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ARE VALIDATION NOTICES VALID? AN EMPIRICAL EVALUATION OF CONSUMER UNDERSTANDING OF DEBT COLLECTION VALIDATION NOTICES

Jeff Sovern* and Kate E. Walton**

ABSTRACT

A principal protection against the collection of consumer debts that are not actually owed is the Fair Debt Collection Practices Act's (FDCPA) validation notice, which obliges debt collectors demanding payment to notify consumers of their rights to dispute debts and request verification, among other things. This Article reports on the first public study of whether consumers understand the notices or what they take away from them. For nearly four decades, courts have decided whether validation notices satisfied the FDCPA without ever knowing when or if consumers understand the notices. This Article attempts to remedy that problem.

Collectors who prefer that consumers focus on the request for payment rather than a statement of consumer rights will find our results heartening. When we surveyed consumers by showing them a collection letter the Seventh Circuit had upheld against challenge, on most questions respondents did not show significantly better understanding of their validation rights from that letter than did the respondents who saw an otherwise identical letter without any validation notice at all. More than half the court-approved letter respondents seemed confused by the notice's phrasing about when the collector would assume the debt to be valid. About a quarter did not realize they could request verification of the debt, and nearly all who realized they could seek verification also thought that an oral request was sufficient even though both the statute and notice specify that a writing is required. More than a third of respondents thought that if they did not meet the thirty-day deadline specified in the validation notice for disputing the debt, they would have to pay the debt or could not defend against a suit to collect it even if they did not owe the debt. Under the standard the Federal

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Trade Commission (FTC) uses for determining deception in surveys, the notice would be found deceptive.

Our results raise troubling questions about the effectiveness of current forms of validation notices, and therefore whether consumers being pursued by collectors for debts they do not owe are appropriately protected. The willingness of courts to approve validation notices that do not serve Congress's goals creates the illusion of consumer protection without the reality.

I. INTRODUCTION

No good-guy business model has ever been based on the logic of "what, don't worry about people's legal rights. I'm pretty sure half these unsophisticated morons can't read, right guys?"—John Oliver¹

THE debt collection industry affects millions of Americans. About 130,000 people work in the industry, pursuing claims against about 77,000,000 Americans, or more than a third of the United States' population.² One debt buyer alone reportedly claims that a fifth of Americans either owe it money or have in the past.³ Debt collectors are said to have contacted consumers more than a billion times just in 2007.⁴

Many of these contacts are unwanted. Federal consumer protection agencies report receiving more consumer complaints about debt collectors than about any other industry.⁵ While some complaints are doubtless unjustified, the industry has also spawned numerous horror stories.⁶

1. *Last Week Tonight With John Oliver: Debt Buyers* (HBO television broadcast June 5, 2016), <https://www.youtube.com/watch?v=hxUAntt1z2c> [<https://perma.cc/5DH5-U9CU>].

2. 2016 CFPB FAIR DEBT COLLECTION PRACS. ACT ANN. REP. 8; *see also* FED. TRADE COMM'N, COLLECTING CONSUMER DEBTS: THE CHALLENGES OF CHANGE 12 (2009) ("Debt collection in the United States has grown into a multi-billion dollar industry that employs thousands of collectors. . . .").

3. Chris Albin-Lackey, *Rubber Stamp Justice: US Courts, Debt Buying Corporations, and the Poor*, HUMAN RIGHTS WATCH 11 (Jan. 20, 2016), <https://www.hrw.org/report/2016/01/20/rubber-stamp-justice/us-courts-debt-buying-corporations-and-poor> [<https://perma.cc/SWF5-QKQF>].

4. Robert M. Hunt, *Collecting Consumer Debt in America*, FED. RES. BANK OF PHILA. BUS. REV., 2d Quarter 2007, at 11.

5. *See, e.g.*, 2014 CFPB FAIR DEBT COLLECTION PRACS. ACT ANN. REP. 9, 17 ("[D]ebt collection is now [the Bureau's] largest source of consumer complaints The FTC continues to receive more complaints about the debt collection industry than any other"); 2012 CFPB FAIR DEBT COLLECTION PRACS. ACT ANN. REP. 6.

6. *See, e.g.*, Press Release, Lori Swanson, Office of Minn. Att'y Gen., Attorney General Swanson Says Accretive Will Cease Operations in the State of Minnesota Under Settlement of Federal Lawsuit (July 31, 2012), <http://graphics8.nytimes.com/packages/pdf/technology/20120730-swanson.pdf> [<https://perma.cc/G878-BHJV>], announcing a settlement with a debt collector, and reporting:

The Attorney General's Office obtained sworn affidavits from about 60 patients to support the lawsuit and heard from many others. Many of these patients say they were asked to pay money in the hospital emergency room before being treated, often while lying on a gurney, undressed, in pain, or hooked up to tubes or morphine. Most of the patients had insurance coverage. For example, the office obtained affidavits from: [(1)] A mother who was taken from the side of her teenage daughter who tried to overdose on a

One recurring problem is that collectors attempt to collect millions of debts that are not in fact owed or are owed in different amounts.⁷ To address this issue, the federal FDCPA obliges collectors to notify consumers of their right to dispute the debt and request verification.⁸ But given the abundant evidence that consumers ignore or misunderstand other disclosures,⁹ we surveyed consumers to determine how effective the validation notice is. Unfortunately, our survey—the first academic survey on validation notices—raises serious questions about whether the validation notice provides any protection at all.

Our goals in this study are to (1) determine whether consumers notice and understand a validation notice when that notice appears in a letter from a debt collector demanding payment; (2) determine whether using a simpler validation *notice* increases consumer awareness and understanding of the validation notice; (3) determine whether a simpler *letter* affects awareness and comprehension of the validation notice; and (4) generally shed light on when debt collection letters overshadow validation notices, thereby violating the FDCPA.

The Article proceeds as follows: Part II provides background on the FDCPA and the validation notice requirement. Part III summarizes the literature on the effectiveness of consumer disclosures. Part IV reports our methodology while Part V describes our results. Part V is divided into two subparts: subpart A discusses the responses to individual questions while subpart B addresses some broader patterns in the data. Part VI compares our findings with how courts interpret validation notices. Part VII offers some recommendations to law-makers. Part VIII concludes.

II. THE FDCPA'S VALIDATION NOTICE REQUIREMENT

In 1977, Congress enacted the FDCPA in an attempt to restrain collector misconduct.¹⁰ According to the statute, Congress found “abundant

bottle of pills, made to give a credit card in the middle of the night and pay \$500 before she could return to her daughter's bedside[; (2)] A mother who had just given birth who was told that her newborn baby could not be discharged from the hospital unless she coughed up a credit card and paid \$800. As it turns out, the mother overpaid and had to fight for months to get the \$800 back[; and (3)] A pregnant mother who was asked to pay money in the emergency room in the midst of miscarrying her first baby

See generally RACHEL TERP & LAUREN BOWNE, E. BAY CMTY. LAW CTR. & CONSUMERS UNION OF THE U.S., PAST DUE: WHY DEBT COLLECTION PRACS. & THE DEBT BUYING INDUSTRY NEED REFORM NOW 1, 5 (2011), http://defendyourdollars.org/pdf/Past_Due_Report_2011.pdf [<https://perma.cc/8EBH-925J>]; RICK JURGENS & ROBERT J. HOBBS, NAT'L CONSUMER LAW CTR., THE DEBT MACHINE: HOW THE COLLECTION INDUSTRY HOUNDS CONSUMERS & OVERWHELMS CTS. 3 (2010), <http://www.nclc.org/images/pdf/pr-reports/debt-machine.pdf> [<https://perma.cc/YAY3-EZVY>].

7. See *infra* notes 19–23 and accompanying text.

8. 15 U.S.C. § 1692g(a) (2012).

9. See *infra* Part III.

10. The FDCPA is codified as Title VII of the Consumer Credit Protection Act, 15 U.S.C. §§ 1692–1692p (2012). Congress stated the statute's purposes as including the “eliminat[ion of] abusive debt collection practices by debt collectors” 15 U.S.C. § 1692(e) (2012).

evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.”¹¹ Nevertheless, the statute contains an important limit: the FDCPA is largely confined to those collecting debts originally owed to another.¹² In other words, original creditors are seldom subject to the FDCPA. Most collectors governed by the FDCPA are either independent contractors retained by the original creditor to collect debts (debt collectors), or have purchased the debt outright (debt buyers). As a result, if a credit card issuer seeks to collect an overdue payment itself, it need not comply with the FDCPA, but if it hires a debt collection firm to collect the payment or sells the debt to a debt buyer firm, that firm must comply with the FDCPA.¹³ Congress’s view that it need regulate only external collectors may perhaps be explained by the perceived reluctance of original creditors to lose customer good will by abusing consumers.¹⁴ In contrast, debt buyers and collectors who do not need a good reputation among consumers can be less concerned about alienating customers and so might be tempted to behave badly.¹⁵

External collectors may differ from original creditors in one other significant respect: because the debt collectors subject to the statute did not extend credit to the consumer themselves, they may know less about the debt than the original creditor did. Alternatively, the information they have about the debt may be out of date.¹⁶ Consequently, collectors may

11. *See id.* § 1692(a).

12. *See id.* § 1692(a)(6). Original creditors who collect debts in the name of a third party are subject to the FDCPA’s restrictions. *Id.* That provision gave creditors collecting debts an incentive to use their true name.

13. While the FDCPA does not apply directly to original creditors, original creditors may not engage in deceptive, unfair, or abusive practices. *See* 12 U.S.C. § 5531 (2012). The Consumer Financial Protection Bureau (CFPB) has issued guidance suggesting that original creditors within the CFPB’s jurisdiction and “service providers” may violate that prohibition by engaging in some conduct prohibited by the FDCPA. *See* CFPB BULL. 2013-07, PROHIBITION OF UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES IN THE COLLECTION OF CONSUMER DEBTS 1–2 (2013), http://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf [<https://perma.cc/F9MC-FV5V>]. In addition, some state statutes apply to original creditors. *See, e.g.,* N.Y. GEN. BUS. LAW § 600.3 (McKinney 2012). *See generally* DEE PRIDGEN & RICHARD M. ALDERMAN, CONSUMER CREDIT AND THE LAW app. 12A (2016).

