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# CFPB Proposed Rule-Making Highlights

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# CFPB Proposed Rule-Making Highlights

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# CFPB PROPOSED RULEMAKING HIGHLIGHTS

## *DEBT COLLECTION AND THE FAIR DEBT COLLECTION PRACTICES ACT*

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## The Act

- In 1977, Congress passed the Fair Debt Collection Practices Act ("FDCPA").
- Purpose of the FDCPA:
  - Eliminate abusive debt collection practices by debt collectors.
  - Protect lawful debt collectors.
  - Promote consistency in States to protect consumers against debt collection abuse.
- Congress found that abusive, unfair, and deceptive debt collection practices contributed to bankruptcies, marital instability, loss of jobs, and invasion of individual privacy.

## The Act

- FDCPA Sections 806 through 808:
- Section 806 prohibits Debt Collectors from “engag[ing] in any conduct that the natural consequence of which is to **harass, oppress, or abuse** any person in connection with the collection of a debt.” Statute gives 6 non-exclusive examples of prohibited conduct.
- Section 807 prohibits debt collectors from using **false, deceptive or misleading** representation or means in the collection of any debt. The statute provides 16 non-exclusive examples of prohibited conduct.
- Section 808 prohibits debt collectors from using **unfair or unconscionable** means to collect a debt. The statute provides 8 non-exclusive examples of prohibited conduct.
- West Virginia has similar prohibitions in West Virginia Code §§ 46A-2-124 through 46A-2-129a.

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## 1977-2010 --- 33 years.

- FDCPA did not contain any rulemaking authority.
- Federal Trade Commission agency interpretations – advisory, not binding.
- Inconsistent case law.
- Emerging technology not contemplated in 1977, such as e-mail, text, social media and mobile phones.

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## CFPB Rulemaking Authority

- In 2010, Congress passes the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”).
- Dodd-Frank created the Consumer Financial Protection Bureau (the “CFPB”).
- Dodd-Frank authorizes the CFPB to promulgate regulations relating to the FDCPA.

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## CFPB Rulemaking Authority

- Stated Role of the CFPB:
  - Rooting out unfair, deceptive, or abusive acts or practices by writing rules, supervising companies, and enforcing the law.
  - Enforcing laws that outlaw discrimination in consumer finance.
  - Taking consumer complaints.
  - Enhancing financial education.
  - Researching the consumer experience of using financial products.
  - Monitoring financial markets for new risks to consumers.
- Stated Core Functions of the CFPB:
 

“The CFPB was created to provide a single point of accountability for enforcing federal consumer financial laws and protecting consumers in the financial marketplace. Before, that responsibility was divided among several agencies. Today, it’s our primary focus.”

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## CFPB Rulemaking Timeline

- November 2013: CFPB issues an Advanced Notice of Proposed Rulemaking (“ANPR”).
- ANPR sought information regarding both first-party and third-party debt collection practices.
- Information sought included:
  - Communication and call practices.
  - Use of disclosures, e.g. time-barred debt disclosures.
  - Credit reporting by debt collectors.
  - Use of litigation by debt collectors.
- CFPB received more than 23,000 comments in response to the ANPR.

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## CFPB Rulemaking Timeline

- July 2014 through April 2015 – CFPB conducts focus groups, cognitive testing, and usability testing of various Debt Validation Notices.
- July 2016 – CFPB publishes a Debt Collection Operations Study regarding the collection processes and the cost of compliance.
- August 2016 – CFPB conveyed a Small Business Review Panel to assess impact and compliance costs for small businesses.
- January 2017 – CFPB publishes Debt Collection Consumer Survey regarding consumer experiences with debt collectors, disputing of debts, litigation, and preference for communicating with debt collectors.

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## Notice Of Proposed Rulemaking

- CFPB issues Notice of Proposed Rulemaking on May 7, 2019.
- 537 Pages.
- “Expands” Coverage.
- Contains 12 Key Conduct Proposals – several relating to e-mail and text communications.
- Contains 4 Key Proposed Disclosures.
- Contains Model Validation Notice.

