c)(2)(ix).

*34(d) Form of validation information.*

*34(d)(1) In general.*

*Paragraph 34(d)(1)(ii).*

1. *Permissible changes.* A debt collector may make certain changes to the content, format, and placement of the validation information described in § 1006.34(c) as long as the resulting disclosures are substantially similar to Model Form B–3 in appendix B of this part. Acceptable changes include, for example:

i. Modifications to remove language that could suggest liability for the debt if such language is not applicable. For example, if a debt collector sends a validation notice to a person who is authorized to act on behalf of the deceased consumer's estate (see comment 34(a)(1)–1), and that person is not liable for the debt, the debt collector may use the name of the deceased consumer instead of ''you.''

*34(d)(2) Safe harbor.*

1. *Safe harbor provided by use of model form.* Although the use of Model Form B–3 in appendix B of this part is not required, a debt collector who uses the model form, including a debt collector who delivers the model form electronically, complies with the disclosure requirements of § 1006.34(a)(1) and (d)(1). A debt collector who uses Model Form B–3 and includes the optional disclosures described in § 1006.34(d)(3) continues to be in compliance as long as those disclosures are made consistent with the instructions in § 1006.34(d)(3). A debt collector who uses Model Form B–3 also may embed hyperlinks if delivering the form electronically and continue to be in compliance as long as the hyperlinks are included consistent with § 1006.34(d)(4)(ii).

*34(d)(3) Optional disclosures.*

*34(d)(3)(iv) Disclosures required by applicable law.*

1. Section 1006.34(d)(3)(iv) permits a debt collector to include on the front of the validation notice a statement that other disclosures required by applicable law appear on the reverse of the validation notice and, on the reverse of the validation notice, any such required disclosures. Disclosures required by other applicable law may include, for example, disclosure requirements established by State statutes or regulations, as well as disclosures required by judicial decisions or orders. To comply with § 1006.34(d)(3)(iv), a debt collector may include in the validation notice a disclosure that is substantially similar to the language about other required disclosures that appears on Model Form B–3 in appendix B of this part and place any such required disclosures on the reverse of the validation notice, located above the consumer information section described in § 1006.34(c)(4).

*34(d)(3)(vi) Spanish-language translation disclosures.*

*Paragraph 34(d)(3)(vi)(A).*

1. *Customizing Spanish-language disclosure.* Section 1006.34(d)(3)(vi)(A) permits a debt collector to include supplemental information in Spanish that specifies how a consumer may request a Spanish-language validation notice. For example, a debt collector may include a statement in Spanish that a consumer can request a Spanish-language validation notice by telephone or email, if the debt collector chooses to accept consumer requests through those communication media.

*34(e) Translation into other languages.*

1. *In general.* Section 1006.34(e) permits a debt collector to satisfy § 1006.34(a)(1) by sending a consumer a validation notice accurately translated into any language, if the debt collector also sends an English-language validation notice in the same communication or has already provided an English-language validation notice. The language of a validation notice a debt collector obtains from the Bureau's website is considered a complete and accurate translation, although debt collectors are permitted to use other validation notice translations so long as they are complete and accurate.

Section 1006.38—Disputes and Requests for Original-Creditor Information

1. *Deceased consumers.* Section 1006.38 contains requirements related to disputes and requests for the name and address of the original creditor timely submitted in writing by the consumer. If the debt collector knows or should know that the consumer is deceased, and if the consumer has not previously disputed the debt or requested the name and address of the original creditor, a person who is authorized to act on behalf of the deceased consumer's estate operates as the consumer for purposes of § 1006.38. In such circumstances, to comply with § 1006.38(c) or (d)(2), respectively, a debt collector must respond to a request for the name and address of the original creditor or to a dispute timely submitted in writing by a person who is authorized to act on behalf of the deceased consumer's estate.

2. *In writing.* Section 1006.38 contains requirements related to a dispute or request for the name and address of the original creditor timely submitted in writing by the consumer. A consumer has disputed the debt or requested the name and address of the original creditor in writing for purposes of § 1006.38(c) or (d)(2) if the consumer, for example:

i. Mails the written dispute or request to the debt collector;

ii. Returns to the debt collector the consumer response form that § 1006.34(c)(4)(i) requires to appear on the validation notice and indicates on the form a dispute or request;

iii. Provides the dispute or request to the debt collector using a medium of electronic communication through which a debt collector accepts electronic communications from consumers, such as an email address or a website portal; or

iv. Delivers the written dispute or request in person or by courier to the debt collector.

