
Final Debt Collection Rule: Part 2

January 7, 2021

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National
Consumer Law
Center
*Fighting Together
for Economic Justice*

Rulemaking Overview

- **Notice of Proposed Rulemaking** ([78 FR 67847](#)) – Nov. 13, 2013
- **Outline of Proposals for Small Business Review** – July 2016
- **Proposed Rule** ([84 FR 23274](#)) – May 21, 2019
- **Supplemental Proposed Rule** ([85 FR 12672](#)) – Mar. 3, 2020
- **Final Rule Part 1** ([85 FR 76734](#)) – Nov. 30, 2020
- **Final Rule Part 2** ([text](#)) – Dec. 18, 2020
- **Effective Date (both parts)** – Nov. 30, 2021



FEDERAL REGISTER

The Daily Journal of the United States Government



PR Proposed Rule

Caution!

Part 2 amended some text
previously released in Part 1.

Future home of full regs:

www.consumerfinance.gov/rules-policy/regulations/1006/



Definitions

Consumer means any natural person, whether living or deceased, obligated or allegedly obligated to pay any debt.

**1006.6(a) still has extended definition of consumer*

Source: 1006.2(e); 1006.6(a), Official Interpretations of Part I of Rule, pp. 599-600

Definitions

Consumer financial product or service: same meaning as in 1005(5) of Dodd-Frank ([12 U.S.C. 5481\(5\)](#)): financial product or service "offered or provided for use by consumers primarily for personal, family, or household purposes." Includes:

- the extension of credit and servicing of loans,
- brokerage of leases of real or personal property,
- real estate settlement or appraisal services,
- deposit-taking activities or "otherwise acting as a custodian of funds or any financial instrument,"
- prepaid debit cards and other "stored value" instruments,
- check cashing, collection, or guaranty services,
- payment processing or "other financial payment processing,"
- financial advisory services,
- credit reporting services, and
- debt collection. (12 U.S.C. 5481(15))

Source: 1006.2(f)

Time-barred Debt Definitions

Statute of limitations means the period prescribed by applicable law for bringing a legal action against the consumer to collect a debt

Time-barred debt means a debt for which the applicable statute of limitations has expired.

Source: 1006.26(a)

Legal actions and threats of legal actions prohibited

- A debt collector *must not bring or threaten to bring a legal action* against a consumer to collect a time-barred debt
 - consistent with case law holding that suits and threats of suits on time-barred debt violate FDCPA section 1692e

Source: 1006.26(b)

- Did not adopt the “knows-or-should-know standard”
- Strict liability standard
- May be able to use bona fide error defense (1692k(c))

** For error of fact, not errors of law*

- Does not apply to *proofs of claim* filed in a bankruptcy
 - Follows *Midland Funding, LLC v. Johnson*, 137 S.Ct. 1407 (2017): filing time-barred POC does not violate 1692e or 1692f

Source: 1006.26(b); Section by
Section Analysis p. 42-43, 59

Time Barred Debt Disclosures

- Proposed time-barred debt and revival disclosures were not finalized
 - Too many concerns ie: “burden on debt collectors” and confusion for consumers

Source: Section by Section Analysis, p. 62

Some States & Cities Have Time-Barred Debt Disclosure Requirements

California

Connecticut

North Carolina

Texas

West Virginia

Massachusetts

New Mexico

New York

Vermont

New York City

City of Yonkers

[See NCLC Comments to Supplemental Rule, August 2020 FN 63, 64](#)

CFPB Encourages Debt Collectors to Disclose Anyway

- BUT:
 - “in many circumstances, *disclosures can effectively cure the potential deception* associated with the collection of time-barred debt.” &
 - “a debt collector may decide that, *to avoid violating the FDCPA* and the final rule, the debt collector *needs to disclose information to consumers about the debt collector’s ability to sue and the possibility of revival* and, in that case, the debt collector may do so.”

Other Prohibited Practices

- No “*passive collection*” (parking)
 - **Can't report** a debt to credit reporting agencies **before first contacting consumer**
- Before reporting, **debt collector must:**
 - **speak** to consumer in person or by phone
OR
 - **mail** a letter or electronic communication to the consumer and **wait** at least **14 days** for notice of undeliverability
- If receives notice of undeliverability, cannot report unless achieves communication detailed above

Source: 1006.30(a)(1) and Official Interpretations pp. 336-338

What if collector sends letter to consumer and after no notice of undeliverability in 14 days, reports to CRAs but then, on day 15 receives letter returned as undeliverable?

