



July 22, 2020

To Whom it May Concern:

Thank you for the opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) in regard to the survey you will be sending for additional information on the proposed model notice. This is a fantastic opportunity you are giving patients, one of the three stakeholders (patients, health systems, and collection agencies) that the proposed model notice impacts. The American Association of Healthcare Administrative Management (AAHAM) implores the CFPB to also give our members the same opportunity for comments to ensure the proposed model notices meet the needs of all stakeholders.

Healthcare billing can be a complex and challenging process for patients to understand. According to CFPB's own study, approximately 9.5 percent of credit reports, nearly one in five, contain one or more medical collections.ⁱ This sheer volume means that one in five of the surveys, discussing the proposed model notice, will be for medical collection, for which the needs differ significantly from other collection efforts. AAHAM's members work directly with our partners, the collection agencies, to ensure the statements provided to patients are correct and include relevant information from which to make an informed decision regarding payment options.

AAHAM's member needs include:

1. The complexity of healthcare that we reference above comes from multiple episodes of care including, multiple family members as patients, physician charges that are different from the facility, and different dates of services, which unlike utilities, credit cards, and cell phone bills, need to be itemized for the patients who are the payers. We also believe the healthcare uniqueness of adding insurance information, such as adjustments and payments made by insurance carriers, to the proposed model notice will support a better-informed patient.
2. AAHAM believes that the CFPB should allow our collection agency partners to add additional language to the proposed model notice as there is a requirement under the Affordable Care Act 501rⁱⁱ of conspicuous written notice that financial assistance, or the ability for patients to apply for free care, may be available. This is in the best interest of all stakeholders.
3. AAHAM also implores the CFPB, just as you all are requesting in item 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," that our partners, the collection agencies, be able to minimize the financial burden and use multiple communication media, such as emails and text, to deliver the proposed model notices to our patients.
4. Finally, the proposed model notice needs to balance all resolution options for our patients, but the focus should be on repayment. Currently, we believe the focus of the proposed model is on disputes. The proposed model should be designed to address the majority, which are payments, and include a sub-section addressing the minority, which are disputes.

ABOUT AAHAM

The American Association of Healthcare Administrative Management (AAHAM) is a national professional association of thirty chapters and over 3,000 healthcare revenue cycle professionals from hospitals, clinics, billing offices, allied vendors, physicians and multi physician groups. AAHAM members direct the activities of the thousands of people employed in the healthcare industry.

AAHAM is the preeminent professional organization for revenue cycle professionals and is known for its prestigious certification and educational programs; professional development of its members is one of the primary goals of the association. AAHAM actively represents the interests of its members through a comprehensive program of legislative and regulatory monitoring and participation in industry groups. For more information on AAHAM and its programs, please visit www.aaham.org or contact AAHAM, 703.281.4043.

Sincerely,



Lori M. Sickelbaugh, CRCE
President

ⁱⁱ https://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf

ⁱⁱ <https://www.irs.gov/charities-non-profits/financial-assistance-policies-faps>



July 29, 2020

VIA ELECTRONIC DELIVERY TO REGULATIONS.GOV

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: “Debt Collection Validation Notice Qualitative Testing, Docket No. CFPB-2020-0024”

Dear Director Kraninger and CFPB Staff:

ACA International (“ACA”), the Association of Credit and Collection Professionals, submits these comments in response to the Bureau of Consumer Financial Protection’s (“Bureau” or “CFPB”) “Debt Collection Validation Notice Qualitative Testing” under the Generic Information Collection Plan entitled, “Generic Information Collection Plan for the Development and Testing of Disclosures and Related Materials.”

I. BACKGROUND ON ACA INTERNATIONAL

ACA International (ACA) is the leading trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents approximately 2,500 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 230,000 employees worldwide. Given its longstanding history and broad membership, ACA is uniquely positioned to assist the Bureau with information gathering related to debt collection, as well as to collaborate with the Bureau on how its proposed policies and regulations will impact the credit and collection industry.

ACA members include the smallest of businesses that operate within a limited geographic range of a single state, and the largest of publicly held, multinational corporations that operate in every state. The majority of ACA-member debt collection companies, however, are small businesses.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community’s businesses. ACA members work with these businesses, large and small, to obtain payment for the goods and services already received by consumers. In years past, the combined effort of ACA members has resulted in the annual recovery of billions of

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dollars. This savings is returned to and reinvested by businesses. This allows small businesses and large employers, to limit losses on the financial statements of those businesses. Without an effective collection process, the economic viability of these businesses and, by extension, the American economy in general, is threatened. Recovering rightfully -owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover governmental budget shortfalls.

The role of the accounts receivable management (ARM) industry currently is more important than ever during these unprecedented and challenging times for our country because of COVID-19. ACA members' clients, consisting of medical providers, hospitals, community financial institutions, and a multitude of small and large businesses in both the public and private sectors throughout the country are providing valuable goods and services. They need the ARM industry to stay afloat. One thing is clear, part of our economy is functioning in a healthy way, and part is not. ACA members have the expertise to address issues that consumers have in both parts of the economy, which, in turn, helps creditors, consumers, and the economy as a whole. Every American family stands to lose \$709 per year due to the increase in the cost of goods and services if ACA members cannot return the \$90 billion back to creditors, according to a recent study.¹

Importantly, ACA members are committed to fair, reasonable, and respectful practices and take their obligations in collecting debt very seriously. As legitimate credit and collection professionals, ACA members play a key role in helping consumers fulfill their financial goals and responsibilities while facilitating broad access to the credit market.