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## Proposed Coverage

- Debt collector: Generally restates FDCPA Definition. Some provisions of the rule only apply when collecting a “consumer financial product or service” as defined by Dodd-Frank, e.g. mortgage loans or credit card.
- Consumer (Generally): The rule generally restates the FDCPA definition, but interprets the rule to “include a deceased natural person who is obligated or allegedly obligated to pay any debt.” §1006.2(e).
- Consumer (Communications): States that a person who is authorized to act on behalf of a deceased consumer’s estate, such as the executor, administrator or personal representative, operates as the consumer for the purpose of:
  - Receiving a Notice of Validation of Debts (§1006.34); and
  - Disputing Debts and Requesting Original-Creditor Information (§1006.38).

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## Key Conduct Proposal 1 Call Frequency Limits (§ 1006.14(b))

- Bright Line Test.
- Limits the number of telephone calls a debt collector may place to a consumer regarding a particular debt to 7 times within a seven-day period.
- Limits telephone conversations with a consumer regarding a particular debt to 1 time within a seven-day period.
- Only Consumer Financial Products or Services? Unclear.
- Call Limit is debt specific, except student loans serviced under a single account or packet number are treated as one debt.
- Exceptions:
  - Call made to respond to a request for information from consumer.
  - Call made with consumer’s prior consent.
  - Call made to consumer’s attorney.
- West Virginia Safe Harbor in W. Va. Code § 46a-2-125. No more than 30 placed calls and 10 actual communications per week.

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## Key Conduct Proposal 2 Safe Harbor For Unintentional Electronic Communications (§ 1006.6(d)(3))

- Provides safe harbor for debt collectors who unintentionally communicate with an unauthorized third-party about a consumer’s debt in e-mails and text messages.
- Safe Harbor requires policies, procedures and programming to avoid such error.
- Essentially, an elevated BFE defense.

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### Key Conduct Proposal 3 Option To Unsubscribe From Electronic Communications (§ 1006.6(e))

- Requires debt collectors to provide in all emails, text messages, and other electronic communications instructions on how to unsubscribe from such future communications.
- Cannot require a consumer to pay a fee or provide additional information to unsubscribe.
- Debt collector may only respond once and for the sole purpose of confirming the opt out request.
- Per debt or for life? Unclear.

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### Key Conduct Proposal 4 Communication Media Restrictions (§ 1006.14(h))

- Prohibits debt collectors from communicating or attempting to communicate through a specific medium of communication after the consumer has requested the debt collector stop using said medium.
- Exceptions:
  - Debt collector may reply once to confirm the opt out request.
  - If the consumer initiates contact with the debt collector using an address or telephone number that the consumer previously requested the debt collector not use, the debt collector may respond once to that consumer initiated communication.

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## Key Conduct Proposal 5 Time And Place Restrictions For Electronic Communications (§ 1006(b)(1))

- Proposed Rule “clarifies” that calls to mobile phones and electronic communications, like texts and e-mails, are also subject to the FDCPA’s prohibition on communicating at unusual and inconvenient times and places.
- In the absence of the debt collector’s knowledge to the contrary, a time before 8:00 a.m. and after 9:00 p.m. local time of the consumer’s location is considered to be inconvenient.
- Standard is based upon what the debt collector knew or should have known from the facts and circumstances. No need for the consumer to specifically use the term “inconvenient.”

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## Key Conduct Proposal 6 Work E-mail Addresses (§ 1006.22(f)(3))

- Prohibits debt collectors from sending communications to an e-mail address the debt collector knows or has reason to know is a workplace e-mail address.
- E.g. File shows that consumer works for ABC Company and e-mail address is [consumer@ABCCompany.com](mailto:consumer@ABCCompany.com).
- Exceptions:
  - Debt collector has received prior consent from the consumer to use that e-mail address; OR
  - Debt collector received an e-mail from the work e-mail address.
- If an exception applies, consumer can opt out or direct the debt collector not to use the work address at any time.

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## Key Conduct Proposal 7 Social Media Platforms (§ 1006.22(f)(4))

- Prohibits debt collectors from contacting consumers through social media platforms, except through a private messaging function.

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## Key Conduct Proposal 8 Decedent Debts (§§ 1006.2(e), 1006.6(a), 1006.10, 1006.34(a)(1), 1006.38 and 1006.42)

- The proposed rule “clarifies” how and with whom a debt collector may communicate about a deceased consumer’s debt.
- A person who is authorized to act on behalf of a deceased consumer’s estate, such as the executor, administrator or personal representative, operates as the consumer for the purpose of:
  - Receiving a Notice of Validation of Debts (§ 1006.34); and
  - Disputing Debts and Requesting Original-Creditor Information (§ 1006.38).