14. *See* Jerry D. Brown, *Painting a Mustache on the Mona Lisa—How Tinkering with the Validation Notice Will Get You Every Time*, 53 CONSUMER FIN. L.Q. REP. 42, 51 (1999) (“[I]n-house collectors (at least theoretically) will use self-control in collecting debts, because they want repeat business from the consumer.”).

15. *See id.*

16. According to one report, the contracts by which debt buyers purchase debts, called forward-flow agreements, have been known to state that the bank selling the debts did not make “promises, covenants, agreements, or guaranties of any kind or character whatsoever” about the accuracy of the information provided about the debts; that some of the debts might already have been repaid or discharged in bankruptcy; and that the reported amounts of the debts were only approximate. *See* Jeff Horwitz, *Bank of America Sold Card Debts to Collectors Despite Faulty Records*, AMERICAN BANKER (Mar. 29, 2012), http://www.americanbanker.com/issues/177_62/bofa-credit-cards-collections-debts-faulty-records-1047992-1.html [<https://perma.cc/4W3V-HB43>]; *see also* East Bay Community Law Center, Comment Letter on the Advance Notice of Proposed Rulemaking on Debt Collection 29 (Feb. 28, 2014), <http://www.regulations.gov/#!documentDetail;D=CFPB-2013-0033-0393> [<https://perma.cc/4ETS-FCW6>] (“We definitely see more disputes about non-original creditor debts than original creditor debts. As in the game of Telephone, there simply tend

seek payment of a claim that is not in fact owed.¹⁷

The Federal Trade Commission has reported “that debt collectors often have inadequate information when they contact consumers, thereby increasing the likelihood that they will reach the wrong consumer, try to collect the wrong amount, or both.”¹⁸ A dramatic example came in 2015 when one of the largest credit card issuers agreed to pay approximately \$200 million for, among other things, selling debts that were not actually owed.¹⁹ The practice of robo-signing—signing affidavits without having

to be more errors and questions about the former.”); Dalié Jiménez, *Dirty Debts Sold Dirt Cheap*, 52 HARV. J. LEGIS. 41, 61 (2015) (study of eighty-four consumer debt purchase and sale agreements finds that more than a third “explicitly disclaim any representations as to the accuracy or completeness of the information provided”); Loan Sale Agreement By and Among FIA Card Servs., N.A., & CACH, LLC § 9.4(b), (d) (Apr. 14, 2010), <https://www.documentcloud.org/documents/329733-fia-to-cach-forward-flow.html> [<https://perma.cc/E5H2-B6XE>] (example of a debt sale agreement under which the seller disclaimed warranting or representing a variety of items, including the “validity . . . of the evidence of indebtedness” and “the accuracy . . . of any information provided by the seller . . . including . . . the accuracy of . . . amounts due under the loans . . .”). Some question whether more recent such agreements similarly disclaim warranties. See Albin-Lackey, *supra* note 3, at 41.

17. See Albin-Lackey, *supra* note 3, at 2–3 (“Debt buyers have sued the wrong people, sued debtors for the wrong amounts, or sued to collect debts that had already been paid. In other cases they have filed lawsuits that were barred by the applicable statutes of limitations or were otherwise legally deficient. . . . Leading debt buyers have settled numerous lawsuits and enforcement actions alleging errors and legal flaws, and the settlement agreements have forced them to throw out tens of thousands of unfounded judgments they had won against consumers.”).

18. See FED. TRADE COMM’N, *supra* note 2, at 21; see also *id.* at 22 (“When accounts are transferred to debt collectors, the accompanying information often is so deficient that the collectors seek payment from the wrong consumer or demand the wrong amount from the correct consumer.”).

19. See Chase Bank, USA N.A. & Chase Bankcard Servs., Inc., CFPB No. 2015-CFPB-0013 (July 8, 2015) (“[Credit card issuer] sold to debt buyers certain accounts that were inaccurate, settled, discharged in bankruptcy, [or] not owed by the consumer. . . . The debt buyers then sought to collect these inaccurate, settled, discharged, not owed, or otherwise uncollectable debts from consumers.”); see also Rachel Witkowski, *JPM’s Debt Collection Settlement Puts Other Firms on Notice*, AMERICAN BANKER (July 8, 2015, 6:46 PM), http://www.americanbanker.com/news/law-regulation/jpms-debt-collection-settlement-puts-other-firms-on-notice-1075290-1.html?utm_medium=email&ET=americanbanker%3Ae97638%3Aa%3A&utm_campaign=jul%209%202015&utm_source=newsletter&st=email [<https://perma.cc/9WEM-MJFY>] (quoting Iowa Attorney General Tom Miller as saying “We do not think these problems are unique to the credit card collection business of Chase. We think it’s throughout the industry.”); Press Release, CFPB, CFPB Takes Action to Stop Illegal Debt Collection Lawsuit Mill (Dec. 28, 2015), <http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-stop-illegal-debt-collection-lawsuit-mill/> [<https://perma.cc/9HLF-VPGH>] (under a consent order, law firm agreed to pay a civil penalty of \$3.1 million for, among other things, filing debt collection cases without being able to verify that the consumer actually owed the debt in question). The problem appears to persist. In its Summer 2016 Supervisory Highlights, the CFPB reported on problems at certain entities it had supervised from January to April 2016:

[E]xaminers determined that debt sellers, as a result of widespread coding errors, sold thousands of debts that did not properly reflect that: (1) the accounts were in bankruptcy, (2) the debt sellers had concluded the debts were products of fraud, or (3) the accounts had been settled in full. The relevant accounts sold were in, or likely to be subject to, collections.

CFPB, SUPERVISORY HIGHLIGHTS, ISSUE 12, at 6 (2016), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_12.pdf [<https://perma.cc/2N8N-2NYF>].

personal knowledge of the facts—may also contribute to the problem.²⁰ An FTC study—which admittedly had methodological problems—suggested that “debt buyers seek to collect on more than a million debts each year that consumers assert that they do not owe or that they owe in a different amount.”²¹ The Consumer Financial Protection Bureau (CFPB) has reported that “the most common debt collection complaint received by the Bureau concerns collectors seeking to recover from the wrong consumer or in the wrong amount.”²² The FTC also found that debt buyers are able to verify only 51.3% of the debts consumers dispute, implying that nearly half a million claims are not able to be verified; even those figures may overstate the number of claims that can be verified because they are based on what debt buyers themselves concluded, rather than a neutral third party.²³ And of course, we do not know how many debts that consumers neglected to dispute—perhaps because they overlooked the validation notice disclosing the right to dispute the debt—could not have been verified if consumers had sought verification.

20. See Albin-Lackey, *supra* note 3, at 45–46.

21. See FED. TRADE COMM’N, THE STRUCTURE AND PRACTICES OF THE DEBT BUYING INDUSTRY 39 (2013), <https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf> [<https://perma.cc/8SPU-T8JB>]. The Commission arrived at that number by calculating a dispute rate for sample portfolios purchased by four debt buyers. *Id.* at 37. The FTC noted several reasons to think the dispute rate may actually have been higher than it calculated, including that not all of the surveyed debt buyers kept records of oral disputes, the dispute rate did not include disputes lodged with third party collectors the buyers retained (who might have been given the most difficult debts to collect), and the surveyed debt buyers were among the larger debt buyers in the industry and had purchased debts directly from creditors. The Commission also noted that the dispute rate may actually be lower than its estimate. In any event, the Commission concluded that it did not believe that “the dispute rate can be used as a precise or definitive indicator of the extent of information problems with debt being collected by debt buyers.” *Id.* at 38–39. To be sure, consumers may complain about debts that are actually owed. They may not recognize the debt because the collector may not disclose the original creditor’s name. In such cases, information provided in the verification process may help the consumer realize that the debt is in fact legitimate.

22. CFPB, SMALL BUSINESS REVIEW PANEL FOR DEBT COLLECTOR AND DEBT BUYER RULEMAKING: OUTLINE OF PROPOSALS UNDER CONSIDERATION AND ALTERNATIVES CONSIDERED 5–6 (2016), http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf [<https://perma.cc/TM65-54T3>]. The Bureau added:

The Bureau believes that such problems arise in significant part from two sources. First, there are often substantial deficiencies in the quality and quantity of information collectors receive at placement or sale of the debt that frequently result in collectors contacting the wrong consumers, for the wrong amount, or for debts that the collector is not entitled to collect. Second, the Bureau is concerned that the information that consumers receive in initial notices required under the FDCPA lack critical elements that would help consumers recognize whether the debt is in fact theirs

Id. at 6; see also ALL. FOR A JUST SOC’Y, UNFAIR DECEPTIVE & ABUSIVE: DEBT COLLECTORS PROFIT FROM AGGRESSIVE TACTICS 4–5 (2016) (study of consumer debt collection complaints to the Consumer Financial Protection Bureau found that the most common complaint, representing 42% of the total, was that consumers were repeatedly asked to pay debts they did not believe they owed); Mary Spector & Ann Baddour, *Collection Texas-Style: An Analysis of Consumer Collection Practices In and Out of the Courts*, 67 HASTINGS L.J. 1427, 1440–42 (2016) (in sample of Texas collection complaints, 26% were about attempts to collect debts that were not the consumers’).

23. See FED. TRADE COMM’N, *supra* note 21, at iv, 39–41.

To address concerns about collectors seeking collection of unowed “debts,” the FDCPA includes a provision captioned “Validation of Debts,” obliging collectors to make certain disclosures in writing to consumers within “five days after the initial communication with [the] consumer.”²⁴ Those disclosures include:

- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector.²⁵

Notice that the consumer may invoke subsection (4) only by a writing. In contrast, under the text’s plain meaning, the consumer may invoke subsection (3) either orally or in writing, though some courts have gone beyond the plain meaning to require a writing to dispute the debt.²⁶ In either case, the statute calls upon consumers to act within thirty days.

Congress saw the validation notice as more than just a formality. The Senate Banking, Housing, and Urban Affairs Committee’s report accompanying the bill which became the FDCPA described it as a “significant feature” of the legislation, and stated that the validation provision’s purpose was to “eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid.”²⁷

Despite the significance Congress attributed to the validation notice, scholars have not attempted to ascertain whether consumers use it. One reason to be concerned about consumer awareness of it is that debt collectors, in common with many entities called upon to make legally-man-

24. 15 U.S.C. § 1692g(a).

