

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1006**

**[Docket No. CFPB-2020-0010]**

**RIN 3170-AA41**

**Debt Collection Practices (Regulation F)**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) proposes to amend Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA) and currently contains the procedures for State application for exemption from the provisions of the FDCPA.

On May 21, 2019, the Bureau published in the *Federal Register* a proposed rule (May 2019 Proposed Rule) that would prescribe Federal rules governing the activities of debt collectors, as that term is defined in the FDCPA. This proposal supplements the May 2019 Proposed Rule by proposing to require debt collectors to make certain disclosures when collecting time-barred debts.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB-2020-0010 or RIN 3170-AA41, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* [2020-NPRM-DebtCollection@cfpb.gov](mailto:2020-NPRM-DebtCollection@cfpb.gov). Include Docket No. CFPB-2020-0010 or RIN 3170-AA41 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, 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 202–435–9169.

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:** Seth Caffrey, 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](mailto:CFPB_accessibility@cfpb.gov).

**SUPPLEMENTARY INFORMATION:**

## **I. Summary of the Proposed Rule**

The Bureau proposes to amend Regulation F, which implements the FDCPA, to require debt collectors, as that term is defined in the FDCPA,<sup>1</sup> to make certain disclosures when collecting time-barred debts. Time-barred debts are debts for which the applicable statute of limitations has expired. The Bureau proposes to require a debt collector collecting a debt that the debt collector knows or should know is time barred to disclose: (1) that the law limits how long the consumer can be sued for a debt and that, because of the age of the debt, the debt collector will not sue the consumer to collect it; and (2) if the debt collector’s right to bring a legal action against the consumer to collect the debt can be revived under applicable law, the fact that revival can occur and the circumstances in which it can occur. The Bureau proposes model language and forms that debt collectors could use to comply with the proposed disclosure requirements.

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. In General*

Statutes of limitations establish time limits for bringing suit on legal claims.<sup>2</sup> They serve several purposes.<sup>3</sup> First, statutes of limitations advance a defendant’s interest in repose. That is, they reflect the legislative judgment that it is “unjust to fail to put the adversary on notice to

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<sup>1</sup> 15 U.S.C. 1692-1692p. This proposal would cover the same universe of debt collectors as the May 2019 Proposed Rule, *i.e.*, only FDCPA-covered debt collectors. 15 U.S.C. 1692a(6). Creditors therefore would only have to comply to the extent they are FDCPA-covered debt collectors.

<sup>2</sup> See generally *Lozano v. Montoya Alvarez*, 572 U.S. 1, 14 (2014).

<sup>3</sup> See generally *Rotella v. Wood*, 528 U.S. 549, 555 (2000) (identifying “the basic policies of all limitations provisions” as “repose, elimination of stale claims, and certainty”).

defend within a specified period of time.”<sup>4</sup> Second, statutes of limitations eliminate stale claims.

That is, they protect defendants and the courts from having to deal with cases in which “the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise.”<sup>5</sup>

Third, statutes of limitations provide “certainty about a plaintiff’s opportunity for recovery and a defendant’s potential liabilities.”<sup>6</sup>

A time-barred debt is a debt for which the applicable statute of limitations has expired. For most debts, State law supplies the applicable statute of limitations.<sup>7</sup> The length of the limitations period varies by State and debt type. Most statutes of limitations applicable to debt collection claims are between three and six years, although some are as long as 15 years.<sup>8</sup>

Currently, in most States, expiration of the statute of limitations, if raised by the consumer as an affirmative defense, precludes the debt collector from recovering on the debt through litigation,<sup>9</sup> but it does not extinguish the debt itself.<sup>10</sup> In these jurisdictions, a debt

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<sup>4</sup> *United States v. Kubrick*, 444 U.S. 111, 117 (1979).

<sup>5</sup> *Id.*

<sup>6</sup> *Young v. United States*, 535 U.S. 43, 47 (2002) (quoting *Rotella*, 528 U.S. at 555).

<sup>7</sup> 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).

<sup>8</sup> See Fed. Trade Comm’n, *The Structure and Practices of the Debt Buying Industry*, at 42 (Jan. 2013), <https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf> (hereinafter FTC Debt Buying Report).

<sup>9</sup> As a result, many courts have held that suing or threatening to sue on time-barred debts is an unfair or deceptive practice under the FDCPA. See, e.g., *Pantoja v. Portfolio Recovery Assocs., LLC*, 852 F.3d 679, 683 (7th Cir. 2017) (noting that “a debt collector violates the [FDCPA] by suing to collect a time-barred debt after the statute of limitations has run and bars the suit”); *Crawford v. LVNV Funding, LLC*, 758 F.3d 1254, 1259 (11th Cir. 2014) (“Federal circuit and district courts have uniformly held that a debt collector’s . . . filing a time-barred suit in state court to recover [a time-barred] debt violates [the FDCPA].”). The Bureau’s May 2019 Proposed Rule would prohibit debt collectors from suing or threatening to sue consumers to collect debts the debt collectors know or should know are time barred. See 84 FR 23274, 23327-29, 23403 (May 21, 2019).

<sup>10</sup> 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.”). North

collector may use non-litigation means, such as letters and telephone calls, to collect a time-barred debt, as long as those means do not violate the FDCPA or other laws. As courts have recognized, a consumer who cannot be sued on a debt may still feel a moral obligation to pay.<sup>11</sup> In addition, a consumer may pay a time-barred debt believing that doing so will improve the consumer's credit report.<sup>12</sup>

In many States, a debt collector's right to sue on a time-barred debt can be "revived" if certain conditions are met. Revival extinguishes the consumer's right to raise expiration of the statute of limitations as an affirmative defense to litigation; that is, it revives the debt collector's right to sue to collect the debt. There are generally two circumstances in which State laws permit revival. First, in some States, a consumer's partial payment on a time-barred debt revives the debt collector's right to sue.<sup>13</sup> One possible theory underlying these laws is that a partial payment "is an acknowledgement of the existence of the indebtedness, which raises an implied promise to continue the obligation and to pay the balance."<sup>14</sup> Second, in some States, a consumer's written acknowledgement of a time-barred debt revives the debt collector's right to

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Carolina prohibits a "debt buyer" from collecting or attempting to collect a debt when the debt buyer "knows, or reasonably should know, that such collection is barred by the applicable statute of limitations." N.C. Gen. Stat. 58-70-115(4).

<sup>11</sup> See, e.g., *Pantoja*, 852 F.3d at 684 ("The creditor retains the right to appeal to the debtor to honor the debt out of a sense of moral obligation even if the legal obligation can no longer be enforced in court."); *Buchanan v. Northland Grp., Inc.*, 776 F.3d 393, 399 (6th Cir. 2015) ("Legal defenses are not moral defenses . . . [a]nd a creditor remains free, in the absence of a bankruptcy order or something comparable preventing it from trying to collect the debt, to let the debtor know what the debt is and to ask her to pay it."); *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010, 1020 (7th Cir. 2014) ("[S]ome people might consider full debt re-payment a moral obligation, even though the legal remedy for the debt has been extinguished.").

<sup>12</sup> Section 605(a)(4) of the Fair Credit Reporting Act generally establishes a seven-year period for reporting information about accounts placed for collection; after this period has elapsed, the debt generally cannot appear on a consumer report. 15 U.S.C. 1681c(a)(4). Because the statute of limitations on a debt collection claim is less than seven years in some States, it is possible for a time-barred debt to appear on a consumer's credit report.

<sup>13</sup> See, e.g., *Buchanan*, 776 F.3d at 399 (applying Michigan law).

<sup>14</sup> *Young v. Sorenson*, 121 Cal. Rptr. 236, 237 (Ct. App. 1975).

sue.<sup>15</sup> One possible theory underlying these laws is that a written acknowledgement “raises a new promise by the debtor to pay [the] existing debt” and is “enforceable because it is supported by the existing legal duty of the promisor.”<sup>16</sup>

#### B. *Market for Time-Barred Debt*

As discussed in the May 2019 Proposed Rule, the debt collection industry includes creditors, third-party debt collectors, debt buyers, and a variety of service providers.<sup>17</sup> A creditor to whom a debt is owed may collect the debt itself, send the account to a third-party debt collector to recover on the debt in the third-party debt collector’s name, or sell the debt to a debt buyer.<sup>18</sup> By the time a debt becomes time barred (*i.e.*, after three to six years for many debts) it may have been placed with multiple third-party debt collectors, or purchased and sold by multiple debt buyers.

The cost to purchase a debt generally decreases over time as the probability of recovering on the debt also decreases.<sup>19</sup> Because of their age and the general unavailability of litigation as a collection method, time-barred debts typically are available for purchase at a discount off face value.<sup>20</sup> In analyzing whether, and for what price, to purchase a portfolio of debts, debt buyers

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<sup>15</sup> See, e.g., *Pariot v. Portfolio Recovery Assocs., LLC*, No. 2:18-cv-09614-SJO, 2019 WL 2635586, at \*3 (C.D. Cal. June 25, 2019) (applying California law).

<sup>16</sup> *United States v. Glens Falls Ins. Co.*, 546 F. Supp. 643, 645 (N.D.N.Y. 1982).

<sup>17</sup> See 84 FR 23274, 23276-77 (May 21, 2019).

<sup>18</sup> *Id.* at 23277.

<sup>19</sup> See FTC Debt Buying Report, *supra* note 8, at 23-24; Bureau of Consumer Fin. Prot., *Market Snapshot: Online Debt Sales*, at 11 (Jan. 2017), [https://www.consumerfinance.gov/documents/2249/201701\\_cfpb\\_Online-Debt-Sales-Report.pdf](https://www.consumerfinance.gov/documents/2249/201701_cfpb_Online-Debt-Sales-Report.pdf) (hereinafter CFPB Online Debt Sales Report).

<sup>20</sup> See, e.g., FTC Debt Buying Report, *supra* note 8, at 23-24; CFPB Online Debt Sales Report, *supra* note 19, at 10.

commonly consider the prevalence of time-barred debts in the portfolio.<sup>21</sup> The Bureau is unaware of any formal studies of the size of the market for collection of time-barred debts.<sup>22</sup>

### C. Consumer Protection Concerns Regarding Collection of Time-Barred Debt

The collection of time-barred debt through non-litigation means can pose consumer protection concerns. Consumers unfamiliar with statutes of limitations may take away from a debt collector's attempt to collect a time-barred debt the misleading impression that the debt is legally enforceable—even if the debt collector does not explicitly threaten litigation. A consumer with the misimpression that a time-barred debt is enforceable in court may pay or prioritize that debt over another debt or expense, in the mistaken belief that doing so is necessary to avoid litigation. The consumer may, in turn, have less money to pay another debt on which the consumer can be sued, or to pay other expenses, such as household necessities. In the many States that permit revival, a consumer who makes a partial payment on a time-barred debt or acknowledges the debt in writing may revive the debt collector's right to sue.

Some States have attempted to address these consumer protection concerns by imposing disclosure requirements on debt collectors. In these jurisdictions, a debt collector may not collect a time-barred debt without disclosing to the consumer that the debt is time barred.<sup>23</sup> Although their wording varies, State-mandated time-barred debt disclosures typically inform the consumer that the law limits how long a consumer can be sued on a debt, and that the debt

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<sup>21</sup> FTC Debt Buying Report, *supra* note 8, at 21.

<sup>22</sup> See David E. Reid, *Out-of-Statute Debt: What is a Smart, Balanced, and Responsible Approach*, at 5 n.6 (Receivables Mgmt. Ass'n Int'l, White Paper, 2015), [https://rmassociation.org/wp-content/uploads/2017/04/RMA\\_Whitepaper\\_OOS.pdf](https://rmassociation.org/wp-content/uploads/2017/04/RMA_Whitepaper_OOS.pdf) (noting challenge of developing a reliable methodology for estimating size of time-barred debt market).

<sup>23</sup> See, e.g., Cal. Civ. Code 1788.14(d); Conn. Gen. Stat. 36a-805(a)(14); Mass. Code Regs., tit. 940, 7.07(24); N.M. Admin. Code 12.2.12.9; N.Y. Comp. Codes R. & Regs., tit. 23, 1.3; N.C. Gen. Stat. 58-70-115(1); Tex. Fin. Code Ann. 392-307(e); 6 Vt. Code R. 031-004-Rule-CF 104.05; 6 Vt. Code R. 3-2-103:CP 104.05(a); W. Va. Code 46a-2-128(f).

collector cannot or will not sue to collect the debt.<sup>24</sup> Some States also require debt collectors to disclose the circumstances in which the right to sue on a time-barred debt can be revived.<sup>25</sup>

Federal regulators also have highlighted the consumer protection concerns associated with time-barred debts. For example, the Federal Trade Commission (FTC) has published several reports on the debt collection industry, each recognizing the potential that consumers may be misled by the collection of time-barred debts.<sup>26</sup> In addition, the FTC and the Bureau have filed amicus briefs addressing the collection of time-barred debt.<sup>27</sup> The FTC and the Bureau also have brought enforcement actions against debt collectors who violated the FDCPA

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<sup>24</sup> For example, California law requires debt collectors to disclose, in relevant part, the following in the first written communication with a debtor after the debt has become time barred: “The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it.” Cal. Civ. Code 1788.14(d).

<sup>25</sup> For example, New Mexico law provides, in relevant part, that it is an unfair or deceptive trade practice for a debt collector to collect or attempt to collect a debt that the debt collector knows or has reason to know is time barred unless the debt collector makes required time-barred debt and revival disclosures. New Mexico provides the following safe harbor disclosure:

We are required by New Mexico Attorney General rule to notify you of the following information. This information is not legal advice: This debt may be too old for you to be sued on it in court. If it is too old, you can't be required to pay it through a lawsuit. You can renew the debt and start the time for the filing of a lawsuit against you to collect the debt if you do any of the following: make any payment of the debt; sign a paper in which you admit that you owe the debt or in which you make a new promise to pay; sign a paper in which you give up (“waive”) your right to stop the debt collector from suing you in court to collect the debt.

N.M. Admin. Code 12.2.12.9. *See also, e.g.*, Mass Code Regs., tit. 94, 7.07(24); N.M. Admin. Code 12.2.12.9; N.Y. Comp. Codes R. & Regs., tit. 23, 1.3; N.C. Gen. Stat. 58-70-115(1); 6 Vt. Code R. 3-2-103:CP 104.05(a).

<sup>26</sup> See FTC Debt Buying Report, *supra* note 8, at 44-49; Fed. Trade Comm'n, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (July 2010), at 22-31, <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf>; Fed Trade Comm'n, *Collecting Consumer Debts: The Challenges of Change* (Feb. 2009), at 62-65, <https://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf>.

<sup>27</sup> See, e.g., Brief of Amici Curiae, *Buchanan v. Northland Grp., Inc.*, No. 13-2523 (6th Cir. Mar. 5, 2014), [https://www.consumerfinance.gov/jf/201403\\_cfpb\\_amicus-brief\\_buchanan-v-northland-group-inc.pdf](https://www.consumerfinance.gov/jf/201403_cfpb_amicus-brief_buchanan-v-northland-group-inc.pdf); Brief of Amici Curiae, *Delgado v. Capital Mgmt. Servs., LP*, No. 13-2030 (7th Cir. Aug. 14, 2013), [https://www.consumerfinance.gov/jf/201309\\_cfpb\\_agency-brief\\_12-cv-04057.pdf](https://www.consumerfinance.gov/jf/201309_cfpb_agency-brief_12-cv-04057.pdf).

when collecting time-barred debts; the injunctive relief in those cases sometimes required the debt collector to make time-barred debt disclosures.<sup>28</sup>

Courts generally have agreed that a debt collector violates the FDCPA when its statements would mislead an unsophisticated consumer to believe that a time-barred debt is legally enforceable, regardless of whether the debt collector expressly threatens litigation.<sup>29</sup> In addition, courts generally have agreed that a debt collector can use disclosures to correct misleading impressions relating to a debt's enforceability and the possibility of revival that arise from the debt collector's attempt to collect a time-barred debt.<sup>30</sup> Some courts have found that a debt collector who seeks payment on a time-barred debt without disclosing the debt's unenforceability (and, where applicable, the possibility of revival) may violate the FDCPA, but whether a particular communication is misleading in violation of the FDCPA raises a question of fact.<sup>31</sup> Other courts have held that a debt collector who offers a settlement or seeks payment on a time-barred debt without disclosing the debt's unenforceability (and, where applicable, the possibility of revival) violates the FDCPA as a matter of law.<sup>32</sup> Some courts have provided debt collectors with model disclosure language,<sup>33</sup> while others have not.<sup>34</sup>

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<sup>28</sup> See, e.g., *In re Encore Capital Grp., Inc.*, Bureau of Consumer Fin. Prot., File No. 2015-CFPB-0022 (Sept. 9, 2015), at 17; *In re Portfolio Recovery Assocs. LLC*, Bureau of Consumer Fin. Prot., File No. 2015-CFPB-0023 (Sept. 9, 2015), at 15; *United States v. Asset Acceptance, LLC*, No. 8:12-cv-182 (M.D. Fla. filed Jan. 30, 2012).

<sup>29</sup> See, e.g., *Holzman v. Malcolm S. Gerald & Assocs.*, 920 F.3d 1264, 1271 (11th Cir. 2019); *Tatis v. Allied Interstate, LLC*, 882 F.3d 422, 429 (3d Cir. 2018); *Daugherty v. Convergent Outsourcing Inc.*, 836 F.3d 507, 509 (5th Cir. 2016); *Buchanan v. Northland Grp., Inc.*, 776 F.3d 393, 398-99 (6th Cir. 2015).

<sup>30</sup> See, e.g., *Holzman*, 920 F.3d at 1272-73; *Pantoja v. Portfolio Recovery Assocs., LLC*, 852 F.3d 679, 685-86 (7th Cir. 2017); *Daugherty*, 836 F.3d at 513; *Buchanan*, 776 F.3d at 399-400.

<sup>31</sup> See, e.g., *Holzman*, 920 F.3d at 1269; *Daugherty*, 836 F.3d at 513; *Buchanan*, 776 F.3d at 397-99.

<sup>32</sup> See, e.g., *Pantoja*, 852 F.3d at 682-83, 685-86; *Manuel v. Merchants & Prof'l Credit Bureau, Inc.*, No. 1:18-cv-226-DAE, 2019 WL 3713750, at \*9 (W.D. Tex. Aug. 5, 2019); *Schafer v. Allied Interstate LLC*, No. 1:17-cv-233, 2019 WL 2710272, at \*10 (W.D. Mich. June 28, 2019).

<sup>33</sup> See, e.g., *Buchanan*, 776 F.3d at 400.

<sup>34</sup> See, e.g., *Tatis*, 882 F.3d at 430; *Pantoja*, 852 F.3d at 682-83, 685-86.

Given the current state of the law, some consumers may not receive a disclosure about the time-barred status of a debt in collection, while others may receive a disclosure containing language that varies based on jurisdiction. In addition, debt collectors may be unclear about their disclosure obligations when collecting time-barred debt through non-litigation means. The lack of clarity may be especially acute in jurisdictions where courts have not considered whether the law requires disclosures or have not provided model disclosure language. Even in jurisdictions with State-law disclosure requirements, debt collectors may not know whether providing such disclosures is sufficient to comply with the FDCPA.

### **III. The Rulemaking Process**

Before publishing the May 2019 Proposed Rule, the Bureau engaged in outreach regarding numerous debt collection topics, including time-barred debt. The May 2019 Proposed Rule described the scope of that outreach, which also has informed the development of this proposed rule.<sup>35</sup> Of particular note, the Bureau has met with stakeholders including consumer advocates, 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 has drawn on information gathered through the more formal outreach described below.