3. *Interpretation of the E-SIGN Act.* Comment 38–2.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, section 101(b) of the E-SIGN Act is not contravened because the consumer may only use a medium of electronic communication through which a debt collector accepts electronic communications from consumers.

*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 notifies the consumer that the dispute is duplicative or provides a copy either of verification of the debt or of a judgment to the consumer. If the debt collector notifies the consumer that the dispute is duplicative, § 1006.38(d)(2)(ii) 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—Providing Required Disclosures

1. *Deceased consumers.* Section 1006.42 contains requirements related to providing certain disclosures required by this part. If a debt collector knows or should know that a consumer is deceased, a person who is authorized to act on behalf of the deceased consumer's estate operates as the consumer for purposes of § 1006.42.

*42(a) Providing required disclosures.*

*42(a)(1) In general.*

1. *Notice of undeliverability.* Under § 1006.42(a)(1), a debt collector who provides disclosures required by this part in writing or electronically must, among other things, do so in a manner that is reasonably expected to provide actual notice. A debt collector who provides a required disclosure in writing or electronically and who receives a notice that the disclosure was not delivered has not provided the disclosure in a manner that is reasonably expected to provide actual notice under § 1006.42(a)(1). See comment 34(b)(5)–1 for how to calculate the updated validation period when sending a subsequent validation notice.

*42(b) Requirements for certain disclosures provided electronically.*

*Paragraph 42(b)(1).*

1. *Interpretation of the E-SIGN Act.* Section 1006.42(b)(1) constitutes the Bureau's interpretation of section 101 of the E-SIGN Act as applied to section 809 of the FDCPA. Under this interpretation, section 101(c) of the E-SIGN Act enables a debt collector to satisfy the requirement in section 809(a) of the FDCPA that the debt collector's notice be ''written,'' and to satisfy the requirement in section 809(b) of the FDCPA that the debt collector mail the consumer a copy of verification or a judgment, or the name and address of the original creditor, through an electronic notice if the consumer provides consent in accordance with the E-SIGN Act directly to the debt collector.

*Paragraph 42(b)(2).*

1. *Information identifying the debt.* Under § 1006.42(b)(2), a debt collector who provides the validation notice described in § 1006.34(a)(1)(i)(B), or the disclosures described in § 1006.38(c) or (d)(2), electronically must, among other things, identify the purpose of the communication by including, in the subject line of an email or in the first line of a text message 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. The following are examples of an additional piece of information, other than amount, identifying a debt: 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 mailing address on the account.

*Paragraph 42(b)(4).*

1. *Disclosures responsive to smaller screens.* Under § 1006.42(b)(4), a debt collector who provides a validation notice electronically must provide the disclosure 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. A debt collector provides the validation notice in a responsive format accessible on a screen of any commercially available size if, for example, the notice adjusts to different screen sizes by stacking elements in a manner that accommodates consumer viewing on smaller screens while still meeting the other applicable formatting requirements in § 1006.34. A debt collector provides the validation notice in a manner accessible via commercially available screen readers if, for example, the validation notice is machine readable.

*42(c) Alternative procedures for providing certain disclosures electronically.*

*Paragraph 42(c)(1).*

1. *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 instructions provided pursuant to § 1006.6(e), then a debt collector cannot use that email address or telephone number to deliver disclosures under § 1006.42(c).

*Paragraph 42(c)(2).*

*Paragraph 42(c)(2)(i).*

1. *Body of an email.* The alternative procedures in § 1006.42(c) permit a debt collector to place a disclosure in the body of an email. A debt collector places a disclosure in the body of an email if the disclosure's content is viewable within the email itself.

*42(d) Notice and opportunity to opt out of hyperlinked delivery.*

1. *Communication covering multiple disclosures.* A debt collector's or a creditor's communication with a consumer pursuant to § 1006.42(d)(1) or (2), respectively, applies to all disclosures covered by § 1006.42(a) that the debt collector thereafter sends regarding that debt, unless the consumer later designates that email address or, in the case of text messages, that telephone number, as unavailable for the debt collector's use, such as by opting out pursuant to the instructions required by § 1006.6(e).

*42(d)(1) Communication by the debt collector.*

1. *Name of the consumer.* For purposes of a debt collector's communication with the consumer under § 1006.42(d)(1), the term ''name of the consumer'' has the same meaning as the term ''consumer's name'' under § 1006.34(c)(2)(ii). See comment 34(c)(2)(ii)–1.

2. *Debt collector communication covering multiple debts.* If a debt collector's communication with a consumer under § 1006.42(d)(1) applies to multiple debts, § 1006.42(d)(1)(i) and (ii) require the debt collector to identify the consumer and the creditor for each debt to which the communication applies.