VIOLATION?



Source: 1006.30, Official Interpretations pp. 337-338

No Violation

14-day safe harbor protects collector



Credit Report Parking Rule con't

- **Exclusion:** Prohibition on passive collection does not apply “to a debt collector’s furnishing of information about a debt to a nationwide **specialty consumer reporting agency that compiles and maintains information on a consumer’s check writing history.**”

Validation Notices

Organization:

- (a) Methods for sending validation information
- (b) Definitions
- (c) Required validation information
- (d) Form of validation information
- (e) Translation into other languages

Source: 1006.34

Methods for Sending

- In writing or electronically as:
 - the initial communication or
 - within 5 days of the initial communication
- Orally in the initial communication

Exceptions: collector not required to provide validation information if consumer paid the debt prior to the expiration of the 5 day period above.

Source: 1006.34(a)

Remember from Part 1

Validation notice sent in writing or electronically must be:

- sent in a manner reasonably expected to provide actual notice and
- in a form that the consumer may keep and access later
- must comply with the E-SIGN Act if sent electronically
 - BUT see p. 440 re: electronic delivery of the validation notice in an initial communication

Source: 1006.42

Deceased Consumers

If the collector:

- **Knows or should know** the consumer is deceased and
- Did not provide validation information to the deceased consumer

It must provide validation information to the individual that collector identifies as **authorized to act on behalf of the deceased consumer's estate**.

Source: 1006.34(a)(1) comment

Definitions

- **Clear and conspicuous** - readily understandable
 - **written:** readily noticeable and legible; no minimum font size
 - **oral:** volume and speed sufficient for consumer to hear and comprehend
- **Initial communication** - first time conveys info, directly or indirectly, about debt to the consumer
 - **Does not include:** legal pleadings (including bankruptcy proof of claims), limited content messages (see part 1), certain legally required notices

Definitions

- **Itemization date** - one of 5 reference dates:
 - Last statement date
 - Charge-off date
 - Last payment date
 - Transaction date
 - Judgment date
- Collector chooses and must use same reference date consistently while collecting that account.
- **BUT** next collector can use a different reference date.

Source: 1006.34(b) + comments

Definitions

- **Validation notice** - written or electronic notice providing validation information
- **Validation period** - runs from date validation information is provided until 30 days after received or assumed received
 - Can assume receipt 5 days after provided (excluding weekends and holidays)

Source: 1006.34(b) + comments

Required Validation Information

Debt Collector Communication Disclosure

1. Must provide the disclosure required by 1006.18(e)

Wording used in model validation notice:

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.

Source: 1006.34(c)(1), Appx. B-1

Required Validation Information

Information about the Debt

1. Debt collector's name and mailing address
2. Consumer's name and mailing address
3. Name of the creditor on the itemization date*
4. Account number on itemization date
5. Name of current creditor
6. Itemization date
7. Amount of the debt on the itemization date
8. Itemization of interest, fees, payments, and credits since itemization date
9. Current amount of the debt

*Only required for consumer financial product or service debt

Source: 1006.34(c)(2)

Required Validation Information

Information about Consumer Protections

1. Date validation period ends and:
 - a. information about right to dispute;
 - b. information about right to seek original-creditor information;
 - c. a statement that collector will assume debt valid if not disputed before that date;
2. [Link to CFPB website for more information about consumer protections in debt collection;](#)* and
3. [If validation notice is sent electronically,](#) information about how to dispute debt or request original-creditor information electronically.

*Only required for consumer financial product or service debt

Source: 1006.34(c)(3)

Required Validation Information

Consumer-response Information

1. Dispute prompts

- a. “I want to dispute the debt because I think:”
- b. “This is not my debt.”
- c. “The amount is wrong.”
- d. “Other (please describe on reverse or attach additional information).”

2. Original-creditor information prompt

- a. “I want you to send me the name and address of the original creditor.”

