



While it remains to be seen what, if any, changes a change in leadership in the CFPB will bring to the Debt Collection Rule, for now, collection agencies should begin readying themselves for a November 30<sup>th</sup> effective date. Now that the Rule has been fully published, this article will explore the Rule's centerpiece, Section 1006.34 (Debt Validation Notices), and five traps for the unwary.

## Trap Number 1: Beware the Deceased Consumer

For purposes of debt validation, the Rule makes clear that if the debt collector knows or should know that the consumer is deceased, and if the debt collector has not previously provided the validation notice to the deceased consumer, the debt collector must provide the debt validation notice to a person authorized to act on behalf of the deceased consumer's estate. Under the CFPB's interpretation, this would include executors, administrators, and personal representatives. Debt collectors therefore should be establishing policies and procedures which address when and to whom a debt validation notice should be sent when the consumer is deceased. Such policies should include processes for identifying estates and the appropriate representative of the estate.

Moreover, debt collectors should be aware that specificity is required when sending validation notices to the representative of a deceased consumer. Comment 34(a)(1)-1 requires that the debt collector identifies *by name* the person who is authorized to act on behalf of the deceased person. It is not enough to simply address the debt validation to the “Estate of John Smith.” Instead, the debt collector will need to identify the specific person authorized to act on behalf of the deceased consumer’s estate and, where the validation notice has not previously been provided, provide it addressed to the appropriate representative.

## **Trap Number 2: Beware the Empty Box**

While the Model Form provides some security for the debt collectors who choose to use it, beware the trap of leaving boxes empty in the itemization! Section 1006.34(c)(2)(vii) specifically requires an itemization of the current amount of the debt reflecting interest, fees, payments, and credits since the itemization date. Comment 34(c)(2)(vii)-1 makes clear that the debt collector must include fields in the notice for all of those items even if none have been assessed or applied. Importantly, a debt collector may not leave a required field blank. This means that debt collectors must provide some indicia that none or “-0-” is owed in each of those fields. An empty box or an indication of “not applicable” is insufficient and likely to be construed as a violation of the Rule.

## **Trap Number 3: Beware the Reverse Side Conundrum**

Under the Rule, certain optional disclosures are allowed. With

respect to those made under applicable state law, the majority of these are required to be placed on the reverse side of the validation notice. Debt collectors need to be aware that their placement is critical. The Rule expressly requires that they should be placed such that they are *above the consumer-response information* or tear-off portion of the notice. See Section 1006.34(d)(3). This is to ensure that the consumer can keep the disclosures should they opt to request validation.

## **Trap Number 4: Beware the End of the Validation Period**

Sections 1006.34(c)(3)(i) through (iii) require that the validation rights statements specify the end date of the validation period. Section 1006.34(b)(5) defines the validation period as starting on the date that the validation notice is mailed and ending 30 days after the consumer receives it or is assumed to receive it. For purposes of the end date, the debt collector can assume the consumer receives the validation on any date which is at least 5 days (excluding legal public holidays defined in the U.S. Code, Saturdays, and Sundays).

Problems may arise if the validation period is calculated in such a manner as to not account for federal holidays or that notices are sent out contemporaneously with their preparation. Debt collectors will need to ensure (a) the data field for the validation end date is properly calculated and filled in, and (b) that they are documenting their business practices for sending debt validation notices.

## **Trap Number 5: Beware the Lockbox Trap**

Section 1006.34(c)(2)(i) of the Rule requires the debt collector to disclose as part of its validation information the mailing address at which the debt collector accepts disputes and requests for original-creditor information. The Rule allows for some flexibility by allowing a debt collector to disclose a vendor's mailing address if that is an address at which the debt collector accepts disputes and original-creditor requests. However, importantly, the Rule does not allow debt collectors to list a second address for payments in the validation notice. In fact, the CFPB is adamant that payment is of secondary concern in the validation notice. The CFPB makes clear that additional prominence as to payment information is not justified and that the allowed optional payment disclosures must appear below the consumer-response information. In keeping with this, the Bureau is clear that a second alternative address for payments should not be included in the validation notice. For debt collectors, who use a lockbox for payments, this may be problematic. Debt collectors will need to consider whether or not they want to include the optional payment disclosures and for those who use a separate lockbox for payment, they may want to consider omitting the payment disclosures until a later letter when they can appropriately include the lockbox address.

## **What's Next?**

Collection agencies should begin reviewing their debt validation notices, ascertain their ability to use the Model Form and what, changes, will need to be in preparation for the November 30, 2021 effective date. Among other things:

- All letters should be reviewed and adjusted to comply with the Rule and the agencies should begin coordinating with their letter

vendors to ensure a smooth transition on November 30, 2021;

- Agencies should begin reviewing and assessing how they will deliver validation notices- will they take advantage of electronic means or will they continue to send validation notices via mail.,
- Agencies should begin discussing and coordinating with their first-party clients the itemization date and what additional information will need to be provided to the agency at placement to ensure compliance with Section 1006.34's new validation requirements;
- Agencies should begin reviewing and assessing applicable state disclosure requirements to ascertain their impact on the agency's ability to use the Safe Harbor Validation Notice and what adjustments, if any, will need to be made to address the same; and
- Once the agency has its validation notice in final form, all agencies should consider a final compliance review of the notice to ensure the agency is aware of any heightened litigation risks or errors.

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Caren Enloe leads Smith Debnam's consumer financial services litigation and compliance group. In her practice, she defends consumer financial service providers and members of the collection industry in state and federal court, as well as in regulatory matters involving a variety of consumer protection laws. Caren also advises fintech companies, law firms, and collection agencies regarding an array of consumer finance issues. Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor* in 2018. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American





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