

**BUREAU OF CONSUMER FINANCIAL PROTECTION**  
**PAPERWORK REDUCTION ACT SUBMISSION**  
**INFORMATION COLLECTION REQUEST**  
**SUPPORTING STATEMENT PART A**  
**DEBT COLLECTION PRACTICES RULE (REGULATION F)**  
**(OMB CONTROL NUMBER: 3170-0056)**

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**OMB TERMS OF CLEARANCE:**

Not applicable. The Office and Management and Budget (OMB) provided no terms of clearance when it last approved the information collections under this OMB control number on November 17, 2015.

**ABSTRACT:** Regulation F. establishes procedures and criteria whereby states may apply to the Bureau of Consumer Financial Protection (Bureau) for an exemption of a class of debt collection practices within the applying state from the provisions of the Fair Debt Collection Practices Act (FDCPA) as provided in section 817 of the Act, 15 U.S.C. § 1692. This proposed regulation adds information collections that apply to debt collectors as defined in the Fair Debt Collection Practices Act (FDCPA). The purpose of the proposed rule is to clarify application of the FDCPA to certain debt collection practices and to establish certain new disclosure requirements for debt collectors.

**JUSTIFICATION**

**1. Circumstances Necessitating the Data Collection**

In 1977, Congress passed the Fair Debt Collection Practices Act (FDCPA) “to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.”<sup>1</sup> The FDCPA established certain consumer protections but interpretative questions have arisen since its passage. Some questions, including those related to communication technologies that did not exist at the time the FDCPA was passed (such as cell phones, text messaging, and email), have been the subject of inconsistent court decisions, resulting in legal uncertainty and additional cost for industry and consumers. As the first Federal agency with authority under the FDCPA to

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

prescribe rules with respect to the collection of debts by debt collectors, the Bureau proposes to clarify how debt collectors may employ such newer communication technologies in compliance with the FDCPA and to address other communications-related practices that may pose a risk of harm to consumers and create legal uncertainty for industry.

This Rule provides a procedure whereby State governments may apply to the Bureau for a determination that, under the laws of that State, any class of debt collection practices within that State is subject to requirements that are substantially similar to, or provide greater protection for consumers than, those imposed under the FDCPA, and that there is adequate provision for State enforcement of such requirements.

The Bureau also proposes to establish new consumer disclosure requirements to provide clarity for both consumers and industry participants.

With respect to the proposal's disclosure requirements, the FDCPA requires that debt collectors send a written notice to consumers within five days of the initial communication containing certain information about the debt and actions the consumer may take in response, unless such validation information was provided in the initial communication or the consumer has paid the debt. To clarify the information that debt collectors must provide to consumers at the outset of debt collection, including (where applicable) in a validation notice, the Bureau proposes:

- To specify that validation information includes certain information about the debt, including an itemization of the debt, and about the consumer's rights with respect to the debt. The Bureau also proposes to require debt collectors to provide prompts that consumers could use to take certain actions, including disputing the debt or requesting information about the original creditor.
- A model validation notice that a debt collector could use to comply with the FDCPA and the proposed rule's disclosure requirements.
- A safe harbor if a debt collector complies with the E-SIGN Act when delivering the validation notice electronically or if a debt collector follows certain other steps prior to sending the validation notice by email to a consumer.

The Bureau also proposes to address certain other consumer protection concerns in the debt collection market. Among other requirements, the proposal would require debt collectors to retain evidence of compliance with Regulation F starting on the date that the debt collector begins collection activity on a debt and ending three years after: (1) the debt collector's last communication or attempted communication in connection with the collection of the debt; or (2) the debt is settled, discharged, or transferred to the debt owner or to another debt collector.

## **2. Use of the Information**

The proposed rule would include information collection requirements that allow the Bureau to

make a determination on State applications. Other information collections would clarify the content of certain disclosures required by the FDCPA and require other disclosures under certain circumstances, such as when a debt collector communicates with a consumer by electronic means. These disclosures would provide consumers with information they can use to decide how to respond to demands for payment of alleged debts and about how to communicate with debt collectors. The proposed rule's record retention requirements would facilitate the Bureau's supervision and enforcement of the requirements of the FDCPA and the proposed rule.

### **3. Use of Information Technology**

The proposed rule would clarify the application of the FDCPA to newer communications technologies including email and text messaging, including providing certain safe harbors for providing required disclosures electronically. The Bureau expects that the proposed rule would thereby encourage the use of information technology for debt collection communications by reducing the risk to debt collectors of legal liability when using such technologies. Additionally, to ensure that the process of applying for an exemption is both easy and fast, States may submit applications and supporting documentation to the Bureau in paper or electronic form. 12 CFR § 1006.3. Finally, the record retention provisions in § 1006.100 would not limit the use of available technology to maintain required records. The proposed rule would allow covered persons to retain records in a way that reproduces the records accurately (including computer programs) and that ensures the debt collector can easily access the records. Thus, this proposed rule is consistent with the aims of the Government Paperwork Elimination Act, 44 U.S.C. 3504.

### **4. Efforts to Identify Duplication**

The recordkeeping, reporting, and disclosure provisions in the proposed rule would not duplicate any other Federal information collection requirement. The information collection requirements are unique to this regulation and proposed rule.