25. *Id.* § 1692g(a)(3)–(4). The validation notice must also include:

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;

....

- (5) a statement that, upon the consumer’s written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

Id. § 1692g(a)(1)–(2), (5). Our survey did not test consumer understanding of those provisions.

26. *See, e.g.,* *Graziano v. Harrison*, 950 F.2d 107, 112 (3d Cir. 1991). But others disagree. *See, e.g.,* *Camacho v. Bridgeport Fin. Inc.*, 430 F.3d 1078, 1080, 1082 (9th Cir. 2005). The *Graziano* line of cases is criticized in Elwin Griffith, *Identifying Some Trouble Spots in the Fair Debt Collection Practices Act: A Framework for Improvement*, 83 NEB. L. REV. 762, 798–802 (2005).

27. S. REP. NO. 95-382, at 4 (1977), as reprinted in 1977 U.S.C.C.A.N. 1695, 1699. It is unclear how often debt collectors simply omit the required notice. A study of debt collection complaints to the CFPB found that 17% of the complainants had an issue with the required disclosures, and 25% of those said they had never received a validation notice. *See* ALL. FOR A JUST SOC’Y, *supra* note 22, at 4–5.

dated disclosures, have little or no stake in the consumer receiving or understanding the information the collectors are charged with conveying.²⁸ Indeed, debt collectors actually have several incentives to obscure the validation notice.²⁹ First, the FDCPA provides that if the consumer responds to the validation notice by writing to dispute the debt or request the name and address of the original creditor, the debt collector must cease collection activities until it mails the consumer verification of the debt or the requested contact information.³⁰ From the collector's point of view, this is at best a temporary derailment of the debt collector's attempts to collect the debt.³¹ But sometimes the consumer's demand for validation causes the collector to abandon its collection efforts permanently, possibly because the collector lacks access to the documentation required to validate the debt.³²

28. See Jeff Sovern, *Preventing Future Economic Crises Through Consumer Protection Law or How the Truth in Lending Act Failed the Subprime Borrowers*, 71 OHIO ST. L.J. 761, 794 (2010).

29. See Elwin Griffith, *The Search for More Fairness in the Fair Debt Collection Practices Act*, 12 J. BANKR. L. & PRAC. 151, 169 (2003) ("From a collector's perspective, however, it is desirable for the customer to overlook the validation notice. Therefore, . . . the collector frequently uses some diversionary tactic to steer the consumer away from his right to challenge the debt.").

30. 15 U.S.C. § 1692g(b) provides:

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

But, as Elwin Griffith has explained: "In the absence of the consumer's written query, the debt collector may continue its collection activities during the thirty-day dispute period." Elwin Griffith, *The Role of Validation and Communication in the Debt Collection Process*, 43 CREIGHTON L. REV. 429, 430–31 (2010).

31. The statute does not require collectors to notify consumers of the collector's obligation to suspend its collection efforts until it responds to the consumer. The FTC believes that "few, if any, debt collectors appear to supply this information voluntarily," and has urged that the practice be changed. FED. TRADE COMM'N, *supra* note 2, at 26; *see also id.* at 27 ("The FTC therefore recommends that Congress amend Section 809(a) of the FDCPA to require that debt collectors inform consumers in validation notices that (1) if they send a timely written dispute or request for verification, the debt collector must suspend collection efforts until it has provided the verification in writing . . ."); Griffith, *supra* note 30, at 468–69 ("[D]ebt collectors should inform consumers in the validation notice that if a consumer disputes the debt in writing, the debt collector will stop its collection efforts until it verifies the debt."); TERP & BOWNE, *supra* note 6, at 12. The FTC has also opined that "many consumers do not know that debt collectors must suspend collection efforts between the time they receive a consumer dispute and the time they supply the consumer with written verification." FED. TRADE COMM'N, *supra* note 2, at 27.

32. See *Jang v. A.M. Miller & Assocs.*, 122 F.3d 480, 482 (7th Cir. 1997) (collector abandoned efforts to collect debt when consumer requested validation); 2015 CFPB FAIR DEBT COLLECTION PRACS. ACT ANN. REP. 12 ("[A] number of collectors . . . appear to respond to consumer complaints by closing the accounts and returning them to their clients."). Some observers have reported that debt buyers purchase debts under contracts that limit their ability to obtain information concerning the debt, *see* Maryland Standing Committee on Rules of Practice and Procedure, Notice of Proposed Rules Changes 7 (July 1, 2011), <http://www.courts.state.md.us/rules/reports/171stReport.pdf> [<https://perma.cc/>

A second reason debt collectors may not eagerly call consumers' attention to the validation notice is that the debt collector understandably wants the consumer to focus on the demand for payment rather than disclosures about the consumer's rights.³³ And third, if the consumer takes advantage of the invitation to dispute the debt, debt collectors which communicate credit information to credit reporting agencies must also disclose that the debt is disputed.³⁴

Some disclosure laws deal with similar disincentives by requiring that disclosures be clear and conspicuous.³⁵ But the FDCPA has no such requirement. Consequently, some collectors formerly printed the validation notice in smaller print than the demand for payment,³⁶ or adopted other techniques to obscure the notice. Courts responded to such stratagems, however, by interpreting the FDCPA as requiring that the collector's communication not overshadow the validation notice.³⁷ Eventually, the FTC—at that time the principal federal agency charged with enforcing the FDCPA—recommended to Congress that it amend the FDCPA to mandate that the validation notice be “clear and conspicuous.”³⁸ Congress responded in 2006 by codifying the overshadowing doctrine, adding the following language to the statute: “Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.”³⁹

Even with this protection, however, reasons exist to doubt consumer awareness and understanding of the validation notice. The next section summarizes those reasons.

III. CONSUMER AWARENESS OF DISCLOSURES

One of us has recently co-authored an article which included a survey

CQ7Y-U2PZ] (“The problem, which has been well-documented by judges, the few attorneys who represent debtors, and the Commissioner of Financial Regulation, is that the plaintiff often has insufficient reliable documentation regarding the debt or the debtor and, had the debtor challenged the action, he or she would have prevailed.”), though others have concluded that debt buyers are able to obtain sufficient information to verify debts. *See* FED. TRADE COMM’N, *supra* note 21, at 40; *cf.* Albin-Lackey, *supra* note 3, at 40 (“Sometimes, the buyers obtain only a simple spreadsheet with a few cells of information—such as names, social security numbers, amounts allegedly owed, and last known addresses—related to thousands of different accounts.”).

33. *See* Griffith, *supra* note 30, at 468 (“[T]he collector will do its utmost to ensure that its demand for payment will have a greater impact on the consumer than the statutory right to dispute the debt.”); Griffith, *supra* note 26, at 787 (“[T]he natural tendency is for the debt collector to state its claim with sufficient enthusiasm that the validation notice loses its appeal.”).

34. 15 U.S.C. § 1692e(8).

35. *See, e.g.*, 12 C.F.R. § 1026.18 (2015) (closed-end consumer loans); 15 U.S.C. § 2302 (2012) (consumer warranties).

36. *See, e.g.*, *Swanson v. S. Or. Credit Serv., Inc.*, 869 F.2d 1222, 1225–26 (9th Cir. 1988).

37. *See id.* at 1225.

38. *See* 2004 FTC FAIR DEBT COLLECTION PRACS. ACT ANN. REP. 12.

39. 15 U.S.C. § 1692g(b).

of the literature on consumer awareness of disclosures.⁴⁰ Little purpose would be served by repeating that survey here, but some highlights merit mention.

One such highlight is that a growing number of studies suggests that few consumers read disclosures. For example, one study of clickstream data reported that “only one or two of every 1,000 retail software shoppers [chooses to] access the license agreement and that most of those who do access it read no more than a small portion” of the license text.⁴¹ In another study, consumers were shown a credit card contract and asked to spend as much time reading the contract as they would have if they had encountered it in their real life transactions.⁴² The average respondent spent only enough time on the contract to read 14% of it.⁴³ In one memorable study, students were asked to sign a phony consent form which contained a number of clauses that people would not ordinarily agree to, such as one requiring the administration of electric shocks.⁴⁴ Nearly all signed the form anyway, after which they learned of the true nature of the consent form, and were asked to sign an authentic consent. Most spent hardly any time reading the actual consent, and many did not read it at all.⁴⁵ In one study, even simplifying disclosures did not make a difference.⁴⁶

Some reasons for not reading disclosures apply with equal force to collection letters and contracts, including the difficulty of understanding

40. See Jeff Sovern, Elayne Greenberg, Paul F. Kirgis & Yuxiang Liu, “*Whimsy Little Contracts*” with *Unexpected Consequences: An Empirical Analysis of Consumer Understanding of Arbitration Agreements*, 75 MD. L. REV. 1 (2015).

41. See Yannis Bakos, Florencia Marotta-Wurgler & David R. Trossen, *Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts*, 43 J. LEGAL STUD. 1, 1 (2014); see also Jonathan A. Obar & Anne Oeldorf-Hirsch, *The Biggest Lie on the Internet: Ignoring the Privacy Policies and Terms of Service Policies of Social Networking Services* 11, 16 (Aug. 24, 2016) (unpublished manuscript), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2757465 [<https://perma.cc/2Y82-XUCA>] (in experiment, median time 543 students spent reading social network terms of service and privacy was about fourteen seconds each).

42. See Sovern, Greenberg, Kirgis & Liu, *supra* note 40, at 33.

43. See Sovern, Greenberg, Kirgis & Liu, *supra* note 40, at 36. Even that probably overstates the amount of time respondents spent on the contract. While the online survey platform recorded how long respondents spent with each page open on their computer, respondents may have had the pages open while not actually reading them continuously. For example, some respondents spent more than a day with the seven-page contract open on their screens.

44. Debra Pogrund Stark & Jessica M. Choplin, *A License to Deceive: Enforcing Contractual Myths Despite Consumer Psychological Realities*, 5 N.Y.U. J.L. & BUS. 617, 679 (2009).