3. Mailing addresses for the consumer and the debt collector.

Must be at the bottom of a validation notice, under the headings:

- “How do you want to respond?” and
- “Check all that apply:”

Source: 1006.34(c)(4)

Required Validation Information

Special Rule for Certain Residential Mortgage Debt

- **If a collector provides with the validation notice:**
 - a copy of the most recent Regulation Z, 12 CFR 1026.41(b) periodic statement and
 - includes a reference to that statement on the validation notice where the itemization would normally appear
- **Then the debt collector does not need to provide:**
 - Itemization date
 - Amount of the debt on the itemization date
 - Itemization of interest, fees, payments, and credits since itemization date

Source: 1006.34(c)(5)

Form of Validation Information

- Validation information must be **clear and conspicuous**
- **Safe Harbor:** A debt collector that uses the model validation notice:
 - Complies with the required information and format
 - Satisfies the clear and conspicuous requirement
 - Does not overshadow rights to dispute / request original-creditor info
- Safe harbor **still applies if** the collector:
 - includes/excludes optional content (discussed *infra*)
 - uses separate page for itemization or periodic mortgage statement
 - uses a substantially similar form (discussed *infra*)

Source: 1006.34(d)(1), (2); 1006.38(b)(2)

Substantially Similar

Permissible changes to the model notice, include:

1. Using the name of the deceased rather than “you” when collected decedent debt from an estate representative
2. Relocating the consumer response information to facilitate mailing
3. Adding barcodes or QR codes
4. Adding the date the form is generated
5. Embedding hyperlinks, if delivered electronically

A debt collector that makes these modifications is still entitled to the safe harbor.

Source: 1006.34(d) comments

Optional Validation Information

Optional Disclosures

1. Collector's phone number
2. Collector's reference code
3. "Contact us about your payment options" or, on the response form, "I enclose this amount:"
4. Disclosures under applicable law (discussed *infra*)
5. Collector's website and email address
6. How to dispute or request original-creditor info electronically*
7. Translated statements "Contact us to request a copy of this form in Spanish" or, on the response form, "I want this form in Spanish"
8. Merchant or affinity brand or facility name
9. Name of the creditor on the itemization date*

*Disclosure required in some circumstances

Source: 1006.34(d)(3)

Optional Disclosures Under Applicable Law

Disclosures under applicable law

1. **On the reverse side:** disclosures required by, or that provide safe harbors under, applicable law
2. **On the front side:**
 - a. A notice that disclosures are on the back, **if applicable**, and
 - b. **If collecting time-barred debt**, a time-barred debt disclosure required by, or that provides a safe harbor under, applicable law - **but only if the content of is specified**

Source: 1006.34(d)(3)(iv)

Electronic Validation Notice

Collector may:

- **Turn prompts into fillable fields to:**
 - dispute the debt or request original-creditor information
 - enclose payments
 - request a Spanish validation notice
- **Add hyperlinks to:**
 - collector's website
 - CFPB's website
 - website to dispute the debt or request original-creditor information

Source: 1006.34(d)(4)

Translation into Other Languages

Collector may send a translated validation notice if:

- translation is **complete and accurate**;^{*}
- provides an English language validation notice in the same communication or in a prior communication

Collector must send Spanish validation notice if:

- included an optional disclosure about how to request a Spanish-language translation and
- consumer made a request for the translated disclosure

^{*}**Safe harbor** for language obtained from the CFPB website. CFPB plans to add Spanish before the rule is effective and may add other translations later.

Source: 1006.34(e) + comments + p. 249 of analysis

Remember from Part 1

Other provisions on language access:

Initial disclosures that “*the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose*” **and**

Subsequent disclosures that “*the communication is from a debt collector*”

must be made in the same language(s) used for the rest of that communication

Sources: 1006.18(e)(4) + comments

Methods to Dispute / Request Original-Creditor Info

A dispute or original-creditor info request has been submitted in writing if:

- Sent by mail
- Returned consumer-response form
- **Sent via electronic communication used by collector to accept consumer communication**
- Delivered in person or via courier

Source: 1006.38 comment

Deceased Consumers and Disputes

If the collector:

- **Knows or should know** the consumer is deceased and
- Consumer did not previously dispute the debt or request original-creditor information

It must respond to timely disputes or requests for original-creditor information made by a person **authorized to act on behalf of the deceased consumer's estate**.

Source: 1006.38 comment