#### *A. 2013 Advance Notice of Proposed Rulemaking*

The Bureau issued an Advance Notice of Proposed Rulemaking (ANPRM) regarding debt collection in November 2013.<sup>36</sup> The ANPRM sought information about an array of debt collection practices, including the use of disclosures, such as time-barred debt disclosures, in

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<sup>35</sup> 84 FR 23274, 23278-81 (May 21, 2019).

<sup>36</sup> 78 FR 67848 (Nov. 12, 2013).

debt collection. Among other things, the Bureau requested comment on whether a debt collector should be required to disclose that a debt is time barred; that the debt collector cannot lawfully sue to collect it; and that, if applicable under State law, a consumer’s partial payment revives the debt collector’s right to sue for the entire amount.<sup>37</sup>

The Bureau received more than 23,000 comments in response to the ANPRM, including nearly 400 non-form comments submitted by consumers, consumer advocates, debt collection industry participants and trade associations, legal groups including law school clinics, State Attorneys General, and other stakeholders. Some consumer advocates, legal groups, and State Attorneys General supported banning the collection of time-barred debts. Some consumer advocates, legal groups, and one industry commenter also supported prohibiting revival.

A number of commenters addressed the merits of time-barred debt disclosures. Consumer advocates and State Attorneys General supported disclosures that would inform consumers when debt collectors are collecting time-barred debt and, if applicable, about the possibility of revival. With a few exceptions, industry commenters generally opposed such disclosures. Some industry commenters favored a disclosure that would provide consumers general information about statutes of limitations but that would not require debt collectors to provide information about the time-barred status of particular debts.

#### *B. Qualitative Consumer Testing*

In 2014, the Bureau contracted with a third-party vendor, Fors Marsh Group (FMG), to assist with developing, and to conduct qualitative consumer testing of, debt collection disclosures for consumers, including disclosures regarding time-barred debt and revival. The Bureau sought insight into consumers’ understanding of time-barred debt and revival, as well as whether and

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<sup>37</sup> *Id.* at 67876.

how time-barred debt and revival disclosures might, if included on the validation notice, affect consumers' ability to make decisions. As described in the May 2019 Proposed Rule, the Bureau's qualitative testing took place during 2014 and 2015 and consisted of five focus group discussions and two rounds of 30 one-on-one interviews with consumers.<sup>38</sup>

The focus group discussions were designed to assess consumers' thoughts about debt collectors and debt collection, to evaluate consumers' perceptions of disclosures provided by debt collectors, and to measure consumers' understanding of their rights in debt collection, including with respect to time-barred debt. The first round of one-on-one interviews (*i.e.*, cognitive testing) was designed to assess how consumers might interact with different versions of a validation notice, and how consumers' behavior might differ after reading the forms. Regarding time-barred debt, participants were shown two different versions of time-barred debt and revival disclosures and were asked to respond to a survey with Likert-scale questions.<sup>39</sup> The second round of one-on-one interviews (*i.e.*, usability testing) also was designed to assess consumers' understanding of different validation notices and to evaluate how each of the notices, which contained one of several different time-barred debt disclosures and, in certain cases, revival disclosures, might affect consumer behavior. During this testing, participants responded to researchers' comprehension questions and engaged in additional testing activities.<sup>40</sup>

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<sup>38</sup> 84 FR 23274, 23279 (May 21, 2019).

<sup>39</sup> 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.

<sup>40</sup> Reports prepared by FMG regarding each phase of the qualitative testing, as well as a report summarizing all of the qualitative testing, were published on the Bureau's website when the May 2019 Proposed Rule was issued. See Fors Marsh Grp., *Debt Collection Focus Groups* (Aug. 2014), [https://files.consumerfinance.gov/f/documents/cfpb\\_debtcollection\\_fmg-focus-group-report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_debtcollection_fmg-focus-group-report.pdf) (hereinafter FMG Focus Group Report); Fors Marsh Grp., *Debt Collection Cognitive Interviews* (n.d.), [https://files.consumerfinance.gov/f/documents/cfpb\\_debtcollection\\_fmg-cognitive-report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_debtcollection_fmg-cognitive-report.pdf) (hereinafter FMG Cognitive Report); Fors Marsh Grp., *Debt Collection User Experience Study* (Feb. 2016), [https://files.consumerfinance.gov/f/documents/cfpb\\_debtcollection\\_fmg-usability-report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_debtcollection_fmg-usability-report.pdf) (hereinafter FMG Usability Report); Fors Marsh Grp., *Debt Collection Validation Notice Research: Summary of Focus Groups, Cognitive Interviews, and User Experience Testing* (Feb. 2016),

As discussed in the May 2019 Proposed Rule, the Bureau’s qualitative testing found that consumers often are uncertain about their rights concerning time-barred debt.<sup>41</sup> Focus group participants said that knowing a debt is time barred is helpful and important information. Many participants said that knowing that a debt was time barred (and thus better understanding the risk of a lawsuit regarding that debt) would affect their decision-making regarding payments.<sup>42</sup> In particular, many participants said they would be less likely to pay or prioritize a debt they knew was time barred.<sup>43</sup> The qualitative testing also suggested that a plain-language disclosure could help consumers understand their rights with respect to time-barred debt. For example, nearly all participants in the Bureau’s qualitative testing who were provided with a disclosure stating, “Because of the age of this debt, we cannot sue you for it” understood that they could not be sued on the debt.<sup>44</sup> However, the Bureau’s qualitative testing also suggested that it could be challenging to develop an effective revival disclosure, in part because consumers find the concept of revival counterintuitive—that is, consumers believe that making a payment should avert the negative consequences of nonpayment, which is in tension with being subject to the risk of a lawsuit.<sup>45</sup>

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[https://files.consumerfinance.gov/f/documents/cfpb\\_debtcollection\\_fmg-summary-report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_debtcollection_fmg-summary-report.pdf) (hereinafter FMG Summary Report).

<sup>41</sup> See 84 FR 23274, 23328 (May 21, 2019). See also FMG Focus Group Report, *supra* note 40, at 9-10; FMG Cognitive Report, *supra* note 40, at 36-37; FMG Summary Report, *supra* note 40, at 35-36.

<sup>42</sup> FMG Summary Report, *supra* note 40, at 35.

<sup>43</sup> FMG Focus Group Report, *supra* note 40, at 9-10; FMG Cognitive Report, *supra* note 40, at 36; FMG Usability Report, *supra* note 40, at 75, 78, 80-81; FMG Summary Report, *supra* note 40, at 35-36.

<sup>44</sup> FMG Usability Report, *supra* note 40, at 74, 77.

<sup>45</sup> *Id.* at 74-75, 77; FMG Summary Report, *supra* note 40, at 37. See also *United States v. Asset Acceptance, LLC*, No. 8:12-cv-182, at ¶ 34 (M.D. Fla. filed Jan. 30, 2012).

### C. Small Business Review Panel

As discussed in the May 2019 Proposed Rule, 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 and the Administrator of the Office of Information and Regulatory Affairs with the Office of Management and Budget (OMB).<sup>46</sup> As part of that process, the Bureau prepared an outline of proposals under consideration and the alternatives considered (Small Business Review Panel Outline or Outline).<sup>47</sup>

Among other topics, the Small Business Review Panel Outline discussed consumer protection concerns regarding time-barred debt and a proposal under consideration to require disclosures in connection with the collection of such debt. The Outline noted that the Bureau was considering requiring debt collectors collecting on time-barred debt to provide a brief, plain-language statement informing the consumer that, because of the age of the debt, the debt collector could not sue to recover it. The Bureau also was considering proposing that a time-barred debt disclosure made by one debt collector would bind subsequent debt collectors who, in turn, would have to provide the disclosure to the consumer.<sup>48</sup> The Outline noted that the Bureau was considering how frequently debt collectors should be required to provide any such time-barred debt disclosures (*i.e.*, in the validation notice only, or in other oral or written communications with the consumer) and whether to require such disclosures only when the debt

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<sup>46</sup> 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 Public Law 110–28, section 8302 (2007)).

<sup>47</sup> 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](https://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf) (hereinafter Small Business Review Panel Outline or Outline).

<sup>48</sup> *Id.* at 20–21.

collector knew or should have known that the debt was time barred.<sup>49</sup> The Outline also noted that the Bureau was considering a proposal to prohibit debt collectors from collecting time-barred debt that could be revived under State law unless they waived the right to sue on the debt.<sup>50</sup>

The Bureau participated in telephone conferences and a full-day outreach meeting to receive feedback on the Outline from the small entity representatives participating in the Panel process. After gathering information from the small entity representatives, the Panel issued a Small Business Review Panel Report (Report), which set forth findings and recommendations regarding the Bureau’s proposals under consideration.<sup>51</sup> The Report noted that some small entity representatives expressed concern about the proposal under consideration to require time-barred debt disclosures. Those small entity representatives stated that it can be difficult to determine whether debt is time barred, and they feared potential lawsuits if good faith determinations about a debt’s time-barred status proved wrong.<sup>52</sup> One such small entity representative recommended that a debt collector should not be liable for failing to provide a time-barred debt disclosure if the debt collector made a good-faith determination, after appropriate consideration, that the statute of limitations for that debt had not yet expired.<sup>53</sup> Another small entity representative said that a time-barred debt disclosure could mislead a consumer into believing that the consumer no longer

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 21.

<sup>51</sup> See 84 FR 23274, 23281 (May 21, 2019). The Small Business Review Panel Report is part of the administrative record in this rulemaking and is available to the public on the Bureau’s website. See generally 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](https://files.consumerfinance.gov/f/documents/cfpb_debt-collector-debt-buyer_SBREFA-report.pdf) (hereinafter Small Business Review Panel Report or Report).

<sup>52</sup> Small Business Review Panel Report, *supra* note 51, at 25.

<sup>53</sup> *Id.* at appendix A (comment of Levy & Associates, LLC).

had any obligation to pay the debt.<sup>54</sup> Regarding the Bureau’s proposal under consideration to require waiver of revival in certain circumstances, one small entity representative predicted that, if the Bureau limited the circumstances in which debt collectors could sue on revived debts, creditors would be less motivated to negotiate prolonged repayment plans and more motivated to sue consumers before the statute of limitations expired. The Bureau has considered the Small Business Review Panel’s findings and recommendations in preparing this proposal and also discusses them in part V.

#### *D. 2019 Notice of Proposed Rulemaking*

In May 2019 the Bureau published a proposed rule to amend Regulation F, 12 CFR part 1006.<sup>55</sup> The May 2019 Proposed Rule would amend Regulation F to prescribe Federal rules governing the activities of debt collectors, as that term is defined in the FDCPA.

Among other things, the Bureau proposed to interpret and apply FDCPA section 807’s prohibitions on false or misleading representations, including by prohibiting a debt collector from suing or threatening to sue a consumer to collect a debt that the debt collector “knows or should know” is time barred.<sup>56</sup> The Bureau proposed the “know or should know” standard in response to feedback received during the SBREFA process about the complexity of determining whether the statute of limitations for a particular debt has expired.<sup>57</sup> The Bureau stated that, while debt collectors often will know, or can readily determine, whether the statute of limitations has expired, there may be some instances in which debt collectors may be uncertain whether it

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<sup>54</sup> *Id.* at 25.

<sup>55</sup> 84 FR 23274 (May 21, 2019).

<sup>56</sup> *Id.* at 23327-29, 23403 (proposing 12 CFR 1006.26(b) 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”).

<sup>57</sup> See part III.C, *supra*.

has expired even after undertaking a reasonable investigation. The Bureau noted that this could occur when, for example, the case law in a State is unclear as to which statute of limitations applies to a particular type of debt. The Bureau also acknowledged, however, that it could be difficult to determine whether a “know or should know” standard has been met. The Bureau requested comment on the merits of using that standard, as opposed to a “strict liability” standard under which collectors would be liable for suing or threatening to sue on time-barred debt even if they neither knew nor should have known that a debt was time barred.<sup>58</sup>

The May 2019 Proposed Rule also stated that the Bureau was likely to propose that debt collectors must provide disclosures to consumers when collecting time-barred debt. The proposal noted that, before issuing any such proposal, the Bureau intended to conduct additional consumer testing of possible time-barred debt and revival disclosures, and that the Bureau would publish the results of such testing for public comment.<sup>59</sup> That testing is now complete and is summarized in part III.E. The May 2019 Proposed Rule reserved proposed 12 CFR 1006.26(c) and appendix B for any requirements for time-barred debt and revival disclosures.<sup>60</sup>

The comment period for the May 2019 Proposed Rule closed on September 18, 2019,<sup>61</sup> and the Bureau received over 14,000 public comments.<sup>62</sup> A large number of comments addressed time-barred debt and the Bureau’s proposed prohibition regarding suits and threats of suit on time-barred debt, including the proposed “know or should know” standard and alternatives for regulating the collection of time-barred debt, such as prohibiting the collection of

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<sup>58</sup> 84 FR 23274, 23329 (May 21, 2019).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> 84 FR 37806 (Aug. 2, 2019).

<sup>62</sup> See *Regulations.gov, Debt Collection Practices (Regulation F) Docket Folder Summary*, <https://www.regulations.gov/docket?D=CFPB-2019-0022> (last visited Feb. 18, 2020).

such debt altogether. The Bureau is undertaking a complete review of the comments as part of the process of taking final action on the May 2019 Proposed Rule. The Bureau cross-references provisions of the May 2019 Proposed Rule throughout this proposal.

#### *E. Quantitative Consumer Testing*

To obtain additional information about consumer comprehension and decision-making in response to sample debt collection disclosures relating to time-barred debt, in 2017 the Bureau contracted with ICF International, Inc. (ICF) to conduct a web survey of approximately 8,000 individuals possessing a broad range of demographic characteristics.<sup>63</sup> This quantitative testing concluded in late September 2019, and the Bureau<sup>64</sup> and ICF<sup>65</sup> have published detailed reports summarizing the testing methodology and results. The Bureau summarizes the results below and welcomes feedback on the full reports, as published on the Bureau’s website.

Respondents to the web survey were provided one of two versions of a vignette in which a consumer incurred debt to purchase a couch. In one version, the purchase occurred three years ago; in the other, it occurred 10 years ago. Respondents were told that the consumer had not paid off the debt and had received a validation notice from a debt collector.

Respondents were randomly shown one of 11 different versions of a validation notice. Two versions served as control conditions. One control was designed to resemble validation notices that some debt collectors use today (Status Quo Notice). The other control was the

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<sup>63</sup> OMB approved the Bureau’s request to conduct the survey on May 7, 2019. See Office of Mgmt. & Budget, Office of Information and Regulatory Affairs, *ICR – OIRA Conclusion*, [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201902-3170-001#](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201902-3170-001#) (last visited Feb. 18, 2020).

<sup>64</sup> See Bureau of Consumer Fin. Prot., *Disclosure of Time-Barred Debt and Revival: Findings from the CFPB’s Quantitative Disclosure Testing* (Feb. 2020), [https://files.consumerfinance.gov/f/documents/cfpb\\_debt-collection-quantitative-disclosure-testing\\_report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-quantitative-disclosure-testing_report.pdf) (hereinafter CFPB Quantitative Testing Report).

<sup>65</sup> See ICF Int’l, Inc., *Quantitative Survey Testing of Model Disclosure Clauses and Forms for Debt Collection: Methodology Report* (Jan. 21, 2020), [https://files.consumerfinance.gov/f/documents/cfpb\\_icf\\_debt-survey\\_methodology-report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_icf_debt-survey_methodology-report.pdf).

Bureau’s model validation notice as proposed in the May 2019 Proposed Rule (Model Notice).<sup>66</sup>

Neither of the control notices contained a time-barred debt or revival disclosure. Of the remaining nine tested notices, four contained variations of a time-barred debt disclosure added to the Bureau’s model notice (TBD Notices), and five contained variations of both a time-barred debt disclosure and a revival disclosure added to the Bureau’s model notice (TBD with Revival Notices).<sup>67</sup> The survey used these various TBD Notices and TBD with Revival Notices to test whether and how consumers’ understanding of time-barred debt and revival concepts changed with differently worded disclosures.

After viewing their assigned validation notice, respondents answered a series of questions designed primarily to measure their understanding of time-barred debt and revival disclosures (or their understanding of time-barred debt and revival concepts without such disclosures). Respondents were asked whether, based on what they read in the notice, they thought a debt collector would be legally allowed to sue the consumer to collect the debt if the consumer: (1) ignored the notice and took no action; (2) made a payment; (3) sent the debt collector a letter acknowledging the debt; (4) called the debt collector acknowledging the debt; or (5) mailed in the tear-off portion of the validation notice to dispute the debt.

As discussed further in part V, the quantitative testing results generally indicate that, in connection with the collection of a time-barred debt, and at least in a testing environment, a validation notice without a time-barred debt disclosure can leave consumers with the misleading impression that debt collectors would be legally allowed to sue to collect the debt.<sup>68</sup> Time-

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<sup>66</sup> See CFPB Quantitative Testing Report, *supra* note 64, at 6-9.

<sup>67</sup> See *id.*

<sup>68</sup> Throughout this proposal, the Bureau refers to time-barred debts as not “legally enforceable” or states that debt collectors are not “legally allowed to sue” to collect them. The Bureau uses these shorthand phrases to reflect the current state of the law, *i.e.*, that the statute of limitations generally is an affirmative defense to a lawsuit on time-

barred debt disclosures, whether alone or with a revival disclosure, generally appear to correct this misimpression. On the other hand, the quantitative testing results indicate that a time-barred debt disclosure alone (*i.e.*, without a revival disclosure) could lead consumers in revival States to believe that debt collectors are legally allowed to sue in fewer circumstances than they in fact are. Revival disclosures generally appear to clarify the circumstances in which the debt collector’s right to sue can be revived.<sup>69</sup>

#### **IV. Legal Authority**

The Bureau issues this supplemental 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.<sup>70</sup>

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.”<sup>71</sup> 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

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barred debt and, as a result, courts have concluded that suits or threats of suit on time-barred debt violate the FDCPA. *See supra* note 9. As noted, the Bureau’s May 2019 Proposed Rule also would prohibit debt collectors from suing or threatening to sue to collect debts that the debt collectors know or should know are time barred. *Id.*

<sup>69</sup> See CFPB Quantitative Testing Report, *supra* note 64, at 4.

<sup>70</sup> 15 U.S.C. 1692l(d).

<sup>71</sup> 12 U.S.C. 5512(a).

thereof.<sup>72</sup> “Federal consumer financial law” includes title X of the Dodd-Frank Act and the FDCPA.<sup>73</sup>

#### A. *FDCPA Sections 807 and 808*

The Bureau issues this proposal pursuant to its authority to interpret FDCPA sections 807<sup>74</sup> and 808.<sup>75</sup> 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,”<sup>76</sup> and then lists, without limiting the general prohibition, 16 examples of conduct that violate the section.<sup>77</sup> Similarly, FDCPA section 808 generally prohibits a debt collector from “us[ing] unfair or unconscionable means to collect or attempt to collect any debt,” and then lists, without limiting the general prohibition, eight examples of conduct that violate the section.<sup>78</sup>

The Bureau proposes to interpret FDCPA sections 807 and 808 consistent with the approach proposed in the May 2019 Proposed Rule for interpreting FDCPA sections 806 through 808.<sup>79</sup> That is, the Bureau proposes to interpret FDCPA sections 807 and 808 in light of: (1) the FDCPA’s language and purpose; (2) the general types of conduct prohibited by sections 807 and 808 and, where relevant, the specific examples enumerated in those sections; and (3) judicial precedent.<sup>80</sup>

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<sup>72</sup> 12 U.S.C. 5512(b)(1).