45. See *id.* at 682 (the average reading time for the actual consent was 16 seconds); see also Obar & Oeldorf-Hirsch, *supra* note 41, at 13, 17 (social network terms of service included promise to surrender first-born child; all the 543 students in experiment agreed to terms, including the 1.7% of the students who expressed concerns about that clause).

46. See Omri Ben-Shahar & Adam Chilton, *Simplification of Privacy Disclosures: An Experimental Test* 28 (Univ. of Chi. Coase-Sandor Inst. for Law & Econ. Research Paper No. 737, 2015), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2711474 [<https://perma.cc/BF2V-35H7>] (“[W]e found that that [sic] the simplification of [privacy] disclosures did not change people’s understanding of them or their ensuing behavior in any meaningful direction.”).

them,⁴⁷ consumers think they know what they say,⁴⁸ and they are boring.⁴⁹ But our disclosure differs from contracts in at least two respects. First, while many contracts are lengthy,⁵⁰ the letter we showed respondents was only two pages long. Second, the studies mentioned above dealt with forms signed at the outset of a transaction, while collection letters are often sent after something has already gone wrong in the transaction, at least if the consumer actually owed the debt.⁵¹ It is plausible that consumers who might disdain reading a contract would in fact read a collection letter. Indeed, one reason sometimes given for not reading standard form contracts is that they deal at length with contingencies unlikely to occur and so time reading them would be poorly spent.⁵² That is less likely to be true with collection letters, which are sent when one such contingency—failure to pay the debt—has supposedly occurred.⁵³

But people in other situations when something has gone wrong also seem to disregard disclosures. For example, after reviewing evidence of

47. See Tess Wilkinson-Ryan, *A Psychological Account of Consent to Fine Print*, 99 IOWA L. REV. 1745, 1749 (2014); see also Melvin Aron Eisenberg, *Text Anxiety*, 59 S. CAL. L. REV. 305, 309 (1986) (“The average consumer knows that he probably will be unable to fully understand the dense text of a form contract. . . .”); Robert A. Hillman & Jeffrey J. Rachlinski, *Standard-Form Contracting in the Electronic Age*, 77 N.Y.U. L. REV. 429, 436 (2002) (“[T]he consumer would not understand much of the language of the boilerplate even if she took the time to read it.”).

48. See OMRI BEN-SHAHAR & CARL E. SCHNEIDER, *MORE THAN YOU WANTED TO KNOW: THE FAILURE OF MANDATED DISCLOSURE* 59 (2014). For example, in the study of arbitration clauses one of us co-authored, one notable finding was that many consumers believed they knew what the arbitration clause provided, even though their answers made clear that they did not. See Sovern, Greenberg, Kirgis & Liu, *supra* note 40, at 46, 50, 78 (four times as many respondents believed that they could participate in a class action as realized that they couldn’t even though the contract text forbade such participation; more than three times as many thought they could sue in court as recognized that they could not even though the contract language blocked court litigation; nearly twice as many respondents mistakenly claimed they were entitled to a jury trial as saw that they weren’t, notwithstanding contract wording waiving trial by jury).

49. See BEN-SHAHAR & SCHNEIDER, *supra* note 48, at 24.

50. See, e.g., BEN-SHAHAR & SCHNEIDER, *supra* note 48, at 24 (noting that the iTunes contract, when printed out in 8 point font, is 32 feet long); Shmuel I. Becher & Esther Unger-Aviram, *The Law of Standard Form Contracts: Misguided Intuitions and Suggestions for Reconstruction*, 8 DEPAUL BUS. & COM. L.J. 199, 220 (2010) (finding that contract length is the second most important factor in determining if consumers will read the contract).

51. Collection letters are sometimes sent when the consumer has not in fact engaged in a transaction with the creditor, and indeed in our survey we asked respondents to assume that they had never had a credit card with the company named in the letter and that they did not in fact owe the debt asserted to be owed, but in the normal case the collector will at least believe that the debt had been incurred.

52. See, e.g., Lee Goldman, *My Way and the Highway: The Law and Economics of Choice of Forum Clauses in Consumer Form Contracts*, 86 NW. U. L. REV. 700, 717 (1992) (“The costs of obtaining and understanding information about contract terms are especially daunting when the form terms involve risks that are unlikely to occur.”); Todd D. Rakoff, *Contracts of Adhesion: An Essay in Reconstruction*, 96 HARV. L. REV. 1173, 1226 (1983) (“[M]any of the terms [in standard form contracts] concern risks that in any individual transaction are unlikely to eventuate.”).

53. While the letter we showed consumers provided for contingencies, in the sense that it included disclosures required for residents of particular states, consumers, if they wanted to, could readily determine which, if any, such disclosure applied to them and skip over the others.

the impact of another warning given in a high-pressure situation, scholars commented that “[n]ext to the warning label on cigarette packs, Miranda is the most widely ignored piece of official advice in our society.”⁵⁴ Similarly, studies have found that patients facing medical travails often seem not to take in the information conveyed by disclosures about their treatment.⁵⁵ To be sure, being arrested for a crime or facing serious medical issues are very different from being accused of being overdue on a payment, but if consumers overlook disclosures both at the contracting stage and when facing difficulties, what reason is there to think they will attend to them in other contexts?

A second takeaway from past studies is that they show that numerous consumers have difficulty understanding many disclosures.⁵⁶ In one study of mortgage disclosures, for example, staffers at the Federal Trade Commission found that many consumers who had recently taken out a mortgage could not understand the mortgage disclosures mandated at that time.⁵⁷ Similarly, the study one of us co-authored on consumer under-

54. See Richard A. Leo, *Questioning the Relevance of Miranda in the Twenty-First Century*, 99 MICH. L. REV. 1000, 1013 (2001) (quoting Patrick Malone, *You Have the Right to Remain Silent: Miranda After Twenty Years*, 55 AM. SCHOLAR 367, 368 (1986)).

55. See Steven Joffe, E. Francis Cook, Paul D. Cleary, Jeffrey W. Clark & Jane C. Weeks, *Quality of Informed Consent in Cancer Clinical Trials: A Cross-Sectional Survey*, 358 THE LANCET 1772, 1774 (2001) (survey finds many participants in clinical trials “did not realise that the treatment being researched was not proven to be the best for their cancer, that the study used non-standard treatments or procedures, that participation might carry incremental risk, or that they might not receive direct medical benefit from participation”); Barrie R. Cassileth, Robert V. Zupkis, Katherine Sutton-Smith & Vicki March, *Informed Consent—Why Are Its Goals Imperfectly Realized?*, 302 NEW ENG. J. MED. 896, 898 (1980) (“Within one day of signing consent forms for chemotherapy, radiation therapy, or surgery, 200 cancer patients completed a test of their recall of the material in the consent explanation and filled out a questionnaire regarding their opinions of its purpose, content, and implications. Only 60 per cent understood the purpose and nature of the procedure, and only 55 per cent correctly listed even one major risk or complication. . . . [P]revious studies have shown that patients remain inadequately informed, even when extraordinary efforts are made to provide complete information and to ensure their understanding. This appears to be true regardless of the amount of information delivered, the manner in which it is presented, or the type of medical procedure involved. . . . Patients were asked how much they could understand of the explanatory material about consent. Eighty-five per cent said that they could understand ‘all’ or ‘most’ of the information in the explanation.”).

56. See, e.g., Victoria C. Plaut & Robert P. Bartlett, III, *Blind Consent? A Social Psychological Investigation of Non-Readership of Click-Through Agreements*, 36 L. & HUM. BEHAV. 293, 299 (2012) (survey finds that consumers “have little comprehension of the terms to which they have agreed”).

57. See JAMES M. LACKO & JANIS K. PAPPALARDO, FED. TRADE COMM’N BUREAU OF ECON., STAFF REPORT, IMPROVING CONSUMER MORTGAGE DISCLOSURES: AN EMPIRICAL ASSESSMENT OF CURRENT AND PROTOTYPE DISCLOSURE FORMS 122 (2007), <http://www.ftc.gov/os/2007/06/P025505MortgageDisclosurereport.pdf> [<https://perma.cc/7DBS-R5QM>].

About a fifth of the respondents viewing the current disclosure forms could not correctly identify the APR of the loan, the amount of cash due at closing, or the monthly payment About a third could not identify the interest rate or which of two loans was less expensive, and a third did not recognize that the loan included a large balloon payment Half could not correctly identify the loan amount. Two-thirds did not recognize that they would be charged a prepayment penalty if in two years they refinanced with another

standing of arbitration clauses in credit card contracts found that even though the arbitration clause was printed in bold, with parts in italics and ALLCAPS, and consumers were advised to read it carefully, many consumers, at times by margins of three or four-to-one, misunderstood it.⁵⁸ But it is hardly surprising that consumers struggle to make sense of disclosure. Even judges and consumer law experts profess to find some disclosures meant for consumers incomprehensible.⁵⁹

While regulators have recently adopted the practice of testing draft disclosures on consumers to see if consumers can understand them,⁶⁰ the FDCPA was enacted decades before that practice became common. Nothing suggests that Congress tested the validation notice on consumers before passing the statute.⁶¹ Put another way, for nearly forty years, courts have found collectors liable for improperly providing a notice that they do not know if consumers understand when it is given “properly.” Conversely, courts have immunized collectors from liability when providing a notice that courts do not know if consumers understand under any circumstances.

A variety of reasons have been offered for consumer inability to com-

lender. . . . Three-quarters did not recognize that substantial charges for optional credit insurance were included in the loan. . . . [N]early nine-tenths could not identify the total amount of up-front charges in the loan.

Id. See also Brian Bucks & Karen Pence, *Do Homeowners Know Their House Values and Mortgage Terms?* 2 (Fin. & Econ. Discussion Series Working Paper No. 2006-03, 2006), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=899152 [<https://perma.cc/GG38-YNYY>] (“[A] sizable number of adjustable-rate borrowers report that they do not know the terms of their contracts.”); IRA J. GOLDSTEIN, THE REINVESTMENT FUND, *LOST VALUES: A STUDY OF PREDATORY LENDING IN PHILADELPHIA* 17 (2007), https://www.reinvestment.com/wp-content/uploads/2015/12/Lost_Values_Predatory_Lending_in_Philadelphia-Report_2007.pdf [<https://perma.cc/9DY6-MFR7>] (“Several borrowers interviewed . . . reported thinking that they have one loan when they have two.”).