### **5. Efforts to Minimize Burdens on Small Entities**

The disclosure and recordkeeping requirements of the proposed rule would apply to all debt collectors as defined in the FDCPA. The Bureau estimates that over 90 percent of respondents are small entities. Many provisions of the proposed rule are intended to reduce costs to entities covered by the FDCPA by providing additional clarity about how to comply with the FDCPA when using electronic communications or when leaving voice messages. The Bureau anticipates that these provisions would reduce the burden of the FDCPA on small entities by making it easier to communicate with consumers using these methods, which are often less expensive than methods generally used today. In addition, the proposed rule provides model forms that could be used to comply with certain requirements of the FDCPA and the proposed rule, and debt collectors that use the model forms would be deemed to be in compliance with the disclosure requirement with respect to such model forms. For a fuller discussion of the Bureau's analysis of the impact of this rule on small entities, please see the Regulatory Flexibility Act section of the preamble to the proposed rule this Supporting Statement accompanies

## **6. Consequences of Less Frequent Collection and Obstacles to Burden Reduction**

Certain of the information collections in the proposed Rule are required by the FDCPA and others interpret the FDCPA's requirements. If the proposed rule were not adopted, debt collectors and consumers would have less clarity about how the FDCPA applies to certain disclosures and would not have access to the proposal's safe harbors for disclosures required by the FDCPA. Without the recordkeeping requirements of the rule, the Bureau would not have a tangible mechanism to ensure that consumers are receiving the protections contained in the rule. With respect to the State application, failing to collect this information may leave the Bureau without the necessary information as to State law to allow the Bureau to consider and grant the exemption request.

## **7. Circumstances Requiring Special Information Collection**

There are no special circumstances. The collection of information requirements are consistent with the applicable guidelines contained in 5 CFR § 1320.5(d)(2).

## **8. Consultation outside the Agency**

In accordance with 5 CFR § 1320.11, the Bureau has published a notice of proposed rulemaking in the Federal Register inviting the public to comment on the information collection requirements contained in the proposed rule. Comments received in response to the notice of proposed rulemaking will be addressed in the preamble to the final rule. An advanced notice of proposed rulemaking for Regulation F was published in the *Federal Register* on November 12, 2013 providing the public 90 days to comment. The Bureau also convened a Small Business Review Panel to obtain feedback from small entities covered by the FDCPA as well as the general public. In developing the 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. The Bureau conducted consumer testing of the proposed model validation notice. The Bureau currently is conducting additional consumer testing of possible time-barred debt and revival disclosures. This testing may also provide additional evidence about the benefits of the proposed validation information to consumers.

## **9. Payments or Gifts to Respondents**

Not applicable. No payment, gifts, or other incentives are provided to respondents.

## **10. Assurances of Confidentiality**

With the exception of the State Application, the Bureau does not collect any information under this rule. The information collected under that application relates to State law and would not be confidential. To the extent that information covered by a recordkeeping requirement is collected

by the Bureau for law enforcement purposes, the confidentiality provisions of the Bureau's rules on the Disclosure of Records and Information, 12 CFR part 1070, would apply.

## **11. Justification for Sensitive Questions**

There is no information of a sensitive nature being requested by the Bureau under this information collection.

## **12. Estimated Burden of Information Collection**

Total Hours Allocated to CFPB: 1,029,500

Total Associated Labor Costs Allocated to CFPB: \$18,639,000

### *Covered Entities*

The Provision for a State application for a waiver would apply to State and US territorial governments only

The proposed rule would apply to "debt collectors" as defined in the FDCPA. The Bureau has identified four categories of entities that would be considered debt collectors and therefore would be subject to the proposed requirements:

1. Collection Agencies – 9,944 firms primarily engaged in collecting payments for claims and remitting payments collected to their clients;<sup>2</sup>
2. Debt Buyers – 330 firms primarily engaged in purchasing delinquent accounts from creditors and attempting to collect amounts owed, themselves or through agents;<sup>3</sup>
3. Collection Law Firms – 1,000 firms primarily engaged in collecting consumer debt; and<sup>4</sup>
4. Loan Servicers subject to the FDCPA – 700 firms that acquire servicing rights to loans that are already in default.<sup>5</sup>

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<sup>2</sup> The Census Bureau estimates that there are 4,009 collection agencies (NAICS Code 56144) with paid employees in the U.S. and 5,935 nonemployer collection agencies in the U.S. as of 2012. U.S. Census Bureau, *2012 Economic Census of the United States: Summary Statistics by Employment Size of Firms for the U.S.* (March 2016), available at [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/56SSSZ5//naics~56144](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/56SSSZ5//naics~56144), and U.S. Census Bureau, *Nonemployer Statistics 2012 Data* (April 2014), available at <https://www.census.gov/econ/nonemployer/download.htm>.

<sup>3</sup> Receivables Management Association (previously DBA International), the largest trade group for this industry segment, states that it has approximately 300 debt buyer members and believes that 90 percent of debt buyers are current members.

<sup>4</sup> The primary trade association for collection attorneys, the National Creditors Bar Association (NARCA), states that it has approximately 600 law firm members. The Bureau estimates that approximately 60 percent of law firms that collect debt are NARCA members.

<sup>5</sup> Loan servicers would be covered by the proposal if they acquire servicing of loans already in default. 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 there are 500 mortgage loan servicers that service more than 5,000 loans. The Bureau makes the assumption that all those servicing more than 5,000 loans may acquire servicing of loans when loans are in

Therefore the Bureau estimates that the proposed rule would impact 11,974 firms defined as “debt collectors” in the FDCPA. Unless otherwise specified, debt collectors include all of the aforementioned mentioned firms in this analysis.

The estimated burden includes the burden of information requirements required by the proposed rule, including the burden of information collections that are already required by the FDCPA and which are incorporated into the proposed rule.