<sup>73</sup> 12 U.S.C. 5481(12)(H), (14).

<sup>74</sup> 15 U.S.C. 1692e.

<sup>75</sup> 15 U.S.C. 1692f.

<sup>76</sup> 15 U.S.C. 1692e.

<sup>77</sup> 15 U.S.C. 1692e(1)–(16).

<sup>78</sup> 15 U.S.C. 1692f.

<sup>79</sup> 84 FR 23274, 23281-82 (May 21, 2019).

<sup>80</sup> *Id.* at 23281-83.

In particular, the Bureau notes that FDCPA section 807’s and 808’s examples of prohibited conduct do not “limit[ ] the general application” of the general prohibitions set forth in those sections. Accordingly, the Bureau may prohibit conduct that the specific examples do not address if the conduct violates the general prohibitions. In addition, the Bureau uses the specific examples to inform its understanding of the general prohibitions.<sup>81</sup> The Bureau also interprets FDCPA sections 807 and 808 in light of the significant body of existing court decisions interpreting those sections, including cases discussing the collection of time-barred debt.<sup>82</sup> Finally, consistent with the majority of courts, the Bureau proposes to interpret FDCPA sections 807 and 808 to incorporate an objective, “unsophisticated” or “least sophisticated” consumer standard.<sup>83</sup>

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

The Bureau also issues this proposal pursuant to 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.”<sup>84</sup> 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

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<sup>81</sup> *Id.* at 23282.

<sup>82</sup> *Id.* See, e.g., *Holzman v. Malcolm S. Gerald & Assocs.*, 920 F.3d 1264 (11th Cir. 2019); *Tatis v. Allied Interstate, LLC*, 882 F.3d 422 (3rd Cir. 2018); *Pantoja v. Portfolio Recovery Assocs., LLC*, 852 F.3d 679 (7th Cir. 2017); *Daugherty v. Convergent Outsourcing Inc.*, 836 F.3d 507 (5th Cir. 2016); *Buchanan v. Northland Grp., Inc.*, 776 F.3d 393 (6th Cir. 2015); *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010, 1020 (7th Cir. 2014).

<sup>83</sup> 84 FR 23282 (May 21, 2019).

<sup>84</sup> 12 U.S.C. 5532(a).

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.”<sup>85</sup> 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.”<sup>86</sup> Dodd-Frank Act section 1032(b)(3) provides that any such model form “shall be validated through consumer testing.”<sup>87</sup>

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.”<sup>88</sup> 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.”<sup>89</sup>

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<sup>85</sup> 12 U.S.C. 5532(b)(1).

<sup>86</sup> 12 U.S.C. 5532(b)(2).

<sup>87</sup> 12 U.S.C. 5532(b)(3).

<sup>88</sup> 12 U.S.C. 5532(c).

<sup>89</sup> 12 U.S.C. 5532(d).

## **V. Section-by-Section Analysis**

### *Section 1006.26 Collection of Time-Barred Debts*

#### *26(c) Disclosures Required*

For the reasons discussed below, the Bureau proposes § 1006.26(c) to require debt collectors who are collecting debts that they know or should know are time barred to provide time-barred debt disclosures and, if applicable, revival disclosures to consumers. Proposed § 1006.26(c)(1) and (2) sets forth content and timing requirements, and proposed § 1006.26(c)(3) sets forth formatting requirements and a safe harbor for making the disclosures.

The Bureau proposes § 1006.26(c) 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 807. The Bureau proposes to interpret FDCPA section 807’s prohibition on using “any false, deceptive, or misleading representation or means in connection with the collection of any debt” to require debt collectors to make time-barred debt disclosures and, if applicable, revival disclosures to consumers because, as discussed below, a debt collector’s attempt to collect a time-barred debt is likely to give a consumer the false impression that the debt is legally enforceable. This false impression, as also discussed below, is likely to affect a consumer’s decision whether to pay or prioritize the debt. Thus, when a debt collector collects a time-barred debt without disclosing that the debt is time barred, the debt collector may misrepresent the character or legal status of the debt, which FDCPA section 807(2)(A) specifically prohibits.

The Bureau also proposes § 1006.26(c) pursuant to its authority under section 1032(a) of the Dodd-Frank Act. As discussed in part IV, 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.” Under Dodd-Frank Act section 1002(5) and (15)(A)(x), collecting debt related to any consumer financial product or service is itself a consumer financial product or service.

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to section 1032 of the Dodd-Frank Act, 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.” Accordingly, in developing proposed § 1006.26(c), the Bureau has considered consumer complaints, industry disclosure practices, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services. The Bureau has also considered the evidence developed through its consumer testing.

The Bureau proposes § 1006.26(c) on the theory that a debt’s status as time barred is a feature of debt collection. Knowing that a debt is time barred may help a consumer understand the costs, benefits, and risks associated with paying or not paying a debt. For the reasons described below, the Bureau believes that requiring debt collectors to clearly and conspicuously disclose to consumers when a debt is time barred and, if applicable, when revival may occur, using disclosures substantially similar to those set forth on the model forms in proposed appendices B-4 through B-7, may ensure that the features of debt collection are fully, accurately, and effectively disclosed to consumers.

### *26(c)(1) In General*

As discussed in part II.C, the non-litigation collection of time-barred debt can raise concerns about consumer deception. If a debt collector attempts to collect a debt, the consumer may take away the impression that the debt collector is legally allowed to sue to collect it.<sup>90</sup> For time-barred debts, this impression would be false, and this false impression is likely to affect a consumer’s decision whether to pay or prioritize a time-barred debt.

As summarized in part III.E, the Bureau’s quantitative testing results suggest that, without a disclosure, many consumers are likely to believe that a debt collector is legally allowed to sue to collect a time-barred debt. For example, as discussed in the Bureau’s Quantitative Testing Report, one survey question asked respondents whether, based on what they read in a sample validation notice, they thought the debt collector would be legally allowed to sue the debtor if the debtor ignored the notice and took no action. For the time-barred debts described in the testing scenarios, the correct answer to this question was “no,” the debt collector would not be legally allowed to sue. However, over 60 percent of respondents who saw either a Status Quo or Model Notice (*i.e.*, a validation notice without a time-barred debt disclosure) got this question wrong and replied that the debt collector would be legally allowed to sue.<sup>91</sup>

This false impression could affect a consumer’s decision whether to pay or prioritize a debt. For example, a different survey question asked respondents how likely they would be, if they were the debtor, either to make a full or partial payment on the debt or to ignore the validation notice and not respond to it. Respondents who saw a validation notice with no time-

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<sup>90</sup> See FTC Debt Buying Report, *supra* note 8, at 46-47 (“When collectors attempt to recover on debts, in many circumstances, such efforts may convey or imply to consumers that the collectors could sue them if they do not pay.”). See also, e.g., *Holzman v. Malcolm S. Gerald & Assocs., Inc.*, 920 F.3d 1264, 1272 (11th Cir. 2019); *Pantoja v. Portfolio Recovery Assocs., LLC*, 852 F.3d 679, 683-84 (7th Cir. 2017).

<sup>91</sup> CFPB Quantitative Testing Report, *supra* note 64, at 17-18.

barred debt disclosure were more likely than respondents who saw a validation notice with such a disclosure to say that they were “very likely” to make a full or partial payment and that they were “very unlikely” to ignore the notice.<sup>92</sup> These results reflect responses to hypotheticals in a testing environment, but they indicate that, if a consumer has the misimpression that a debt collector can sue to enforce a time-barred debt, the consumer may be more likely to pay or prioritize that debt than if the consumer knew that doing so was not necessary to avoid litigation. Consumers, of course, may choose to pay time-barred debts for any number of reasons, including moral ones<sup>93</sup> or in the belief that doing so will improve their credit reports.<sup>94</sup> However, the Bureau believes that consumers are harmed to the extent that they decide to pay or prioritize time-barred debts over other debts or expenses such as household necessities because of a false understanding that they can be sued.

As discussed in part II.C., several jurisdictions already require debt collectors to inform consumers if a debt is time barred,<sup>95</sup> and some debt collectors also must provide such disclosures as a result of consent agreements with law enforcement agencies, including the Bureau and the

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<sup>92</sup> *Id.* at 28-29. The Bureau’s qualitative consumer testing and other research also suggests that knowing whether a debt is time barred, and that debt collectors cannot enforce time-barred debts in court, may affect a consumer’s decision-making with respect to the debt. Participants in the Bureau’s consumer testing said that knowing a debt is time barred is important and would affect their decision-making. In particular, many participants said they would be less likely to pay or prioritize a debt they knew was time barred. FMG Focus Group Report, *supra* note 40, at 9-10; FMG Cognitive Report, *supra* note 40, at 36; FMG Usability Report, *supra* note 40, at 75, 78, 80-81; FMG Summary Report, *supra* note 40, at 35-36. See also Timothy E. Goldsmith & Nathalie Martin, *Testing Materiality Under the Unfair Practices Acts: What Information Matters Collecting Time-Barred Debts?*, 64 Consumer Fin. L. Q. Rep. 372, at 377-80 (2010).

<sup>93</sup> See, e.g., *Pantoja*, 852 F.3d at 684; *Buchanan v. Northland Grp., Inc.*, 776 F.3d 393, 399 (6th Cir. 2015); *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010, 1020 (7th Cir. 2014).

<sup>94</sup> See *supra* note 12.

<sup>95</sup> 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).

FTC.<sup>96</sup> The Bureau’s quantitative testing supports the conclusion that such a time-barred debt disclosure can, in fact, help to correct the misimpression that a debt collector would be legally allowed to sue to collect a time-barred debt. As noted, over 60 percent of respondents who were shown a validation notice without a time-barred debt disclosure answered incorrectly when asked whether, based on what they read in the notice, the debt collector would be legally allowed to sue to collect the time-barred debt if the debtor ignored the notice and took no action. By contrast, over 60 percent of respondents who received either a TBD or TBD with Revival Notice (*i.e.*, a validation notice with a time-barred debt disclosure) answered this question correctly.<sup>97</sup>

Although the Bureau’s quantitative testing found that a time-barred debt disclosure tended to correct the misimpression that a debt collector would be legally allowed to sue to collect a time-barred debt, the testing also revealed that, in States with revival laws, an unqualified time-barred debt disclosure could create its own risk of a consumer taking away a false, material impression. Specifically, the Bureau’s quantitative testing found that a time-barred debt disclosure alone (*i.e.*, without a revival disclosure) could lead consumers in revival

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<sup>96</sup> For example, the Bureau has brought enforcement actions alleging that debt collectors violated the FDCPA by sending letters containing time-limited “settlement” offers that failed to disclose that the debt was time barred and therefore too old for litigation. Consent Order at ¶¶ 65-69, *In re Encore Capital Grp., Inc.*, Bureau of Consumer Fin. Prot., File No. 2015-CFPB-0022 (Sept. 9, 2015), [https://files.consumerfinance.gov/f/201509\\_cfpb\\_consent-order-encore-capital-group.pdf](https://files.consumerfinance.gov/f/201509_cfpb_consent-order-encore-capital-group.pdf); Consent Order at ¶¶ 56-59, *In re Portfolio Recovery Assocs., LLC*, Bureau of Consumer Fin. Prot., File No. 2015-CFPB-0023 (Sept. 9, 2015), [https://files.consumerfinance.gov/f/201509\\_cfpb\\_consent-order-portfolio-recovery-associates-llc.pdf](https://files.consumerfinance.gov/f/201509_cfpb_consent-order-portfolio-recovery-associates-llc.pdf). Similarly, the FTC has brought an enforcement action alleging that a debt collector’s collection of time-barred debts violated the FDCPA where the debt collector failed to disclose that the debts were time-barred and that the debt collector’s right to sue could be revived. Complaint ¶¶ 30-34, 56-58, *United States v. Asset Acceptance, LLC*, No. 8:12-cv-182 (M.D. Fla. Jan. 30, 2012), <https://www.ftc.gov/sites/default/files/documents/cases/2012/01/120130assetcmpt.pdf>. The consent orders that resolved *Encore*, *Portfolio Recovery*, and *Asset Acceptance* required the debt collectors in those cases to make time-barred debt disclosures. *Encore* Consent Order at ¶ 133; *Portfolio Recovery* Consent Order at ¶ 126; *Asset Acceptance* Consent Decree at § IV, <https://www.ftc.gov/sites/default/files/documents/cases/2012/01/120131assetconsent.pdf>.

<sup>97</sup> CFPB Quantitative Testing Report, *supra* note 64, at 17-18. The Bureau’s qualitative testing supports the same conclusion. Nearly all participants in the Bureau’s consumer testing who were provided with a disclosure stating, “Because of the age of this debt, we cannot sue you for it” understood that they could not be sued on the debt. FMG Usability Report, *supra* note 40, at 74, 77.

States to believe that debt collectors are able to legally sue them on time-barred debt in fewer circumstances than they in fact are.<sup>98</sup> As discussed in the Bureau’s Quantitative Testing Report, two survey questions asked respondents whether, based on what they read in a sample validation notice, they thought the debt collector would be legally allowed to sue the debtor if the debtor either made a payment or acknowledged the debt in writing. For the time-barred debts described in the testing scenarios, the correct answer to these questions was “yes,” the debt collector would be legally allowed to sue. However, more than 60 percent of respondents who saw a TBD Notice (*i.e.*, a validation notice with an unqualified time-barred debt disclosure) replied incorrectly that the debt collector would *not* be legally allowed to sue.<sup>99</sup>

As with the false impression that debt collectors legally *are* allowed to sue to collect a time-barred debt even if the consumer takes *no action*, the false impression that debt collectors *are not* legally allowed to sue *even if* the consumer makes a payment or acknowledges the debt in writing could affect a consumer’s decision whether to pay or prioritize time-barred debts. The Bureau’s quantitative testing suggests that, in revival jurisdictions, a time-barred debt disclosure accompanied by a revival disclosure may help to correct this misimpression. When respondents were asked whether, based on what they read in the notice, the debt collector would be legally allowed to sue to collect the time-barred debt if the consumer either made a payment or acknowledged the debt in writing, about 70 percent and 60 percent of respondents, respectively, who received both a time-barred debt and revival disclosure answered correctly that the debt

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<sup>98</sup> As discussed in part II, in “revival jurisdictions,” if consumers either make partial payments on time-barred debts or acknowledge time-barred debts in writing (or both), debt collectors once again would be legally allowed to sue to collect the debts. If a debt collector makes an unqualified time-barred debt disclosure to a consumer in a revival jurisdiction, that disclosure would be false for a consumer whose conduct revived the debt.

<sup>99</sup> CFPB Quantitative Testing Report, *supra* note 64, at 18-20. Although respondents who received no time-barred debt disclosure at all also tended to answer these questions incorrectly, respondents who received an unqualified time-barred debt disclosure were even more likely to answer these questions incorrectly. *Id.* These results suggest that an unqualified time-barred debt disclosure could mislead consumers for those scenarios.

collector would be legally allowed to sue.<sup>100</sup>

To address the likelihood that consumers may be deceived by the non-litigation collection of time-barred debt, and pursuant to its authority under FDCPA sections 814(d) and 807 and Dodd-Frank Act section 1032, the Bureau proposes § 1006.26(c)(1) to require debt collectors who are collecting time-barred debt to provide certain disclosures to consumers.<sup>101</sup> Specifically, proposed § 1006.26(c)(1) would provide that a debt collector who knows or should know that a debt is time barred when the debt collector makes the initial communication as defined in § 1006.34(b)(2) must, in that initial communication, and on any validation notice required by § 1006.34(a)(1)(i)(B), clearly and conspicuously provide time-barred debt and, if applicable, revival disclosures to consumers.<sup>102</sup>

Proposed § 1006.26(c)(1) would require the time-barred debt and, if applicable, revival disclosures to be made regarding debts that the debt collector “knows or should know” are time barred. As discussed in the May 2019 Proposed Rule and in part III.D, determining whether the statute of limitations for a particular debt has expired can, in certain cases, be a complex undertaking, and debt collectors may be uncertain about whether a particular statute of limitations has passed even after conducting a reasonable investigation.<sup>103</sup> For this reason, the May 2019 Proposed Rule proposed to prohibit debt collectors from suing or threatening to sue to

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<sup>100</sup> *Id.*

<sup>101</sup> The requirements of proposed § 1006.26(c)(1) therefore would apply to FDCPA-covered debt collectors collecting debt, as that term is defined in FDCPA section 803(5), regardless of whether the debt is a consumer financial product or service debt, as that term is defined in the May 2019 Proposed Rule. *See* 84 FR 23274, 23399 (May 21, 2019). Consumer financial product or service debts would include, for example, debts related to consumer mortgage loans or credit cards. *Id.* at 23286.

<sup>102</sup> The required disclosures are discussed in the section-by-section analysis of proposed § 1006.26(c)(1)(i) and (ii). Proposed § 1006.34(c)(2)(xi), discussed below, would amend the validation notice provisions of the May 2019 Proposed Rule to reflect the disclosures that would be required by proposed § 1006.26(c)(1).

<sup>103</sup> *See* 84 FR 23274, 23329 (May 21, 2019) (determining whether the statute of limitations has expired 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).

collect debts if they “know or should know” that the statute of limitations has expired.<sup>104</sup> In response to the May 2019 Proposed Rule, the Bureau received a large number of comments regarding this knowledge standard. In general, industry commenters favored a “know or should know” standard, while consumer advocates favored a “strict liability” standard.<sup>105</sup> The Bureau is analyzing those comments as part of the process of finalizing the May 2019 Proposed Rule. For consistency with that proposal, the Bureau proposes to require disclosures under § 1006.26(c)(1) only if the debt collector knows or should know that the debt is time barred.

Proposed § 1006.26(c)(1) also would require the time-barred debt and, if applicable, revival disclosures to be made clearly and conspicuously. The Bureau proposes this standard to help ensure that consumers take away a truthful, non-misleading impression. A disclosure that is not clear and conspicuous will not be effective in conveying this impression, defeating the disclosure’s purpose. Proposed comment 26(c)(1)-1 would clarify that “clearly and conspicuously” for purposes of § 1006.26(c)(1) means the same thing as “clear and conspicuous” as the Bureau proposed to define that term in § 1006.34(b)(1) in the May 2019 Proposed Rule.<sup>106</sup>

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<sup>104</sup> *Id.* at 23328-29, 23403. A debt collector would violate FDCPA section 807’s prohibition on deception and, if finalized, § 1006.18 in the May 2019 Proposed Rule, by providing the § 1006.26(c)(1) disclosures if the debt collector later sues or threatens to sue to collect the debt. The Bureau requests comment on whether the final rule should indicate in rule text or commentary that this would be a violation.

<sup>105</sup> Under a “strict liability” standard, for example, a debt collector would violate the proposed prohibition against suits or threats of suit if the debt collector sued or threatened to sue to collect a debt that a court later determined was time barred, even if the debt collector had investigated and reasonably concluded that the debt was not time barred. This could occur, for example, if State law applies different statutes of limitations to different types of debts, and if a court later determined that a debt collector had applied the wrong provision in determining whether the debt was time barred, notwithstanding a reasonable investigation.

<sup>106</sup> Proposed § 1006.34(b)(1) defines “clear and conspicuous” to mean “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.”