II. Relevant Questions Posed

The CFPB notes that it plans to conduct cognitive interviews to assess the effectiveness and validate the performance of the Bureau's model debt collection validation notices. It states that it will collect information on how consumers locate and use information in the model notice including:

- (1) Whether the consumer can locate and use important information effectively, such as information about the debt, information about the consumer's rights, and information about how the consumer may respond if they so choose; and
- (2) How consumers view and respond to paper and electronic versions of the model validation notice.

III. ACA's Comments

Consumer testing can be a helpful aspect of developing policymaking. However, there are also many other aspects surrounding the testing of any model validation notice that the Bureau must consider, including applicable state laws, electronic alternatives, predatory litigation in this area that targets highly technical violations (which can have little to no impact on consumers), and the

¹ 2020 State of The Industry Report, available at <https://www.acainternational.org/kaulkin-ginsberg>.

host of issues outlined in ACA's Comments on the Notice of Proposed Rulemaking (NPRM) to implement the Fair Debt Collection Practices Act (FDCPA).² The CFPB's request for comment does not include the model validation notice to be tested, so it would be impossible to provide substantive comments. However, if the model notice is the same as what was included in the FDCPA NPRM, we ask that the Bureau consider our previous lengthy comments outlining improvements that can be made.

In general, greater transparency about why data is being collected and how it is being used in the rulemaking process is critical. To that end, not knowing for certain exactly how this new model validation notice to be tested will be included, or if it will be included, in the forthcoming final rule, it is impossible at this time to determine or comment on whether its use will comply with Administrative Procedures Act requirements.³

ACA appreciates the opportunity to provide comments.

Sincerely,

A handwritten signature in black ink that reads "Leah Dempsey". The signature is written in a cursive, flowing style.

Leah Dempsey
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Phone: 202-810-8901
Dempsey@acainternational.org

² Comments of ACA International in response to the Notice of Proposed Rulemaking (NPRM) to implement the Fair Debt Collection Practices Act (FDCPA), available at <https://www.acainternational.org/assets/comments/aca-comment-cfpb-reg-f-9.17.19.pdf>. (Sep. 17, 2019).

³ 5 U.S.C. § 551(1).



July 29, 2020

By Electronic Submission

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

RE: Americollect Comment in Response to the Notice and Request for Comment regarding “Debt Collection Validation Notice Qualitative Testing” (Docket No. CFPB-2020-0024).

Dear Director Kraninger,

Americollect appreciates the opportunity to submit our comments in response to the notice and request for comment regarding the “Debt Collection Validation Notice Qualitative Testing” (Docket No. CFPB-2020-0024). Particularly, Americollect is providing its comments in response to the Bureau’s request for comment on: (1) “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”; and (2) “Ways to enhance the quality, utility, and clarity of the information to be collected.” 85 FR 38870 (June 29, 2020).

The collection of information in unnecessary and will have no practical utility because the model notice should be updated prior to further testing.

The proposed B3 model notice was built for one creditor when the majority of the collection agencies are regional players for many small businesses, meaning a notice may include several debts for different creditors or, as in the case of healthcare, several different line items of debts with different account numbers. The model B3 notice has many elements on the front page making it appear “busy” and may overwhelm the consumer. Ultimately, for consumers with four or more accounts, the tabular format in the B3 notice will become especially crowded and the consumer will have a hard time differentiating each account.

The collection of information would be more practical if a more easily readable notice for the consumer with a page regarding the account details and payment information and a second page providing their rights (state and federal) as well as additional room to outline any dispute was also tested and responses were compared to the B3 Model notice.

At a minimum, when collecting information, a B3 Model notice with at least four different debts or account numbers should be tested to ensure that it is not confusing to consumers.



Again, Americollect appreciates the opportunity to provide comments.

Sincerely,

Jenna Leigh Guyton

Jenna Leigh Guyton
General Counsel
Americollect, Inc.

The Center for Responsible Lending

**Comments to the Consumer Financial Protection Bureau
Debt Collection Validation Notice Qualitative Testing
Docket No. CFPB-2020-0024
OMB Control Number: 3170-0022
July 29, 2020**

**Submitted electronically to <https://www.regulations.gov>
Comment Intake Consumer Financial Protection Bureau
1700 G Street NW Washington, DC 20552**

The Center for Responsible Lending (CRL) appreciates the opportunity to submit comments on the Consumer Financial Protection Bureau's proposed Debt Collection Validation Notice Qualitative Testing (Proposal).

CRL is a non-profit, non-partisan research and policy organization that works to ensure a fair, inclusive financial marketplace. CRL's work focuses on those who may be marginalized or underserved by the existing financial marketplace, people who often are targeted for unfair and abusive financial products that leave them worse off. This includes people of color, women, rural residents and low-wealth families and communities. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. Over 37 years, Self-Help has provided over \$7 billion in financing through 146,000 loans to homebuyers, small businesses, and nonprofits. It serves more than 145,000 mostly low-income members through 45 retail credit union locations in North Carolina, California, Florida, Greater Chicago, and Milwaukee.

Introduction

We support the CFPB's decision to conduct additional testing of the validation notice it has proposed and agree that such research is a necessary part of the Bureau's debt collection rulemaking. As discussed below, we believe that the utility of the research will depend upon: the criteria used to select individuals to participate in the research; and the scope of the issues that are probed through the research. This comment is thus offered to address ways to "enhance the quality, utility, and clarity of the information to be collected."

For the reasons discussed below, CRL urges the Bureau to withdraw the Proposal for limited qualitative testing and to submit a revised proposal with a more robust research design to answer the important empirical questions posed by the Bureau's 2019 Notice of Proposed Rulemaking (NPRM) and the comments thereon.