**Exhibit 1: Burden Hour Summary**

Information Collection Requirement	No. of Respondents	Type of IC	Frequency	Annual Responses	Average Response Time (hours)	Annual Burden Hours	Hourly Rate	Hourly Costs
State Application for Waiver §1006.2 <sup>6</sup>	53	Reporting	1	1	2	2	\$32.86	\$66
<i>Opt-out notice for electronic communication</i>		<i>Disclosure</i>						
Ensuring communication system provides opt-out capacity (proposed § 1006.6(e))	11,974*				0	0	n/a	\$0
Providing disclosure in communications (proposed § 1006.6(e))	11,974*				0	0	n/a	\$0
<i>Communication prior to furnishing</i>		<i>Disclosure</i>						

default and that at most 100 of those servicing 5,000 loans or fewer acquire servicing of loans when loans are in default. The Bureau estimates that there are fewer than 100 servicers of student loans that may obtain servicing of delinquent loans in the course of their business.

<sup>6</sup> The State application for waiver is an existing part of Regulation F (Fair Debt Collection Practices Act). The burden associated with the State application for waiver has been previously accounted for under OMB control number 3170-0056.

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Information Collection Requirement	No. of Respondents	Type of IC	Frequency	Annual Responses	Average Response Time (hours)	Annual Burden Hours	Hourly Rate	Hourly Costs
Updating policies such that validation notice is sent before furnishing (proposed § 1006.30(a))	619		1	619	8	5,000	\$33.10	\$166,000
Sending additional validation notices (proposed § 1006.30(a))	619		6,785	4,200,000	0.003	12,600	\$17.32	\$218,000
<i>Validation Notice</i>		<i>Disclosure</i>						
Reformatting of Validation Notice (proposed § 1006.34)	1,700		1	1,700	8	13,600	\$33.10	\$450,000
System Upgrades to Implement Validation Notice (proposed § 1006.34)	238		1	238	40	9,520	\$40.52	\$386,000
Delivering Validation Notice (proposed § 1006.34)	11,974		6,815	81,600,000	0.003	245,000	\$17.32	\$4,243,000
<i>Request for creditor information</i>		<i>Disclosure</i>						
Responding to requests for original creditor information (proposed § 1006.38(c))	11,974		24	287,000	0.003	860	\$17.32	\$15,000
<i>Disputes</i>		<i>Disclosure</i>						
Responding to non-duplicative disputes (proposed § 1006.38(d)(2)(ii))	11,974		359	4,298,000	0.332	1,426,000	\$17.32	\$24,700,000

Information Collection Requirement	No. of Respondents	Type of IC	Frequency	Annual Responses	Average Response Time (hours)	Annual Burden Hours	Hourly Rate	Hourly Costs
Responding to duplicative disputes (proposed § 1006.38(d)(2)(ii))	11,974		40	478,000	0.102	49,000	\$17.32	\$800,000
<i>Subject line</i>		<i>Disclosure</i>						
Including creditor name in subject line of electronic communications (proposed § 1006.42(b)(2))	11,974				0	0	n/a	\$0
<i>Notice and opt-out provisions for certain types of electronic delivery</i>		<i>Disclosure</i>						
Implementing policy for capturing opt out (proposed § 1006.42(c)(3))	9,600		1	9,600	8.0	77,000	\$33.10	\$2,500,000
Providing opt-out notice during telephone calls (proposed § 1006.42(c)(3))	9,600		2,750	26,400,000	0.0083	220,000	\$17.32	\$3,800,000
<i>Recordkeeping</i>		<i>Recordkeeping</i>						
Record retention (proposed § 1006.100)	11,974				0	0	n/a	\$0
<b>Totals:</b>	<b>12,027</b>		<i>//////////</i>	<b>117,275,000</b>	<i>//////////</i>	<b>2,059,000</b>	<i>//////////</i>	<b>\$37,278,000</b>
<b>CFPB Totals:</b>	<b>12,027</b>		<i>//////////</i>	<b>58,637,501</b>	<i>//////////</i>	<b>1,029,502</b>	<i>//////////</i>	<b>\$18,639,000</b>

*Burden Shared Between CFPB and the Federal Trade Commission.*

The CFPB shares administrative enforcement authority under the FDCPA with the Federal Trade Commission per sec. 814(a) of the FDCPA (15 USC 1692l(a)). To avoid double-counting



burden with the FTC , the CFPB allocates to itself half of the estimated paperwork burden under the proposed rule by dividing the burden hours even between the agencies. However since we have joint authority over the respondents themselves, we retain the entity count of all affected respondents as shown above.

### *State Application*

12 CFR § 1006.2 provides that any State may apply for a determination that, under the laws of that state, any class of debt collection practices within that State is subject to requirements that are substantially similar to, or provide greater protection for consumers than, those imposed under sections 803 through 812 of the FDCPA, and that there is adequate provision for State enforcement of such requirements. Such an application must be in writing, addressed to the Bureau, signed by the Governor, Attorney General or State official having primary enforcement or responsibility under the State law which is applicable to the class of debt collection practices, and shall be supported by the documents specified in the regulation. 12 CFR § 1006.3 also specifies the documentation that a State must submit to support its application, including: (1) a copy of the relevant State law with requirements similar to those contained in sections 803 and 812 of the FDCPA; (2) a comparison between the relevant State law and these FDCPA provisions; (3) a copy of the relevant State law permitting enforcement of the relevant State law; (4) a comparison between the relevant State law's enforcement provisions and the enforcement provisions in section 814 of the FDCPA; and (5) information identifying the State officials responsible for enforcing the relevant State law and describing the powers and resources these State officials can or will use in enforcement.