That standard, in turn, is based on the standard used in other consumer financial services laws and their implementing regulations, including Regulation E Subpart B (Remittance Transfers).<sup>107</sup>

Proposed § 1006.26(c)(1) also would require the time-barred debt and, if applicable, revival disclosures to be made in the initial communication as defined in § 1006.34(b)(2), and on any validation notice required by § 1006.34(a)(1)(i)(B).<sup>108</sup> Proposed § 1006.26(c)(1) would require a debt collector to provide the disclosures in these communications because, without the disclosures, the debt collector may convey a misleading impression about the legal enforceability of the time-barred debt. In addition, requiring the disclosures at the time that the debt collector first communicates with the consumer in connection with the collection of the debt and on any required validation notice should ensure that consumers receive information regarding the debt's legal enforceability at a time when they may be evaluating their rights and obligations regarding the debt, including whether to pay or prioritize it over other debts. Proposed comment 26(c)(1)-2 would clarify that a debt collector who sends a validation notice in the initial communication pursuant to § 1006.34(a)(1)(i)(A) complies with § 1006.26(c)(1) by providing the required disclosures on the validation notice.

Some stakeholders, including consumers, consumer groups, and others who commented on the May 2019 Proposed Rule, have urged the Bureau to prevent the risk of deception by prohibiting the collection of time-barred debt and banning revival. These stakeholders assert, among other things, that concepts like statutes of limitations and revival are too complicated to disclose to consumers effectively. As discussed above, however, the Bureau's quantitative

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<sup>107</sup> Regulation E, 12 CFR 1005.31.

<sup>108</sup> The Bureau proposes to use the same definition of "initial communication" proposed in the May 2019 Proposed Rule. *See* 84 FR 23274, 23404 (May 21, 2019) (proposing 12 CFR part 1006.34(b)(2) to define "initial communication" in 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 certain communications required by law or made in the form of a formal pleading in a civil action).

testing results suggest that disclosures can be effective in preventing the deception associated with the collection of time-barred debts and that, therefore, prohibiting the collection of time-barred debt and banning revival are not necessary to prevent deception. In addition, banning the collection of time-barred debt could have unintended consequences for consumers, such as increased litigation before expiration of the statute of limitations. Because disclosures may adequately address the risks to consumers, the Bureau proposes to require disclosures rather than to prohibit the collection of time-barred debt and ban revival.

The Bureau requests comment on proposed § 1006.26(c)(1) and its related commentary. In particular, the Bureau requests comment on the merits of using a “know or should know” standard versus a “strict liability” standard for determining when debt collectors must provide time-barred debt and revival disclosures. The Bureau also requests comment on the merits of using, as an alternative, a “strict liability” standard with a safe harbor for debt collectors who provide the disclosures when they neither knew nor should have known the debt was time-barred.

The Bureau also requests comment on: (1) whether knowing if a debt is time barred affects or is likely to affect a consumer’s conduct relating to the debt; (2) the frequency with which debt collectors should be required to provide required disclosures, including the basis for requiring more or less frequent disclosures; (3) whether additional guidance is needed to address situations in which a validation notice might be re-issued voluntarily because, for example, the consumer requests a copy or a translation; (4) debt collectors’ current practices with respect to disclosing whether a debt is time barred and the circumstances, if any, in which revival can occur; and (5) debt collectors’ current practices with respect to revival, including whether and how frequently they sue to collect debts when the right to do so has been revived.

*26(c)(1)(i)*

Proposed § 1006.26(c)(1)(i) sets forth the disclosure that debt collectors would be required to provide when collecting debts that they know or should know are time barred. Proposed § 1006.26(c)(1)(i) would require debt collectors to disclose that the law limits how long the consumer can be sued for a debt and that, because of the age of the debt, the debt collector will not sue the consumer to collect it. The disclosure would be required to be substantially similar to the disclosure shown on proposed Model Form B-4 in appendix B, and debt collectors could comply by using that model form (or, if making the disclosure other than on a validation notice, by using the relevant language from that model form).<sup>109</sup>

As discussed in the Bureau’s Quantitative Testing Report, the Bureau tested alternative versions of this time-barred debt disclosure, including two that used the phrase “will not sue” and two that used the phrase “cannot sue.” A disclosure that uses the phrase “will not sue” may be more accurate than a disclosure that uses the phrase “cannot sue.” A disclosure that uses the phrase “cannot sue” may imply that a debt collector has definitively determined that the debt is time barred and that all subsequent collectors thus would reach the same conclusion. By contrast, a “will not sue” disclosure merely represents that the debt collector believes that the debt is time barred, not that the debt collector has definitely determined that it is time barred; it may not actually be the case that the debt is, or that a subsequent collector would conclude that

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<sup>109</sup> See the section-by-section analysis of proposed § 1006.26(c)(3) regarding proposed requirements for the form and delivery of the required disclosures.

the debt is, time barred.<sup>110</sup> The Bureau’s testing showed no consistent differences in consumer understanding between the “will not sue” and “cannot sue” disclosures.<sup>111</sup>

As discussed in part III.C, during the SBREFA process, the Bureau was considering a proposal to require a debt collector who was collecting a time-barred debt to disclose that, because of the age of the debt, the debt collector “cannot sue to recover it.”<sup>112</sup> Several small entity representatives expressed concern that the disclosure under consideration could constitute legal advice, or that consumers who received the disclosures could construe them as legal advice and ask the debt collector follow-up questions about the debt’s legal status. Some industry commenters to the Bureau’s ANPR expressed similar concerns. As noted, the Bureau does not believe that the “will not sue” disclosure described in proposed § 1006.26(c)(1)(i) constitutes legal advice. It is neither a statement of what the law is nor advice to consumers as to what they should or should not do. Instead, it is a statement of what the collector will do. In addition, nothing in the Bureau’s proposal would require a debt collector to provide legal advice to a consumer who requests it. The Bureau requests comment on proposed § 1006.26(c)(1)(i) and on the burden of making a time-barred debt determination for debt collectors who do not sue to collect debts.

#### *26(c)(1)(ii)*

Proposed § 1006.26(c)(1)(ii) sets forth an additional disclosure that debt collectors would be required to provide when collecting debts that they know or should know are time barred if,

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<sup>110</sup> For this reason, a debt collector who provides the proposed § 1006.26(c)(1) disclosures after undertaking a reasonable inquiry and concluding that a debt is time barred would not be liable under either the FDCPA or Regulation F for having made the disclosures even if it is determined later that the debt collector’s conclusion about the debt’s time-barred status was incorrect, as long as the debt collector honors the disclosures by not suing.

<sup>111</sup> CFPB Quantitative Testing Report, *supra* note 64, at 22-23.

<sup>112</sup> Small Business Review Panel Outline, *supra* note 47, at 20.

under applicable law, the debt collector’s right to bring a legal action against the consumer could be revived. Under proposed § 1006.26(c)(1)(ii), debt collectors would be required to disclose the fact that revival can occur and the circumstances in which it can occur. The disclosure would be required to be substantially similar to those shown on proposed Model Forms B-5 through B-7 in appendix B, and debt collectors could comply by using those model forms, as applicable (or, if making the disclosure other than on a validation notice, by using the relevant language from the model forms).<sup>113</sup> Proposed comment 26(c)(1)(ii)-1 would clarify that, to satisfy the disclosure requirement in proposed § 1006.26(c)(1)(ii), a debt collector would be required to determine which State’s law applies and the circumstances, if any, in which that law would permit revival.

The Bureau requests comment on proposed § 1006.26(c)(1)(ii) and on comment 26(c)(1)(ii)-1. The Bureau specifically requests comment on the burden of requiring all debt collectors to determine, when collecting debt that they know or should know is time barred, which State’s law applies and the circumstances, if any, under which that law would permit revival. The Bureau also specifically requests comment on the burden of making these determinations under a strict liability standard. The Bureau recognizes that some debt collectors do not sue to collect any debts (including revived debts) and that some debts may be clearly time barred under any applicable State law. The Bureau requests comment on the burden in such circumstances of requiring debt collectors to conduct the inquiry that would be required to satisfy proposed § 1006.26(c)(1)(ii) (*i.e.*, to make a disclosure that reflects the applicable State’s revival law).

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<sup>113</sup> See the section-by-section analysis of proposed § 1006.26(c)(3) regarding proposed requirements for the form and delivery of the required disclosures.

## *26(c)(2) Additional Circumstances in which Disclosures Are Required*

A debt may become time barred after a debt collector's initial communication with the consumer or after the debt collector sends the consumer any validation notice required by § 1006.34(a)(1)(i)(B). This could happen, for example, if a debt collector begins collecting a debt soon before the statute of limitations expires, and collection activities continue after expiration. This also could happen if a debt collector begins collecting a debt before the statute of limitations expires, warehouses the debt, and resumes collection activities after expiration. Relatedly, it may be the case that a debt collector who does not know, and should not know, that a debt is time barred when making the initial communication with the consumer or when sending the consumer any validation notice required by § 1006.34(a)(1)(i)(B) later knows, or should know, that the debt was, in fact, time barred.

As discussed, the Bureau's quantitative testing results indicate that, without disclosure, few consumers are likely to recognize that a debt collector is not legally allowed to sue to collect a time-barred debt. The quantitative testing results also indicate that an unqualified time-barred debt disclosure provided in a revival State may create a risk of consumer misunderstanding about revival. For these reasons, and pursuant to its authority under FDCPA sections 814(d) and 807 and Dodd-Frank Act section 1032(a), the Bureau proposes § 1006.26(c)(2) to specify additional circumstances in which debt collectors would be required to provide time-barred debt and, if applicable, revival disclosures.<sup>114</sup>

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<sup>114</sup> The requirements of proposed § 1006.26(c)(2) therefore would apply to FDCPA-covered debt collectors collecting debt, as that term is defined in FDCPA section 803(5), regardless of whether the debt is a consumer financial product or service debt, as that term is defined in the May 2019 Proposed Rule. See 84 FR 23274, 23399 (May 21, 2019). Consumer financial product or service debts would include, for example, debts related to consumer mortgage loans or credit cards. *Id.* at 23286.

Proposed § 1006.26(c)(2)(i) would require a debt collector who knows or should know that a debt has become time barred after the initial communication as defined in § 1006.34(b)(2) but before the debt collector has sent any validation notice required by § 1006.34(a)(1)(i)(B) to provide the disclosures required by § 1006.26(c)(1) in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt has become time barred, and on any validation notice required by § 1006.34(a)(1)(i)(B). In addition, proposed § 1006.26(c)(2)(i) would require a debt collector who knows or should know that a debt has become time barred after the debt collector has made the initial communication as defined in § 1006.34(b)(2) and has sent any validation notice required by § 1006.34(a)(1)(i)(B) to provide the disclosures required by § 1006.26(c)(1) in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt became time barred. Proposed comments 26(c)(2)(i)-1 and -2 provide examples illustrating the rule.

Proposed § 1006.26(c)(2)(ii) would require a debt collector who neither knows nor should know that a time-barred debt is time barred when the debt collector makes the initial communication as defined in § 1006.34(b)(2), but who knows or should know that the debt is time barred before the debt collector has sent any validation notice required by § 1006.34(a)(1)(i)(B), to provide the disclosures required by § 1006.26(c)(1) in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt is time barred, and on any validation notice required by § 1006.34(a)(1)(i)(B). In addition, proposed § 1006.26(c)(2)(ii) would require a debt collector who neither knows nor should know that a time-barred debt is time barred when the debt collector makes the initial communication as defined in § 1006.34(b)(2) and sends any

validation notice required by § 1006.34(a)(1)(i)(B), but who later knows or should know that the debt is time barred, to provide the disclosures required by § 1006.26(c)(1) in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt was time barred. Proposed comments 26(c)(2)(ii)-1 and -2 provide examples illustrating the rule.

The Bureau requests comment on proposed § 1006.26(c)(2). In particular, the Bureau requests comment on the knowledge standard that should apply for determining when disclosures would be required under proposed 1006.26(c)(2).<sup>115</sup> In addition, the Bureau requests comment on whether, if the first communication after a debt becomes time barred (or after the debt collector knows or should know that the debt is time barred) is oral, the debt collector should also be required to provide the disclosures in the first subsequent written communication.

### *26(c)(3) Form and Delivery of Disclosures*

#### *26(c)(3)(i) In General*

The Bureau has developed a series of model forms featuring the disclosures that would be required by proposed § 1006.26(c)(1). Under proposed § 1006.26(c)(3)(i), the required disclosures would need to be substantially similar to those shown on the model forms, and under proposed § 1006.26(c)(3)(ii), debt collectors would receive a safe harbor for using the model forms (or, when applicable, for providing the disclosures shown on the model forms).

Proposed Model Form B-4 is a validation notice that includes a time-barred debt disclosure, for use by debt collectors providing only the disclosure required under § 1006.26(c)(1)(i) (*i.e.*, if the right to bring a legal action against the consumer on a time-barred

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<sup>115</sup> See the request for comment regarding the knowledge standard in the section-by-section analysis of proposed 1006.26(c)(1).

debt cannot be revived under applicable law). The disclosure on proposed Model Form B-4 reads as follows: “The law limits how long you can be sued for a debt. Because of the age of this debt, we will not sue you for it.”

Proposed Model Forms B-5 through B-7 are validation notices that include time-barred debt and revival disclosures, for use by debt collectors providing the disclosures required under § 1006.26(c)(1)(i) and (ii). The proposed model forms contain revival disclosures tailored to the different circumstances in which time-barred debts could be revived under applicable law.

Specifically:

- The disclosure on proposed Model Form B-5 provides: “The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you make a payment or acknowledge in writing that you owe this debt, then we can sue you to collect it.” Proposed Model Form B-5 would be for use by debt collectors collecting time-barred debts if applicable law permits revival when a consumer makes a payment or acknowledges the debt in writing.<sup>116</sup>
- The disclosure on proposed Model Form B-6 provides: “The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you make a payment, then we can sue you to collect it.” Proposed Model Form B-6 would be for use by debt collectors collecting time-barred debts if applicable law permits revival only when a consumer makes a payment.

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<sup>116</sup> Although what constitutes a written acknowledgement sufficient to trigger revival may differ by State, proposed Model Form B-5 is drafted at a level of generality meant to accommodate debt collectors in all jurisdictions where written acknowledgement revives the debt collector’s right to sue.

- The disclosure on proposed Model Form B-7 provides: “The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you acknowledge in writing that you owe this debt, then we can sue you to collect it.” Proposed Model Form B-7 would be for use by debt collectors if applicable law permits revival only when a consumer acknowledges the debt in writing.<sup>117</sup>

As described in part III.B, the Bureau tested multiple written time-barred debt and revival disclosures. In proposing Model Forms B-4 through B-7, the Bureau generally has selected the disclosures that, based on testing results, consumers would be most likely to understand.<sup>118</sup> Regarding revival, the Bureau selected the disclosure that respondents most understood when asked whether the debt collector would legally be allowed to sue to collect the debt if the debtor did nothing, made a payment, or wrote to the debt collector to acknowledge the debt. However, the Bureau notes that this disclosure underperformed other tested revival disclosures when respondents were asked whether the debt collector would legally be allowed to sue if the debtor called the debt collector to acknowledge the debt.<sup>119</sup> As tested, the first sentence of the selected revival disclosure read, “If you do nothing in response to this notice, we will not sue you to collect this debt.” Based on the testing results, the Bureau believes that this phrasing could lead consumers who receive such a revival disclosure to have the false impression that communicating with a debt collector by telephone would revive the debt collector’s right to sue and thus make the consumer reluctant to communicate. To clarify that communicating with a

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<sup>117</sup> Proposed Model Form B-7, like proposed Model Form B-5, is drafted at a level of generality meant to accommodate debt collectors in all written-acknowledgement jurisdictions.

<sup>118</sup> CFPB Quantitative Testing Report, *supra* note 64, at 22-25.

<sup>119</sup> CFPB Quantitative Testing Report, *supra* note 64, at 24-25.

debt collector by telephone would not revive the debt collector’s right to sue, the first sentence of the revival disclosures on proposed Model Forms B-5 through B-7 also includes the phrase “or speak to us.”

As noted, the Bureau’s quantitative testing tested respondents’ understanding of written disclosures included on validation notices. For this reason, the time-barred debt and revival disclosures described what would or would not happen if the consumer took various actions in response “to this notice.” However, proposed § 1006.26(c)(1) and (2) would require time-barred debt and revival disclosures in certain oral communications. To ensure that the disclosure on the proposed model forms will be appropriate whether provided in writing or orally (and whether on a validation notice or not), the Bureau also proposes to include the phrase “about this debt” instead of the tested language “in response to this notice.” Based on the Bureau’s quantitative testing, and with these slight adjustments, the Bureau believes that the model forms effectively disclose the information described in proposed § 1006.26(c)(1) and (2).

For these reasons, and pursuant to its authority under FDCPA sections 814(d) and 807 and Dodd-Frank Act section 1032, the Bureau proposes § 1006.26(c)(3)(i) to require that, when debt collectors provide the disclosures required by § 1006.26(c)(1) on a validation notice, the content, format, and placement of the disclosures must be substantially similar to such disclosures on Model Forms B-4 through B-7 in appendix B, as applicable. Proposed § 1006.26(c)(3)(i) also would require that, when the disclosures required by § 1006.26(c)(1) are provided orally or in a written communication that is not a validation notice, the content must be substantially similar to such disclosures on Model Forms B-4 through B-7 in appendix B, as applicable.

As already discussed, some jurisdictions require debt collectors to make disclosures, including on validation notices, when collecting time-barred debt. Proposed comment 26(c)(3)(i)-1 would clarify that, when providing the disclosures required by § 1006.26(c)(1) on a validation notice, a debt collector who uses a validation notice that is otherwise substantially similar to Model Forms B-4 through B-7, as applicable, may include any disclosures required by other applicable law on the reverse of the validation notice and will continue to be in compliance with the requirements of proposed § 1006.26(c)(1) and (3)(i). The proposed comment also provides an example of a disclosure required by other applicable law.

The Bureau requests comment on proposed § 1006.26(c)(3)(i) and on comment 26(c)(3)(i)-1, including on conflicts that might arise between the Bureau’s proposed model forms and other disclosures required by applicable law. In particular, the Bureau requests comment on whether proposed § 1006.26(c)(3)(i)—and proposed Model Forms B-4 through B-7—would allow debt collectors to comply with other applicable law, including on whether any jurisdictions require time-barred debt or revival disclosures to be included on the front of the validation notice and whether, if so, it is possible for a debt collector to comply with both the Bureau’s proposal and any such State laws. The Bureau also requests comment and any supporting data on whether consumers who receive both Federal and State time-barred debt (and, if applicable, revival) disclosures on a validation notice may be confused by the dual disclosures.

#### *26(c)(3)(ii) Safe Harbor*

Model forms that provide a safe harbor may benefit both consumers and debt collectors. A model form that has been tested with consumers may effectively disclose the information required by proposed § 1006.26(c)(1) in a manner that prevents deception and permits consumers to understand the costs, benefits, and risks associated with the collection of time-barred debts. A

model form may also provide debt collectors with protection from liability that could arise if they developed and used their own forms. During the SBREFA process, small entity representatives encouraged the Bureau to develop model forms and safe harbors, emphasizing that model forms can promote efficiency and predictability by reducing legal risk.<sup>120</sup> Because of the potential benefits to consumers and debt collectors, the Bureau has developed proposed Model Forms B-4 through B-7 in appendix B.

As described above, proposed Model Forms B-4 through B-7 were developed over multiple rounds of consumer testing, and, based on this testing, the Bureau believes that they effectively disclose the information described in proposed § 1006.26(c)(1). For these reasons, under proposed § 1006.26(c)(3)(ii) a debt collector who uses Model Forms B-4 through B-7 in appendix B, as applicable, to provide the disclosures required by § 1006.26(c)(1) in a validation notice would receive a safe harbor for compliance with the requirements of § 1006.26(c)(1) and (3)(i). In addition, under proposed § 1006.26(c)(3)(ii) a debt collector who uses the relevant content of Model Forms B-4 through B-7, as applicable, to provide the disclosures required by § 1006.26(c)(1) orally or in a written communication that is not a validation notice would receive a safe harbor for compliance with the requirements of § 1006.26(c)(1) and (3)(i).