I. We urge the Bureau to Increase its Sample Size.

The Request for Approval indicates that the Bureau intends to conduct between 40 and 60 interviews. That coupled with the 30 cognitive and 30 user experience interviews conducted in 2014-2015, albeit on an earlier version of the validation notice, means that at most the Bureau will be basing its decisions on a convenience sample of only 120 individuals. That is a miniscule sample for creating a notice which, by the Bureau's own estimate, may be used 140 million times each year, and is critical to conveying important information about the debt to consumers. We recommend a substantial increase in the sample size to produce more "robust and reliable" evidence, which is the standard that the Bureau holds for itself in other contexts.

II. The Bureau Should Strongly Consider Altering its Selection Criteria Such That Communities of Color Who Disproportionately Experience Debt Collection Are Represented Adequately.

In order for the research to be useful in determining whether the proposed validation notice will be effective in achieving its objectives and the purposes of the Fair Debt Collection Practices Act (“FDCPA”), it is essential that the research be conducted with participants who are representative of those who are likely to be subject to third-party debt collection, and thus likely to be exposed to validation notices. That is especially important in light of the unrepresentativeness of the research the Bureau has conducted to date as part of this rulemaking as discussed below.

At the threshold, CRL questions the Bureau’s intention, as reflected in the Request for Approval that accompanies the Proposal, to devote up to one-third of the testing among participants who have *not* had any experience with debt collection in the prior two years. We recognize, of course, that in any given time period some consumers will be contacted by a debt collector—and thus exposed to a validation notice—for the first time. But, given the small number of interviews the Bureau plans to conduct, we believe the research would be more valuable if it were limited to those who have actually had debts that were subject to collection within the past two years. However, if the Bureau believes it is important to conduct “non-collection sessions,” we recommend that the participants for those sessions be screened so as to identify individuals who are likely to be subject to debt collection in the future. For example, the Bureau could screen to identify individuals who are struggling to make ends meet, especially those who currently have past due accounts and are not confident in their ability to repay those debts.

Of particular importance, for this research to be useful the Bureau must assure robust participation of Black and Latinx individuals. The Bureau’s landmark Survey of Consumers Views on Debt found that 44% of Black people had experienced debt collection activity in the prior year, a rate 50% higher than among white individuals, and that the rate for Latinx people was 25% higher than for non-Hispanic white individuals. Thus, a representative sample would include an over-representation of Black and Latinx individuals relative to their percentage in the overall population. Yet, in the quantitative research the Bureau conducted regarding time-barred debt, Black and Latinx individuals actually were underrepresented. The Bureau should not repeat that error in this round of research.

Moreover, in the cognitive testing that the Bureau conducted in 2014—almost five years prior to releasing the proposed debt collection rule—only two Latinx people were included among the 30 individuals interviewed. The Bureau did not release demographic information regarding the 30 participants in the user experience testing. Even in the testing conducted in Las Vegas – a city that is roughly one-third Latinx – only *one* of the test participants was Latinx. It is even more important now than it was five years ago to assure robust representation of Latinx individuals in the Bureau’s testing given that the Bureau’s 2019 NPRM – in contrast to the concepts that were the subject of the 2014 research and were included in the Outline of Proposals Under Consideration that the Bureau released in 2016 – would permit the validation notice to be given almost entirely in English. A key empirical question posed by the proposal is whether individuals for whom Spanish is their primary language and with limited English proficiency will find, let alone make use of, the option to request a Spanish translation. That question cannot

be answered without including a meaningful number of such participants in the cognitive interviews. To do so, a question about language preference should be added to the Screener and the Bureau should instruct the contractor to screen on that basis.

Finally, we note, as the Bureau did in its debt collection proposal, that “circuit courts have held ... that the least sophisticated consumer standard applies to a consumer’s understanding of a validation notice.”¹ That means that the utility of the research in answering legally relevant questions will depend on the Bureau’s ability to assess the extent to which unsophisticated consumers comprehend the validation notice. Although sophistication, of course, cannot be directly measured, the Bureau could select participants based on objective factors that may be correlated with the degree of sophistication such as levels of education.

III. The Bureau Should Consider Expanding the Scope of its Research in Light of the 2019 NPRM.

The Proposal identifies two questions that the Bureau intends to research: “(1) Whether the consumer can locate and use important information effectively...” and “(2) How consumers view and respond to paper and electronic versions of the model validation notice.” CRL submits that this limited agenda ignores the most important empirical questions posed by the Bureau’s validation proposal and by the comments that CRL and other consumer advocates have submitted in response to the Bureau’s 2019 NPRM with respect to that proposal. We discuss, below, a number of such questions.

A. The Effect of Electronic Delivery Impacts Whether Consumers Can Locate and Use Validation Notice Information Effectively.

The question of whether consumers can “locate and use important information effectively” necessarily presupposes that consumers will actually see the information contained in the validation notice. Yet, the Bureau has proposed to allow these notices to be sent electronically, without compliance with the E-SIGN Act, by sending an e-mail or a text message with a hyperlink to an e-mail address or phone number that the creditor or a prior debt collector could have used under the E-SIGN Act. As discussed in the comments that CRL and other advocates, including the National Consumer Law Center (NCLC) submitted, that proposal raises a myriad of concerns, including the potential that such electronic notifications will end up in a spam folder or the inbox of an inactive e-mail account, or will be sent to a phone number that no longer belongs to the consumer. Those are empirical questions that the Bureau should research, but not ones that can be answered through consumer interviews.