If the Bureau determines based on the application and supporting documents that the State meets the standard for an exemption set forth above, Regulation F states that the Bureau will exempt the class of debt collection practices in the State from the requirements of sections 803 through 812 and section 814 of the FDCPA.

There are potentially 53 state respondents (50 states and 3 territories); however, in past years, one State has applied for this determination. The application must be resubmitted annually. Given an estimate of two hours to complete the application, the Bureau estimates two burden hours annually and \$66 in ongoing labor costs.<sup>7</sup>

### *Opt-out Notice for Electronic Communications or Attempts to Communicate*

Proposed § 1006.6(e) would require a debt collector who communicates or attempts to communicate with a consumer electronically in connection with the collection of a debt using a particular email address, telephone number for text messages, or other electronic-medium address to include in each such communication or attempt to communicate a clear and conspicuous statement describing one or more ways the consumer can opt out of further

<sup>7</sup> The Bureau uses the median hourly wage of \$32.86 for Business and Financial Operations Occupations (13-0000) to calculate labor costs. Bureau of Labor Statistics, *National Occupational Employment and Wage Estimates* (May 2018), available at [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm) (May 2018 BLS Wage Estimates).

electronic communications or attempts to communicate by the debt collector to that address or telephone number. Proposed comment 6(e)-1 provides examples illustrating the proposed rule, including language that could be used to comply with the proposed requirement.

The Bureau understands that opt-out functionality is a common component of business email and text message software products. If a debt collector chose to adopt email or text messaging as a means of communication, it is very likely the software system the debt collector selected would include opt-out functionality. Therefore, inasmuch as this is something all or nearly all respondents already do in the ordinary course of business the Bureau estimates that there is no one-time or ongoing costs associated with this provision.<sup>8</sup>

*Disclosures required by FDCPA section 807(11).*

FDCPA section 807(11) requires debt collectors to disclose in their initial communications with consumers that they are attempting to collect a debt and that any information obtained will be used for that purpose, and to disclose in their subsequent communications with consumers that the communication is from a debt collector, except in a formal pleading made in connection with a legal action.<sup>9</sup> Proposed § 1006.18(e) would implement FDCPA section 807(11). Proposed comment 18(e)(1)-1 describes the circumstances in which debt collectors would be required to provide disclosures in initial communications under proposed § 1008.18(e)(1).

FDCPA section 807(11) and proposed § 1006.18(e) provide the required content for a debt collector's initial and subsequent communication with a consumer. Therefore, this provision qualifies for the label exception to the definition of an information collection under the PRA<sup>10</sup> and the Bureau does not estimate any one-time or ongoing costs associated with it.

*Communication Prior to Furnishing Information*

The Bureau proposes § 1006.30(a), which provides that a debt collector must not furnish to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act,<sup>11</sup> information regarding a debt before communicating with the consumer about the debt. The Bureau anticipates that debt collectors generally will comply with this requirement by ensuring that they provide a validation notice to the consumer before furnishing information about the debt to a consumer reporting agency.

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<sup>8</sup> Some free email software systems include this functionality. See [https://knowledge.hubspot.com/articles/kcs\\_article/email/how-do-i-add-an-unsubscribe-link-to-my-one-to-one-sales-emails-and-sequences](https://knowledge.hubspot.com/articles/kcs_article/email/how-do-i-add-an-unsubscribe-link-to-my-one-to-one-sales-emails-and-sequences) for opt-out functionality information. For product pricing see <https://www.hubspot.com/pricing/sales?selectedPackage=free>. Microsoft Outlook email users can add an unsubscribe link to all their email messages at no cost ([https://answers.microsoft.com/en-us/outlook\\_com/forum/all/insert-unsubscribe-link/4e37fcb2-e038-403d-93d3-68203675e4cb](https://answers.microsoft.com/en-us/outlook_com/forum/all/insert-unsubscribe-link/4e37fcb2-e038-403d-93d3-68203675e4cb)). The functionality is available in text message services as well; see, e.g., <https://www.protexting.com/product-and-services.html>.

<sup>9</sup> 15 U.S.C. 1692e(11).

<sup>10</sup> 5 CFR 1320.3(c)(2)

<sup>11</sup> 15 U.S.C. 1681a(f).

The Bureau understands that most debt collectors already provide validation notices to consumers before furnishing information to consumer reporting agencies, but that some debt collectors furnish information about debts and do not provide validation notices unless or until they communicate with the consumer. The Bureau expects debt collectors who currently furnish to a consumer reporting agency before providing a validation notice will incur one-time burden of updating their policies such that the debt collector provides a validation notice before furnishing information to a consumer reporting agency. The Bureau estimates that 5.2 percent of debt collectors, or 619 firms, currently furnish before providing a validation notice.<sup>12</sup> The Bureau estimates it will take each firm, on average, 4 hours to update their policies, resulting in approximately 5,000 hours of one-time burden and \$166,000 in labor costs.<sup>13</sup>

The Bureau estimates that consumers are contacted about approximately 186,260,000 debts in collection annually, such that a validation notice would be required.<sup>14</sup> The Bureau estimates that 73 percent of these contacts are made by debt collectors.<sup>15</sup> Therefore, the Bureau estimates there are 136 million validation notices sent annually.

