



1700 G Street NW, Washington, DC 20552

December 18, 2020

# Executive Summary of the December 2020 Debt Collection Rule

On December 18, 2020, the Consumer Financial Protection Bureau (Bureau) issued a final rule (December 2020 Rule) amending Regulation F to provide additional requirements regarding validation information and disclosures provided at the outset of debt collection communications, prohibit suits and threats of suits regarding time-barred debt, and identify actions that must be taken before a debt collector may report information about a debt to consumer reporting agencies (CRAs).

## Background

In 2019, the Bureau published a notice of proposed rulemaking (2019 Proposal) to amend Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA), to prescribe federal rules governing the activities of debt collectors. In addition, the Bureau published a supplemental notice of proposed rulemaking on March 3, 2020 (2020 Supplemental Proposal) proposing disclosure requirements related to the collection of time-barred debt.

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This is a Compliance Aid issued by the Consumer Financial Protection Bureau. The Bureau published a Policy Statement on Compliance Aids, available at <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/policy-statement-compliance-aids/>, that explains the Bureau's approach to Compliance Aids.

On October 30, 2020,<sup>1</sup> the Bureau issued a final rule (October 2020 Rule) to amend Regulation F to address most of the provisions in the 2019 Proposal, including communications in connection with debt collection and the interpretation and application of the FDCPA’s prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection.

To address the remaining issues from the 2019 Proposal and the 2020 Supplemental Proposal, the Bureau has issued the December 2020 Rule. This summary discusses that December 2020 rule, specifically, the 1) requirements to provide validation information at the outset of collection communications, 2) required actions prior to the debt collector reporting a consumer’s debt to CRAs, including the three major credit reporting agencies, and 3) a prohibition on suing or threatening to sue a consumer to collect a debt for which the applicable statute of limitations has expired (a “time-barred debt”).<sup>2</sup> The Bureau is not finalizing the time-barred debt disclosures proposed in the 2020 Supplemental Proposal.<sup>3</sup>

## Validation Information Requirements and Disclosures

The FDCPA requires a debt collector to provide the consumer with certain information when the debt collector first communicates with the consumer to collect the debt or shortly thereafter. The December 2020 Rule implements the FDCPA’s validation information requirement. The Rule requires the debt collector to provide the consumer with certain information related to the debt and the consumer’s rights (the “validation information”) and imposes certain timing and delivery requirements. When this validation information is provided in writing or electronically, the document containing the information is commonly referred to as a “validation notice.”

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<sup>1</sup> The rule was issued on the Bureau’s website on October 30, 2020, and it was published in the *Federal Register* on November 30, 2020. 85 FR 76734 (Nov. 30, 2020). The December 2020 Rule refers to the October 2020 Rule as the “November 2020 Final Rule.” More information about the October 2020 Rule can be found in the [October 2020 Rule Executive Summary](#).

<sup>2</sup> The December 2020 Rule is effective November 30, 2021.

<sup>3</sup> While these disclosures are not being finalized, note that the FDCPA and October 2020 Rule requirements still apply to communications about time-barred debt. For example, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of a time-barred debt. Additionally, a debt collector may not use unfair or unconscionable means to collect or attempt to collect a time-barred debt.

The Rule clarifies that the debt collector may provide the validation information in a validation notice delivered in writing or electronically.<sup>4</sup> The Rule’s content requirements, the timing and delivery requirements, validation period requirements, and the model notice safe harbors are discussed below.

### **Required Content**

Under the December 2020 Rule, the validation notice must include the following validation information:

- *Debt collector communication disclosure:* A statement that indicates the communication is from a debt collector.
- *Name<sup>5</sup> and mailing information:* The debt collector’s name and mailing address, the name and mailing address of the consumer who owes the debt, and the name of the creditor to whom the debt is currently owed. Also, if the validation information is provided in connection with a debt related to a consumer financial product or service (e.g., credit card debt, mortgage-related debt), the name of the creditor as of the itemization date (see below regarding “itemization date”).
- *Account number:* The account number (full or truncated) associated with the debt.
- *Itemization-related information:*<sup>6</sup> An itemization of the current amount of the debt reflecting interest, fees, payments, and credits since the itemization date. The “itemization date” reflects an event in the debt’s history that provides a reference point that consumers may recognize. The debt collector may select one of five reference dates as the itemization date: 1) the last statement date; 2) the charge-off date; 3) the last payment date; 4) the

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<sup>4</sup> The Rule also allows the debt collector the option to provide the validation information orally during the initial communication. However, the Bureau notes that it might be difficult for a debt collector to convey all of the required information orally and in a way that meets the requirements of the regulation. As a result, this summary focuses on the requirements as they apply to validation notices sent by written and electronic delivery methods.