58. See Govern, Greenberg, Kirgis & Liu, *supra* note 40, at 63, 79.

59. For example, Omri Ben-Shahar and Carl E. Schneider report the following about *Gerhardt v. Cont’l Ins. Cos.*, 225 A.2d 328 (1966):

During oral argument one state supreme court justice said he couldn’t “understand half of my insurance policies.” Another justice thought that “insurance companies keep the language of their policies deliberately obscure.”

The chief justice concurred: “I don’t know what it means. I am stumped. . . .”

BEN-SHAHAR & SCHNEIDER, *supra* note 48, at 84. Ben-Shahar & Schneider also recount that Senator Elizabeth Warren has said “I teach contract law at Harvard, and I can’t understand half of what [a consumer credit contract] says.” BEN-SHAHAR & SCHNEIDER, *supra* note 48, at 7–8; see also Joan Warrington, *Disclosure as a Consumer Protection*, in *THE IMPACT OF PUBLIC POLICY ON CONSUMER CREDIT* 145, 146 (Thomas A. Durkin & Michael E. Staten eds., 2002) (“Even with a law degree and a career in consumer credit, I still have problems understanding many of the disclosures that I see.”).

60. See, e.g., *Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z)*, 78 Fed. Reg. 79,730 (Dec. 31, 2013) (codified at 12 C.F.R. pts. 1024, 1026). The disclosure rules were adopted only after ten rounds of qualitative testing, see KLEIMANN COMM’N GRP., INC., CFPB, *KNOW BEFORE YOU OWE: EVOLUTION OF THE INTEGRATED TILA-RESPA DISCLOSURES* 9–10, 37, (2012), and additional quantitative testing, see KLEIMANN COMM’N GRP., INC., CFPB, *KNOW BEFORE YOU OWE: QUANTITATIVE STUDY OF THE CURRENT AND INTEGRATED TILA-RESPA DISCLOSURES* (2013).

61. For example, the Senate Report, S. REP. NO. 95-382, at 4 (1977), as reprinted in 1977 U.S.C.C.A.N. 1695, 1699, does not refer to consumer testing.

prehend notices. Some consumers may have cognitive problems⁶² or lack the requisite literacy skills.⁶³ For example, the Consumer Financial Protection Bureau (CFPB) found that the average credit card arbitration clause required more than two years of college to understand, according to one widely-used test of reading difficulty.⁶⁴ In comparison, the validation notice that we used in our test, approved by the Seventh Circuit and based on a notice created by the American Collectors Association (ACA), not only requires four years of college, but an additional three years of graduate school to understand.⁶⁵

Even consumers with overall literacy skills may be unfamiliar with the terminology used in particular transactions. Ben-Shahar and Schneider call this “sector illiteracy.”⁶⁶ Thus, consumers unfamiliar with debt collection may not know what verification of the debt entails or why they should request it. Sector illiterates especially risk misunderstanding disclosures,⁶⁷ as illustrated by the arbitration study in which respondents gave 44% more incorrect than correct answers.⁶⁸ Consumers unfamiliar with debt collection may similarly misinterpret a validation notice.

In Ben-Shahar’s and Schneider’s words, “not only does the empirical evidence show that mandated disclosure regularly fails, failure is inherent in it.”⁶⁹ The next section explains how we tested whether certain validation notices failed in their purpose, though our data is too limited to determine whether validation notices are inherently incapable of succeeding.

62. See Debra Pogrud Stark & Jessica M. Choplin, *A Cognitive and Social Psychological Analysis of Disclosure Laws and Call for Mortgage Counseling to Prevent Predatory Lending*, 16 PSYCHOL., PUB. POL’Y, & L. 85, 98 (2010) (identifying “fourteen cognitive and social psychological factors that cause disclosure forms to be ineffective”).

63. See BEN-SHAHAR & SCHNEIDER, *supra* note 48, at 79 (“Many people cannot read many disclosures because they are not literate or numerate enough to decipher them with reasonable effort.”); Alan M. White & Cathy Lesser Mansfield, *Literacy and Contract*, 13 STAN. L. & POL’Y REV. 233, 237–39 (2002) (“The degree of literacy required to comprehend the average disclosure form and key contract terms simply is not within reach of the majority of American adults.”).

64. See CFPB, ARBITRATION STUDY PRELIMINARY RESULTS: SECTION 1028(A) STUDY RESULTS TO DATE 28–29 (2013) (reporting that the mean Flesch-Kincaid grade level for credit card arbitration clauses was 14.2 and the median grade level was 14.7); *id.* at 28 n.65 (“The Flesch readability score is a widely used standard in plain language analysis. Scores range from 0.0 to 100.0, with a higher number indicating greater readability. The calculation of the score takes into account total words, total sentences, and total syllables.”).

65. The Flesch-Kincaid grade level for the validation notice was 19.2 and the Flesch Readability score was 27.9. Any score under 50 is considered difficult. See generally Rudolf Flesch, *A New Readability Yardstick*, 32 J. APPLIED PSYCHOL. 221, 230 (1948); PETER J. KINCAID ET AL., NAVAL TECH. TRAINING COMMAND, RESEARCH BRANCH REPORT 8-75: DERIVATION OF NEW READABILITY FORMULAS (AUTOMATED READABILITY INDEX, FOG COUNT AND FLESCH READING EASE FORMULA) FOR NAVY ENLISTED PERSONNEL, 4, 14 (1975), <http://www.dtic.mil/dtic/tr/fulltext/u2/a006655.pdf> [<https://perma.cc/C6KZ-AXUW>]; Norman E. Plate, *Do as I Say, Not as I Do: A Report Card on Plain Language in the United States Supreme Court*, 13 T.M. COOLEY J. PRAC. & CLINICAL L. 79, 93–94 (2010).

66. BEN-SHAHAR & SCHNEIDER, *supra* note 48, at 89.

67. BEN-SHAHAR & SCHNEIDER, *supra* note 48, at 89.

68. See Sovern, Greenberg, Kirgis & Liu, *supra* note 40, at 63–64.

69. BEN-SHAHAR & SCHNEIDER, *supra* note 48, at 12.

IV. METHODOLOGY

A. SURVEY DESIGN AND STRUCTURE

We employed a web-based survey, using the Qualtrics platform. We asked respondents to complete a consent form and then posed a series of demographic questions to insure that respondents overall were typical of adult Americans generally; respondents for whom the needed demographic categories (e.g., income, level of education) were already full were excluded from proceeding further in the survey. After completing the demographic questions, respondents saw a letter requesting payment of an overdue credit card debt and were instructed to “give it the exact same amount of attention you would if it had just been mailed to you.”⁷⁰ After respondents spent as much time with the letter as they wanted, the survey asked several questions intended to determine what respondents took away from the letter on first reading. At this point in the survey, respondents could not return to the letter for aid in answering the questions.

After these initial questions, the survey gave respondents a second look at the letter. The survey then asked a sequence of questions about the meaning of the validation notice. With each such question, respondents had the option of clicking on a link to make the letter open in a separate tab, or hitting the back button to return to the letter.⁷¹ Our goal with these questions was to see if respondents understood the validation notice when they could study it as much as they wished.

Respondents were divided into four groups, each of which saw a different collection letter, though all were asked the same questions. One group (Condition A) saw the letter appearing in Appendix A, which closely resembles the actual letter approved by the Seventh Circuit in *Zemeckis v. Global Credit & Collection Corp.*,⁷² with changes to eliminate identifying information. The *Zemeckis* letter calls upon the recipient to act “now” and call the collector “today” and also threatened legal action.⁷³ The original two-page letter stated on the first page “SEE REVERSE SIDE FOR IMPORTANT INFORMATION”; the validation notice appeared printed at the top of the back page under the legend “IMP ORTANT NOTICE OF YOUR RIGHTS UNDER FEDERAL LAW.”⁷⁴ The validation notice states in bold:

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity

70. See *infra* app. A for a copy of one version of the survey with a collection letter.

71. See *infra* app. A.

72. See *Zemeckis v. Glob. Credit & Collection Corp.*, 679 F.3d 632, 634, 636–37 (7th Cir.), cert. denied, 133 S.Ct. 584 (2012).

73. *Id.* at 634.

74. Brief for Appellee at 3–4, *Zemeckis v. Glob. Credit & Collection Corp.*, 679 F.3d 632 (7th Cir. 2012) (No. 11-2334).

of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment, if any, and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from the current creditor.⁷⁵

After the validation notice, the letter included another statement required by the FDCPA,⁷⁶ as well as a list of notices required by various states.⁷⁷ Because our letter was not printed on paper but appeared on a computer screen, we changed the first page direction to see the reverse side to read “SEE NEXT PAGE FOR IMPORTANT INFORMATION.” We did not judge that difference significant.

We chose the *Zemeckis* letter for several reasons. First, the letter was approved by the Seventh Circuit.⁷⁸ Second, the validation notice appears to be based on a standard ACA form mentioned in other cases,⁷⁹ and so is a typical form. Third, the *Zemeckis* letter sought to collect a credit card debt, among the most common types of debt placed with collectors and

75. See *infra* App. A.

76. In compliance with 12 U.S.C. § 1692e(11) (making it a deceptive practice to fail to “disclose in the initial written communication with the consumer . . . that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose”), the letter stated “WE ARE ACTING AS A DEBT COLLECTOR. THIS LETTER IS AN ATTEMPT TO COLLECT THIS DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.” See *infra* app. A. A similar statement also appeared on the first page of the letter.

77. This too is common. See National Consumer Law Center et al., Comments to the Bureau of Consumer Financial Protection: Advance Notice of Proposed Rulemaking Regarding Debt Collection 66 (Feb. 28, 2014), http://www.nclc.org/images/pdf/debt_collection/comments-cfpb-debt-collection-anprm-2-28-14.pdf [<https://perma.cc/T8BZ-FHV3>] (“State law disclosures are usually on the reverse side, and are rarely tailored to the recipient’s state.”); DBA International, Comments to the Consumer Financial Protection Bureau’s Advance Notice of Proposed Rulemaking 20 (Feb. 28, 2014) (“Debt collectors typically include a state level disclosure from the state that the notice is being sent to, along with the disclosures that are required to be provided in the initial demand, as required by the FDCPA.”).