The Bureau estimates that debt collectors who furnish before providing a validation notice successfully reach 10 percent of consumers they attempt to contact and ultimately provide a validation notice. Therefore, the Bureau estimates that 5.2 percent of debt collectors are currently sending 10 percent of the notices they will send post-rule and 94.8 percent of debt collectors are currently sending the same number of validation notices they will send post-rule. Therefore, Bureau assumes that the current number of validation notices sent annually represents 95.3 percent of the notices that will be sent after the proposed rule takes effect.<sup>16</sup> Given that

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<sup>12</sup> See Consumer Financial Protection Bureau, *Study of Third-Party Debt Collection Operations* (July 2016) at 19, available at [http://files.consumerfinance.gov/f/documents/Third\\_Party\\_Debt\\_Collection\\_Operations\\_Study\\_embargoed.pdf](http://files.consumerfinance.gov/f/documents/Third_Party_Debt_Collection_Operations_Study_embargoed.pdf) (CFPB Operations Study). Forty-five of 58 respondents reported that they furnish data to the credit bureaus. In all but three of these cases the respondents said that they send a validation notice upon account placement, such that the proposed requirement would be satisfied (CFPB analysis of data from the CFPB Operations Study).  $3 / 58 = 0.052$ .

<sup>13</sup> The Bureau uses the median hourly wage of \$33.10 for Compliance Officers (13-1041) to calculate labor costs. See May 2018 BLS Wage Estimates.

<sup>14</sup> The Bureau estimates that there are approximately 208 million U.S. consumers with a credit file. See Brevoort, Kenneth P., Philipp Grimm and Michelle Kambara. (May 2015). *Credit Invisibles*. Bureau of Consumer Financial Protection, p. 12, available at [https://files.consumerfinance.gov/f/201505\\_cfpb\\_data-point-credit-invisibles.pdf](https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf). Of these, approximately 32 percent, or 67 million, are contacted about a debt in collection each year. See *CFPB Debt Collection Consumer Survey* (January 2017). Consumer Financial Protection Bureau, p. 13 (CFPB Debt Collection Consumer Survey report). Of those contacted about a debt, 27 percent of consumers reported being contacted about one debt, 57 percent of consumers reported being contacted two to four debts, and 16 percent of consumers reported being contacted about 5 or more debts. See *CFPB Debt Collection Consumer Survey* report at 13. Based on those reported number of debts, the Bureau estimates that the average consumer is contacted about 2.78 debts annually ( $0.68*0 + 0.27*1 + 0.57*3 + 0.16*5 = 2.78$ ). Therefore, the Bureau estimates that consumers are contacted about approximately 186,260,000 debts in collection annually (67 million \* 2.78 = 186,260,000).

<sup>15</sup> The CFPB Debt Collection Consumer Survey asked respondents whether the most recent contact regarding a debt was from a creditor or debt collector. Of the 86 percent of respondents who were able to answer, 73 percent said they were contacted by a debt collector. See *CFPB Debt Collection Consumer Survey* report at 40.

<sup>16</sup>  $0.948 + (0.052*.1) = 0.953$

estimate, the Bureau estimates 7 million additional notices will be sent annually post-rule.<sup>17</sup> The Bureau estimates that under the proposal 60 percent of notices will be sent by mail and the remaining 40 percent will be sent electronically. Given an estimate of 0.003 hours to mail a notice, the Bureau estimates the ongoing annual burden hours will be approximately 12,600 and ongoing annual labor costs of \$218,000.<sup>18</sup>

### *Validation Notice*

The proposed rule would require that debt collectors provide additional information on validation notices sent to consumers. While the Bureau does not expect that the requirement to provide additional information would result in an increase in any ongoing printing or mailing costs, debt collectors may experience costs resulting from the need to reformat validation notices to include the required information. The Bureau expects that debt collectors relying on vendors to send validation notices would experience minimal costs as a result of this requirement because vendors are likely to provide updates to the notices at no additional cost. The Bureau estimates that 1,700 firms do not use a vendor to send validation notices and therefore would bear the cost of reformatting validation notices themselves.<sup>19</sup> The Bureau assumes that each of the 1,700 firms would take, on average, 8 hours to reformat the validation notice, resulting in approximately 13,600 hours of one-time burden and \$450,000 in labor costs.<sup>20</sup>

Some debt collectors would also need to update their debt collection management systems to enable them to track certain information required by the validation notices that they don't already track. The Bureau believes that all debt collectors are currently maintaining all of the information required by the proposed validation notice with the exception of post-default interest and fee data. The Bureau estimates that 1,900 firms do not track post-default interest and fee data and would therefore need to upgrade their systems to add such data fields.<sup>21</sup> The Bureau expects that the majority of these updates will be made by vendors supplying collection management systems at a minimal cost to the debt collectors. The Bureau estimates that 238 of the firms that would need to add fields use a proprietary system and would therefore bear the burden of making upgrades.<sup>22</sup> The Bureau estimates that these updates would take, on average, 40 hours of programming time.<sup>23</sup> Therefore debt collectors upgrading proprietary debt collection

<sup>17</sup> The Bureau estimates that 143 million notices will be sent annually post-rule (136 million / 0.953 = 143 million) which is 7 million more annual notices than are currently sent.

<sup>18</sup> 7 million additional notices \* 0.6 \* 0.003 = 12,600. The Bureau uses the median hourly wage of \$17.32 for Bill and Account Collectors (43-3011) to calculate labor costs. See May 2018 BLS Wage Estimates.

<sup>19</sup> The Bureau estimates that 86 percent of debt collectors use letter vendors. See CFPB Operations Study at 32.

<sup>20</sup> The Bureau uses the median hourly wage of \$33.10 for Compliance Officers (13-1041) to calculate labor costs. See May 2018 BLS Wage Estimates.

<sup>21</sup> This estimate is based on the percentage of firms reporting that they rarely (9 percent) or never (7 percent) receive a breakdown of post-charge-off fees and interest from clients. See CFPB Operations Study at 23.