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## Key Conduct Proposal 9 Time-barred Debts (§ 1006.26)

- Expressly prohibits a debt collector from suing or threatening to sue on a debt if the debt collector knows or should know that the applicable statute of limitations has expired.
- No proposed disclosure regarding the collection of time barred debts in the proposed rule.
- It is expected that the CFPB will test potential disclosures relating to the collection of time-barred debt.
- West Virginia disclosure requirement in W. Va. Code § 46A-2-128(f).
- FTC and CFPB Consent Orders.

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## Key Conduct Proposal 10 Communication Before Credit Reporting (§ 1006.30(a))

- A debt collector may not furnish information about a debt to credit reporting agencies until after the debt collector has communicated with the consumer about the debt.

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## Key Conduct Proposal 11 Transfers Of Debt (§ 1006.30(b))

- Debt collectors cannot sell, transfer, or place for collection a debt if the debt collector knows or should know that:
  - the debt has been paid or settled,
  - the debt has been discharged in bankruptcy, or
  - an identity theft report has been filed with respect to the debt.
- Exceptions:
  - Transfer of the debt to the owner.
  - Transfer of the debt to the prior owner if authorized by the contract between the current owner and former owner.
  - Securitizes the debt or pledges a portfolio of such debt as collateral.
  - Transfers the debt as part of a merger, acquisition, purchase and assumption agreement, or transfer of substantially all of the debt collector's assets.

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## Key Conduct Proposal 12 Limited Content Messages (§ 1006.2(j))

- A "limited-content message" is a certain type of message that if heard by a third-party is not considered to be a prohibited third-party disclosure.
- Limited-content messages count towards the frequency limit of attempted communications.
- The message is intended solely to solicit a response from the consumer, such as a message left for the consumer by voicemail, text or orally, including leaving a message with a third-party who answers the consumer's home or cell number.

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## Limited Content Messages Continued

- To be a “limited content message,” the message must include:
  - Consumer’s name;
  - A request that consumer reply to the message;
  - Name or names of one or more natural persons to whom the consumer can contact in the reply;
  - A return telephone number; and
  - The opt out notice pursuant to § 1006.6(e) if the message was sent through an electronic communication, like e-mail or telephone number for a text message.

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## Limited Content Messages Continued

- Optional Content for Limited Content Messages:
  - A salutation;
  - Date and time of message;
  - A generic statement that the message relates to an account; and
  - Suggested dates and times for the consumer to reply to the message.

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## 4 Key Proposed Disclosures

- Providing Required Disclosures Electronically.
- Validation Notice.
- Validation Notice – Spanish Language Disclosures.
- Validation Notice Language Access.

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### Key Proposed Disclosures Providing Required Disclosures Electronically (§ 1006.42(b))

- If FDCPA disclosures are made electronically, the debt collector must comply with § 1006.42(b).
- Disclosure must be made in a form that the consumer may keep and access later.
- Debt collector would either need to comply with the Electronic Signatures in Global and National Commerce Act (known as E-SIGN Act), 15 U.S.C. § 7001(c), or a set of alternative procedures.
- For more information, see the FCPB's Flow Chart on the E-SIGN Act or Proposed Alternative Handout.

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## Key Proposed Disclosures Validation Notice (§ 1006.34)

- The proposed rule would require additional information to be provided in the Validation Notice, including:
  - Customer’s Account Number;
  - An itemization of the debt;
  - An explanation of the consumer’s right to dispute and receive additional information;
  - Consumer response information with specific language in “check the box” format on why the consumer is disputing the debt and requesting original creditor information; and
  - A “tear-off” response sheet.
- State Notices are on the back of the letter.
- See CFPB Model Validation Notice attachment.

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## Key Proposed Disclosures Validation Notice – Spanish Language Disclosures (§ 1006.34(d)(vi))

- Proposed Rule would permit debt collectors to include statements in the validation notice informing consumers how they may request the notice in Spanish.
- Specific language is contained in the proposed rule.
- Only required if debt collector chooses to provide a Spanish-language translation.