78. *Zemeckis*, 679 F.3d at 636–37.

79. The American Collectors Association form was quoted as follows in *Rabideau v. Mgmt. Adjustment Bureau*, 805 F. Supp. 1086, 1090 (W.D.N.Y. 1992):

Unless you notify this office in 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing in 30 days from receiving this notice, this office will obtain verification of the debt or obtain a copy of the judgment, if any, and mail you a copy of the verification. If you request this office in writing in 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

For other cases using similar validation notices, see *Muha v. Encore Receivable Mgmt., Inc.*, 558 F.3d 623, 625 (7th Cir. 2009); *McStay v. I.C. Sys., Inc.*, 308 F.3d 188, 189 (2d Cir. 2002); *Walker v. Nat’l Recovery, Inc.*, 200 F.3d 500, 502 (7th Cir. 1999); *Jacobson v. Healthcare Fin. Servs., Inc.*, 516 F.3d 85, 88 (2d Cir. 2008); *Caprio v. Healthcare Revenue Recovery Grp., LLC*, 709 F.3d 142, 146 (3d Cir. 2013); *Leshner v. Law Offices of Mitchell N. Kay, PC*, 650 F.3d 993, 995 (3d Cir. 2011); *Wilson v. Quadramed Corp.*, 225 F.3d 350, 352 (3d Cir. 2000); *Jang v. A.M. Miller & Assocs.*, 122 F.3d 480, 482 (7th Cir. 1997); see also National Consumer Law Center et al., *supra* note 77, at 69.

representing some 90% of the debt sold.⁸⁰

A second set of respondents (Condition B) saw the *Zemeckis* letter with a simpler validation notice.⁸¹ Under the Flesch-Kincaid Reading Level Test, the *Zemeckis* validation notice scores 19.2, meaning that the validation notice would require three years of graduate school to understand.⁸² In contrast, the simpler validation notice we used, drafted by the National Consumer Law Center (NCLC), tests at a sixth grade reading level.⁸³ The NCLC validation notice reads as follows:

**You can dispute this debt at any time, either orally or in writing.
If you write to us within thirty days of when you get this letter,
regarding:**

- (1) A question or a dispute about all or any part of the debt, or**
 - (2) A request for the name and address of the original creditor**
- we will stop collecting until we mail you our response.**

**Also, we will stop calling and writing you if you tell us (in writing)
that you refuse to pay or want us to stop calling and writing.⁸⁴**

In addition to being simpler, the NCLC validation notice also differs substantively from the *Zemeckis* notice. Unlike the *Zemeckis* notice, it tells respondents that the collector will stop collection efforts until it responds to the consumer's written question or dispute and that the collector will stop calling or writing if the consumer so requests. The NCLC notice does not refer to the assumption of validity, nor does it use the word "verification."

A third set of respondents (Condition C) saw the letter without any validation notice.⁸⁵ A fourth group (Condition D) saw a letter with two important differences. First, we reduced the text of the body of the letter (the portion between the salutation and the signature line) from 229

80. See FED. TRADE COMM'N, *supra* note 2, at 12–13.

81. See *infra* app. B.

82. Cf. Albin-Lackey, *supra* note 3, at 35–36 (quoting debt buyer Encore Capital's General counsel Greg Call as saying about debt buyer notice, "Lawyers are horrible at dumbing down their average work product to the average reading level of our consumer. We generally shoot for a seventh or eighth grade reading level. They are trying in good faith to communicate, but to the average consumer it's what you described—it's too dense, it's intimidating, and it's scary.").

83. See National Consumer Law Center et al., *supra* note 77, at 64.

84. National Consumer Law Center et al., *supra* note 77, at 64.

85. See *infra* app. C; cf. *Muha v. Encore Receivable Mgmt., Inc.*, 558 F.3d 623, 626 (7th Cir. 2009) (rejecting use of survey because it lacked a control group that saw the dunning letter without the challenged sentence, among other reasons); *Hernandez v. Attention, LLC*, 429 F. Supp. 2d 912, 917 (N.D. Ill. 2005)

(The survey's fatal flaw is that it did not make use of a control group. . . . 'A survey . . . under the Fair Debt Collection Practices Act would be useful *only* if it included a benchmark measure of consumers' understanding after reading the unelaborated statutory notice plus a statement of the debt, or perhaps after reading the *Bartlett* safe-harbor letter.' . . . The purpose of the control group is to make clear that any consumer confusion is caused by the debt collector's language, not by the statutory language itself.)
(citing *Johnson v. Revenue Mgmt. Corp.*, 169 F.3d 1057, 1060 (7th Cir. 1999) ("noting that 'many [unsophisticated] consumers would be confused even if the letters they received contained nothing more than a statement of the debt and the statutory notice'").

words to one paragraph of 48 words, or by 79%.⁸⁶ As a result, the text of the letter was less threatening than the *Zemeckis* letter, though it retained much of the formatting and some of the text.⁸⁷ Second, this simpler letter had the *Zemeckis* validation notice on the first page. The second page of this letter was identical to the second page of the *Zemeckis* letter, except that it did not include the validation notice.

In all conditions, the second page of the collection letter included a series of statements addressed to consumers in ten states identified on the second page by name, just as was true of the actual *Zemeckis* letter. The practice of sending mandated state disclosures along with the FDCPA-required notices is typical.⁸⁸

B. SURVEY IMPLEMENTATION

Qualtrics supplied us with a sample of survey participants that was demographically representative of adult Americans⁸⁹ with respect to age,⁹⁰ education,⁹¹ income,⁹² gender,⁹³ and ethnicity.⁹⁴ We did not attempt to confine our respondents to those who have or have had debts in collection for several reasons. First, reliable demographic information about such consumers is difficult to come by. Second, those who have seen validation notices before might respond differently from those who have not, and we wanted to learn what consumers who have not previ-

86. See *infra* app. D. The body of the letter in Condition D reads: Your account with XYZ Credit Card Company has been placed with ABC Credit & Collection Corp., a collection agency. Call our office at 1-XXX XXX-XXXX to make arrangements to resolve this matter, if you cannot make your minimum payment, we can go over the options available to you.

87. Condition D omitted the following text from the actual *Zemeckis* letter: XYZ Credit Card Company has not yet made a decision to file a lawsuit, there is still time for you to work with us in resolving this matter. If we cannot get this matter resolved soon and your account charges off, XYZ Credit Card Company may be forced to take legal action. This could result in a judgment against you. If XYZ Credit Card Company obtains a judgment against you, they can take whatever actions they deem advisable to enforce it. In addition, judgments are a matter of public record, and employers, landlords, and other creditors can check your credit and see that the judgment has been taken against you.

It is not too late to fix this situation: We urge you to act now.

See *infra* app. A.

88. See *supra* note 77 and accompanying text.

89. See *QuickFacts*, U.S. CENSUS BUREAU (June 24, 2014), <https://www.census.gov/quickfacts/table/PST045215/00> [<https://perma.cc/88RT-D9WL>].

90. See *Age and Sex Composition in the United States: 2012*, U.S. CENSUS BUREAU (June 18, 2014), <https://www.census.gov/population/age/data/2012comp.html> [<https://perma.cc/GBS7-2YT8>].

91. See *Educational Attainment in the United States: 2013 - Detailed Tables*, U.S. CENSUS BUREAU (June 18, 2014), <http://www.census.gov/hhes/socdemo/education/data/cps/2013/tables.html> [<https://perma.cc/2MTN-M4AV>].

92. See LINDA LEVINE, CONG. RESEARCH SERV., RS20811, THE DISTRIBUTION OF HOUSEHOLD INCOME AND THE MIDDLE CLASS (2012).

93. See Lindsay M. Howden & Julie A. Meyer, *Age & Sex Composition: 2010*, U.S. CENSUS BUREAU (May 2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-03.pdf> [<https://perma.cc/23UT-KCWN>].

94. See *QuickFacts*, *supra* note 89.

ously seen such notices take away from them; if we had limited our respondents to those who have already been pursued by debt collectors, and so have probably already seen validation notices—possibly repeatedly—we would not have learned how consumers seeing validation notices for the first time respond to them. Third, because courts evaluate validation notices, overshadowing, and inconsistency using the “least sophisticated consumer” or the “unsophisticated consumer” tests,⁹⁵ it seems helpful to have a pool of respondents who reflect the general population more broadly to facilitate identification of the least sophisticated or unsophisticated consumer. We did not filter out respondents using proxies like household income and level of education that could conceivably correlate with less sophisticated consumers because we did not know whether those proxies would actually enable us to identify the less sophisticated—though we did ask questions about income and education to see the extent to which they correlated with incorrect answers.⁹⁶

Our sample, however, does not mirror the adult population perfectly. Because it is limited to those who use the Internet, and the general population includes some who do not, we cannot be certain that our population accurately reflects the entire adult population.⁹⁷ Another limit is that our sample was confined to those who have agreed to answer surveys from Qualtrics for compensation. It is heartening to know, however, that another survey one of us conducted using Qualtrics found no statistically-significant difference between answers supplied by respondents found by Qualtrics and respondents found by other means.⁹⁸

Another concern is that respondents knew they were not reading a letter they had actually received in the mail, and so they might not have responded the same way a consumer might to receiving such a letter. That may have had several effects. For one, consumer lawyers claim that some debt collectors specifically target consumers who are unable to read debt collection letters.⁹⁹ Because our survey did not include such consumers—

95. See *infra* note 210 and accompanying text.

96. See *Jackson v. Nat'l Action Fin. Servs., Inc.*, 441 F. Supp. 2d 877, 880–81 (N.D. Ill. 2006) (Court finds problematic a survey that targeted consumers with no more than a twelfth grade education, saying “The ‘unsophisticated consumer’ is a hypothetical construct which makes it necessary to choose objective proxies for levels of sophistication. . . . Extrinsic evidence that a letter is confusing to a significant portion of the population is relevant to whether it is confusing to the ‘unsophisticated consumer.’”). But see *Muha v. Encore Receivable Mgmt., Inc.*, 558 F.3d 623, 626–27 (7th Cir. 2009) (“[T]he law is primarily intended to protect the unsophisticated consumer . . . since the sophisticated one can usually fend for himself (that is what ‘sophistication’ means in this context). So a better survey would include questions designed to filter out the sophisticated.”); *Taylor v. Cavalry Inv., LLC*, 365 F.3d 572, 574 (7th Cir. 2004) (“[T]he benchmark is the understanding of unsophisticated debtors, who are frequent targets of debt collectors. . . .”).

