

What You Need to Know About Recent Legislative Updates

presented by state collection service, inc.

Today's Speaker



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CFPB Rule Summaries

Part 1006 – debt collection practices (regulation F)

Revisions implemented in the October 30,2020 final rule

Key Takeaways

1006.6 Limited Content Message

Limited-Content Message

- Required content. A limited-content message is a voicemail message for a consumer that includes:
 - (i) A business name for the debt collector that does not indicate that the debt collector is in the debt collection business;
 - (ii) A request that the consumer reply to the message;
 - (iii) The name or names of one or more natural persons whom the consumer can contact to reply to the debt collector; and
 - (iv) A telephone number or numbers that the consumer can use to reply to the debt collector.

CFPB Examples of Limited-Content Messages

- “This is Robin Smith calling from ABC Inc. Please contact me or Jim Johnson at 1-800-555-1212.”
OR
- “Hi, this is Robin Smith calling from ABC Inc. It is 4:15 p.m. on Wednesday, September 1. Please contact me or any of our representatives at 1-800-555-1212 today until 6:00 p.m. Eastern time, or any weekday from 8:00 a.m. to 6:00 p.m. Eastern time.”

1006.6 Reasonable Procedures for Email and Text Message Communications

Email and Text

(Safe Harbor for Unintended
Third Party Disclosures)

- This section provides guidance on email and text message communications.
- If the debt collector follows this guidance, they are afforded a “safe harbor” from “unintended third party disclosures”
- The “safe harbor” is limited in scope and does not prevent a debt collector from utilizing email or text message for communications with consumers in a different manner.

Email

(Safe Harbor for Unintended Third Party Disclosures)

- Prior Consent to Creditor – A creditor obtained the email address from the consumer; and
- Creditor Use - The creditor used the email address to communicate with the consumer about the account and the consumer did not ask the creditor to stop using it; or
- Creditor Notice – Before the debt collector used the email address the creditor sent the consumer a written or electronic notice, to an address the creditor obtained from the consumer and used to communicate with the consumer about the account, a disclosure: (1) That the debt have been or will be transferred to the debt collector; (2) The email address and the fact that the debt collector might use the email address to communicate with the consumer about the debt; (3) That, if other have access to the email address, then it is possible they may see the emails; (4) Instructions for a reasonable and simple method by which the consumer could opt out of such communications; and (5) The date by which the debt collector or the creditor must receive the consumer's opt out, must be at least 15 days after the date notice is sent.

Text

(Safe Harbor for Unintended
Third Party Disclosures)

- Text - A debt collector may send a text message to a telephone number if:
 - Prior Use – The consumer use the telephone number to communicate with the debt collector about the debt by text message, the consumer has not since opted out of text message communications to that telephone number and within the past 60 days either:
 - The consumer sent a text message to the debt collector from that telephone number; or
 - The debt collector confirmed, using a complete and accurate database, that the telephone number has not been reassigned from the consumer to another user since the date of the consumer's most recent text message to the debt collector from that telephone number; or
 - The debt collector received directly from the consumer prior consent to use the telephone number to communicate with the consumer about the debt by text message, the consumer has not since withdrawn that consent, and within the past 60 days the debt collector either:
 - Obtained prior or renewed consent from the consumer; or
 - Confirmed, using a complete and accurate database, the that the telephone number has not been reassigned from the consumer to another user since the date of the consumer's most recent consent to use that telephone number to communicate about the debt by text message.

Email and Text

(Safe Harbor for Unintended
Third Party Disclosures)

- Opt-Out - Notices for electronic communications (email or text):
 - Reasonable and simple - The method to opt-out must be included in every electronic communication to a consumer and must be reasonable and simple.
 - Free – The opt out option must be free to the consumer and a debt collector may not require any fee or additional information to be provided by the consumer to the debt collector to opt out.

1006.14 Harassing, Oppressive or Abusive Conduct

Telephone Call Frequencies

(Presumption of Compliance
and Violation)

- No more than 7 attempts within 7 consecutive days without a Right Party Contact (RPC).
- 7 day hold after RPC.
 - If no RPC after 7-day hold, revert to 7 attempts within 7 consecutive day restriction.
- Exclusions:
 - Consent from the called party within 7 days of consent;
 - “Particular Debt” - Debt level restriction for all telephone call frequency restrictions (unless student loan debt then at account level if multiple accounts are placed and serviced under a single account number)

1006.30 Other Prohibited Practices

Credit Reporting Requirements

Sec. 1006.30(a)

This rule prohibits a debt collector from furnishing to a credit reporting agency information regarding a debt before communicating with the consumer about the debt.