Proposed comment 26(c)(3)(ii)-1 explains that, although the use of Model Forms B-4 through B-7 is not required, a debt collector who uses the applicable model form complies with the requirements of § 1006.26(c)(1) and (3)(i). The comment also would clarify what it means for a debt collector to use the “applicable” model form. For example, if under applicable law only a payment on a time-barred debt revives a debt collector’s right to bring a legal action against the consumer to collect the debt, a debt collector who uses Model Form B-6, which refers

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<sup>120</sup> See, e.g., Small Business Review Panel Report, *supra* note 51, at 22.

to payment but not written acknowledgement, to provide the disclosure on the validation notice would comply with the requirements of § 1006.26(c)(1) and (3)(i). Proposed comment 26(c)(3)(ii)-2 would clarify that a debt collector who uses Model Forms B-4 through B-7, as applicable, may include any disclosures required by other applicable law on the reverse of the validation notice and will continue to be in compliance with the requirements of proposed § 1006.26(c)(1) and (3)(i).

The Bureau proposes Model Forms B-4 through B-7 pursuant to its authority under section 1032(b) of the Dodd-Frank Act. As discussed in part IV, section 1032(b)(1) of the Dodd-Frank Act provides that “any final rule prescribed by the Bureau under [section 1032] requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.” Section 1032(b)(2) of the Dodd-Frank Act provides certain minimum criteria that any such model form must meet, and section 1032(b)(3) of the Dodd-Frank Act requires the Bureau to validate any such model form through consumer testing.

Consistent with the Bureau’s authority under Dodd-Frank Act section 1032(b)(1), the Bureau believes that proposed Model Forms B-4 through B-7 use plain language comprehensible to consumers, contain a clear format and design, such as easily readable type font, and succinctly explain the information that must be communicated to consumers. As discussed above, the Bureau has developed these model forms after consumer testing and believes that making them available would help ensure that the disclosures required by proposed § 1006.26(c)(1) are provided to consumers effectively, while also minimizing the burden on debt collectors who would otherwise need to develop their own disclosures.

The Bureau requests comment on proposed § 1006.26(c)(3)(ii) and on proposed comments 26(c)(3)(ii)-1 and -2. In particular, the Bureau requests comment on the content,

format, and design of proposed Model Forms B-4 through B-7. The Bureau also requests comment on whether the two conditions described on the model forms—payment and written acknowledgement—capture all circumstances in which State law permits revival.

*26(c)(3)(iii) Delivery*

Proposed § 1006.26(c)(3)(iii) would state that, when providing the disclosures required by proposed § 1006.26(c)(1) on a validation notice or a written communication that is not a validation notice, a debt collector must do so in a manner permitted by proposed § 1006.42. As discussed in the May 2019 Proposed Rule, proposed § 1006.42(a)(1) generally would require a debt collector who provides disclosures required by Regulation F in writing or electronically to 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.<sup>121</sup> Proposed § 1006.42(b) through (e) in the May 2019 Proposed Rule explain how debt collectors may provide required notices to consumers by email or text message.<sup>122</sup>

The Bureau proposes § 1006.26(c)(3)(iii) 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

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<sup>121</sup> See 84 FR 23274, 23355-57 (May 21, 2019). The May 2019 Proposed Rule would except from this requirement two disclosures that would be required to accompany all written debt collection communications (even relatively routine ones), on the theory that subjecting them to proposed § 1006.42(a)(1) likely would impose an unnecessary burden on debt collectors with little corresponding benefit to consumers. *Id.* The disclosures that proposed § 1006.26(c) would require would accompany at most two of the debt collector's communications, so there is no similar basis to except them from proposed § 1006.42(a)(1).

<sup>122</sup> See *id.* at 23357-67. As discussed in the May 2019 Proposed Rule, the Bureau proposed § 1006.42(b) through (d) based, in part, on its authority under the Electronic Communications in Global and National Commerce Act (E-SIGN Act). *Id.*; see also *id.* at 23285 (describing Bureau's E-SIGN Act authority).

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. 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 the rule's disclosure provisions. Thus, whatever benefits debt collectors may receive from such conduct do not appear to be outweighed by the costs to consumers.

In addition, to the extent proposed § 1006.26(c)(3)(iii) applies to the provision of disclosures on a validation notice, the Bureau proposes § 1006.26(c)(3)(iii) 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.<sup>123</sup> The Bureau requests comment on proposed § 1006.26(c)(3)(iii).

#### *26(c)(3)(iv) Translated Disclosures*

As discussed, the disclosures that proposed § 1006.26(c)(1) would require may help resolve consumer uncertainty related to the collection of time-barred debts and enable consumers to make more informed choices about whether to pay or prioritize such debts. Because some consumers do not speak or understand English, some debt collectors communicate with consumers in languages other than English. Consumers who are unable to communicate in

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<sup>123</sup> *Id.* at 23356.

English would benefit from receiving translated versions of the disclosures. At the same time, requiring debt collectors to identify such consumers and provide accurate translations in the myriad languages that consumers speak may impose a significant burden on industry. If a debt collector chooses to communicate with a consumer in a non-English language, however, this burden may be reduced. Such a debt collector has already identified the consumer's language preference and exhibited a willingness to communicate in that language. Although preparing accurate translations of the disclosures described in proposed § 1006.26(c)(1) may be challenging in some circumstances, requiring a debt collector who communicates in a non-English language to provide the disclosures in that language may prevent deception and help ensure that the disclosures are effective for more consumers.<sup>124</sup>

For these reasons, and pursuant to the Bureau's authority under FDCPA section 814(d) and Dodd-Frank Act section 1032(a), proposed § 1006.26(c)(3)(iv) would require a debt collector to make the disclosures that would be required by proposed § 1006.26(c)(1) in the same language or languages used for the rest of the communication in which the disclosures are conveyed. Proposed § 1006.26(c)(3)(iv) also would require that any translation of the disclosures that would be required by § 1006.26(c)(1) be complete and accurate. Proposed comment 26(c)(3)(iv)-1 provides illustrative examples, the second of which illustrates the application of proposed § 1006.26(c)(3)(iv) to communications that take place in multiple languages. Proposed comment 26(c)(3)(iv)-2 would clarify that the language of a disclosure obtained from the Bureau's website is considered a complete and accurate translation, although

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<sup>124</sup> Proposed § 1006.34(e) in the May 2019 Proposed Rule also would require the translation of any such disclosures provided on a validation notice that is translated into a language other than English. *See id.* at 23405 (permitting a debt collector who also sends an English-language validation notice in the same communication, or who has already provided an English-language validation notice, to "send the consumer a validation notice completely and accurately translated into any language").

debt collectors are permitted to use other translations so long as those translations are complete and accurate. The Bureau requests comment on proposed § 1006.26(c)(3)(iv).

*Section 1006.34 Notice for Validation of Debts*

*34(c) Validation Information*

*34(c)(2) Information about the Debt*

*34(c)(2)(xi)*

In the May 2019 Proposed Rule, the Bureau proposed § 1006.34(a) to require debt collectors to provide consumers with specified validation information, either by sending the consumer a validation notice in the initial communication, as defined in proposed § 1006.34(b)(2), or within five days of that initial communication, or by providing the information orally in the initial communication.<sup>125</sup> Proposed § 1006.34(c) in the May 2019 Proposed Rule set forth the required validation information, with proposed § 1006.34(c)(2) specifying the information that debt collectors would be required to provide about the debt being collected.<sup>126</sup> Because the time-barred debt and revival disclosures described in § 1006.26(c)(1) and (2) represent information about the debt that debt collectors would be required to include, as applicable, on validation notices, the Bureau proposes to include the disclosures in the list of validation information in § 1006.34(c)(2). Specifically, the Bureau proposes § 1006.34(c)(2)(xi) to provide that validation information includes a time-barred debt disclosure, or a time-barred debt and a revival disclosure, if the debt collector determines after a reasonable investigation that such disclosures are required by § 1006.26(c). Thus, a debt collector who provides the proposed § 1006.26(c) disclosures after undertaking a reasonable inquiry and concluding that the

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<sup>125</sup> *Id.* at 23404.

<sup>126</sup> *Id.*

disclosures are required would not violate proposed § 1006.34 for having made the disclosures even if it is determined later that such disclosures were not required. For the reasons discussed in the section-by-section analysis of proposed § 1006.26(c)(1), the Bureau proposes § 1006.34(c)(2)(xi) pursuant to its authority under FDCPA sections 814(d) and 807 and Dodd-Frank Act section 1032(a). The Bureau requests comment on proposed § 1006.34(c)(2)(xi).

## **VI. Dodd-Frank Act Section 1022(b) Analysis**

### *A. Overview*

In developing the supplemental proposed rule, the Bureau has considered its potential benefits, costs, and impacts.<sup>127</sup> 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 requests for repayment.

The supplemental proposal would require debt collectors to make certain disclosures when attempting to collect time-barred debt. The new requirements would provide benefits to consumers by helping to correct the misimpression that consumers might have that debt collectors can legally sue to collect time-barred debts. Correcting this misimpression can help

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<sup>127</sup> Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act 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 and services; the impact of proposed rule on insured depository institutions and insured credit unions with less than \$10 billion in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

consumers because a better understanding of whether they can be sued could be important in deciding how to prioritize time-barred debts relative to other debts or expenses such as household necessities. The requirements would also impose costs on debt collectors who would need to determine for each debt whether the disclosures are required and to provide the disclosures when appropriate. The disclosures could also reduce debt collector revenue because consumers who receive such disclosures might be less willing to repay time-barred debts. In addition to these effects, there could be indirect impacts on credit markets. This is because, if the proposal were to increase costs for debt collectors or reduce repayment of time-barred debt, it would reduce the expected return to lending. This could lead lenders to increase interest rates and other costs to borrowers and to restrict availability of credit, particularly to higher-risk borrowers.<sup>128</sup>

In developing the supplemental 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 the supplemental proposal, which would require debt collectors who are collecting debts that they know or should know are time barred to provide time-barred debt disclosures and, if applicable, revival disclosures to consumers.

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<sup>128</sup> See 84 FR 23274, 23371-72, 23389-91 (May 21, 2019).

### *C. Data Limitations and Quantification of Benefits, Costs, and Impacts*

The discussion in this part VI relies on publicly available information as well as information the Bureau has obtained. The Bureau engaged a contractor to conduct qualitative and quantitative testing to evaluate consumers' understanding of time-barred debt and revival and of disclosures about time-barred debt and revival. Specifically, the Bureau conducted 54 qualitative one-on-one interviews with consumers between April 2017 and April 2019, in order to refine the disclosures. The Bureau then conducted an online survey designed to assess the effectiveness of time-barred debt and revival disclosures. The online survey, completed in September of 2019, surveyed 8,011 consumers—66 percent of whom had debt collection experience—and used random assignment to study the effect of receiving a time-barred debt disclosure alone, or time-barred debt and revival disclosures together, on consumer comprehension of time-barred debt and revival.<sup>129</sup>

The Bureau also relies on the results of its 2015 Survey of Consumer Views on Debt, which provided the first comprehensive and nationally representative data on consumers' experiences and preferences related to debt collection.<sup>130</sup> In addition, the Bureau relies on its Consumer Credit Panel (CCP) to understand potential benefits and costs to consumers of the proposed rule.<sup>131</sup> To better understand potential effects on industry of potential requirements, such as those in the proposed rule, the Bureau has engaged in significant outreach, including the

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<sup>129</sup> See CFPB Quantitative Testing Report, *supra* note 64. The survey results provide important information on consumer comprehension of disclosures about time-barred debt; however, as further discussed in the Testing Results Report, effects observed in a controlled setting such as the survey may differ from those observed in practice.

<sup>130</sup> Bureau of Consumer Fin. Prot., *Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt* (Jan. 2017), <https://www.consumerfinance.gov/data-research/research-reports/consumer-experiences-debt-collection-findings-cfpbs-survey-consumer-views-debt/>.

<sup>131</sup> 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/>.

CFPB Debt Collections Operations Study.<sup>132</sup> 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, including disclosures regarding a debt's time-barred status.<sup>133</sup>

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 supplemental proposed rule. The Bureau provides the best estimates possible of the potential benefits and costs to consumers and covered persons of this proposal given available data. However, available data sources 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 the debt collection market rather than from representative sampling that would allow the Bureau to estimate total benefits and costs.

The Bureau's discussion in this part generally considers the benefits, costs, and impacts of the supplemental proposal through the first 10 years after the potential effective date. The Bureau generally anticipates that any one-time costs to covered persons of coming into compliance with the supplemental proposal would be borne before or during the first year after the effective date. Ongoing benefits and costs would likely vary from year to year in accordance with the amount of time-barred debt collected in any year. The Bureau does not have any basis at this time to predict how that amount will vary during future years.

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<sup>132</sup> See 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](https://www.consumerfinance.gov/documents/755/20160727_cfpb_Third_Party_Debt_Collection_Operations_Study.pdf) (hereinafter CFPB Debt Collection Operations Study).

<sup>133</sup> See Small Business Review Panel Report, *supra* note 51.

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 supplemental 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 supplemental proposed rule.

#### *D. Baseline for Analysis*

In evaluating the potential benefits, costs, and impacts of the supplemental proposal, the Bureau takes as a baseline 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 by courts and law enforcement agencies, other Federal laws, and the rules and statutory requirements promulgated by the States.<sup>134</sup> In the consideration of potential benefits, costs, and impacts 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.

#### *E. Coverage of Proposal*

The proposed rule would apply to debt collectors as defined in the FDCPA, as further discussed in the May 2019 Proposed Rule.<sup>135</sup> Creditors that collect on debts they own generally would not be affected directly by the proposal because they typically are not debt collectors for

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<sup>134</sup> These requirements, and the specificity of the requirements, may vary depending upon the jurisdiction in which the collection occurs. For example, as discussed in part II.C, certain States require specific disclosure language be provided when collecting time-barred debt.

<sup>135</sup> See 84 FR 23274, 23372 (May 21, 2019).

purposes of the FDCPA. Creditors, however, may experience indirect effects if debt collectors' costs increase and if those costs are passed on to creditors.

#### *F. Potential Benefits and Costs to Consumers and Covered Persons*

Proposed § 1006.26(c) would require debt collectors who are collecting debts that they know or should know are time barred to provide time-barred debt disclosures and, if applicable, revival disclosures to consumers. Proposed model forms B-4 through B-7 include the disclosures that debt collectors could use to comply with the disclosure requirements of proposed § 1006.26(c).

*Potential benefits and costs to consumers.* The proposed time-barred debt and revival disclosures would benefit consumers by providing them with information that may be important when deciding how to respond to a request for payment. A debt collector's attempt to collect a time-barred debt may give a consumer the impression that the debt is legally enforceable—an impression that is false for time-barred debts. A consumer who takes away from the collection attempt that he or she will, or could, be sued for a time-barred debt may place greater priority on paying that debt than if he or she knew that the debt collector could not sue. Furthermore, a consumer who is unaware of the actions that would trigger revival may revive the debt collector's right to sue, for example by making a partial payment.

The consumer benefits of the proposed time-barred debt and revival disclosures depend on a number of factors, including: (i) how frequently debt collectors attempt to collect debt that is time barred; (ii) what consumers already understand about debts' time-barred status and how much the proposed disclosures would improve their understanding about time-barred debt and revival; and (iii) the value to consumers of gaining a better understanding of time-barred debt and revival and making better-informed decisions as a result. The Bureau cannot fully quantify

each of these factors, although the Bureau has research and other data that are relevant to the potential extent of these benefits.

First, regarding the frequency with which debt collectors attempt to collect time-barred debt, the Bureau is not aware of representative data showing how much debt collection activity involves time-barred debt. There is evidence that some debt collectors contact a substantial share of consumers to attempt to collect time-barred debt. For example, a 2013 FTC report notes that most statutes of limitations are between three and six years and estimates that, for certain large debt buyers, about a third of debt purchased was at least three years old, and 12 percent of debt purchased was at least six years old.<sup>136</sup> On the other hand, some contingency collection agencies have told the Bureau that they do not collect any debt that is time barred. Variation in State statutes of limitations makes quantification of the number of debts that are time barred difficult; some States consider debts time barred if they are three years from charge off, while others use longer periods, such as seven or 15 years, to demarcate time-barred debt. The Bureau has estimated that at least 49 million consumers are contacted by a third-party debt collector each year about a debt in collection.<sup>137</sup> Even if only a relatively small fraction of those consumers' debts were time barred, it could still mean that debt collectors contact millions of consumers each year about time-barred debts.

Second, the Bureau has some evidence that consumers do not have a clear understanding of what constitutes time-barred debt and the implications of having a debt that is time barred. In focus groups the Bureau observed in developing the proposed disclosures, for example, consumers expressed erroneous beliefs about if debts are time barred, if they can be sued for

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<sup>136</sup> FTC Debt Buying Report, *supra* note 8, at 43. The same study estimates that, even for debts that are at least 15 years old, these debt buyers attempted to collect the debt at least 29 percent of the time. *Id.* at B-12.

<sup>137</sup> See 84 FR 23274, 23384 (May 21, 2019).

time-barred debt, and if time-barred debt can appear on their credit report.<sup>138</sup> As an example, one consumer said “I think you’re forgiven after twenty years.” Additionally, as discussed in the Quantitative Testing Report, without a disclosure, most consumers believe they can be sued for a debt even if it is old enough to be time barred in most jurisdictions. When asked if a debt collector could sue to collect a debt if the debtor did nothing in response to the collection notice for a ten-year-old debt, about 65 percent of respondents who read a notice about a debt that did not include a time-barred debt disclosure incorrectly reported that the debt collector was legally allowed to sue to collect the debt.<sup>139</sup> Being presented with a disclosure explaining that a debt is time barred largely corrected this misunderstanding: approximately 65 percent of respondents who were randomly assigned a notice containing a time-barred debt disclosure (with or without a revival disclosure) correctly stated that they could not be sued on the debt.<sup>140</sup>

Similarly, the Bureau has evidence to suggest that consumers do not understand the actions that trigger revival of a debt collector’s right to sue on a time-barred debt. In focus groups, participants in general were confused about actions that would trigger revival, in particular finding it surprising that making a payment made them susceptible to being sued. One participant said, “Why would they punish me for trying to make a payment?”<sup>141</sup> The Bureau’s quantitative research findings are consistent with this. Of the respondents who did not receive a disclosure informing them of the actions that trigger revival, fewer than 20 percent correctly reported that the debt collector is legally allowed to sue the debtor if the debtor makes a partial

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<sup>138</sup> FMG Focus Group Report, *supra* note 40, at 9-10.

<sup>139</sup> CFPB Quantitative Testing Report, *supra* note 64, at appendix table 8. The length of the limitations period generally varies by State and debt type. Most statutes of limitations applicable to debt collection claims are between three and six years, and therefore a ten-year-old debt is likely to be time-barred in most states.

<sup>140</sup> *Id.*

<sup>141</sup> FMG Cognitive Report, *supra* note 40, at 35-36.

payment, and fewer than 20 percent correctly reported that a debt collector is legally allowed to sue if the debtor sends a letter acknowledging the debt as theirs.<sup>142</sup> In contrast, once a revival disclosure was provided, about 70 percent of respondents reported correctly that the debtor can be sued after making a partial payment, and about 58 percent reported correctly that the debtor can be sued after writing to the debt collector to acknowledge the debt as theirs.<sup>143</sup> This research suggests that consumers generally do not understand that making a partial payment or writing a debt collector to acknowledge a time-barred debt can trigger revival of a debt collector's right to sue to collect the debt, but that a revival disclosure can substantially improve understanding of the implications of these actions.

