



1700 G Street NW, Washington, DC 20552

## Debt collection proposed rule electronic disclosure options

The Debt Collection Proposed Rule (Proposed Rule) proposes to clarify how a debt collector would provide certain required disclosures electronically. Though this document outlines and aids in understanding the Proposed Rule, it is not, itself, a proposed rule. All citations in this document are to sections of the Proposed Rule. For more information on the Proposed Rule, including a “Fast Facts” summary of the proposal, please visit:

<http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/>

The Proposed Rule clarifies how to provide three required disclosures electronically. Those disclosures are (1) the validation notice described in § 1006.34(a)(1)(i)(B), (2) the original-creditor disclosure described in § 1006.38(c), and (3) the validation-information disclosure described in § 1006.38(d)(2).

The next page identifies the ways a debt collector may provide these three disclosures electronically and meet the general requirement in § 1006.42 to provide disclosures in a manner that is reasonably expected to provide actual notice and in a form that the consumer may keep and access later.<sup>1</sup> No matter which option a debt collector chooses, the Proposed Rule would require a debt collector to:

- Identify the purpose of the communication in the subject line of an email or the first line of a text message transmitting the disclosure (for example, a subject line could read: "Main Street credit card issued by North South Bank"). § 1006.42(b)(2).
- Receive notifications of undeliverability and monitor for those notifications. If a debt collector receives notice that an email or text message is undeliverable, the debt collector has not met the required reasonable expectation of actual notice for that delivery attempt. § 1006.42(b)(3).
- For the validation notice only, provide the disclosure in a responsive format that is reasonably expected to be accessible on any commercially available screen size and via commercially available screen readers. § 1006.42(b)(4).

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<sup>1</sup> This document does not describe the two safe harbors under proposed § 1006.42(e). Proposed § 1006.42(e) would establish two safe harbors regarding: (1) providing disclosures by mail and (2) providing the validation notice within the body of an email that is a debt collector’s initial communication with the consumer.

To meet the general requirement in § 1006.42(a), a debt collector who chooses to provide any of the three identified disclosures electronically also would need to do the following:

① Choose E-SIGN Act or Proposed Alternative.

**Proposed Alternative**

Provide the disclosure by sending an electronic communication to an email address or phone number that the creditor or a prior debt collector could have used to provide disclosures under E-SIGN Act.

§ 1006.42(c)(1)

Or

**E-SIGN Act**

Comply with section 101(c) of the E-SIGN Act after the consumer provides affirmative consent directly to the debt collector.  
§ 1006.42(b)(1)

Send Electronic Disclosure

Proceed to step ②

② If you choose the Proposed Alternative, choose one of the following formats.

**Hyperlink to a Secure Website**

Place the disclosure on a **secure website** that is accessible by clicking on a **hyperlink** included within an electronic communication. The disclosure must be available on the website for a reasonable period of time in an accessible format that can be saved or printed. § 1006.42(c)(2)(ii)

Or

**Email Body**

Place the disclosure in the **body of an email** so that the disclosure's content is viewable within the email itself. § 1006.42(c)(2)(i)

Send Electronic Disclosure

Proceed to step ③

③ If you choose to provide a hyperlink to a secure website, do one of the following.

Provide Notice and Opt-Out Communication to the Consumer

The **debt collector** must inform the consumer of:

- The name of the consumer who owes or allegedly owes the debt;
- The name of the creditor to whom the debt currently is owed or allegedly owed;
- The email address or phone number from which and to which the debt collector intends to send the hyperlink to the disclosure;
- The consumer's ability to opt out of hyperlinked delivery to that email address or phone number; and
- Instructions for opting out, including a reasonable period within which to opt out.

The consumer must not have opted out.

§§ 1006.42(c)(2)(ii) and 1006.42(d)(1)

Or

Confirm Creditor Previously Provided Notice and Opt-Out Communication to the Consumer

The debt collector must **confirm** that, no more than 30 days before the debt collector's communication containing the hyperlink, **the creditor**:

(1) communicated with the consumer using the email or phone number to which the debt collector intends to send the hyperlink and (2) informed the consumer of:

- The placement or sale of the debt to the debt collector;
- The name the debt collector uses when collecting debts;
- The debt collector's option to use the consumer's email address or phone number to provide any legally required disclosures in a manner consistent with Federal law;
- The email addresses or phone number from which the debt collector intends to send the hyperlink to the disclosure;
- The consumer's ability to opt out of hyperlinked delivery to that email address or phone number; and
- Instructions for opting out, including a reasonable period within which to opt out.

The consumer must not have opted out.

§§ 1006.42(c)(2)(ii) and 1006.42(d)(2)

Send Electronic Disclosure

Send Electronic Disclosure