<sup>22</sup> One vendor estimated that approximately 10 to 15 percent of collection firms use an in-house collection system, which is roughly consistent with the eight of 58 respondents that indicated using a proprietary system in the CFPB Operations Study. The Bureau used a midpoint (12.5 percent) of the 10 to 15 percent to estimate the number of firms not tracking post-default interest and fee data that also use a proprietary debt collection management system.

<sup>23</sup> Respondents in the CFPB Operations Study reported a wide range of programming costs to make upgrades to debt collection management systems, from "under \$1,000" for smaller firms to as much as "\$13,000 to \$26,000" for

management systems would result in approximately 9,520 hours of one-time burden and \$386,000 in labor costs.<sup>24</sup>

Debt collectors will incur the cost of delivering validation notices. As described above, the Bureau estimates there are 136 million validation notices sent annually. The Bureau estimates that under the proposal 60 percent of validation notices would be sent by mail and the remaining 40 percent would be sent electronically. Therefore, the Bureau estimates that 81.6 million notices would be sent by mail annually. Given an average time of 0.003 hours to mail each notice, the Bureau estimates debt collectors would incur approximately 245,000 burden hours annually and \$4,243,000 in labor costs.<sup>25</sup>

### *Responses to requests for original-creditor information*

Proposed § 1006.38(c) would require that upon receipt of a request for the name and address of the original creditor submitted by the consumer in writing within the validation period, a debt collector must cease collection of the debt until the debt collector provides the name and address of the original creditor to the consumer in writing or electronically in a manner permitted by § 1006.42. This proposal would incorporate the existing requirement to provide information about the original creditor as required by FDCPA section 809(a)(5).

Debt collectors will incur costs to respond by mail to consumer requests for information about the original creditor. The Bureau expects that debt collectors who respond to requests for information by email will not incur any ongoing costs. The Bureau estimates that 0.35 percent of consumers contacted by a debt collector request information about the original creditor.<sup>26</sup> The Bureau estimates that in 60 percent of these cases, the debt collector will respond by mail. As described above, the Bureau estimates 136 million validation notices are sent annually. Therefore, the Bureau estimates that there will be 286,500 requests for information that debt collectors will respond to by mail annually.<sup>27</sup> Given an average time of 0.003 hours to mail each response, the Bureau estimates that debt collectors will incur an ongoing annual burden of 860 hours and \$15,000 in labor costs.<sup>28</sup>

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larger firms. The respondents also indicated that adding data fields could be done using in-house resources. The Bureau assumes that these changes could be made with 40 hours of programming time and that, given the number of small firms relative to larger firms, that the labor costs associated with that programming time is representative of the feedback received in the CFPB Operations Study.

<sup>24</sup> The Bureau uses the median hourly wage of \$40.52 for Computer Programmers (15-1131) to calculate labor costs. See May 2018 BLS Wage Estimates.

<sup>25</sup> The Bureau uses the median hourly wage of \$17.32 for Bill and Account Collectors (43-3011) to calculate labor costs. See May 2018 BLS Wage Estimates.

<sup>26</sup> The Bureau estimates that 3.5 percent of consumers dispute a debt after being contacted by a debt collector. See CFPB Operations Study at 30. The Bureau understands that requests for original creditor information are substantially less common than disputes.

<sup>27</sup>  $136,000,000 * 0.0035 * 0.6 = 286,500$ .

<sup>28</sup> The Bureau uses the median hourly wage of \$17.32 for Bill and Account Collectors (43-3011) to calculate labor costs. See May 2018 BLS Wage Estimates.

*Responses to Disputes*

FDCPA section 809(b) provides that, if a consumer disputes a debt in writing within 30 days of receiving the validation information or notice described in section 809(a), the debt collector must cease collection of the debt, or any disputed portion of the debt, until the debt collector obtains verification of the debt or a copy of a judgment and mails it to the consumer.<sup>29</sup> Proposed § 1006.38(d) would implement and interpret this requirement, including the requirement to provide a copy either of verification of the debt or of a judgment to the consumer in writing or electronically in a manner permitted by § 1006.42.

Proposed § 1006.38(d)(2)(ii) would establish an alternative way for debt collectors to respond to disputes that they reasonably conclude are duplicative disputes, as that term is defined in proposed § 1006.38(a)(1). Proposed § 1006.38(d)(2)(ii) would provide that, upon receipt of a duplicative dispute, a debt collector must cease collection of the debt, or any disputed portion of the debt, until the debt collector either: notifies the consumer in writing or electronically that the dispute is duplicative, provides a brief statement of the reasons for the determination, and refers the consumer to the debt collector's response to the earlier dispute; or provides the disclosure required for a non-duplicative dispute.

Debt collectors will incur costs to respond to both duplicative and non-duplicative disputes. The Bureau estimates that 3.5 percent of consumers who receive a validation notice dispute the debt.<sup>30</sup> The Bureau estimates that 10 percent of disputes are duplicative. As described above, the Bureau estimates that 136 million validation notices are sent annually. Therefore, the Bureau estimates there are 4,298,000 non-duplicative disputes and 478,000 duplicative disputes annually.