Finally, the Bureau has evidence that, if consumers know that debts are time barred, that knowledge is likely to affect their conduct relating to the debts. Consumers in focus groups expressed that it was important to know that a debt was time barred. The Bureau's Quantitative Testing Report indicates that, for many respondents, understanding a debt's time-barred status and revival could affect their choice of what to do about a debt under some circumstances. Respondents who were shown a time-barred debt and revival disclosure were more likely to say that they would ignore the debt, and less likely to say that they would make a payment on the debt, than respondents who did not see a disclosure or who saw a time-barred debt disclosure without a revival disclosure.<sup>144</sup> These differences were statistically significant and relatively

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<sup>142</sup> CFPB Quantitative Testing Report, *supra* note 64, at appendix tables 9-10. These results compare respondents who received a time-barred debt with revival disclosure to respondents who received either a time-barred debt disclosure that did not mention revival or no time-barred debt disclosure at all.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 28-30. Respondents were asked about a hypothetical debt and told that "while it would not be easy, [the respondent] probably could find a way to come up with money to pay the debt." The survey results thus more closely reflect consumer choices in that situation than situations in which consumers are either more or less able to repay.

large in magnitude. For example, of respondents who saw either a time-barred debt disclosure without revival or no time-barred debt disclosure, about 31 to 38 percent said they would be “very likely” to make a full or partial payment on a hypothetical debt, whereas about 23 percent of respondents who saw the a time-barred debt with revival disclosure said they would be “very likely” to pay.<sup>145</sup> The fact that many respondents who saw a time-barred debt with revival disclosure said they would make different choices suggests that, for consumers such as these respondents, the information in the proposed disclosure is valuable in making choices.

The Bureau is unaware of data that could be used to estimate the frequency with which debt collectors in fact sue or threaten to sue on revived debt. Industry representatives state that many debt collectors choose not to sue or threaten to sue on time-barred debt even if the consumer takes action to revive the right to sue, and one major trade association composed largely of debt buyers has established standards that prohibit its members from suing or threatening to sue on time-barred debt even if the right to sue has been revived.<sup>146</sup> However, the Bureau does not know what share of time-barred debts are collected by debt collectors following such a policy. The benefits of the revival disclosures in the supplemental proposal may be limited if few debt collectors in fact sue or threaten to sue after the right to do so has been revived.

The estimates above suggest that the proposed time-barred debt and revival disclosures could benefit some consumers, but the Bureau expects this benefit could vary based on current

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<sup>145</sup> *Id.* at appendix table 23.

<sup>146</sup> 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.”)

State law and the practices of particular debt collectors. The Bureau understands, for example, that some debt collectors, when attempting to collect time-barred debt, currently disclose to consumers that they cannot sue to collect the debt.<sup>147</sup> Moreover, certain jurisdictions, including California and New York, require debt collectors to make time-barred debt disclosures, and in some cases revival disclosures, in at least some circumstances. The benefits of the proposed disclosures may be limited where similar disclosures are already being provided.

The proposed disclosures could have costs to consumers if they lead to mistaken beliefs about the consequences of consumers' actions. Some results of the Bureau's quantitative testing suggest that a revival disclosure could lead some consumers to overgeneralize the actions that can make them susceptible to lawsuit. In the Bureau's quantitative testing, about 45 percent of respondents who saw the revival disclosure incorrectly reported that the debt collector is legally allowed to sue the debtor to collect time-barred debt if the debtor calls to acknowledge the debt as theirs, relative to about 17 percent of respondents who saw no disclosure about time-barred debt or revival and about 9 percent of respondents who saw a time-barred debt disclosure without revival.<sup>148</sup> As discussed in the section-by-section analysis of proposed § 1006.26(c)(3)(i), the Bureau has made a small change to the content of the disclosures on proposed Model Forms B-5 through B-7 (*i.e.*, the proposed model forms containing revival language), specifically mentioning that the debt collector will not sue if the consumer does nothing or speaks to the debt collector about the debt, to attempt to reduce the risk of this type of overgeneralization.

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<sup>147</sup> Some debt collectors also must provide such disclosures as a result of consent agreements with law enforcement agencies, including the Bureau and the FTC. See *supra* note 96.

<sup>148</sup> CFPB Quantitative Testing Report, *supra* note 64, at appendix table 11.

Another potential cost to consumers could arise if the proposed disclosures make debt collectors more likely to sue consumers before a debt becomes time-barred. The Bureau's research provides some evidence that consumers may be less likely to pay debts that they know are time barred, as discussed below in the Bureau's consideration of costs to covered persons. Requiring debt collectors to disclose that a debt is time barred may therefore reduce the number of time-barred debts that are paid. Knowing that a consumer is less likely to pay a time-barred debt may make debt collectors more likely to pursue litigation prior to a debt reaching the statute of limitations, which could impose costs on some consumers. However, as described below, the available evidence suggests that, in practice, time-barred debt disclosures in use today do not lead to a material reduction in the aggregate rate at which time-barred debt is repaid, which in turn suggests that there would not be a large increase in litigation. The Bureau requests data and other evidence that would permit it to better estimate any such effects.

*Potential benefits and costs to covered persons.* The supplemental proposal would require debt collectors who attempt to collect time-barred debt to provide new disclosures in certain communications with consumers. This could impose one-time costs for systems that identify whether a debt is time barred and whether (and if so, when) it is subject to revival, and it may impose ongoing costs both to determine whether debts are time barred and to make disclosures when appropriate.

To quantify costs of the proposal to covered persons, the Bureau would need to estimate the number of debt collectors who collect time-barred debt, the number of time-barred accounts they collect, the cost to such debt collectors of determining whether a debt is time barred and whether and when it can be revived, and the cost of making the proposed disclosures when appropriate. The Bureau does not have representative data that permit it to estimate the number

of debt collectors who collect time-barred accounts or the number of time-barred accounts they collect. The Bureau understands based on industry outreach that many debt collectors do not collect time-barred accounts. Even debt collectors who do not regularly collect time-barred debt might need to review systems to ensure that they are not communicating about time-barred debts without providing the appropriate proposed disclosure in circumstances when they are required; however, as discussed below, the Bureau expects that the burden of the proposed provision on such debt collectors would be lower than for debt collectors who regularly collect time-barred accounts.

Among those debt collectors who do regularly attempt to collect time-barred accounts, the Bureau understands that some currently disclose to consumers that they cannot sue to collect the debt. Moreover, debt collectors who are collecting debt in certain jurisdictions, such as California and New York, already must make such disclosures in at least some circumstances. Also, debt collectors who litigate accounts must know whether an account is time barred to avoid threatening to sue or suing on time-barred accounts in violation of the FDCPA as interpreted by existing FDCPA case law. Thus, some debt collectors, particularly ones that collect nationwide or that engage in litigation, already have a process in place for identifying time-barred accounts and, where they do attempt to collect time-barred debt, for providing disclosures to consumers about the time-barred status of such accounts.<sup>149</sup>

The Bureau understands that determining whether an account is time barred is not always straightforward, particularly for debt collectors operating in a range of jurisdictions. Different

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<sup>149</sup> Consistent with this, the FTC found that debt buyers commonly consider the prevalence of time-barred debt when bidding on portfolios of debt, suggesting that debt buyers and sellers of debt regularly determine whether debts are time barred. *See* FTC Debt Buying Report, *supra* note 8, at 21.

States have different statutes of limitations for different types of debt.<sup>150</sup> Which statute applies depends on questions such as where the consumer resides and the nature of the credit contract, as well as which State’s law a court applies to a given case. As noted above, many debt collectors already must make decisions about a debt’s time-barred status to determine whether a lawsuit is permissible or, in certain States, whether particular disclosures are required. Even for these debt collectors, however, the proposed rule would increase the importance of making the correct determination. The Bureau anticipates that some collection agencies and debt buyers would incur legal and programming costs to develop a system to identify time-barred accounts and incorporate the determination into the collection management system.<sup>151</sup> These costs could be mitigated somewhat by the proposed rule’s “know or should know” standard for the debt’s time-barred status, which could reduce the likelihood that debt collectors would be held liable for failing to identify time-barred debt. Debt collectors would also incur costs to train staff to answer consumer questions about the proposed disclosures and to incorporate information about the new disclosures into their systems for managing communication with consumers.

Debt collectors could also incur ongoing costs of determining whether debts are time barred. Debt collectors would need to update systems from time to time to reflect changes in State laws regarding statutes of limitations and might need to perform new legal analyses when facing novel questions of law or fact, such as when beginning to collect debt from consumers in a particular jurisdiction for the first time.

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<sup>150</sup> Small Business Review Panel Report, *supra* note 51, at 25.

<sup>151</sup> The Bureau understands that many debt collectors who currently track the time-barred status of debts to comply with existing requirements are able to categorize debts as time barred in an automated way. In part, this may require debt collectors to take a conservative approach of erring in favor of categorizing debt as time barred in cases where there might be doubt as to a debt’s time-barred status and where a detailed fact-specific inquiry about a particular account would be costly.

For accounts that are identified as time barred, debt collectors would need to make disclosures with certain written and oral communications. This would impose direct costs to make the disclosures and potentially indirect costs because consumers may be less likely to pay debts after being informed that those debts are time barred.

Debt collectors most often initiate communication with consumers by letter, meaning that most disclosures required by the proposal would be made in writing.<sup>152</sup> The Bureau does not anticipate that debt collectors would incur substantial ongoing costs to provide the proposed disclosures in written materials because required disclosures could be automatically included in written materials when applicable.

Some debt collectors call consumers before sending any written material and would need to make any required disclosure orally in their first communication with the consumer. For oral communications, the Bureau anticipates that debt collectors or their vendors would adjust collection management systems to identify disclosures that must be made and prompt debt collector employees to make oral disclosures when required. The required disclosure would increase the length of each conversation about a time-barred debt by perhaps 5 to 10 seconds, though if consumers have questions about the disclosure, this could lengthen some calls considerably. If the disclosure lengthens initial calls to collect a time-barred debt by 15 seconds on average, given an assumed average labor cost of \$22 per hour for debt collectors, this would cost approximately \$0.09 per call.<sup>153</sup>

Costs may also increase if debt collectors and creditors increase monitoring of calls regarding time-barred debt to ensure compliance. Many debt collectors currently audit telephone

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<sup>152</sup> CFPB Debt Collection Operations Study, *supra* note 132, at 28.

<sup>153</sup> *Id.* at 17.

conversations, either by listening to a sample of calls or by using automated voice-recognition software, to ensure that individual debt collectors comply with applicable law and other standards. A new required disclosure for time-barred debt could increase the cost of such monitoring, by adding to the list of items that must be audited.

The Bureau believes that many consumers are unaware of the statute of limitations or may not know whether it has expired for their debt. As discussed above, the Bureau's quantitative survey suggests that some consumers might not repay a debt if they know they cannot be sued, although others may repay regardless.<sup>154</sup> While the Bureau's quantitative research findings show that about 44 percent of respondents who viewed a time-barred debt with revival disclosure indicated they would be "very unlikely" to pay, about 32 percent answered they would be likely or very likely to pay (indicated either a 4 or 5 on a 5-point scale where 5 was "very likely").<sup>155</sup> In contrast, about 18 to 26 percent of consumers who did not see the revival disclosure said they would be "very unlikely" to pay, and about 54 to 56 percent of these consumers said they would be likely or very likely to repay.<sup>156</sup>

These survey results reflect responses to a hypothetical question by respondents who were being asked specifically about a debt's time-barred status. They suggest that the proposed disclosures can affect consumers' decisions about whether to repay under certain circumstances. The degree to which the proposed disclosures would affect repayment of time-barred debt in aggregate depends on a number of other factors, including the extent to which debt collectors

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<sup>154</sup> CFPB Quantitative Testing Report, *supra* note 64, at 28-30. In addition, another study found that, when told they could not be sued, 34 percent of participants reflecting on a hypothetical scenario said they would decline to pay relative to 6 percent who were not told they could not be sued. FTC Debt Buying Report, *supra* note 8, at 47.

<sup>155</sup> CFPB Quantitative Testing Report, *supra* note 64, at appendix table 23.

<sup>156</sup> *Id.* The likelihood that consumers choose to repay actual debts is likely to be different than the rate at which survey respondents said they would repay debt in a hypothetical situation, but the survey findings do suggest that time-barred debt and revival disclosures will affect some consumers' repayment decisions.

actively attempt to collect time-barred debts, whether debt collectors are able to contact consumers, and whether consumers are willing and able to repay debts. To better understand the effect of time-barred debt disclosures on aggregate real-world collections activity, the Bureau examined credit report data from the CCP. As noted above, some debt collectors already provide time-barred debt disclosures; some do so voluntarily, while others are required by State law or a consent order to do so. While the Bureau has no data regarding debt collectors who voluntarily provide time-barred debt disclosures, the Bureau has some data in the CCP regarding the effects of disclosures mandated by State laws. The Bureau analyzed whether a likely time-barred collections tradeline in the CCP has a lower probability of being paid if there is a State-mandated time-barred debt disclosure requirement in effect. To determine whether a collections tradeline is likely past the State statute of limitations, the Bureau used the same procedure as in its analysis of the effects of prohibiting threats of suit on time-barred debt in the May 2019 Proposed Rule.<sup>157</sup> The Bureau identified nine States with laws or regulations mandating some kind of time-barred debt disclosure: California,<sup>158</sup> Connecticut,<sup>159</sup> Massachusetts,<sup>160</sup> Nevada,<sup>161</sup> New Mexico,<sup>162</sup> New York,<sup>163</sup> North Carolina,<sup>164</sup> Vermont,<sup>165</sup> and West Virginia.<sup>166</sup>

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<sup>157</sup> See 84 FR 23274, 23381-82 (May 21, 2019).

<sup>158</sup> Cal. Civ. Code 1788.52(d). This law only applies to debt buyers, and so the Bureau only considered California debts to have a disclosure required if the CCP data indicate that the debt was held by a debt buyer.

<sup>159</sup> Conn. Gen. Stat. 36a-805(a)(14).

<sup>160</sup> Mass Code Regs., tit. 904, 7.07(24).

<sup>161</sup> Nev. Rev. Stat. 649.332(2). This regulation only applies to “hospital” debt. The Bureau only considered Nevada debts to have a disclosure required if the CCP data indicate that the tradeline was related to a medical debt.

<sup>162</sup> N.M. Admin. Code 12.2.12.9.

<sup>163</sup> N.Y. Comp. Codes R. & Regs. tit. 23, 1.3.

<sup>164</sup> N.C. Gen. Stat. 58-70-115.

<sup>165</sup> 6 Code of Vt. Rules 031-004-Rule CF 104.05.

<sup>166</sup> W. Va. Code 46a-2-128(f).

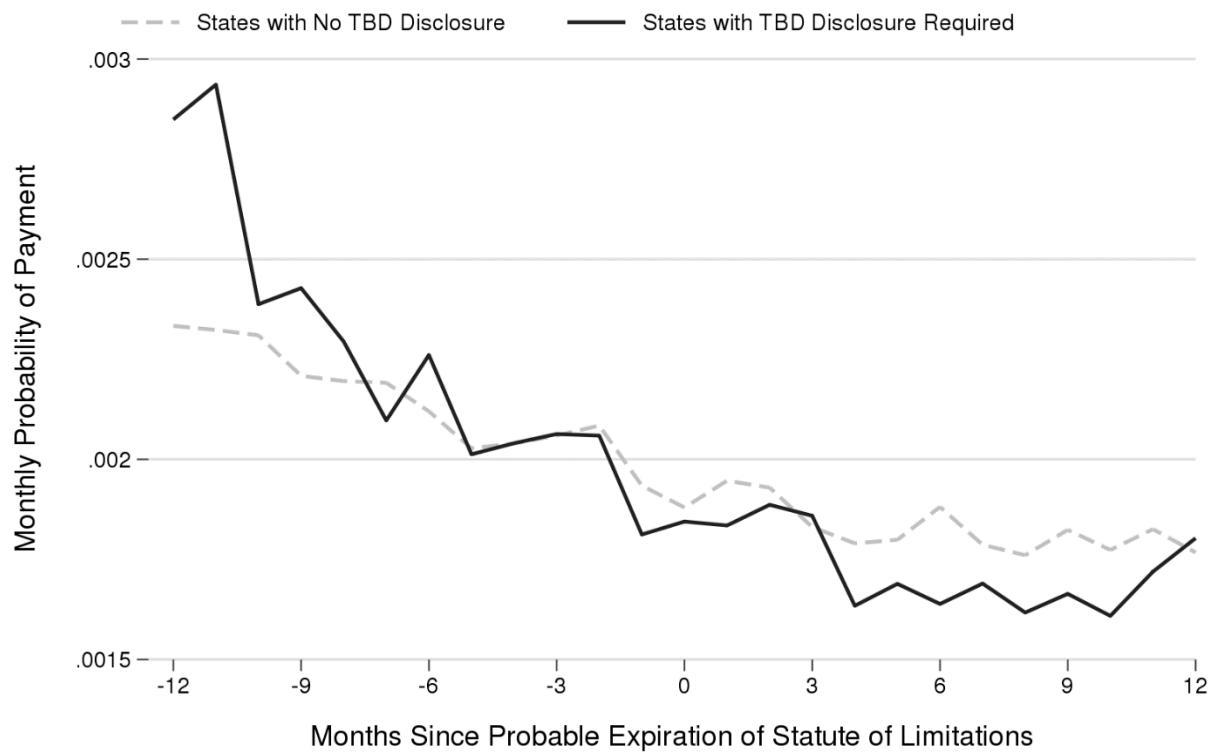
The Bureau calculated the hazard rate of payment over time in collections—that is, the probability of payment occurring after a given number of months, conditional on no payment occurring before—for all collections tradelines in the CCP. The Bureau also calculated the hazard rate separately for tradelines belonging to consumers residing in a State where a time-barred debt disclosure would have been required after the expiration of the statute of limitations, and for tradelines belonging to consumers residing in States that did not have these requirements.<sup>167</sup> The Bureau then calculated the average hazard rate based on the number of months before or after the probable expiration of the applicable statute of limitations, again with separate calculations for loans with and without a State-mandated time-barred debt disclosure. This calculation is plotted in Figure 1, below.<sup>168</sup> The hazard of payment declines steadily over the year leading up to the probable expiration of the statute of limitations and continues to decline at roughly the same rate afterwards, with the rate of decline flattening out slowly over time. If the requirement to make a time-barred debt disclosure significantly affects payment rates, one would expect the hazard rate in States with disclosures to diverge downward from the rate in States without disclosures following the probable expiration of the State statute of limitations. In fact, although prior to the probable expiration of the State statute of limitations

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<sup>167</sup> The calculations rely on the assumption that debts owed by consumers who reside in a given State are governed by the statute of limitations in that State and that consumers in that State receive disclosures mandated by the law of that State. Note that some of the States in question passed their laws or regulations mandating a time-barred debt disclosure during the sample period studied by the Bureau. Specifically, California's law became effective January 1, 2014; Connecticut's law became effective October 1, 2013; Massachusetts' regulation became effective March 2, 2012; Nevada's law became effective June 13, 2007; New Mexico's law became effective March 15, 2011; New York's regulation became effective December 1, 2014; North Carolina's law became effective October 1, 2009; Vermont's law became effective January 1, 1976; and West Virginia's law became effective June 6, 2014. The CCP data used in the Bureau's analysis covers the period from 2005 to 2018. For purposes of this analysis, the Bureau excluded debts belonging to consumers in States that eventually mandated time-barred debt disclosures if the probable expiration of the statute of limitations occurred before the disclosure became effective.

