

## **NEW Model Form B-1 validation notice Debt Validation Notice**

This document is intended to be a notice or form, NOT a letter.

The notice should include a few key elements:

- Confirming that you're handling the debt
- Stating the amount that is owed as of a particular date
- Notify consumers about their rights to dispute or complain
- Provide direction to consumer on how to contact the debt collector or access the debt collector's contactless website or portal

If you are accustomed to including other recommendations or supplementary information (whether through your own pattern or practice or at the request of your creditor clients), if that information is not in the Model Form B-1 validation notice and may need to be provided to consumers through subsequent or separate (e.g., online) methods.

If you want to avail yourself of the "safe harbor" for the model validation notice, you would not include any of the supplemental information in your Model Form B-1 validation notice.

### **WHAT MUST THE VALIDATION NOTICE ACCOMPLISH?**

Regulation F is the CFPB's well-researched way of interpreting the Fair Debt Collection Practices Act to meet the objective of assuring in debt collection we are attempting to collect the right amount from the right consumer, per that consumer's communication preferences.

The section of the rule regarding the validation notice covers many topics. A few of note are:

- Outlines validation notice requirements
- Provides definitions and explains the purpose of the notice requirements
- Establishes that validation information be clear and conspicuous, and offers safe harbors when using the Model Form B-1 (or something substantially similar)

North South Group  
 P.O. Box 123456  
 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 **August 28, 2020**, 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 **August 28, 2020**, 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 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 different from the current creditor. If you write by August 28, 2020, we must 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).
- Go to [www.cfpb.gov/debt-collection](http://www.cfpb.gov/debt-collection) to learn more about your rights under federal law. For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

Notice: See reverse side for important information.



Mail this form to:  
 North South Group  
 P.O. Box 123456  
 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 este formulario en español.

## Itemization Date Disclosures

This is one area that agencies should not wait to address, as it may mean development work on your software, changing in-office processes or closer collaboration with clients.

How you determine itemization dates is an internal decision and may differ from creditor to creditor and the types of debt you collect. The reason you chose a method of date calculation does not need to be explained in your notice but the date itself must be provided.

You may however want to develop a policy and possibly also client-specific work instructions (that going forward you would develop when onboarding new business) explaining which itemization date you have selected per creditor. Itemization date can be calculated one of five ways:

1. **Last statement date** - the date the creditor sent a last invoice or statement to the consumer
2. **Charge off date** - the date the creditor “charged off” a debt
3. **Last payment date** - when the last payment was applied to an account
4. **Transaction date** - the date a good or service was provided by the creditor
5. **Judgement date** - date of a court judgement

## WHY IS IT IMPORTANT?

The new process will impact many of your employees and suggests a greater need for communication with original creditors, as they may need to furnish information to help you calculate this date. You’ll also want to harmonize your training and call listening programs to reinforce Reg F topics.

These new definitions for the itemization date were chosen by the CFPB as some of the easiest dates an agency may be able to access that also help consumers identify the debt in question. The CFPB conducted focus groups with consumers to test its theories and approaches.

The new list of ways to calculate the itemization date helps to fulfill the central goals of Regulation F by creating a standard process for all collectors to follow

and making it easier for consumers to know what they owe and that they are paying the right amount to the right source.

## **CALCULATING END DATES**

The end date you supply to consumers must be at a minimum 30 days plus five (5) business days from the date you actually send the notice. It is important to emphasize this: this is calculated from the date the notice is sent, even if it was received by the consumer on a different date.

Bender and Needleman say it is up to state law and the underlying contract or agreements creating the consumers' debts to determine whether you will be charging post-itemization interest and the method you use to do so. You may also choose to place the itemization on a separate page of the Validation Notice as long as it is clear on the first page that you have done so.

### **Safe Harbor**

The final rule only provides safe harbor if you use Model B-1 as it is intended (meaning, you are using the form and layout provided). The more your agency strays from this model, the less likely it is to provide you with a safe harbor. Experts expect the CFPB to issue further guidance on some of these validation notice topics.

The CFPB has also emphasized that if other things are included with the Model Form B-1 that overshadow, conflict with, or confuse the consumer – the safe harbor for the Model Form B-1 can be jeopardized. Some more items of note about the validation notice safe harbor:

- This form must be supplemented to adhere to the state laws wherever and whenever they apply. It does not provide state safe harbors. Confer with counsel to read and interpret state disclosure laws carefully to verify whether or not they specify where in a validation notice they must be placed.
- Straying from the model creates areas of opportunity for plaintiff's counsels to challenge your changes. Expect challenges to the term "substantially similar."
- Optional disclosures add flexibility and greater opportunities for electronic communications.

## **State Disclosures**

State law disclosure placements have raised many questions from agencies. State disclosures must be placed on the back of the notice.

However, there are some disclosures that are required by law to be on the front of the notice. Bender says that this is a rare circumstance and should only be done when a specific provision of law requires the disclosure's placement on the face or at the top of the validation notice.

Formatting of your state disclosures is also important. You must be sure that all necessary disclosures are printed above the tear off portion of the notice, so consumers may keep this information intact after removing the tear off.

Remember, there are a wide range of views among industry legal experts on whether to only send a consumer the disclosures you reasonably believe apply to that consumer versus sending all possible state or city disclosures.

Again this is a key area to confer with legal counsel familiar with your business and the geographic locations of consumers from whom you attempt to collect.

## **Dispute Disclosures**

The CFPB now requires an actual end date for the validation window. To find this, start with the date you will be sending your validation notice (including any days it may take you to sort mail or similar) and calculate from there. Some agencies are adding extra days to this time period to ensure they account for holidays and weekends within their calculation.

Debt collectors have raised concerns about including a website address and collecting disputes online but adding your web address to the notice creates the opportunity to collect detailed information about the dispute that will make resolution easier.

Sending people online also drives consumers to your payment portal and gives instant access to online tools that collect consents, ask consumers to update their contact details and give you other information that may help assure you are communicating with consumers in the methods they prefer and that you are attempting to collect from the right person.

## **Final Guidance**

Remember, your agency does have the option to use your own style of validation notice if you do not want to take advantage of the safe harbor the model form offers. That validation notice will have to be reviewed against the Reg F interpretations of what must be in a validation notice.

Also consider this: if and as more debt collectors adopt the Model Form B-1 validation notice – is it risky for your letters to look differently from the model notice – thus potentially increasing the likelihood of being challenged legally by consumer attorneys on some basis?

In the end, every business is different. Understanding your company's needs and considerations is the first step. Retaining attorneys that can help you look critically at your materials and processes is an essential part of the compliance process.