<sup>5</sup> The December 2020 Rule allows the debt collector to disclose the trade name or “doing business as” (d/b/a) name instead of the legal name for the debt collector, the creditor to whom the debt is currently owed, and the creditor that owned the debt as of the itemization date.

<sup>6</sup> If the debt is a residential mortgage debt and a periodic statement is required under Regulation Z at the time the debt collector provides a validation notice, the December 2020 Rule establishes a special rule that allows the debt collector to provide the most recent periodic statement in lieu of certain itemization-related information requirements.

transaction date; or 5) the judgment date. The debt collector may disclose the itemized information as of that itemization date on a separate page provided in the same communication with the validation notice if the debt collector includes on the validation notice, where the itemization would have appeared, a statement referring to that separate page.

- *Current amount of the debt:* The amount of the debt as of when the validation information is provided.
- *Information about consumer protections:* Statements about the consumer’s right to dispute the debt and request original-creditor information, and rights that apply if the consumer completes those actions. The statements must include the date the validation period (i.e., the 30-day period, as discussed below, during which the consumer’s submission of disputes and requests for original-creditor information about the debt obligates the debt collector to respond before resuming collection of the debt) will end. Additionally, for consumer financial product or service debts, a statement directing the consumer to a page on the Bureau’s website with more information regarding consumer protections in debt collection.
- *Consumer-response information:* Prepared statements and prompts that the consumer may use to take certain actions, such as disputing the debt. On the model notice, the consumer-response information is formatted as a tear-off that the consumer may detach and return to the debt collector, if the consumer chooses. If the validation notice is provided electronically, the consumer-response information must include a statement explaining how the consumer can take these actions electronically.

The contents above must be “clear and conspicuous,” which is defined in the December 2020 Rule to mean readily understandable. If the validation notice is provided in writing or electronically, the location and type size also must be readily noticeable and legible to consumers.

#### **Optional Content**

In addition to the required content, if a debt collector wishes to retain the safe harbor for using the model notice (discussed below), the debt collector may also include certain optional content in the validation notice, provided that the optional content is no more prominent than the required content. Optional content includes: 1) the debt collector’s telephone contact information, 2) a reference code the debt collector uses to identify the consumer or the particular debt, 3) certain payment disclosures, 4) certain electronic communication information, such the debt collector’s website or email address, 5) certain Spanish-language disclosures regarding how a consumer may request a Spanish-language validation notice, 6) the merchant brand, affinity brand, or facility

name associated with the debt, and 7) disclosures specifically required under (or that provide safe harbor under) other applicable law.<sup>7</sup>

If the validation information is provided electronically, the December 2020 Rule allows the debt collector the option to vary the format or content of the notice in certain places to accommodate the electronic delivery, such as by including hyperlinks or formatting consumer response prompts into fillable fields.

### **Delivery Method and Timing Requirements**

The validation notice must be provided either: 1) in the debt collector's initial communication to the consumer or 2) within 5 calendar days after the initial communication.<sup>8</sup> For purposes of the validation information, "initial communication" means the first time the debt collector conveys information to the consumer about the debt, directly or indirectly. If the consumer pays off the debt before the validation information is required to be sent (i.e., prior to the end of the 5 calendar days after the initial communication), the debt collector is not required to provide the information.

If the debt collector provides the validation notice *in the initial communication*, the debt collector can provide the required information in whichever method the debt collector chooses for the initial communication itself. If provided in the initial communication electronically, the debt collector need not comply with E-SIGN requirements, but must comply with the general disclosure delivery requirements in the October 2020 Rule (i.e., in a manner reasonably expected to provide actual notice and in a form the consumer may keep and access later). The October 2020 Rule also contains additional requirements related to electronic disclosures.