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## **Key Proposed Disclosures Validation Notice – Language Access (§ 1006.34(e))**

- Allows debt collectors to provide a validation notice translated into any language, if the debt collector also provides an English-language validation notice in the same communication or if the debt collector previously sent an English-language validation notice.
- Permissive, not mandatory.

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# Debt collection proposed rule electronic disclosure options

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

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

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

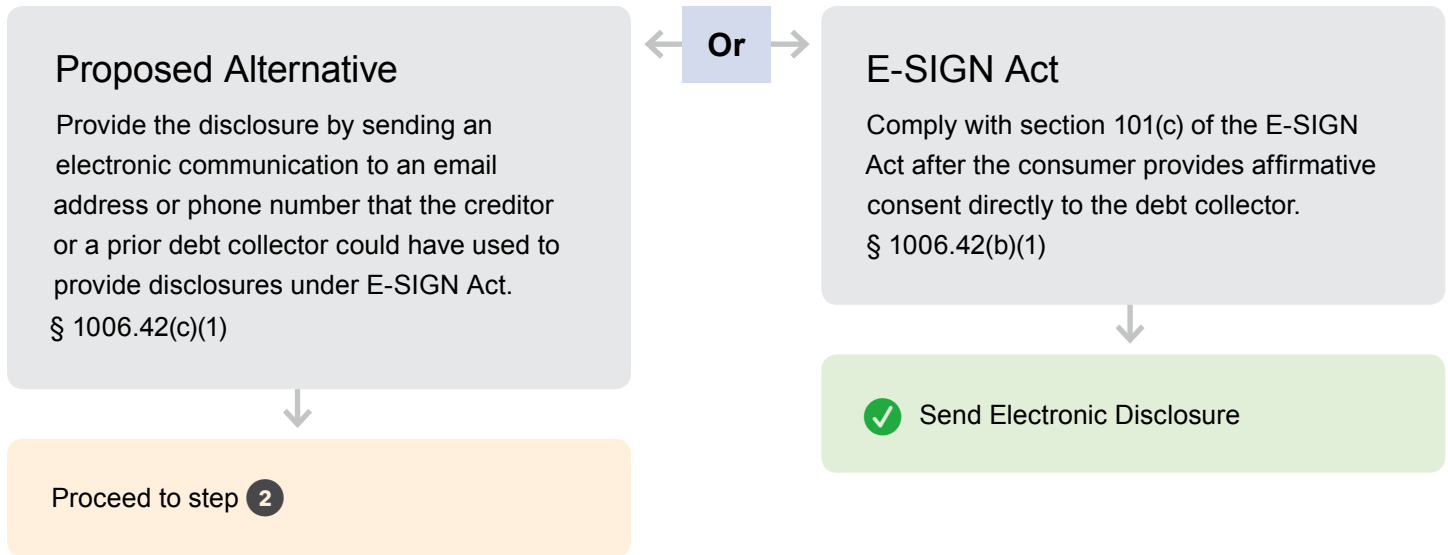
The next page identifies the ways a debt collector may provide these three disclosures electronically and meet the general requirement in § 1006.42 to provide disclosures in a manner that is reasonably expected to provide actual notice and in a form that the consumer may keep and access later.<sup>1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