97. See Kathryn Zickuhr, *Who's Not Online and Why*, PEWRESEARCHCENTER (Sept. 25, 2013), <http://www.pewinternet.org/2013/09/25/whos-not-online-and-why/> [<https://perma.cc/Q4UV-WM8Q>] (15% of adults generally and 44% of those over 65 do not use the internet).

98. See Sovern, Greenberg, Kirgis & Liu, *supra* note 40, at 32.

99. See e-mail from David F. Addleton to Jeff Sovern & Kate E. Walton (June 19, 2015) (on file with the authors):

indeed, our sample consists only of people who are able to answer online surveys—our survey sheds no light on the extent to which consumers targeted by debt collectors because of their inability to read collection letters are aware of validation notices, though it seems likely that they are not. As a result, our survey may *overstate* consumer awareness of validation notices.

Another difference between the effect of receiving a simulated collection letter and a genuine collection letter is emotional: a consumer receiving a collection letter may experience a range of emotions, including anxiety, annoyance, fear, or anger, while a consumer taking a survey is unlikely to feel any of those (well, maybe annoyance).¹⁰⁰ It is difficult to determine how this might affect the survey results; on the one hand, consumers receiving a genuine dunning letter might be too upset to read the letter with care, and so our respondents might perform better on the survey questions than an actual consumer would have. On the other hand, a consumer who has received such a letter might have more of a stake in asserting her rights than our respondents, and so might read the letter with more care than our respondents.

We attempted to deal with that last concern in several ways. First, we instructed respondents to give the letter “the exact same amount of attention you would if it had just been mailed to you.”¹⁰¹ Second, we excluded from the survey respondents who answered either of two attention check questions incorrectly. The first, which was the first question after the letter was displayed, asked “What kind of document did you just see?”¹⁰² To continue, respondents had to click “A letter requesting payment of a credit card bill.”¹⁰³ The 78 respondents who did not answer that question correctly were removed from the survey. One consequence of eliminating respondents who did not give the correct answer to that question might be that we excluded respondents who would in real life not have read the letter, and so our results might *overstate* consumer awareness and comprehension of debt collection letters.¹⁰⁴ A second attention check question posed later in the survey asked respondents to click “No” from

You see, many of my clients, although still living independently, are too tired to read these letters, let alone understand them and react to them. . . . They receive a letter with print too small for them to read and they throw it away. I very rarely see any of these [1692]G-notice letters from my elderly and disabled clients. They don't even remember throwing them away. . . . These people are identified and selected for special attention by debt collectors because the debt collector expects to win a default judgment from them.

100. See Griffith, *supra* note 29, at 172 (A consumer reading a collection letter “may be so overcome with the original shock about what can happen if he does not pay that he may not be particularly excited about the chance to dispute the debt.”).

101. See *infra* app. A.

102. See *infra* app. A.

103. See *infra* app. A. Incorrect answers included a cell phone contract, a letter summoning you to serve on a jury, and an offer of a rebate for buying a television.

104. See FED. TRADE COMM’N, *supra* note 21, at 38 (“[S]ome consumers may not read or understand the validation notice because . . . they may assume it is junk mail, or they find writing a letter to be unduly burdensome.”).

among three choices.¹⁰⁵ That question resulted in the elimination of five respondents; perhaps the lower number indicates that the first attention check question had already resulted in the exclusion of most respondents who were not giving the survey sufficient attention. We also planned to remove from the survey respondents who completed it in less than a third of the median time respondents took to answer the questions, but in fact no respondents finished it that quickly.

We tested each of the four conditions on groups that ranged in size from twenty-two to twenty-four. At that stage, the survey asked participants to indicate anything that confused them in the places for comments. No one expressed confusion or a lack of understanding. But because only one respondent in the first trial had less than a high school education, we conducted an additional test run with the same instruction. In addition, two respondents indicated that they could not open the links to the letter included in some questions. We excluded those responses and learned, upon investigation, that those accessing the survey through Internet Explorer could not open the links, though the links worked with other browsers. Consequently, we asked that respondents be advised to take the survey through a browser other than Explorer; respondents who nevertheless attempted to access the survey through Explorer were eliminated from the survey. In the absence of evidence that the population that uses only Explorer is different from groups that use other browsers, we do not believe that this affected the representativeness of our sample. We then arranged a second test run, after which we fully launched the survey. Ultimately, we obtained 193 responses to Condition A, and 182 responses to each of Conditions B, C, and D, for a total of 793 responses.

V. RESULTS

We tested consumer understanding of the validation notice by asking a series of questions about the notice. Before consumers were asked any of the comprehension questions, they had seen the letter twice within the survey itself. Because we wanted to test understanding, rather than consumer recollection of the notice, each comprehension question gave consumers the opportunity to click on a link to view the collection letter.¹⁰⁶ In all, consumers had fourteen opportunities to read the letter, either within the survey or by opening a link. This section discusses their understanding of the validation notice as well as their understanding of some other aspects of the text of the *Zemeckis* letter.

105. The other choices were “Yes” and “I don’t know.” See *infra* app. A.

106. Specifically, the instructions in each such question stated: “If you wish to see the letter again, please click here for the first page and here for the second. If the letter is too small for comfortable reading, please use your browser control to zoom in. You also have the option of hitting the back button to review the earlier presentation of the letter.” See *infra* app. A.

A. INDIVIDUAL QUESTIONS: THE TREES

This subsection focuses on the results on individual questions. Part VB discusses broader patterns in the data.

1. *Did Respondents Understand that the Letter Said They Could Dispute the Validity of the Debt?*

Condition A, B, and D respondents saw a letter stating that they could dispute the debt, while the letter in Condition C said nothing about disputing the debt.¹⁰⁷ Indeed, both the *Zemeckis* notice and the NCLC notice referred twice to the possibility of the consumer disputing the debt.¹⁰⁸ Question 38 asked respondents to indicate if the letter said they could dispute the validity of the debt.¹⁰⁹ The percentages of respondents selecting that item were 55% (Condition A), 59% (B), 32% (C), and 62% (D).¹¹⁰

Figure 1: Question 38 Part 3

Which of the following did the letter say? Please click as many as you think correct. . . . You may dispute the validity of the debt.

(1)	(2)	(3)	(4)	(5)	(6)
Condition	#	%/total	All of the above ¹¹¹	(2)+(4)	%/total
A	106	55	55	161	83
B	107	59	50	157	86
C	58	32	46	104	57
D	113	62	50	163	90

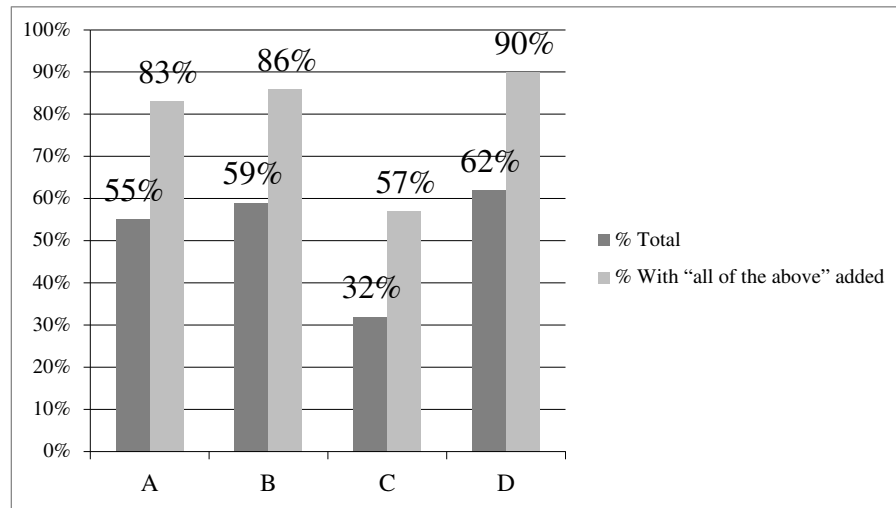
107. While Conditions A and D twice referred to disputing *the validity* of the debt, Condition B's NCLC notice stated that respondents could dispute the debt but didn't refer to validity. It seems unlikely that many B respondents noticed the difference between disputing the validity of the debt and simply disputing the debt, however, as a greater percentage of B respondents reported that the letter said they could dispute the validity of the debt than A respondents, and the percentages of B and D respondents so stating were comparable.

108. *See infra* apps. A–B.

109. *See infra* Figure 1.

110. *See infra* Figure 1.

111. Respondents selecting this item were also indicating that the letter said things it did not say, including that they had a right to know how much of the amount they owed is interest and that they had a right to be told the date they last charged something on the credit card.



But that doesn't tell the whole story. Question 38 offered respondents the opportunity to click on "All of the above."¹¹² Respondents who selected that option also conveyed that they thought the letter said they could dispute the debt. The options embraced by "All of the above" included as well, however, two items that were incorrect: "You have a right to know how much of the amount you owe is interest" and "You have a right to be told the date you last charged something on the credit card."¹¹³ In each condition, between a quarter and a third of the respondents who did not click on the choice indicating that the letter said they could dispute the debt selected "All of the above," bringing the total of those who chose one or the other or both to 83% for Condition A, 86% for Condition B, 57% for Condition C, and 90% for Condition D.¹¹⁴

This presents something of a conundrum. If we ignore "All of the above," our findings indicate that, in every condition, more than a third of respondents failed to take in that the letter indicated they could dispute the debt, something that was also true of nearly half the respondents seeing the *ZemECKis* letter. Assuming our sample was random, our figures give a 95% confidence level in a confidence interval of 4.1%, meaning that there is a 95% chance that at least 37.9% of consumers shown one of our validation notices would either not select the item saying that the validation notices state that they can dispute debts or would select "All of the above" with both its correct and incorrect implications.¹¹⁵ If, however, we include those who selected "All of the above," we have a much

112. See *infra* app. A, question 38.

113. See *infra* app. A, question 38.

114. See *supra* Figure 1.

115. We reached that conclusion by combining the Condition A, B, and D respondents, all of whom saw a letter indicating that they could dispute the debt in one way or another, and used the average (42%) among those three conditions for the percentage of respondents who overlooked that the letter said they could dispute the debt. We excluded the Condition C results because Condition C respondents did not see a validation notice.

more respectable awareness of the right to dispute the debt—but the higher percentage comes at the price of also including respondents who thought the letter said two things it did not say.