The Bureau expects that debt collectors who respond to disputes by mail will experience a time burden for investigating the dispute and for mailing a response. Debt collectors who respond electronically will only incur the time burden of investigating the dispute. The Bureau estimates that it takes 0.33 hours to investigate a non-duplicative dispute and 0.003 hours to mail a response, and that it takes 0.1 hours to investigate a duplicative dispute and 0.003 hours to mail a response. Given the estimate that 60 percent of responses to disputes will be sent by mail, the Bureau estimates that the average response time per non-duplicative dispute is 0.332 hours and that the average response time per duplicative dispute is 0.102 hours.<sup>31</sup> Therefore, the Bureau estimates an ongoing annual burden of approximately 1,426,000 hours and \$24.7 million for non-duplicative disputes and 49,000 hours and \$800,000 for duplicative disputes.<sup>32</sup>

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<sup>29</sup> 15 U.S.C. 1692g(b).

<sup>30</sup> See CFPB Operations Study at 30. 3.5 percent is the midpoint of the estimates given by respondents who used business data to estimate dispute rates.

<sup>31</sup> For non-duplicative disputes,  $0.6*(0.33 + 0.003) + 0.4*0.33 = 0.332$ ; for duplicative disputes  $0.6*(0.1 + 0.003) + 0.4*0.1 = 0.102$ .

<sup>32</sup> The Bureau uses the median hourly wage of \$17.32 for Bill and Account Collectors (43-3011) to calculate labor costs. See May 2018 BLS Wage Estimates.

*Subject line when required disclosures are delivered electronically*

Proposed § 1006.42(b)(2) would apply when a debt collector provides required disclosures electronically. The proposed provision would require a debt collector to identify the purpose of the communication by including, in the subject line of an email or in the first line of a text message transmitting the disclosure, the name of the creditor to whom the debt currently is owed or allegedly is owed and one additional piece of information identifying the debt, other than the amount.

The Bureau understands that personalized subject line functionality is a common component of small business email and text message software. If a debt collector chose to adopt email or text messages as a means of communication, it is very likely the software system the debt collector selected would include personalized subject line functionality. Therefore, the Bureau estimates that there is no one-time or ongoing costs associated with this provision.<sup>33</sup>

*Notice and opt-out provisions for certain types of electronic delivery*

Proposed § 1006.42(c)(3) would require a debt collector who wishes to use the alternative procedures to place a required disclosure on a website that is accessible by clicking on a hyperlink to choose between two options for providing consumers with notice and an opportunity to opt out of this delivery mechanism: the process described in proposed § 1006.42(c)(3)(i) or the process described in proposed § 1006.42(c)(3)(ii). Proposed § 1006.42(c)(3)(i) would require a debt collector to provide certain information to the consumer and provide an opportunity to opt out of such electronic communication; proposed § 1006.42(c)(3)(ii) would require in the alternative that the debt collector has confirmed that the creditor has provided certain disclosures to the consumer.

As mentioned above, the Bureau understands that opt-out functionality is a common component of small business email and text message software. Therefore, the Bureau estimates that there is no one-time or ongoing costs associated with this provision when the opt-out notice is provided in an electronic communication. Debt collectors that provide the opt-out notice by telephone will need to implement a process to ensure that the disclosure is made consistently and that consumers' choice of opting out is captured and implemented, and will need to make the disclosure orally to each consumer to whom they intend to send this type of electronic disclosure. The Bureau estimates that 9,600 debt collection firms will provide the opt-out notice orally, and that it will take each such firm, on average, 8 hours to update their policies and systems, resulting in approximately 77,000 hours of one-time burden and \$2.5 million in labor costs.<sup>34</sup> The Bureau estimates that these 9,600 firms will provide the opt-out notice in 25 percent of initial debt

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<sup>33</sup> Email (<https://docs.expona.com/docs/personalized-subject-line>) and text message (<https://www.slicktext.com/helpcenter/articles/how-does-personalization-work>) software often allow users to assign "attributes" to an email or text recipient's profile and personalize a subject line or message using the attribute values.

<sup>34</sup> The Bureau estimates that 80 percent of firms will provide the opt-out for electronic communications notice orally. The Bureau uses the median hourly wage of \$33.10 for Compliance Officers (13-1041) to calculate labor costs. See May 2018 BLS Wage Estimates.

collection contacts each year, or 26.4 million times each year, and that each notice will require 30 seconds to deliver orally.<sup>35</sup> Therefore, the Bureau estimates an ongoing annual burden of approximately 220,000 hours and \$3.8 million in labor costs.<sup>36</sup>

### *Recordkeeping*

The proposed rule would require debt collectors to retain evidence of compliance with the FDCPA and Regulation F for three years after: (1) the debt collector's last communication or attempted communication in connection with the collection of the debt; or (2) the debt is settled, discharged, or transferred to the debt owner or to another debt collector. The Bureau believes that, in most cases, debt collectors are already maintaining records for three or more years for legal purposes.<sup>37</sup> Furthermore, the Bureau believes that nearly all debt collectors now retain their records electronically, and any additional records that would be required to be kept under this regulation would add only a *de minimis* additional burden to their existing recordkeeping systems and therefore regulated entities would not incur significant time or material costs as a result of this requirement.<sup>38</sup>

## **13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers**

### *Communication Prior to Furnishing Information*

The proposed rule would require debt collectors to provide consumers a validation notice before furnishing information to a credit reporting agency. As described above, the Bureau estimates this requirement will result in approximately 7 million additional notices sent annually, 60 percent or 4.2 million of which will be sent by mail. The Bureau estimates that the cost to send validation notices with a return envelope is, on average, \$0.65 per notice.<sup>39</sup> Therefore, the Bureau estimates this requirement will result in materials costs of approximately \$2.7 million annually.

<sup>35</sup> As stated above, the Bureau estimates that there are 136 million consumer contacts annually that result in a validation notice, or approximately 11,000 initial contacts annually per firm.  $9,600 * 11,000 * 0.25 = 26.4$  million.