If the debt collector does not provide the validation information in the initial communication, the debt collector generally must provide the validation notice no more than *5 calendar days after the initial communication*. If providing the validation notice during this later period, it must meet the general disclosure delivery requirements in the October 2020 Rule. If electronic, it must also meet

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<sup>7</sup> If the debt is *not* related to a consumer financial product or service, the debt collector also has the option to include the content required for validation information that is related to a consumer financial product or service (i.e., the name of the creditor that owned the debt as of the itemization date and specific statements about consumer protections).

<sup>8</sup> If providing the validation information orally, the debt collector may only provide it during the initial communication. The debt collector may not provide the validation information orally after the initial communication. As discussed above, this summary discusses the requirements for the written and electronic delivery methods.

the electronic disclosure requirements in the October 2020 Rule, and the debt collector must have E-SIGN consent.

For purposes of the validation information, the initial communication does not include formal civil action pleadings (including proof of claims filed in accordance with the United States Bankruptcy Code). Additionally, it does not include any form or notice that is not related to the collection of debt and that is expressly required by the Internal Revenue Code, Title V of the Gramm-Leach-Bliley Act, or any federal or state law or regulation mandating notice of a security breach or privacy risk.

The December 2020 Rule revises the definition of consumer used in the October 2020 Rule. “Consumer” now includes both living and deceased consumers. As a result, the debt collector must provide the validation notice either to the living consumer, or, if the debt collector knows or should know the consumer is deceased prior to providing the validation notice, to the person authorized to act on behalf of the deceased consumer’s estate (e.g., an executor, administrator, or personal representative).

#### **Validation Period Requirements**

Under the December 2020 Rule, the debt collector must allow the consumer 30 calendar days from the date the consumer receives, or is assumed to have received, the validation notice, to dispute the debt or request original-creditor information about the debt.<sup>9</sup> This 30-day period is identified in the rule as the “validation period.” A debt collector may use the date on which the consumer is assumed to receive the validation notice to calculate the end date of the validation period (even if the debt collector later learns when the consumer received the notice). A consumer is assumed to have received the validation notice 5 business days<sup>10</sup> after the date the debt collector sent it.

During the validation period, the debt collector must not engage in collection activities or communications that overshadow, are inconsistent with, or would interfere with the consumer’s rights to dispute the debt or request original-creditor information. Additionally, if the consumer

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<sup>9</sup> Similarly, if the debt collector provides the validation information orally it must allow the consumer 30 calendar days from the date the consumer receives the validation information. As discussed above, the summary discusses requirements for the written and electronic delivery methods.

<sup>10</sup> For purposes of the December 2020 Rule, business days do not include Federal holidays, Saturdays, and Sundays.

disputes the debt or requests original-creditor information in writing<sup>11</sup> within the validation period, the debt collector must cease collection of the debt, or the disputed portion, until the debt collector provides the information needed to verify the debt or provides the original-creditor information.

#### **Safe Harbor for Model Validation Notice Use**

Under the December 2020 Rule, a debt collector who uses the model validation notice complies with the Rule's content requirements, including that the notice be clear and conspicuous. Use of the model validation notice also would not constitute a violation of the October 2020 Rule's prohibition on conduct that "overshadows" a consumer's rights during the validation period.

Additionally, a debt collector receives this safe harbor if it uses any of the specified variations of the model notice in Appendix B, or if it provides a notice substantially similar to the model notice in Appendix B. This includes adding any of the optional disclosures specifically identified in the rule, omitting optional disclosures that appear on the model notice, or providing certain disclosures on a separate page, as provided for in the Rule.

If a debt collector includes any additional disclosures beyond: 1) the required validation information; 2) the optional disclosures identified in the rule; or 3) any changes to the form that, if included, still leave the form substantially similar in substance, clarity, and meaningful sequence to the model notice, then the safe harbor generally *does not* apply with respect to the entirety of the validation notice.