However, as also discussed in the comments, even if an e-mail or text is sent to a consumer’s current e-mail address or current mobile phone number, there is a substantial risk that a consumer receiving an e-mail from a debt collector who is new to the consumer—which is a precondition for sending the validation notice—will ignore that e-mail or text altogether or will open the e-mail/text, but decline to click on the hyperlink to avoid potential malware. Indeed, at least some debt collectors might deliberately attempt to structure their e-mails in such a way as to engender such a (non-)response in order to minimize the number of disputes resulting from the

¹ 83 Fed. Reg. 23274, 23282-23283 n.84 (May 21, 2019).

validation notice. The questions of (i) whether consumers will open emails from unknown debt collectors and (ii) whether consumers will click on hyperlinks to get to a validation notice, are questions that could be explored through well-structured consumer testing. It is imperative that the Bureau do so for this research to have practical utility.

B. The Bureau’s Proposed Research Protocol Should Better Test the Ability of Consumers to Recognize Debts, Especially in Light of the Bureau’s 2019 NPRM Concerning Itemization Dates.

As the Bureau stated repeatedly in the 2019 NPRM, the purpose of the validation notice is to “help a consumer recognize a debt and determine whether the amount of a debt is accurate.”² In principle, then, a key research question should be whether the proposed validation notice achieves this objective. Yet, in the Moderator’s Guide accompanying this proposal, the participants are given a notice and told to assume “you owe this debt”; the Guide explains that the purpose of this instruction is to “reduce participant ambiguity in how to respond.” But, one goal of the research should be to determine whether, in fact, the proposed validation notice reduces ambiguity – not to assume it away.

This limitation is particularly troubling in light of the comments the Bureau has received on its proposal. The Bureau has proposed to require that the validation notice include an itemization of the amount owed. However, the itemization required is based upon the “itemization date,” and under the Bureau’s proposal debt collectors have a choice of itemization dates. As is discussed in detail in the comments on the 2019 NPRM, at least some of the proposed itemization dates—such as the date that the original creditor removed the debt from the creditor’s balance sheet as an asset (i.e. the charge-off date)—are almost surely opaque for most consumers. For these reasons, the NCLC in its comments urged the Bureau to “conduct thorough and rigorous consumer testing to determine what dates will help consumers and whether use of any of the proposed itemization dates helps consumers or causes confusion.” The Bureau’s Proposal ignores that recommendation.

Determining whether the alternative itemization dates permitted by the proposal are meaningful to consumers is admittedly challenging, at least so long as the research protocol uses validation notices based upon hypothetical debts of hypothetical consumers. However, the Bureau’s researchers could potentially design a research protocol to address this challenge, such as by obtaining consumer reports for the participants with their authorization, and using the information in those reports to construct validation notices for real debts using various proposed itemization dates. In any event, the research surely could explore with those consumers who have had recent debt collection experience, their memory about the various potential itemization dates to assess which would be most meaningful, constituting yet another reason to focus the research among those with such experience.

² 84 Fed. Reg. 23274, 23341 (May 21, 2019).

C. The Bureau Should Consider Testing Alternatives to Improve Clarity Given the Validation Notice’s Purpose to Convey Important Information to the Least Sophisticated Consumer.

The comments on the 2019 NPRM identified a number of areas in which the proposed validation notice risks creating a false or misleading impression and recommended that the Bureau conduct testing to develop revised language to mitigate these risks. For example, NCLC’s comment noted that specifying the ending date of the validation period, coupled with a statement of the consumer’s right to dispute the debt during that period could leave consumers with the false impression that disputes cannot be submitted after that date or that such disputes would have no legal consequence. NCLC likewise noted that specifying that the consumer should submit a dispute in writing to trigger the collection pause could leave consumers with the false impression that oral disputes have no legal consequence.

Rather than designing the research to explore ways to improve upon its proposed validation notice in light of these concerns, the Bureau’s research plan appears to take that proposed notice as a given and asks only whether it is adequate. But, more than minimal adequacy is required—the validation notice must be *clearly and effectively* conveyed to the *least sophisticated consumer* so that they is certain of their rights.³ Moreover, merely striving for adequacy negates the very purpose of the notice-and-comment process which is designed to elicit recommendations for ways to improve on what has been proposed.

IV. Conclusion

For all of the above stated reasons, CRL urges the Bureau to withdraw the Proposal for limited qualitative testing and to submit a revised proposal with a more robust research design to answer the important empirical questions posed by the Bureau’s proposed rule and the comments thereon.

³ See *Russell v. Equifax A.R.S.*, 74 F.3d 30, 35 (2d Cir. 1996) (“A notice is overshadowing or contradictory if it would make the least sophisticated consumer uncertain as to her rights. It is not enough for a debt collection agency simply to include the proper debt validation notice in a mailing to a consumer—Congress intended that such notice be clearly conveyed.”); *Wilson v. Quadramed Corp.*, 225 F.3d 350, 354 (3d Cir. 2000), *as amended* (Sept. 7, 2000) (“Thus, in order to comply with the requirements of section 1692g, more is required than the mere inclusion of the statutory debt validation notice in the debt collection letter—the required notice must also be conveyed effectively to the debtor”) (citing *Miller v. Payco—General American Credits, Inc.*, 943 F.2d 482, 483–84 (4th Cir.1991)).

**COMMENTS
to the
Consumer Financial Protection Bureau
on its**

Debt Collection Validation Notice Qualitative Testing

OMB Control Number: 3170-0022

Docket No. CFPB-2020-0024

85 Fed. Reg. 38,870

**By the
National Consumer Law Center
On behalf of its low-income clients**

July 29, 2020

1. Introduction

The Consumer Financial Protection Bureau (“CFPB”) estimates that 140 million validation notices are sent annually.¹ The validation notice is a critical notice to consumers that informs them about the alleged debt and provides information about some critical debt collection rights, such as the right to dispute the debt.