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

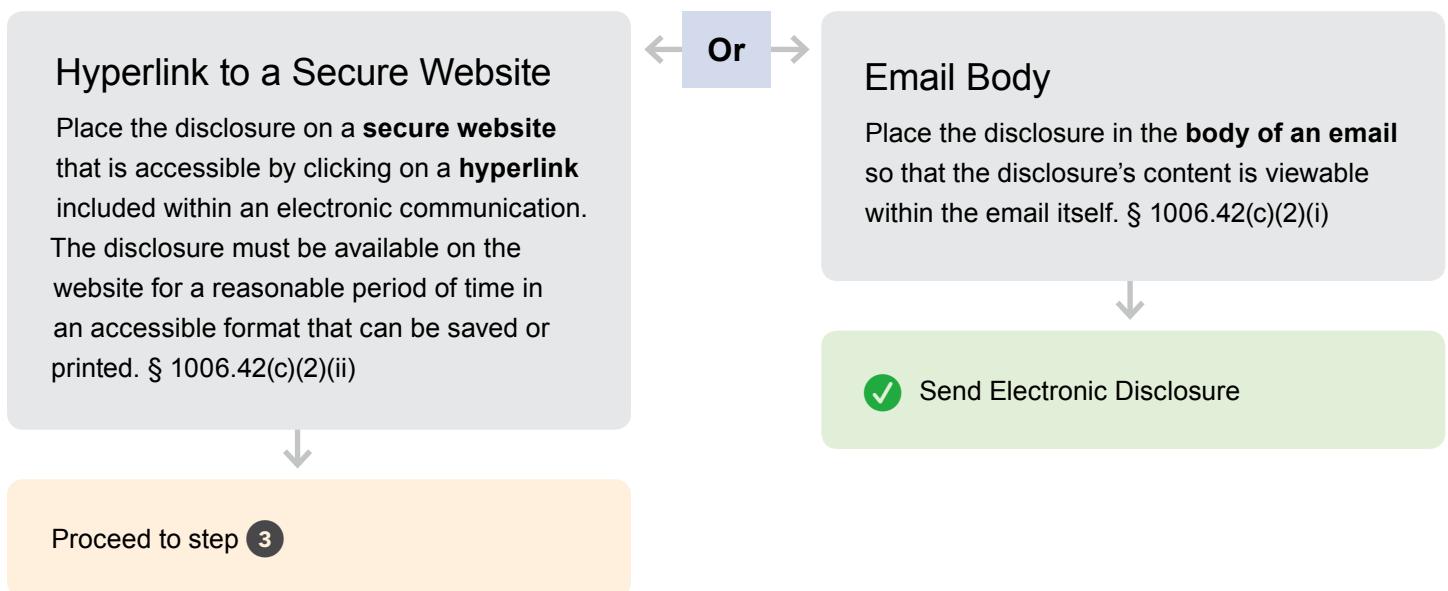
<sup>1</sup> This document does not describe the two safe harbors under proposed § 1006.42(e). Proposed § 1006.42(e) would establish two safe harbors regarding: (1) providing disclosures by mail and (2) providing the validation notice within the body of an email that is a debt collector’s initial communication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

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

## 1 Choose E-SIGN Act or Proposed Alternative.



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



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

← Or →

### Provide Notice and Opt-Out Communication to the Consumer

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

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

The consumer must not have opted out.

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



Send Electronic Disclosure

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

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

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

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

The consumer must not have opted out.

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



Send Electronic Disclosure

North South Group  
P.O. Box 121212  
Pasadena, CA 91111-2222  
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday  
[www.example.com](http://www.example.com)

To: Person A  
2323 Park Street  
Apartment 342  
Bethesda, MD 20815

Reference: 584-345

**North South Group is a debt collector.** We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

### Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2017, you owed:			\$ 2,234.56
Between January 2, 2017 and today:			
You were charged this amount in interest:	+	\$	75.00
You were charged this amount in fees:	+	\$	25.00
You paid or were credited this amount toward the debt:	-	\$	50.00
<b>Total amount of the debt now:</b>			<b>\$ 2,284.56</b>

### How can you dispute the debt?

- **Call or write to us by November 12, 2019, to dispute all or part of the debt.** If you do not, we will assume that our information is correct. If you write to us by November 12, 2019, we must stop collection on any amount you dispute until we send you information that shows you owe the debt.
- You may use the form below or you may write to us without the form. You may also include supporting documents. We accept disputes electronically at [www.example.com/dispute](http://www.example.com/dispute).

### What else can you do?

- **Write to ask for the name and address of the original creditor.** If you write by November 12, 2019, we will stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at [www.example.com/request](http://www.example.com/request).
- **Learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you. Go to [www.consumerfinance.gov](http://www.consumerfinance.gov).
- Contact us about your payment options.
- Review state law disclosures on reverse side, if applicable.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.



#### Mail this form to:

North South Group  
P.O. Box 121212  
Pasadena, CA 91111-2222

Person A  
2323 Park Street  
Apartment 342  
Bethesda, MD 20815

### How do you want to respond?

Check all that apply:

- I want to dispute the debt because I think:**
  - This is not my debt.
  - The amount is wrong.
  - Other (please describe on reverse or attach additional information).
- I want you to send me the name and address of the original creditor.**
- I enclosed this amount:** \$

Make your check payable to *North South Group*. Include the reference number 584-345.

- Quiero esta forma en español.** 81