<sup>168</sup> 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.

the hazard of payment declines slightly faster in States with time-barred debt disclosures than in States that do not require disclosure, the slope flattens out more following the probable expiration of the statute of limitations in States with disclosures, compared to States without. This suggests that time-barred debt disclosures in these States have not resulted in a large drop in the aggregate likelihood that consumers pay time-barred debts, although it is still consistent with the possibility that repayment rates are reduced for certain types of debt or for consumers in certain situations.



Thus, while the requirement to provide the proposed disclosures would likely impose some costs on covered persons, the Bureau does not expect that the proposed disclosures would have large effects on aggregate collections revenue.

*Alternatives considered.* The Bureau considered alternative proposals regarding time-barred debt and revival, including those considered as part of the SBREFA process. In the Small Business Review Panel Outline, the Bureau considered an alternative that would also require debt collectors to provide a disclosure when collecting time-barred debt but would prohibit debt collectors from collecting on time-barred debt that can be revived unless they waive the right to sue on the debt. Under the requirement considered, subsequent debt collectors would be bound by the disclosure made by any previous debt collectors. Such a requirement could have benefits for consumers relative to the supplemental proposal, because it would mean debt would generally not be revived regardless of whether consumers read and understood a disclosure about revival. Similarly, this alternative would be more burdensome for debt collectors than the proposed requirement because it would prevent them from suing to recover debts when the consumer had taken actions that revive the debts. However, the differences in consumer benefits and in debt collector costs from this alternative could be quite small assuming that, as industry has claimed, collectors do not in fact sue to recover debts that have been revived.

The Bureau also considered requiring a time-barred debt disclosure without requiring any disclosure about revival. Such a requirement could be less burdensome for small entities under some circumstances. However, the Bureau’s quantitative disclosure testing indicates that many consumers who view a time-barred debt disclosure without a disclosure about revival fail to understand that certain actions they take could revive the debt.<sup>169</sup>

#### *G. Potential Reduction of Access by Consumers to Consumer Financial Products and Services*

Economic theory indicates that it is possible for changes in debt collection rules, such as those contained in this supplemental proposal, to affect consumers’ access to credit. Under

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<sup>169</sup> See CFPB Quantitative Testing Report, *supra* note 64, at 16-25.

economic theory, 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 and expected payments will decrease. If the proposed rule were to increase collection costs or reduce revenue collected from time-barred debt, then this would reduce the return to lending, which in theory could lead lenders to increase the cost of lending, restrict availability of credit, or both.

As discussed in the May 2019 Proposed Rule, the Bureau has considered the available empirical data and research on the effect of State debt collection laws on the price and availability of credit.<sup>170</sup> That research shows that State debt collection laws affect the price and availability of credit in ways that theory would predict, but that effects are relatively small even for changes in State laws that are likely more significant than the disclosures in this proposed rule.<sup>171</sup> In light of that research and the CCP analysis above, the Bureau concludes that the disclosures in the proposed rule are unlikely to cause any significant reduction in access to consumer credit. The Bureau requests comment on this conclusion and data that can provide insights into the impact of the proposed disclosures on the price and availability of credit.

#### *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 under the proposal. Creditors could experience

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<sup>170</sup> See 84 FR 23274, 23389-91 (May 21, 2019).

<sup>171</sup> For example, one study found that additional State regulations on debt collectors' conduct caused the success rate of a credit inquiry to decline by less than 0.02 percentage points off a base rate of about 43 percent. See 84 FR 23274, 23389-90 (May 21, 2019).

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 uncollected 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 supplemental 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. The Bureau does not have any information to suggest that consumers in rural areas are more or less likely than other consumers to have time-barred debt or to benefit from disclosures about time-barred debt. 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 any modifications to the proposed provisions made in response to comments, 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 implementation costs and ongoing operational costs imposed by the proposed provisions.

## **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.”<sup>172</sup> 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.<sup>173</sup> Section 603(b)(2) requires a succinct statement of the objectives of, and the legal basis for, the proposed rule.<sup>174</sup> 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.<sup>175</sup> 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.<sup>176</sup>

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<sup>172</sup> 5 U.S.C. 603(a).

<sup>173</sup> 5 U.S.C. 603(b)(1).

<sup>174</sup> 5 U.S.C. 603(b)(2).

<sup>175</sup> 5 U.S.C. 603(b)(3).

<sup>176</sup> 5 U.S.C. 603(b)(4).

Section 603(b)(5) requires identifying, to the extent practicable, all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.<sup>177</sup> 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.<sup>178</sup> 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.<sup>179</sup>

*A. Description of the Reasons Why Agency Action Is Being Considered*

The Bureau is issuing this supplemental proposed rule to implement and interpret the FDCPA, particularly with respect to debt collection communication and disclosures regarding time-barred debts and revival. As discussed in part V, the Bureau believes that the supplemental proposed rule would provide additional clarity about the FDCPA’s requirements to debt collectors and consumers and help ensure that the features of debt collection are fully, accurately, and effectively disclosed to consumers.

*B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule*

As discussed in part IV, the Bureau issues this supplemental proposal pursuant to its authority under the FDCPA and the Dodd-Frank Act. The objectives of the supplemental

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<sup>177</sup> 5 U.S.C. 603(b)(5).

<sup>178</sup> 5 U.S.C. 603(c).

<sup>179</sup> 5 U.S.C. 603(d)(1).

proposed rule are to clarify and implement the FDCPA’s provisions 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.<sup>180</sup> 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 consumer disclosure requirements to provide greater clarity for both consumers and industry participants as to the information they must provide consumers to comply with the law. 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.<sup>181</sup>

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.<sup>182</sup> 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.”<sup>183</sup> “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.

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<sup>180</sup> See 15 U.S.C. 1692(e).

<sup>181</sup> See *id.*

<sup>182</sup> 15 U.S.C. 1692l(d).

<sup>183</sup> 12 U.S.C. 5512(a).

*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 supplemental proposed rule on small entities, “small entities” is defined in the RFA to include small businesses, small nonprofit organizations, and small government jurisdictions.<sup>184</sup> A “small business” is determined by application of SBA regulations in reference to the North American Industry Classification System (NAICS) classifications and size standards.<sup>185</sup> 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 annual receipts at or below the SBA size standard (currently \$16.5 million), debt buyers (NAICS 522298) with annual receipts at or below the size standard (currently \$41.5 million), collection law firms (NAICS 54110) with annual receipts at or below the size standard (currently \$12 million), and servicers who acquire accounts in default. These servicers include depository institutions (NAICS 522110, 522120, and 522130) with assets at or below the size standard (currently \$600 million) or non-depository institutions (NAICS 522390) with annual receipts at or below the size standard (currently \$22 million). The Panel did not meet with small nonprofit organizations or small government jurisdictions.<sup>186</sup>

The following table provides the Bureau’s estimate of the number and types of entities that may be affected by the proposed provisions:

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<sup>184</sup> 5 U.S.C. 601(6).

<sup>185</sup> The current SBA size standards are found on SBA’s website, <http://www.sba.gov/content/table-small-business-size-standards>.

<sup>186</sup> Small Business Review Panel Report, *supra* note 51, at 29.

Table 1: Estimated number of affected entities and small entities by category

<b>Category</b>	<b>NAICS</b>	<b>Small Entity Threshold</b>	<b>Estimated total number of debt collectors within category</b>	<b>Estimated number of small entity debt collectors</b>
Collection agencies	561440	\$16.5 million in annual receipts	9,000	8,800
Debt buyers	522298	\$41.5 million in annual receipts	330	300
Collection law firms	541110	\$12.0 million in annual receipts	1,000	950
Loan servicers	522110, 522120, and 522130 (depositories); 522390 (non-depositories)	\$600 million in annual receipts for depository institutions; \$22.0 million or less for non-depositories	700	200

Descriptions of the four categories:

*Collection agencies.* The Census Bureau defines “collection agencies” (NAICS code 561440) as “establishments primarily engaged in collecting payments for claims and remitting payments collected to their clients.”<sup>187</sup> According to the Census Bureau, in 2012 (the most recent year for which detailed data are available), 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

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<sup>187</sup> As defined by the Census Bureau, collection agencies include entities that collect only commercial debt, and the proposed rule would apply only to debt collectors of consumer debt. However, the Bureau understands that relatively few collection agencies collect only commercial debt.

entities.<sup>188</sup> 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.<sup>189</sup> Many debt buyers—particularly those that are small entities—also collect debt on behalf of other debt owners.<sup>190</sup>

*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.<sup>191</sup>

*Loan servicers.* Loan servicers would be covered by the proposed rule if they are covered by the FDCPA because, among other things, they acquire the right to service loans already in default.<sup>192</sup> 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

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<sup>188</sup> 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.

<sup>189</sup> The Receivables Management Association, the largest trade group for debt buyers, states that it has approximately 300 debt buyer members and believes that 90 percent of debt buyers are current members.

<sup>190</sup> 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).

<sup>191</sup> The primary trade association for collection attorneys, the National Creditors Bar Association (NCBA), 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 NCBA members and that a similar fraction of non-member law firms are small entities.

<sup>192</sup> 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.

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.<sup>193</sup>

*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 supplemental proposed rule would not impose new reporting or recordkeeping requirements, but it would impose new compliance requirements on small entities subject to the proposal.<sup>194</sup> The proposed requirements and the costs associated with them are discussed below.

In evaluating the potential impacts of the proposal on small entities, the Bureau takes as a baseline 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 by courts and law enforcement agencies, other Federal laws, and the rules and statutory requirements promulgated by the States. 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

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<sup>193</sup> 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.

<sup>194</sup> While the supplemental proposed rule does not include new recordkeeping requirements, the Bureau notes that, by introducing a new compliance requirement, the supplemental proposed rule may increase the cost of complying with recordkeeping requirements proposed in the May 2019 Proposed Rule. This is because debt collectors would need to retain evidence of compliance with any additional compliance requirement.

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 supplemental proposed rule, if finalized. Other impacts, such as the impacts of disclosures about time-barred debt on consumers' repayment decisions, are discussed in part VI. The Bureau believes that, except where otherwise noted, the impacts discussed in part VI would apply to small entities.

The supplemental proposal would require small entity debt collectors that attempt to collect time-barred debt to provide new disclosures in certain communications with consumers. This could impose one-time costs for systems that identify whether a debt is time barred and whether (and if so, when) it is subject to revival, and it may impose ongoing costs both to determine whether debts are time barred and to make disclosures when appropriate.

To quantify costs of the proposal to small entities, the Bureau would need to estimate the number of small entity debt collectors that collect time-barred debt, the number of time-barred accounts they collect, the cost to such debt collectors of determining whether a debt is time barred and whether and when it can be revived, and the cost of making the proposed disclosures when appropriate. The Bureau does not have representative data that permit it to estimate the number of small entity debt collectors that collect time-barred accounts or the number of time-barred accounts they collect. The Bureau understands based on industry outreach that many debt collectors do not collect time-barred accounts. Even debt collectors that do not regularly collect time-barred debt might need to review systems to ensure that they are not communicating about time-barred debts without providing the appropriate proposed disclosure in circumstances when they are required; however, the Bureau expects that the burden of the proposed provision on such

debt collectors would be lower than for debt collectors that regularly collect time-barred accounts.

Among those debt collectors that do regularly attempt to collect time-barred accounts, the Bureau understands that some currently disclose to consumers that they cannot sue to collect the debt. Moreover, debt collectors who are collecting debt in certain jurisdictions, such as California and New York, already must make such disclosures in at least some circumstances. Also, debt collectors that litigate accounts must know whether an account is time barred to avoid threatening to sue or suing on time-barred accounts in violation of the FDCPA as interpreted by existing FDCPA case law. Thus, some debt collectors, particularly ones that collect nationwide or that engage in litigation, already have a process in place for identifying time-barred accounts and, where they do attempt to collect time-barred debt, for providing disclosures to consumers about the time-barred status of such accounts.<sup>195</sup>

The Bureau understands that determining whether an account is time barred is not always straightforward, particularly for debt collectors that operate in a range of jurisdictions. Different States have different statutes of limitations for different types of debt.<sup>196</sup> Which statute applies depends on questions such as where the consumer resides and the nature of the credit contract, as well as which State's law a court applies to a given case. As noted above, many debt collectors already must make decisions about a debt's time-barred status to determine whether a lawsuit is permissible or, in certain States, whether particular disclosures are required. Even for these debt collectors, however, the proposed rule would increase the importance of making the correct

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<sup>195</sup> Consistent with this, the FTC found that debt buyers commonly consider the prevalence of time-barred debt when bidding on portfolios of debt, suggesting that debt buyers and sellers of debt regularly determine whether debts are time barred. *See* FTC Debt Buying Report, *supra* note 8, at 21.

<sup>196</sup> Small Business Review Panel Report, *supra* note 51, at 25.

determination. The Bureau anticipates that some collection agencies and debt buyers would incur legal and programming costs to develop a system to identify time-barred accounts and incorporate the determination into the collection management system. These costs could be mitigated somewhat by the proposed rule’s “know or should know” standard for the debt’s time-barred status, which could reduce the likelihood that debt collectors would be held liable for failing to identify time-barred debt. Debt collectors would also incur costs to train staff to answer consumer questions about the proposed disclosures and to incorporate information about the new disclosures into their systems for managing communication with consumers.

Debt collectors could also incur ongoing costs of determining whether debts are time barred. Debt collectors would need to update systems from time to time to reflect changes in State laws regarding statutes of limitations and might need to perform new legal analyses when facing fact patterns that are new to their business, such as when beginning to collect debt from consumers in a particular jurisdiction for the first time.

For accounts that are identified as time barred, debt collectors would need to make disclosures with certain written and oral communications. This would impose direct costs to make the disclosures and potentially indirect costs because consumers may be less likely to pay debts after being informed that those debts are time barred.

Debt collectors most often initiate communication with consumers by letter, meaning that the majority of disclosures required by the proposal would be made in writing.<sup>197</sup> The Bureau does not anticipate that debt collectors would incur substantial ongoing costs to provide the proposed disclosures in written materials because required disclosures could be automatically included in written materials when applicable.

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<sup>197</sup> CFPB Debt Collection Operations Study, *supra* note 132, at 28.

Some debt collectors call consumers before sending any written material and would need to make any required disclosure orally in their first communication with the consumer. For oral communications, the Bureau anticipates that debt collectors or their vendors would adjust collection management systems to identify disclosures that must be made and prompt debt collector employees to make oral disclosures when required. The required disclosure would increase the length of each conversation about a time-barred debt by perhaps 5 to 10 seconds, though if consumers have questions about the disclosure, this could lengthen some calls considerably. If the disclosure lengthens initial calls to collect a time-barred debt by 15 seconds on average, given an assumed average debt collector labor cost of \$22 per hour, this would cost approximately \$0.09 per call.<sup>198</sup>

Costs may also increase if debt collectors and creditors increase monitoring of calls regarding time-barred debt to ensure compliance. Many debt collectors currently audit telephone conversations, either by listening to a sample of calls or by using automated voice-recognition software, to ensure that individual debt collectors comply with applicable law and other standards. A new required disclosure for time-barred debt could increase the cost of such monitoring, by adding to the list of items that must be audited.

*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. However, consistent with the findings of the Panel, the Bureau is not aware of any other Federal regulations that currently duplicate, overlap, or conflict with the proposed rule.

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<sup>198</sup> *Id.* at 17.

The Bureau requests comment on the intersection between the proposed rule and other Federal laws and regulations. The Bureau specifically requests 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.<sup>199</sup> 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.<sup>200</sup>

In developing the proposal, the Bureau considered a number of alternatives, including those considered as part of the SBREFA process. In the Small Business Review Panel Outline, the Bureau considered an alternative that would also require debt collectors to provide a disclosure when collecting time-barred debt but would prohibit debt collectors from collecting on time-barred debt that can be revived unless they waive the right to sue on the debt. Under the requirement considered, subsequent debt collectors would be bound by the disclosure made by

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<sup>199</sup> 5 U.S.C. 603(c).

<sup>200</sup> Certain alternatives, including those suggested by commenters, are discussed in part V above.

any previous debt collectors. The Bureau believes that such a requirement would be more burdensome for small entities than the proposed requirement.

The Bureau also considered requiring a time-barred debt disclosure without requiring any disclosure about revival. Such a requirement could be less burdensome for small entities under some circumstances. However, the Bureau’s quantitative disclosure testing indicates that many consumers who view a time-barred debt disclosure without a disclosure about revival fail to understand that certain actions they take could revive the debt.<sup>201</sup>

#### *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.<sup>202</sup> 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 the proposals under consideration would affect the cost of credit to small

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<sup>201</sup> See CFPB Quantitative Testing Report, *supra* note 64, at 17-24.

<sup>202</sup> 5 U.S.C. 603(d).

entities. The Bureau believes that the disclosures in the supplemental proposal will have little impact on the cost of credit to small entities. The Bureau does recognize that consumer credit could become more expensive and less available as a result of requirements that restrict the collection of debt; however, the Bureau does not anticipate that the requirements of this supplemental proposal would have any significant impact on the cost or availability of consumer credit. Many small entities affected by the disclosures in the supplemental proposal 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.

During the SBREFA process, several small entity representatives said that the proposals under consideration at that time, which included time-barred debt disclosures among several other proposals, 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),<sup>203</sup> Federal agencies are generally required to seek approval from the Office of Management and Budget (OMB) for information collection requirements prior to implementation. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to,

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<sup>203</sup> 44 U.S.C. 3501 *et seq.*

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 supplemental 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 supplemental proposed rule along with the May 2019 Proposed Rule would revise the information collection requirements contained in Regulation F that OMB has approved under that OMB control number.

The supplemental proposal would require a new information collection requirement under Regulation F, in proposed § 1006.26 regarding time-barred debts, which would require debt collectors to provide a particular disclosure in certain communications when attempting to collect time-barred debt.

This information collection would be required to provide benefits for consumers and would be mandatory. Because the Bureau does not collect any information, no issue of confidentiality arises. The likely respondents would be for-profit businesses that are FDCPA-covered debt collectors.

The collection of information contained in this supplemental proposed rule, and identified as such, has been submitted to OMB for review under section 3507(d) of the PRA. A complete description of the information collection requirement, 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](mailto: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](http://www.regulations.gov) as well as on OMB's public-facing docket at [www.reginfo.gov](http://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.

Estimated Number of Respondents: 12,027.<sup>204</sup>

Estimated Total Annual Burden Hours: 2,360,000.<sup>205</sup>

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

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<sup>204</sup> The Bureau shares enforcement authority under the FDCPA with the Federal Trade Commission. To avoid double-counting, the Bureau allocates to itself half of the estimated paperwork burden under the proposed rule by dividing the burden hours even between the agencies. However, since the Bureau has joint authority over the respondents themselves, the Bureau retains the entity count of all affected respondents as shown above.

<sup>205</sup> The Bureau's share of burden hours for this rule is 1,180,000 hours including 150,000 hours of burden that would be added by the new information collections added by the supplemental proposed rule.