As announced in the Federal Register, the CFPB plans “to conduct cognitive interviews to assess the effectiveness and validate the performance of the Bureau’s model debt collection validation notices.”² The focus of the qualitative testing is:

- (1) Whether the consumer can locate and use important information effectively, such as information about the debt, information about the consumer's rights, and information about how the consumer may respond if they so choose; and
- (2) How consumers view and respond to paper and electronic versions of the model validation notice.³

We applaud the CFPB for taking a data-driven approach to assess the effectiveness of the model validation notices and to ensure that consumers comprehend their rights pertaining to debt collection. Consumer testing is a critical step to ensure that the CFPB promulgates the most effective regulations in its ongoing debt collection rulemaking.⁴

However, the CFPB needs to make significant improvements to the proposed testing to maximize the effectiveness of the proposed qualitative testing and to ensure comprehension of this critical notice. The following are our recommendations for how “to enhance the quality, utility, and clarity of the information to be collected.”⁵

¹ Proposed Rules, Debt Collection Practices (Regulation F), 84 Fed. Reg. 23,274, 23,389 (May 21, 2019) [hereinafter Proposed Rules].

² Agency Information Collection Activities: Consumer Request, 85 Fed. Reg. 38,870 (June 29, 2020).

³ Id.

⁴ See Debt Collection (Regulation F), 78 Fed. Reg. 67,848 (Nov. 12, 2013).

⁵ Agency Information Collection Activities: Consumer Request, 85 Fed. Reg. 38,870 (June 29, 2020).

2. The Model Validation Notice Must Be Comprehensible to the Least Sophisticated Consumer.

Assessing the least sophisticated consumer's ability to comprehend the model validation notices is critical. To accomplish the consumer protection purpose of the Fair Debt Collection Practices Act (FDCPA), the courts apply a "least sophisticated"⁶ or "unsophisticated"⁷ consumer standard to analyze many of the protections of the FDCPA.⁸ Thus, in order to develop model validation notices, the CFPB needs to analyze whether such notices are comprehensible to the least sophisticated consumer. Testing results will not show whether the model notice meets the FDCPA's standards unless the test is designed to assess the proposed validation notices from the perspective of the least sophisticated consumer.

Accordingly, the CFPB should ensure that the testing pool includes a large enough sample of unsophisticated consumers to produce valid results for this group. Factors such as education level and general financial literacy could be used as proxies for consumer sophistication when assessing the validation notice. The CFPB should report

⁶ See, e.g., *Powell v. Palisades Acquisition XVI, L.L.C.*, 782 F.3d 119, 126 (4th Cir. 2014); *Crawford v. LVNV Funding, L.L.C.*, 758 F.3d 1254, 1258 (11th Cir. 2014); *Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d 1109, 1117-18 (9th Cir. 2014), *as amended on denial of reh'g and reh'g en banc* (Oct. 31, 2014); *Caprio v. Healthcare Revenue Recovery Group, L.L.C.*, 709 F.3d 142, 149 (3d Cir. 2013); *Fed. Home Loan Mortg. Corp. v. Lamar*, 503 F.3d 504, 509 (6th Cir. 2007); *Russell v. Equifax A.R.S.*, 74 F.3d 30, 34 (2d Cir. 1996).

⁷ See, e.g., *Pollard v. Law Office of Mandy L. Spaulding*, 766 F.3d 98, 103 (1st Cir. 2014); *McMahon v. LVNV Funding, L.L.C.*, 744 F.3d 1010, 1019 (7th Cir. 2014); *Peters v. Gen. Serv. Bureau, Inc.*, 277 F.3d 1051, 1055 (8th Cir. 2002).

⁸ The CFPB recognizes that the courts have applied a "least sophisticated" or "unsophisticated" consumer standard in interpreting claims under §§ 1692e and 1692f. See Proposed Rules, 84 Fed. Reg. at 23,283.

Additionally, courts have applied a least sophisticated consumer standard when analyzing claims under § 1692g. See, e.g., *Sims v. GC Servs. L.P.*, 445 F.3d 959, 963 (7th Cir. 2006) ("In reviewing the collection letters to determine whether they violate the FDCPA, we view the letters from the 'standpoint of the so-called unsophisticated consumer or debtor.'" (citation omitted)); *Graziano v. Harrison*, 950 F.2d 107, 111 (3d Cir. 1991) ("Statutory notice under the Act is to be interpreted from the perspective of the 'least sophisticated debtor.'"); *Swanson v. Southern Oregon Credit Serv., Inc.*, 869 F.2d 1222, 1225 (9th Cir. 1988) ("In this circuit, the impact of language alleged to violate section 1692g is judged under the 'least sophisticated debtor' standard.").

results of its consumer testing that are broken out by these categories to demonstrate that the potential disclosure is intelligible to the least sophisticated consumer.

3. The CFPB Should Increase Testing of the Proposed Model Validation Notice.

3.1 Testing of the Model Validation Notice To Date Has Been Inadequate.

To date, the CFPB has not engaged in sufficient testing of the proposed model validation notices. Previously, the CFPB tested model validation notices with only 30 consumers for cognitive testing and 30 consumers for usability testing.⁹ We have serious concerns about the ability of such limited testing to adequately evaluate comprehension of the proposed model validation notices. This is particularly true given that all testing took place prior to the release of the SBREFA Outline in July 2016¹⁰ even though the model validation notice changed from the SBREFA Outline¹¹ to the Proposed Rules released in May 2019.¹²

Currently, the CFPB is planning to engage in quantitative testing of the model validation notices with only 40 to 60 respondents.¹³ While any additional testing represents a step in the right direction, these 40 to 60 respondents will not cure the current inadequacy of consumer testing of the proposed model validation notices.