<sup>36</sup> The Bureau uses the median hourly wage of \$17.32 for Bill and Account Collectors (43-3011) to calculate labor costs. See May 2018 BLS Wage Estimates.

<sup>37</sup> At the Small Business Review Panel convened to consider proposed debt collection rules, nearly all small entity representatives stated that their current recordkeeping practices are already consistent with the a three year recordkeeping requirement, with some saying that they retain records for longer periods ranging from five to ten years. 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 Buyer Rulemaking* (Oct. 2016), [https://files.consumerfinance.gov/f/documents/cfpb\\_debt-collector-debt-buyer\\_SBREFAreport.pdf](https://files.consumerfinance.gov/f/documents/cfpb_debt-collector-debt-buyer_SBREFAreport.pdf) (hereinafter Small Business Review Panel Report).

<sup>38</sup> Some of the proposed regulation's new requirements could require changes to recordkeeping systems – for example, to record that a required disclosure was sent timely. The burden of making such changes is included as part of the burden associated with such new requirements.

<sup>39</sup> Respondents to the CFPB Operation Study generally said that the cost of sending a letter with one page and a return envelope was \$0.50 to \$0.80 per letter sent. See CFPB Operations Study at 32. The Bureau uses the midpoint of this range in its analysis.



*Validation Notice*

The proposed rule would require debt collectors to provide a validation notice. The Bureau assumes that 60 percent of validation notices would be sent by mail if the proposal's provisions regarding electronic communications were finalized. Given an estimated mailing cost of \$0.65 per response, the Bureau estimates the validation notice requirement would result in material costs of approximately \$53 million annually.

*Responses to requests for original-creditor information*

The proposed rule would require debt collectors to respond to requests for information about the original creditor submitted by the consumer in writing within the validation period. As described above, the Bureau estimates there are approximately 286,500 requests annually that debt collectors will respond to by mail. Given an estimated mailing cost of \$0.65 per response, the Bureau estimates this requirement will result in materials costs of approximately \$186,000 annually.

*Responses to Disputes*

Debt collectors will incur costs to respond to both duplicative and non-duplicative disputes. As described above, the Bureau estimates there are approximately 4,298,000 non-duplicative disputes and 478,000 duplicative disputes annually. The Bureau estimates that debt collectors will respond to 60 percent, or 2,578,000 non-duplicative disputes and 286,800 duplicative disputes, by mail. The Bureau estimates that the cost to respond is, on average, \$1.03 per non-duplicative dispute response and \$0.65 per duplicative dispute response.<sup>40</sup> Therefore, this requirement would result in material costs of approximately \$2,643,000 for non-duplicative disputes and \$186,000 for duplicative disputes annually.

**Exhibit 2: Cost Burden Summary**

<b>Description of Costs (O&amp;M)</b>	<b>Per Unit Costs</b>	<b>Quantity</b>	<b>Costs</b>
Mailing Validation Notice prior to furnishing	\$0.65	4,200,000	\$2,730,000
Mailing Validation Notices	\$0.65	81,600,000	\$53,040,000
Responses to requests for original creditor	\$0.65	286,500	\$186,000

<sup>40</sup> The Bureau estimated that the response to a non-duplicative is approximately 6 pages while the response to a duplicative request is approximately 1 page. Respondents to the CFPB Operations Study said the cost of including an additional 8.5" x 11" insert in a mailing costs approximately \$0.05 - \$0.10 per letter. See CFPB Operations Study at 33. The Bureau used the mid-point of this range in its analysis.

Description of Costs (O&M)	Per Unit Costs	Quantity	Costs
Responses to non-duplicative disputes	\$1.03	2,578,800	\$2,643,000
Responses to duplicative disputes	\$0.65	286,800	\$186,000
<b>Total Burden Costs:</b>	////////////////////	////////////////////	<b>\$58,785,000</b>
<b>CFPB Burden Costs:</b>	////////////////////	////////////////////	<b>\$29,392,500</b>

**14. Estimated Cost to the Federal Government**

There are no additional costs to the Federal Government.

**15. Program Changes or Adjustments**

The change in burden would result from new information collection requirements as contained in the proposed rule for 12 CFR 1006 (Regulation F).

**Exhibit 3: Summary of Burden Changes**

	Total Respondents	Annual Responses	Burden Hours	Cost Burden (O & M)
Total Annual Burden Requested	12,027	58,637,501	1,029,502	\$29,392,500
Current OMB Inventory	1	1	2	\$0
Difference (+/-)	12,026	58,637,500	1,029,500	\$29,392,500
Program Change	12,026	58,637,500	1,029,500	\$29,392,500
Discretionary				
New Statute				
Violation				
Adjustment				

**16. Plans for Tabulation, Statistical Analysis, and Publication**

There are no plans to provide any publications based on the information collection of this regulation.

**17. Display of Expiration Date**

The OMB control number and expiration date associated with this PRA submission will be displayed on the Federal government’s electronic PRA docket at [www.reginfo.gov](http://www.reginfo.gov), as well as in the Code of Federal Regulations. There are no required forms or other documents upon which display of the control number and expiration date would be appropriate.

**18. Exceptions to the Certification Requirement**

The Bureau certifies that this collection of information is consistent with the requirements of 5 CFR § 1320.9, and the related provisions of 5 CFR § 1320.8(b)(3) and is not seeking an exemption to these certification requirements.

**PART B: COLLECTIONS OF INFORMATION USING STATISTICAL METHODS**

Not applicable. The information collections contained in this proposed rule do not involve the use of statistical methods.

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