Credit Reporting Requirements

Sec. 1006.30(a)

- Letter or electronic message must be placed in the mail or sent electronically to the consumer prior to reporting the debt to a credit reporting agency (CRA) and debt collector must wait a reasonable period of time to receive a notice of undeliverability prior to reporting said debt to a CRA.
- “Reasonable Period of Time” means 14 consecutive days after placing the letter in the mail or sending the notice electronically. (Debt collector must monitor for notifications of undeliverability)
- Should including 30 days from the date notice is sent electronically or placed in the mail to avoid “overshadowing issues – Best to wait 45+ days after sending notice electronically or placing the letter in the mail before reporting a debt to a CRA.
- Check writing history reports to CRA’s are exempt
- PIF/BIF accounts are exempt

1006.34 Notice For Validation of Debts

Model Validation Notice...

Validation Notice – Model Form B-1

Sec. 1006.34

This rule provides a safe harbor for debt collectors that use the model form B-1 notice to provide validation to the consumer where the notice is the same as or substantially similar to the model form B-1 notice.

North South Group
P.O. Box 123456
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 August 28, 2020, 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 August 28, 2020,** 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 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 different from the current creditor.** If you write by August 28, 2020, we must 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.
- **Go to www.cfpb.gov/debt-collection to learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

Notice: See reverse side for important information.



Mail this form to:

North South Group
P.O. Box 123456
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 este formulario en español.

Validation Notice – Itemization Date Defined

Sec. 1006.34(c)

- **Definition of Itemization Date:**
 - The itemization date means any one of the following five (5) reference dates for which a debt collector can ascertain the amount of the debt:
 - Last Statement Date – the date of the last periodic statement or written account statement or invoice provided to the consumer by the creditor;
 - Charge-off Date – the date the debt was charged off;
 - Last Payment Date – the date the last payment was applied to the debt;
 - Transaction Date – the date of the transaction that gave rise to the debt; or
 - Judgment Date – the date of a final court judgment that determines the amount of the debt owed by the consumer.

Validation Notice – Dispute Prompts

Sec. 1006.34(c)

- Dispute Prompts (remit portion of validation notice):
 - The following statements, listed in the following order, and using the following phrasing or substantially similar phrasing, each next to a prompt:
 - “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...”

Model Validation Notice – Key Changes

Sec. 1006.34

- Key Changes –
 - Need to calculate the 30 day validation notice date and not just state 30 days from the date of letter.
 - Website link to payment portal allowed but only for consumers to file a dispute electronically.
 - Website link to the CFPB website is required.
 - State backer may be used but may not be on the remit portion of the backer
 - May provide model validation notice for multiple debt but those debt must be broken out on a subsequent page and roll up on all account on front of letter.
 - Any OOS disclosure must be on the front of the letter.

Validation Notice – Substantially Similar

Sec. 1006.34(c)

- Substantially Similar Form
 - A debt collector may make changes to the form and retain a safe harbor for compliance provided the form remains substantially similar in substance, clarity, and meaningful sequence to Model Form B-1
 - Permissible Changes may include:
 - Modifications to remove language that could suggest liability for the debt if such language is not applicable. (e.g. validation notice to a person who is authorized to act on behalf of the consumer's estate - use name of decedent instead of "you")
 - Relocation of consumer responses information to facilitate mailing
 - Adding barcodes or QR codes, as long as the inclusion of such item does not violate 1006.38(b)
 - Adding the date the form is generated
 - Embedding hyperlinks, if delivered electronically
 - Other optional disclosures

1006.42 Sending Required Disclosures

Debt collector sending required written disclosures electronically must do so in accordance with the E-SIGN Act.

Consumer's E-Sign consent is not required for follow up communications, responses to balance inquiries, settlement offer letters, payment receipts, etc.

Required Notices

- FDCPA Required notices:
 - Validation Notice (VOD)*
 - Initial Mini-Miranda Disclosure (MMDC)*
 - Post Date Notice Letter
- CFPB Added Required Notices:
 - Verification of Debt
 - Providing Creditor Information
- *initial notice may be in writing or verbal

Required Disclosure - Postdated Payment Instruments

Postdated Payment Instruments

- Bureau is not taking a position on E-SIGN's applicability to the intent to deposit letter.
- However, the letter is subject to actual notice and form requirements under 1006.42(a)(1).

1006.100 Records Retention

- Section 1006.100(a) – 3 year retention period for Debt Collector Records evidencing compliance with Regulation F. Period begins to run on the last collection activity on the account.
 - Need to match replaced accounts; restarting collection activity at any time would mean that the last collection activity on the debt had not yet occurred.
- Section 1006.100(b) – 3 year retention period for Call Recordings. Retain telephone recordings for 3 years after the date of the call.

Effective Date

Currently: November 30, 2021

Potentially: January 29, 2022

- 1 year after publication in the Federal Register which Part I was published on Saturday, November 28, 2020, making the effective date November 30, 2021.
- Part 2 - Disclosure Focused Final Rule to be published later – may extend effective date of this rule to align with effective date of those rules.
- Debt collectors may, but are not required to, comply with final rule's requirements and prohibitions before the effective date. Until that date, the FDCPA and other laws govern. Safe harbor provisions are not effective until rule's effective date.

Questions?

Thank you for joining us!
Please place questions in the chat panel.