3.2 The CFPB Should Expand the Proposed Qualitative Testing.

⁹ Proposed Rules, 84 Fed. Reg. at 23,279. We note that there were additional focus group conversations discussing disclosures more generally that took place before the cognitive and usability studies, but it is not clear how many consumers were involved in those conversations. *See id.*

¹⁰ Proposed Rules, 84 Fed. Reg. at 23,279.

¹¹ Consumer Fin. Prot. Bureau, Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered (July 28, 2016), *available at* https://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf.

¹² Proposed Rules, 84 Fed. Reg. at 23,409.

¹³ Consumer Fin. Prot. Bureau, Request for Approval Under the “Generic Information Collection Plan for the Development and Testing of Disclosures and Related Materials” available at [regulations.gov](https://www.regulations.gov) as a related material for CFPB-2020-0024.

We urge the CFPB to conduct additional consumer testing in the current round of proposed qualitative testing. A larger group of respondents will enable the CFPB to ensure that there is a sufficiently diverse pool of respondents and that there are sufficient respondents from each subgroup to create statistical power to allow for comparisons of key subgroups.

Currently, the CFPB states that:

The contractor will select respondents from a variety of backgrounds, representing various ages, genders, races/ethnicities, education levels, and incomes. Additionally, the contractor will aim to recruit such that one-third of the sample is comprised of consumers without debt collection experience and approximately two-thirds of the sample is comprised of consumers who have had a debt in collection in the past two years. The contractor will also recruit respondents who have had a variety of types of debts (e.g., medical debt, student loan debt, etc.).¹⁴

We applaud the plan to include a diverse array of respondents. However, it appears impossible to achieve subgroups of sufficient size across all of these categories with only 40 to 60 qualitative interviews. Moreover, this list does not even include the additional variable – whether the respondent is first provided a paper-based or electronic model validation notice¹⁵ – that will add further complexity to ensuring that subgroups are of sufficient size.

The CFPB should interview a larger group of people to ensure comprehension by the least sophisticated consumer. It is also important to increase the size of the testing pool in order to identify any subgroups of respondents who lack comprehension, and to ensure adequate representation by subgroups such as communities of color that are disproportionately impacted by debt collection.¹⁶

¹⁴ Id.

¹⁵ Id.

¹⁶ See, e.g., Urban Institute, Debt in America: An Interactive Map (last updated Dec. 17, 2019) available at <https://apps.urban.org/features/debt-interactive-map>; Consumer Fin. Prot. Bureau, Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt 17-18, 20-23, 25 (Jan. 2017) available at https://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf.

3.3 The CFPB Should Also Use Quantitative Testing of the Proposed Model Validation Notices.

To test the proposed time-barred debt disclosures, the CFPB used a contractor to conduct quantitative testing with 8,000 respondents.¹⁷ This quantitative testing for the time-barred debt disclosures included three general comprehension questions about portions of the model validation notice.¹⁸ This limited testing of content from the model validation notice identified a significant comprehension problem with the model validation notice – more than 40 percent of respondents incorrectly answered a question about whom the consumer should pay.¹⁹

However, the CFPB has never conducted any quantitative testing designed to assess comprehension of the model validation notices as a whole. Nor has it explained the reason for using less robust testing for the model validation notices than it used for the proposed time-barred debt disclosures, which would also appear on the model validation notices for some consumers.

We urge the CFPB to rethink the role that quantitative testing should play in an analysis of consumer comprehension of the proposed model validation notices. Such testing may be particularly helpful to test different alternative language or layouts when consumer testing shows that consumers do not understand particular content in the proposed model validation notices.

3.4 The CFPB Should Test Comprehension of the Content of the Model Validation Notice.

Whether through quantitative or qualitative testing, the CFPB should explore consumer comprehension of the proposed model validation notices. In previous comments

¹⁷ Proposed Rules, Debt Collection Practices (Regulation F), 85 Fed. Reg. 12,672, 12,676 (Mar. 3, 2020).

¹⁸ Consumer Fin. Prot. Bureau, Disclosures of Time-Barred Debt and Revival: Findings from the CFPB's Quantitative Disclosure Testing 13-16 (Feb. 2020) available at https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-quantitative-disclosure-testing_report.pdf.

¹⁹ Id. at 13.

responding to the Proposed Rule,²⁰ we identified aspects of the model validation notice that are in need of additional testing. We summarize these here:

- The CFPB should conduct consumer testing to answer questions about the proposed itemization date:²¹
 - Whether the proposed itemization dates and other potential itemization dates like the date of default, tested one-by-one, enhance or impede consumer understanding;
 - What itemization date is most meaningful to consumers;
 - Whether it is confusing to consumers to disclose an itemization date without explaining what the date references, and whether an explanation of the itemization date can dispel that confusion; and
 - Whether the itemization of interest, fees, payments, and credits is more helpful to consumers when using a particular itemization date.
- The CFPB should conduct consumer testing to determine how to explain to consumers that they can continue to dispute debts even after the validation period has run.²²
- The CFPB should conduct consumer testing on whether consumers correctly distinguish between the effect of an oral dispute and the effect of a written one.²³
- The CFPB should test whether having additional dispute prompts on the tear-off portion would be helpful to consumers.²⁴
- The CFPB should conduct additional testing to identify whether combining a dispute tear-off form and a payment coupon causes consumer confusion.²⁵
- The CFPB should conduct testing of the model validation notices with all of the disclosures that the CFPB proposes to permit on the reverse side.²⁶
- The CFPB should conduct testing of translations of the model validation notices²⁷ and translated statements to be included in the English language model validation notices.²⁸

²⁰ National Consumer Law Center et al., Comments to the Consumer Fin. Prot. Bureau on its Proposed Debt Collection Rule, Docket No. CFPB-2019-0022 (Sept. 18, 2019), *available at* https://www.nclc.org/images/pdf/debt_collection/comments-debt-collection-sept2019.pdf.