3. *Form of communication with consumer before hyperlinked delivery.* A debt collector's communication with the consumer under § 1006.42(d)(1) must inform the consumer of, among other things, the consumer's ability to opt out of hyperlinked delivery of disclosures to an email address or, in the case of text messages, to a telephone number, and instructions for

opting out, including a reasonable period within which to opt out. This communication must, among other things, take place before the debt collector provides the hyperlinked disclosure, and the debt collector must allow the consumer a reasonable period within which to opt out. 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, a written or electronic communication that requires the consumer to make an opt-out decision within a period of five or fewer days does not meet these timing criteria. Therefore, when using hyperlinked delivery for the validation notice required by § 1006.34, an oral communication, such as a telephone conversation or in-person conversation, is necessary under § 1006.42(d)(1).

4. *Combined notice concerning electronic communications and electronic delivery of disclosures.* An opt-out notice provided by a debt collector under § 1006.42(d)(1) may be combined with an opt-out notice provided by the debt collector under § 1006.6(d)(3)(i)(B)(*1*). See comment 6(d)(3)(i)(B)(*1*)–3.

*42(d)(2) Communication by the creditor.*

1. *Creditor communication covering multiple debts.* A creditor's communication with the consumer under § 1006.42(d)(2) may apply to multiple debts being placed with or sold to the same debt collector at the same time.

2. *Form of communication with consumer before hyperlinked delivery.* A creditor's communication with the consumer under § 1006.42(d)(2) must inform the consumer of, among other things, the consumer's ability to opt out of hyperlinked delivery of disclosures to an email address or, in the case of a text message, to a telephone number, and instructions for opting out, including a reasonable period within which to opt out. This communication must, among other things, take place no more than 30 days before the debt collector's electronic communication containing the hyperlink to the disclosure, and the creditor must allow the consumer a reasonable period within which to opt out. In an oral communication with the consumer, such as a telephone or in-person conversation, the creditor may require the consumer to make an opt-out decision during that same communication. However, a written or electronic communication that requires the consumer to make an opt-out decision within a period of five or fewer days does not meet these timing criteria.

3. *Combined notice concerning electronic communications and electronic delivery of disclosures.* An opt-out notice provided by a creditor under § 1006.42(d)(2) may be combined with an opt-out notice provided by the creditor under § 1006.6(d)(3)(i)(B)(*1*). See comment 6(d)(3)(i)(B)(*1*)–3.

*42(e) Safe harbors.*

*42(e)(1) Disclosures provided by mail.*

1. *Consumer's residential address.* Section 1006.42(e)(1) provides that a debt collector satisfies § 1006.42(a) if the debt collector mails a printed copy of a disclosure to the consumer's residential address, unless the debt collector receives a notification from the entity or person responsible for delivery that the disclosure was not delivered. For purposes of § 1006.42(e)(1), a disclosure is not mailed to the consumer's residential address if the debt collector knows or should know at the time of mailing that the consumer does not currently reside at that location.

*42(e)(2) Validation notice contained in the initial communication.*

1. *Effect of consumer opt out.* If a consumer has opted out of debt collection communications to a particular email address by, for example, following the instructions provided pursuant to § 1006.6(e), then a debt collector cannot use that email address to deliver disclosures under § 1006.42(e)(2).

*Subpart C—[Reserved]*

*Subpart D—Miscellaneous*

Section 1006.100—Record Retention

1. *Evidence of required actions.* Section 1006.100 requires a debt collector to retain evidence of compliance with this part. Thus, under § 1006.100, a debt collector must retain evidence that the debt collector performed the actions and made the disclosures required by this part. For example, a debt collector could retain:

i. Telephone call logs as evidence that the debt collector complied with the frequency limits in § 1006.14; and

ii. Copies or records of documents provided to the consumer as evidence that the debt collector provided the information required by §§ 1006.34 and 1006.38 and met the delivery requirements of § 1006.42.

2. *Methods of retaining records.* Retaining records that are evidence of compliance with this part does not require retaining actual paper copies of documents. The 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).

3. *Recorded telephone calls.* Nothing in § 1006.100 requires a debt collector to record telephone calls. However, under § 1006.100, a debt collector who records telephone calls must retain the recordings if the recordings are evidence of compliance with this part.

Section 1006.104—Relation to State Laws

1. *State law disclosure requirements.* A disclosure required by applicable State law that describes additional protections under State law does not contradict the requirements of the Act or the corresponding provisions of this part.

Dated: May 6, 2019.

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