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 supplemental 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 that Regulation F, 12 CFR part 1006, as proposed to be amended on May 21, 2019 (84 FR 23274), be further amended as follows:

## **PART 1006—DEBT COLLECTION PRACTICES (REGULATION F)**

1. The authority citation for part 1006 continues to read as follows:

**Authority:** 12 U.S.C. 5512, 5514(b), 5531, 5532; 15 U.S.C. 1692l(d), 1692o, 7004.

### **Subpart B—Rules for FDCPA Debt Collectors**

2. Section 1006.26 is amended by adding paragraph (c) to read as follows:

#### **§ 1006.26 Collection of time-barred debts.**

\* \* \* \*

(c) *Disclosures required.* (1) *In general.* A debt collector who knows or should know that a debt is time barred when the debt collector makes the initial communication as defined in § 1006.34(b)(2) must, in that initial communication and on any validation notice required by § 1006.34(a)(1)(i)(B), clearly and conspicuously disclose:

- (i) That the law limits how long the consumer can be sued for a debt and that, because of the age of the debt, the debt collector will not sue the consumer to collect it; and
- (ii) If, under applicable law, the debt collector's right to bring a legal action against the consumer can be revived, the fact that revival can occur and the circumstances in which it can occur.

(2) *Additional circumstances in which disclosures are required.* (i) *Debts that become time barred.* A debt collector who knows or should know that a debt has become time barred after the debt collector has made the initial communication as defined in § 1006.34(b)(2) but before the debt collector has sent any validation notice required by § 1006.34(a)(1)(i)(B) must provide the disclosures required by paragraph (c)(1) of this section in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt became time barred, and on any validation notice required by § 1006.34(a)(1)(i)(B). A debt collector who knows or should know that a debt has become time barred after the debt collector has made the initial communication as defined in § 1006.34(b)(2) and has sent any validation notice required by § 1006.34(a)(1)(i)(B) must provide the disclosures required by paragraph (c)(1) of this section in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt became time barred.

(ii) *Change in debt collector's knowledge.* A debt collector who neither knows nor should know that a time-barred debt is time barred when the debt collector makes the initial communication as defined in § 1006.34(b)(2), but who knows or should know that the debt is time barred before the debt collector has sent any validation notice required by § 1006.34(a)(1)(i)(B), must provide the disclosures required by paragraph (c)(1) of this section in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt is time barred, and on any validation notice required by § 1006.34(a)(1)(i)(B). A debt collector who neither knows nor should know that a time-barred debt is time barred when the debt collector makes the initial communication as defined in § 1006.34(b)(2) and sends any validation notice required by § 1006.34(a)(1)(i)(B), but who later knows or should know that the debt is time barred, must provide the disclosures required by paragraph (c)(1) of this section in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt was time barred.

(3) *Form and delivery of disclosures.* (i) *In general.* When provided on a validation notice, the content, format, and placement of the disclosures required by paragraph (c)(1) of this section must be substantially similar to such disclosures on Model Form B-4, B-5, B-6, or B-7 in appendix B of this part, as applicable. When provided orally or in a written communication that is not a validation notice, the content of the disclosures required by paragraph (c)(1) of this section must be substantially similar to such disclosures on Model Form B-4, B-5, B-6, or B-7 in appendix B of this part, as applicable.

(ii) *Safe harbor.* When providing the disclosures required by paragraph (c)(1) of this section on a validation notice, a debt collector who uses Model Form B-4, B-5, B-6, or B-7 in

appendix B of this part, as applicable, complies with the requirements of paragraphs (c)(1) and (3)(i) of this section. When providing the disclosures required by paragraph (c)(1) of this section orally or in a written communication that is not a validation notice, a debt collector who uses the relevant content of Model Form B-4, B-5, B-6, or B-7, as applicable, complies with the requirements of paragraphs (c)(1) and (3)(i) of this section.

(iii) *Delivery*. When providing the disclosures required by paragraph (c)(1) of this section on a validation notice or a written communication that is not a validation notice, a debt collector must do so in a manner permitted by § 1006.42.

(iv) *Translated disclosures*. A debt collector must make the disclosures required by paragraph (c)(1) of this section in the same language or languages used for the rest of the communication in which the disclosures are conveyed. Any translation of the required disclosures must be complete and accurate.

3. Section 1006.34 is amended by adding paragraph (c)(2)(xi) to read as follows:

**§ 1006.34 Notice for validation of debts.**

\* \* \* \*

(c) \* \* \*

(2) \* \* \*

(xi) A time-barred debt disclosure, or a time-barred debt and a revival disclosure, if the debt collector determines after a reasonable investigation that such disclosures are required by § 1006.26(c).

4. Appendix B to part 1006 is amended by adding B-4 through B-7 to read as follows:

**Appendix B to Part 1006—Model Forms and Clauses**

\* \* \* \*

## B-4 MODEL FORM FOR TIME-BARRED DEBT DISCLOSURE § 1006.26

North South Group  
P.O. Box 123456  
Pasadena, CA 91111-1234  
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday  
[www.NorthSouthGroup.com](http://www.NorthSouthGroup.com)

To: Person A  
2323 Park Street  
Apartment 123  
Bethesda, MD 20800  
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, 2009, you owed:	\$ 2,234.56
Between January 2, 2009 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
<b>Total amount of the debt now:</b>	<b>\$ 2,284.56</b>



The law limits how long you can be sued for a debt. Because of the age of this debt, we will not sue you for it.

### How can you dispute the debt?

- Call or write to us by April 30, 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 April 30, 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.NorthSouthGroup.com/dispute](http://www.NorthSouthGroup.com/dispute).

### What else can you do?

- Write to ask for the name and address of the original creditor. If you write by April 30, 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.NorthSouthGroup.com/request](http://www.NorthSouthGroup.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](http://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.

*o*

### Mail this form to:

North South Group  
P.O. Box 123456  
Pasadena, CA 91111-1234

Person A  
2323 Park Street  
Apartment 123 Bethesda,  
MD 20800

### 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 *Bank of Rockville*.  
Include the reference number 584-345.

Quiero esta formulario en español.

## B-5 MODEL FORM FOR TIME-BARRED DEBT AND REVIVAL DISCLOSURE (PAYMENT AND WRITTEN ACKNOWLEDGEMENT) § 1006.26

North South Group  
P.O. Box 123456  
Pasadena, CA 91111-1234  
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday  
[www.NorthSouthGroup.com](http://www.NorthSouthGroup.com)

To: Person A  
2323 Park Street  
Apartment 123  
Bethesda, MD 20800  
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, 2009, you owed:	\$ 2,234.56
Between January 2, 2009 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
<b>Total amount of the debt now:</b>	<b>\$ 2,284.56</b>



The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you make a payment or acknowledge in writing that you owe this debt, then we can sue you to collect it.

### How can you dispute the debt?

- Call or write to us by April 30, 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 April 30, 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.NorthSouthGroup.com/dispute](http://www.NorthSouthGroup.com/dispute).

### What else can you do?

- Write to ask for the name and address of the original creditor. If you write by April 30, 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.NorthSouthGroup.com/request](http://www.NorthSouthGroup.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](http://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.

o

### Mail this form to:

North South Group  
P.O. Box 123456  
Pasadena, CA 91111-1234

Person A  
2323 Park Street  
Apartment 123  
Bethesda, MD 20800

### 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 *Bank of Rockville*.  
Include the reference number 584-345.

- Quiero esta formulario en español.

## B-6 MODEL FORM FOR TIME-BARRED DEBT AND REVIVAL DISCLOSURE (PAYMENT) § 1006.26

North South Group  
P.O. Box 123456  
Pasadena, CA 91111-1234  
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday  
[www.NorthSouthGroup.com](http://www.NorthSouthGroup.com)

To: Person A  
2323 Park Street  
Apartment 123  
Bethesda, MD 20800  
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.

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You were charged this amount in fees:	+ \$ 25.00
You paid or were credited this amount toward the debt:	- \$ 50.00
<b>Total amount of the debt now:</b>	<b>\$ 2,284.56</b>



The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you make a payment, then we can sue you to collect it.

### How can you dispute the debt?

- Call or write to us by April 30, 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 April 30, 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.NorthSouthGroup.com/dispute](http://www.NorthSouthGroup.com/dispute).

### What else can you do?

- Write to ask for the name and address of the original creditor. If you write by April 30, 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.NorthSouthGroup.com/request](http://www.NorthSouthGroup.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](http://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.

o

### Mail this form to:

North South Group  
P.O. Box 123456  
Pasadena, CA 91111-1234

Person A  
2323 Park Street  
Apartment 123  
Bethesda, MD 20800

### 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 *Bank of Rockville*.  
Include the reference number 584-345.

- Quiero esta formulario en español.

## B-7 MODEL FORM FOR TIME-BARRED DEBT AND REVIVAL DISCLOSURE (WRITTEN ACKNOWLEDGEMENT) § 1006.26

North South Group  
P.O. Box 123456  
Pasadena, CA 91111-1234  
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday  
[www.NorthSouthGroup.com](http://www.NorthSouthGroup.com)

To: Person A  
2323 Park Street  
Apartment 123  
Bethesda, MD 20800  
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, 2009, you owed:	\$ 2,234.56
Between January 2, 2009 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
<b>Total amount of the debt now:</b>	<b>\$ 2,284.56</b>



The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you acknowledge in writing that you owe this debt, then we can sue you to collect it.

### How can you dispute the debt?

- Call or write to us by April 30, 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 April 30, 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.NorthSouthGroup.com/dispute](http://www.NorthSouthGroup.com/dispute).

### What else can you do?

- Write to ask for the name and address of the original creditor. If you write by April 30, 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.NorthSouthGroup.com/request](http://www.NorthSouthGroup.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](http://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.

*[Signature]*

### Mail this form to:

North South Group  
P.O. Box 123456  
Pasadena, CA 91111-1234

Person A  
2323 Park Street  
Apartment 123  
Bethesda, MD 20800

### 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 *Bank of Rockville*.  
Include the reference number 584-345.

- Quiero esta formulario en español.

5. In Supplement I to Part 1006—Official Interpretations, new *Section 1006.26*—

*Collection of Time-Barred Debt* is added to read as follows:

*Section 1006.26—Collection of Time-Barred Debt*

*26(c) Disclosures required.*

*26(c)(1) In general.*

1. *Clearly and conspicuously.* The disclosures required by § 1006.26(c)(1) must be provided clearly and conspicuously. The term “clear and conspicuous” is defined in § 1006.34(b)(1).

2. *Validation notice in initial communication.* The disclosures required by § 1006.26(c)(1) must be provided in the initial communication as defined in § 1006.34(b)(2) and on any validation notice required by § 1006.34(a)(1)(i)(B). A debt collector who sends a validation notice in the initial communication pursuant to § 1006.34(a)(1)(i)(A) complies with § 1006.26(c)(1) by providing the required disclosures on the validation notice.

*Paragraph 26(c)(1)(ii).*

1. *Revival disclosures.* If a debt collector’s right to bring a legal action against a consumer to collect a debt can be revived under applicable law, § 1006.26(c)(1)(ii) requires a debt collector who collects a debt that the debt collector knows or should know is time barred to disclose the fact that revival can occur and the circumstances in which it can occur. To satisfy the § 1006.26(c)(1)(ii) disclosure requirement, a debt collector first must determine which State’s law applies and the circumstances under which that State permits revival, if any. Then, for example, if a debt collector determines that applicable State law permits revival only if the consumer makes a payment, the debt collector must provide the time-barred debt and revival disclosure shown on Model Form B-6 in appendix B of this part, or a substantially similar

disclosure. If, on the other hand, a debt collector determines that applicable State law does not permit revival § 1006.26(c)(1)(ii) does not apply and the debt collector must provide the time-barred debt disclosure shown on Model Form B-4 in appendix B of this part, or a substantially similar disclosure.

*26(c)(2) Additional circumstances in which disclosures are required.*

*26(c)(2)(i) Debts that become time barred.*

*1. Debts that become time barred after the debt collector has made the initial communication but before the debt collector has sent the validation notice.* Under § 1006.26(c)(2)(i), a debt collector who knows or should know that a debt has become time barred after the debt collector has made the initial communication as defined in § 1006.34(b)(2) but before the debt collector has sent any validation notice required by § 1006.34(a)(1)(i)(B) must provide the disclosures required by § 1006.26(c)(1) in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt became time barred, and on any validation notice required by § 1006.34(a)(1)(i)(B). The following example illustrates the rule:

i. A creditor hires ABC debt collector to collect a debt that ABC debt collector knows will become time barred on June 30. ABC debt collector's initial communication with the consumer takes place by telephone on June 27. ABC debt collector's next communication with the consumer takes place by telephone on July 1. Under § 1006.26(c)(2)(i), ABC debt collector must provide the disclosures required by § 1006.26(c)(1) in that telephone conversation. The following day, ABC debt collector sends a validation notice to the consumer. Under § 1006.26(c)(2)(i), the validation notice must include the disclosures required by § 1006.26(c)(1).

*2. Debts that become time barred after the debt collector has made the initial communication and has sent the validation notice.* Under § 1006.26(c)(2)(i), a debt collector who knows or should know that a debt has become time barred after the debt collector has made the initial communication as defined in § 1006.34(b)(2) and has sent any validation notice required by § 1006.34(a)(1)(i)(B) must provide the disclosures required by § 1006.26(c)(1) in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt became time barred. The following example illustrates the rule:

i. A creditor hires ABC debt collector to collect a debt. ABC debt collector knows that the applicable statute of limitations will expire in one month and promptly sends the consumer a validation notice, which is the debt collector's initial communication with the consumer. The next communication between ABC debt collector and the consumer takes place over the telephone two weeks after the statute of limitations has expired. Under § 1006.26(c)(2)(i), ABC debt collector must provide the disclosures required by § 1006.26(c)(1) in that telephone communication.

*26(c)(2)(ii) Change in debt collector's knowledge.*

*1. Change in debt collector's knowledge after the debt collector has made the initial communication but before the debt collector has sent the validation notice.* Under § 1006.26(c)(2)(ii), a debt collector who neither knows nor should know that a time-barred debt is time barred when the debt collector makes the initial communication as defined in § 1006.34(b)(2), but who knows or should know that the debt is time barred before the debt collector has sent any validation notice required by § 1006.34(a)(1)(i)(B), must provide the disclosures required by § 1006.26(c)(1) in the debt collector's first communication, if any, with

the consumer on or after the date on which the debt collector knows or should know that the debt is time barred, and on any validation notice required by § 1006.34(a)(1)(i)(B). The following example illustrates the rule.

i. A creditor hires ABC debt collector to collect a debt. Although the debt is time barred, ABC debt collector neither knows nor should know that the debt is time barred. ABC debt collector has an initial communication with the consumer that does not include the disclosures required by § 1006.26(c)(1). Because ABC debt collector neither knew nor should have known that the debt was time barred, ABC debt collector has not violated § 1006.26(c)(1). The next day, before sending the validation notice required by § 1006.34(a)(1)(i)(B), ABC debt collector learns that the debt was, in fact, time barred at the time of the initial communication. Under § 1006.26(c)(2)(ii), ABC debt collector must provide the disclosures required by § 1006.26(c)(1) in its next communication, if any, with the consumer, and on any validation notice required by § 1006.34(a)(1)(i)(B).

*2. Change in debt collector's knowledge after the debt collector has made the initial communication and has sent the validation notice.* Under § 1006.26(c)(2)(ii), a debt collector who neither knows nor should know that a time-barred debt is time barred when the debt collector makes the initial communication as defined in § 1006.34(b)(2) and sends any validation notice required by § 1006.34(a)(1)(i)(B), but who later knows or should know that the debt is time barred, must provide the disclosures required by § 1006.26(c)(1) in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt was time barred. The following example illustrates the rule:

i. A creditor hires ABC debt collector to collect a debt. Although the debt is time barred, ABC debt collector neither knows nor should know that the debt is time barred. ABC debt

collector has an initial communication with the consumer and sends a validation notice to the consumer, neither of which includes the disclosures required by § 1006.26(c)(1). Because ABC debt collector neither knew nor should have known that the debt was time barred, ABC debt collector has not violated § 1006.26(c)(1). Several weeks later, however, ABC debt collector learns that the debt was, in fact, time barred when ABC debt collector sent the validation notice. Under § 1006.26(c)(2)(ii), ABC debt collector must provide the disclosures required by § 1006.26(c)(1) in its next communication, if any, with the consumer.

*26(c)(3) Form and delivery of disclosures.*

*26(c)(3)(i) In general.*

*1. Disclosures required by other applicable law.* Section 1006.26(c)(3)(i) requires that, when provided on a validation notice, the content, format, and placement of the disclosures required by § 1006.26(c)(1) must be substantially similar to such disclosures on Model Form B-4, B-5, B-6, or B-7 in appendix B of this part, as applicable. A debt collector who uses a validation notice that otherwise is substantially similar to Model Form B-4, B-5, B-6, or B-7, as applicable, may include any additional disclosures required by other applicable law on the reverse of the validation notice and will continue to be in compliance with the requirements of § 1006.26(c)(1) and (3)(i). Disclosures required by other applicable law may include, for example, a State law requirement to disclose that a debt is time barred or that a debt collector's right to bring a legal action on a time-barred debt can be revived. See comments 26(c)(3)(ii)-2 and 34(d)(3)(iv)-1 for further guidance concerning disclosures required by other applicable law.

*26(c)(3)(ii) Safe harbor.*

*1. Safe harbor provided by use of model form.* Although the use of Model Form B-4, B-5, B-6, or B-7 in appendix B of this part is not required, a debt collector who uses the applicable

model form complies with the requirements of § 1006.26(c)(1) and (3)(i). For example, if under applicable law only a payment on a time-barred debt revives a debt collector's right to bring a legal action against the consumer to collect the debt, a debt collector who uses Model Form B-6, which refers to payment but not written acknowledgement, to provide the disclosure on the validation notice complies with the requirements of § 1006.26(c)(1) and (3)(i).

*2. Disclosures required by other applicable law.* When providing the disclosures required by § 1006.26(c)(1) on a validation notice, a debt collector who uses Model Form B-4, B-5, B-6, or B-7 in appendix B of this part, as applicable, may include any additional disclosures required by other applicable law on the reverse of the validation notice and will continue to be in compliance with the requirements of § 1006.26(c)(1) and (3)(i). See comments 26(c)(3)(i)-1 and 34(d)(3)(iv)-1 for further guidance concerning disclosures required by other applicable law.

*26(c)(3)(iv) Translated disclosures.*

*1. Examples.* Section 1006.26(c)(3)(iv) provides that a debt collector must make the disclosures required by § 1006.26(c)(1) in the same language or languages used for the rest of the communication in which they are conveyed. The following examples illustrate the rule:

- i. ABC debt collector is collecting time-barred debt. ABC debt collector's initial communication with the consumer takes place in Spanish. Under § 1006.26(c)(1), the initial communication must contain the disclosures described in that section, as applicable. Under § 1006.26(c)(3)(iv), ABC debt collector must provide the disclosures in Spanish.
- ii. XYZ debt collector is collecting a time-barred debt. XYZ debt collector's initial communication with the consumer takes place partly in English and partly in Spanish. Under § 1006.26(c)(1), the initial communication must contain the disclosures described in that section,

as applicable. Under § 1006.26(c)(3)(iv), XYZ debt collector must provide the disclosures in both Spanish and English.

2. *Complete and accurate translation.* Under § 1006.26(e)(3)(iv), any translation of the disclosures required by § 1006.26(c)(1) must be complete and accurate. The language of a disclosure that a debt collector obtains from the Bureau's website is considered a complete and accurate translation, although debt collectors are permitted to use other translations so long as they are complete and accurate.

[THIS SIGNATURE PAGE PERTAINS TO THE SUPPLEMENTAL NOTICE OF  
PROPOSED RULEMAKING TITLED “DEBT COLLECTION PRACTICES  
(REGULATION F)”]

Dated: February 13, 2020.

Kathleen L. Kraninger

Kathleen L. Kraninger,

*Director, Bureau of Consumer Financial Protection.*