²¹ Id. at 150.

²² Id. at 160.

²³ Id. at 163.

²⁴ Id. at 168-169.

²⁵ Id. at 177.

²⁶ Id.

Additionally, the proposed qualitative testing does not appear to include any questions that address the collection of decedent debt. If the CFPB modifies the model validation notices for collection of decedent debt, it will be important to separately test comprehension of those modified validation notices. If the CFPB does not create separate model validation notices for collection of decedent debt, it will be important to test comprehension of the existing model validation notices when they are used to collect decedent debt.

Finally, the proposed qualitative testing does not appear to include any questions that address the collection of time-barred debts. As our forthcoming comments on the proposed time-barred debt collection disclosures will discuss, additional testing is needed to ensure comprehension by the least sophisticated consumer. Moreover, qualitative testing presents an ideal opportunity to engage in more real world testing of the proposed time-barred debt disclosure, including whether or not consumers identify the relevant disclosure language without their attention being directed to the language and the interaction between state or city time-barred debt disclosures and the CFPB's proposed time-barred debt disclosures.

As the CFPB tests for comprehension in all of these areas, it should build in time for revisions. For example, if testing with a small group reveals comprehension problems, the CFPB should build in time to revise and retest that language with a new batch of respondents. In addition, the CFPB should build in time for as many rounds as are needed until there is a high level of comprehension among all subgroups, including unsophisticated consumers. The CFPB should publish detailed results of all testing, including: the questions asked; the answers; respondent selection criteria; demographic characteristics of the respondents; the dates of each round of testing; the model validation notices used for each test; and the testing company's analysis, including an analysis by subgroups.

4. The CFPB Needs to Test All Delivery Methods for Validation Notices.

4.1 The CFPB Should Improve the Current Proposal for Testing the Electronic Notice.

²⁷ Id. at 185.

²⁸ Id. at 187.

The proposed qualitative testing would assess consumer comprehension of the proposed model validation notice when presented as either a paper-based notice or an electronic notice. The testing of the electronic notice appears to be designed to assess comprehension of a validation notice received by email that will be presented via a “digital form.”²⁹ Rather than presenting the email notice to the respondent on a tablet or laptop, the CFPB should instead email a copy of the validation notice to the consumer at her or his actual email address. The CFPB could then evaluate the rate of messages that are refused or sent to spam.³⁰

A consumer selected to evaluate email delivery of the proposed model validation notices should also be asked to bring the device from home that would most likely be used to read the email, and then the consumer should be allowed to use that device whether it is a laptop, tablet, or phone.³¹ This would allow the CFPB to test consumer comprehension on a variety of different devices, including phones. Phones present unique comprehension challenges due to the very different layout and the limited amount of information that can be displayed on the screen at one time. In order to develop a statistically significant sample, the CFPB should ensure that sufficient respondents using laptops, tablets, and phones all participate.

The current survey design also calls for consumers to be presented with a validation notice in the other media after they have already answered comprehension questions (e.g., a paper-based notice if they first answered questions about an electronic notice). This portion of the qualitative interview should be eliminated, because a respondent who has already answered questions about a paper-based validation notice, and potentially had specific content pointed out by the interviewer, will know to anticipate such content in the electronic format. As a result, these respondents may be more likely

²⁹ Fors Marsh Group, Debt Collection Model Validation Notice Qualitative Testing Moderator’s Guide, *available at* regulations.gov as a related material for CFPB-2020-0024.

³⁰ This would, of course, not replicate the experience of a consumer who receives an email that they are not expecting or does not receive an email because it is sent to an old or inactive email account, which would both be possible if the CFPB proceeds with its proposal to allow alternatives to E-SIGN Act compliance. Alternatives to E-SIGN Act compliance are in § 1006.42(c). *See* Proposed Rules, 84 Fed. Reg. at 23,406. *See also* National Consumer Law Center et al., Comments to the Consumer Fin. Prot. Bureau on its Proposed Debt Collection Rule 206-215, Docket No. CFPB-2019-0022 (Sept. 18, 2019) (responding to § 1006.42(c)), *available at* https://www.nclc.org/images/pdf/debt_collection/comments-debt-collection-sept2019.pdf.

³¹ If the COVID-19 pandemic forces these qualitative interviews to be conducted virtually, it would also be possible for the respondent to use a desktop to read the message if that was the most likely way that she or he would read the email.

to be able to identify (or to continue look for) content in the electronic format because they have already seen such content in the paper-based format.

4.2 The CFPB Must Also Test Oral Comprehension of the Validation Information.

The CFPB has proposed allowing debt collectors to provide validation information orally despite significantly increasing the amount of validation information that would be provided to consumers.³² However, none of the prior testing and none of the proposed testing of the model validation notices have involved testing for oral comprehension of the information contained in a model validation notice.