The safe harbor *does not* cover validation notice delivery method and timing requirements.

#### **Translation into Other Languages**

Generally, the December 2020 Rule allows the debt collector the option to send the consumer a validation notice completely and accurately translated into any language. If a debt collector chooses to offer translated validation notices, the debt collector must provide the translated notice with an English-language notice in the same communication as the translated validation notice.

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<sup>11</sup> Note that the October 2020 Rule allows a consumer to dispute the validity of the debt or request original-creditor information electronically through any medium that the debt collector accepts electronic communications from consumers.

The debt collector may provide the translated notice separately if it previously provided the consumer an English-language notice.

Under the December 2020 Rule, the debt collector must provide a Spanish-language validation notice if it included the optional disclosure notifying the consumer of the ability to request Spanish translation (discussed above in the Optional Content section), and the consumer made that request. The debt collector must provide the consumer a validation notice completely and accurately translated into Spanish.<sup>12</sup>

## Required Actions Before Credit Reporting

Some debt collectors have historically engaged in “passive collection,” the practice of furnishing collection information about a debt to a CRA without first taking an action to notify the consumer about the debt. The December 2020 Rule prohibits this practice.

Under the December 2020 Rule, before a debt collector furnishes information to a CRA the debt collector must do one of the following:

1. Speak with the consumer in person about the debt;
2. Speak with the consumer by telephone about the debt;
3. Mail the consumer a letter about the debt and wait a reasonable period of time to receive a notice of undeliverability; or
4. Send the consumer a message about the debt by electronic communication and wait a reasonable period of time to receive a notice of undeliverability.

Each of the four actions identified above requires the debt collector to convey information “about the debt” to the consumer. Providing the validation information, discussed above, is one way to comply with this requirement, although it is not the only way.

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<sup>12</sup> The Bureau plans to make available on its website, prior to the effective date of the December 2020 Rule, a Spanish-language translation of the validation notice. The language of a validation notice that a debt collector obtains from the Bureau’s website is considered a complete and accurate translation.



In taking any of the four actions above, a debt collector must comply with the requirements and prohibitions in the October 2020 Rule, including, for example, the prohibition on communications at inconvenient or unusual times or places, as applicable.

If a debt collector chooses to comply with this requirement by mailing a letter or sending a message electronically, the debt collector cannot immediately begin furnishing information to the CRAs after doing so. In these circumstances, the December 2020 Rule requires a debt collector to wait a reasonable period of time to receive a notice of undeliverability before furnishing information to a CRA. The December 2020 Rule provides that a period of 14 calendar days after the letter or electronic message was sent is deemed a “reasonable period of time.” During the “reasonable period of time,” the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers.

If the debt collector receives a notice of undeliverability during the “reasonable period of time,” the debt collector must not furnish information about the debt to a CRA until it resubmits the information about the debt to the consumer using one of the methods identified above. For example, if the debt collector receives a notice of undeliverability during the “reasonable period of time” after sending an email about the debt to the consumer, the debt collector may not furnish information to a CRA until it either 1) speaks with the consumer in person, 2) speaks with the consumer by telephone, 3) mails a letter and waits another reasonable waiting period, or 4) sends another electronic communication and waits another reasonable waiting period. However, if the debt collector *does not* receive a notice that the letter or electronic message was undeliverable during that reasonable waiting period, the debt collector may furnish information about the debt to a CRA, even if the debt collector later receives a notice of undeliverability.

The requirements under the prohibition on passive collection do not apply when furnishing information to certain specialty CRAs that compile and maintain information on check writing history.

## Time-Barred Debt

Time-barred debts are debts for which the applicable statute of limitations has expired. The statute of limitations is the period during which a person can bring a legal action to collect the debt.

Under the December 2020 Rule, a debt collector is prohibited from bringing or threatening to bring a legal action against a consumer to collect a time-barred debt. Proofs of claim filed in connection with a bankruptcy proceeding are not included in this prohibition.

## Additional resources and implementation support

Other implementation resources and updates on future debt collection rulemakings are available at <https://www.consumerfinance.gov/policy-compliance/guidance/other-applicable-requirements/debt-collection/>.