Auditory comprehension is quite different from reading comprehension.³³ Moreover, information overload, which may result if the entire content of the model validation notice is delivered orally, is a well-documented impediment to comprehension.³⁴ The same language that results in strong comprehension among survey respondents who read the written disclosure may result in weak comprehension among consumers who hear the language recited orally.

If the CFPB intends to retain oral delivery of validation information in the final rule, it needs to add oral delivery of validation information as a separate method of delivery in

³² Delivering validation information orally in the initial communication is discussed at § 1006.34(a)(1)(ii). See Proposed Rules, 84 Fed. Reg. at 23,404. See also National Consumer Law Center et al., Comments to the Consumer Fin. Prot. Bureau on its Proposed Debt Collection Rule 146-147, Docket No. CFPB-2019-0022 (Sept. 18, 2019) (responding to § 1006.34(a)(1)(ii)), available at https://www.nclc.org/images/pdf/debt_collection/comments-debt-collection-sept2019.pdf.

³³ See, e.g., Erica B. Michael, Timothy A. Keller, Patricia A. Carpenter, & Marcel Adam Just, *fMRI Investigation of Sentence Comprehension by Eye and by Ear: Modality Fingerprints on Cognitive Processes*, 13 Hum. Brain Mapping 239 (2001) (“[E]ven when written and spoken language have the same content, the two modalities provide different information and make different demands on the comprehender.”).

³⁴ See, e.g., Martin J. Eppler & Jeanne Mengis, *The Concept of Information Overload: A Review of Literature from Organization Science, Accounting, Marketing, MIS, and Related Disciplines*, 30 The Information Society 325 (2004) (“Researchers across various disciplines has found that the performance (i.e., the quality of decisions or reasoning in general) of an individual correlates positively with the amount of information he or she receives—up to a certain point. If further information is provided beyond this point, the performance of the individual will rapidly decline. . . . The burden of a heavy information load will confuse the individual, affect his or her ability to set priorities, and make prior information harder to recall.”).

the qualitative testing. Since oral validation information would be most likely to be delivered over the phone, this portion of the qualitative testing should be administered over the phone to most faithfully replicate real-world conditions.

4.3 The CFPB Must Also Test Validation Notices Delivered by Hyperlink.

The CFPB has proposed allowing debt collectors to provide validation information by placing the disclosure on a website and providing a hyperlink to that website via email or text message.³⁵ However, none of the prior testing and none of the proposed testing of the model validation notices have involved testing for delivery of validation notices via hyperlink.

If the CFPB intends to retain delivery of validation notices via hyperlink in the final rule, it needs to test comprehension of validation information delivered via hyperlink as a separate method of delivery in the qualitative testing. Such testing needs to include questions regarding whether the consumer would click on a hyperlink in an email or text message that is received from an unknown number or email address. As discussed above in Section 4.1, the CFPB should test the electronic version of the validation notice that would be displayed to the consumer on the type of device that the consumer would likely use to access such a hyperlink.

5. Conclusion

We urge the CFPB to engage in additional testing of the model validation notices beyond what it has proposed with this qualitative testing. When results show lack of comprehension or other problems with the proposed model validation notices, the CFPB should be committed to revising and retesting the notice. Moreover, due to the inevitable shortcomings of lab tests for the proposed model validation notices, we urge the CFPB to monitor comprehension and evaluate effectiveness of the model validation notices even after a final rule so that the CFPB can continue to improve this critical notice to consumers.

³⁵ Delivering validation notices via hyperlink is discussed at the proposed § 1006.42(c)(2)(ii). *See* Proposed Rules, 84 Fed. Reg. at 23,406. *See also* National Consumer Law Center et al., Comments to the Consumer Fin. Prot. Bureau on its Proposed Debt Collection Rule 212-214, Docket No. CFPB-2019-0022 (Sept. 18, 2019) (responding to § 1006.42(c)(2)(ii)), *available at* https://www.nclc.org/images/pdf/debt_collection/comments-debt-collection-sept2019.pdf.

July 27, 2020



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By Electronic Submission

Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

Re: RMAI Comment in Response to the Notice and Request for Comment regarding “Debt Collection Validation Notice Qualitative Testing” (Docket No. CFPB–2020–0024).

Dear Director Kraninger:

The Receivables Management Association International (RMAI) is pleased to submit our comments in response to the notice and request for comment regarding the “Debt Collection Validation Notice Qualitative Testing” (Docket No. CFPB–2020–0024). Particularly, RMAI is providing its comments in response to the Bureau’s request for comment on “[w]ays to enhance the quality, utility, and clarity of the information to be collected.” 85 FR 38870 (June 29, 2020).

RMAI believes that the utility as well as the clarity of the proposed “Debt Collection Validation Notice Qualitative Testing” would benefit from the inclusion of demographic information tied to the responses. For example, the Bureau’s February 2020 study entitled “Disclosure of Time-Barred Debt and Revival: Findings from the CFPB’s Quantitative Disclosure Testing,”¹ reported responses received from the survey group and included (in Table 33) the survey group’s demographic information. However, the study did not tie the demographic information to the survey group’s responses to all survey questions. For example, Tables 21 and 22 provided demographic information related to “Distribution of Average Comprehension Score by Notice Type.” But demographic information was not provided for other responses, including survey responses concerning electronic delivery of collection communications.

RMAI expects that demographic information concerning age and education tied to survey responses would enhance the utility of the proposed testing, particularly those responses concerning electronic delivery of validation notices.

Sincerely,

Jan Stieger
Executive Director
Receivables Management Association International

¹ Publicly available at https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-quantitative-disclosure-testing_report.pdf