This question's responses raised two other concerns. The first involves a comparison of the Condition A respondents—who saw the *Zemeckis* letter—and the Condition C respondents—who did not see a validation notice. On this question, while a greater percentage of A respondents than C respondents indicated that the letter said they could dispute the debt, the differences between those two groups did not rise to the level of statistical significance.¹¹⁶ In other words, our data does not show that the *Zemeckis* letter did a better job of conveying to respondents that they have a right to dispute the debt than a letter lacking a validation notice. In contrast, the responses to Condition C were significantly different from those for B and D,¹¹⁷ meaning that both the more conspicuous validation notice and the simpler validation notice seemingly produced greater awareness of the right to dispute the debt's validity than a letter that did not include a validation notice.¹¹⁸

Second, another way of looking at the data assumes that the difference between the Condition A responses and the Condition C responses indicates the value added by the *Zemeckis* notice. Put another way, as 32% of the C respondents thought that the letter they saw indicated that they could dispute the debt even though it did not (57% if we include the "All of the above" responses), and 55% of the Condition A respondents correctly recognized that their letter stated that they could dispute the debt (or 83% if "All of the above" is added in), the difference between these two numbers—21% (or 26% if "All of the above" is incorporated)—enables us to infer the increase in respondent awareness caused by the *Zemeckis* notice.¹¹⁹ To be sure, that inference is fraught with the possibility of error because it ignores that the differences between the two groups are not significantly different as well as the possibility that different samples would have produced different results. Still, it suggests that the *Zemeckis* notice increases awareness of the disclosure about disputing the

116. See *supra* Figure 1. For this and other results reported herein, we carried out logistic regressions to determine whether condition was a statistically significant predictor of participants' responses. Included in these regression models were education, income, self-reported percentage of the letter understood, experience with debt collection, and all interactions between condition and these covariates. We note any observed statistically significant relationships at the $p < .05$ level.

Condition itself is not a significant predictor of responses. While there are some statistically significant specific group comparisons, the frequencies of responses across conditions are in fact highly similar and these significant differences are only observed when other independent variables are entered into the model. Therefore, we caution against interpreting these differences as being practically significant unless they are replicated in other studies. However, our data appear to be reliable given that responses to several questions were similar, as discussed in Part VB.

117. See *supra* Figure 1. Condition A responses were not significantly different from B or D, nor were the B responses significantly different from the D responses.

118. Level of education or income did not have a statistically significant effect on the results.

119. See *supra* Figure 1.

debt for only about a quarter of our respondents. A notice written in such pale ink is not very effective.

2. *Did Respondents Understand When the Collector Would Assume the Debt Was Valid?*

In this section, we report on the results for multiple questions about the *Zemeckis* notice's statement about the assumption of validity. That provision, which appeared in Conditions A and D, stated in bold "[u]nless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid."¹²⁰ We found that a substantial percentage of respondents—on one question, a large majority—either did not realize that the letter said that or else misinterpreted it. In addition, we found that the *Zemeckis* letter did no better than a letter without a validation notice in conveying when the collector would not assume a debt was valid.

In one sequence of questions, the survey told respondents to assume that they had communicated to "ABC Debt Collectors to tell them that you had never had that credit card. You also said you didn't owe the money the letter said you did."¹²¹ Depending on the question, the communications came in the form of a phone call, a letter sent the day after the respondents received the collection letter, and a letter sent twenty-five or thirty-five days after receipt of the demand for payment, respectively. The survey then asked respondents "According to the letter from ABC, would ABC assume the debt was valid?"¹²²

Figure 2 shows the percentage of respondents who thought that the collector would assume that the debt was valid even though the consumer disputed the debt in a phone call the day after receiving the letter. Large majorities of respondents thought that the act of disputing the debt by phone would *not* keep the collector from assuming the debt was valid, despite the necessary implication of the *Zemeckis* validation notice and 1692g(a)(3) that it would.¹²³ For example, of the respondents who thought that they knew whether the collector would or would not assume the debt was valid notwithstanding receiving a phone call disputing the debt, more than 70% wrongly thought that the collector would.¹²⁴ Thus, to the extent that the *Zemeckis* notice is intended to convey to consumers

120. See *infra* apps. A, D. This follows the wording of § 1692g(a)(3), which states "a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector." 15 U.S.C. § 1692g(a)(3).

121. See *infra* app. A, questions 33, 35–37.

122. See *infra* app. A, questions 33, 35–37. Because the *Zemeckis* notice did not specify a writing on this point, a phone call notification should be sufficient under the wording of the notice. While the notice, consistent with the statute, does not explicitly say whether the collector will assume the debt is valid if the consumer disputes the debt within thirty days, the necessary implication of the statement is that the collector will not assume the debt is valid if the consumer timely disputes it. See § 1692g(a)(3). Otherwise, there would be little point in saying when the collector would assume it is valid.

123. See *infra* Figure 2.

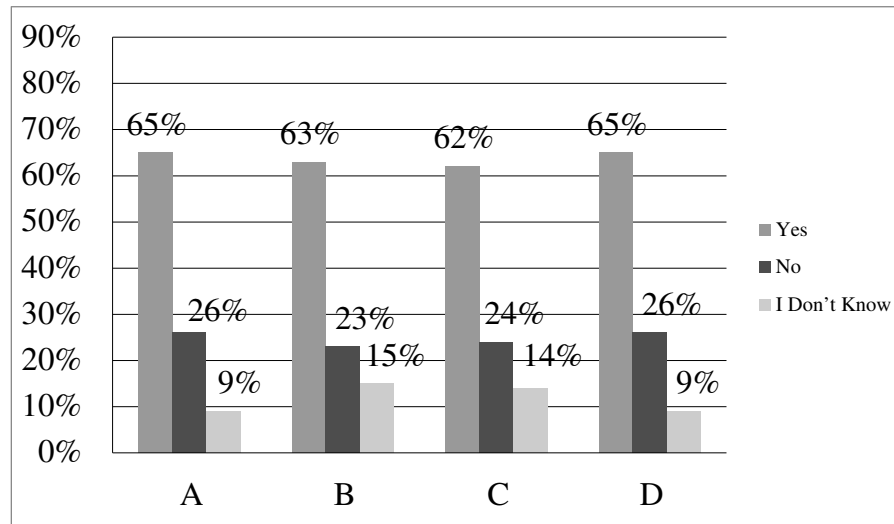
124. See *infra* Figure 2, % answering column.

that disputing the debt will keep the collector from assuming that the debt is valid, it seemed not to succeed for a substantial majority of respondents.

Figure 2: Question 33 Part 1

Suppose the day after you got this letter, you called ABC Debt Collectors to tell them that you had never had that credit card. You also said you didn't owe the money the letter said you did. . . . According to the letter from ABC, would ABC assume the debt was valid?

Condition	Yes			No		I don't know	
	#	%/total	% answering ¹²⁵	#	%	#	%
A	125	65	71	50	26	18	9
B	114	63	74	41	23	27	15
C	113	62	72	43	24	26	14
D	118	65	71	48	26	16	9



By comparing the responses in Condition A and Condition C—in which no validation notice appeared—displayed in Figure 2, we can infer the percentage of respondents who concluded based on the validation notice that disputing the debt within thirty days would prevent the collector from assuming the debt was valid. Nearly the same percentage of respondents thought that the collector would assume the debt to be valid in the two conditions notwithstanding the consumer's disputing the debt orally.¹²⁶ Because Condition B—with the simpler validation notice—also

125. The % answering column consists of the percentage of those choosing yes as a percentage of those who selected either yes or no.

126. See *supra* Figure 2, Conditions A, C. We carried out a logistic regression to see if participants' likelihood to say yes could be predicted by condition. The overall model was not statistically significant ($\chi^2_{(1)} = 16.08$, *ns*; Nagelkerke's $R^2 = .04$). The values did not take into account those who stated that they did not know the answer. Percentage of the letter

did not say anything about whether the collector would assume the debt was valid or not, it too offers a sort of control for this question. Once more, the percentage of respondents who thought that they knew whether a phone call would cause the collector to assume or not to assume the debt is valid was not significantly different from those for Condition A.¹²⁷ On the other hand, the Condition D responses were significantly different from Condition C's, though the numbers seem similar.¹²⁸ Unfortunately, the D respondents were *more* likely to believe the collector would assume the debt to be valid if a consumer disputed it than C respondents. In other words, Condition D's more prominent notice seemingly generated more consumer confusion than did no notice at all.¹²⁹ Condition D's more prominent notice also significantly increased confusion over Condition A's notice.

We also asked respondents if the collector would assume the debt to be valid notwithstanding that the respondent sent a dispute letter the day after receiving the dunning letter.¹³⁰ Of those who thought they knew the answer, large majorities again thought that the collector would assume the debt to be valid, as indicated in Figure 3. As with the question about the phone call, Condition A responses were not significantly different from Condition B or C responses, again meaning that the *Zemeckis* letter did not perform better than a letter that didn't mention the assumption of validity. On this question, however, the Condition D respondents did significantly better than the Condition C respondents, indicating that the more prominent validation notice did a better job of conveying the information than no validation notice.¹³¹

Figure 3: Question 35 Part 1

Instead of calling, suppose the day after you got this letter, you mailed your own letter to ABC Debt Collectors to tell them that you had never had that credit card. You also said you didn't owe the money the letter said you did. . . . According to the letter from ABC, would ABC assume the debt was valid?

that participants claimed to have understood was the only significant predictor (Wald $\chi_{(1)}^2 = 5.26, p < .05$), and there was a significant condition by percentage understood interaction (Wald $\chi_{(1)}^2 = 5.26, p < .05$). Individuals with a greater level of understanding were less likely to say yes. No other independent variables or interactions were statistically significant.

127. See *supra* Figure 2, Conditions A–B.

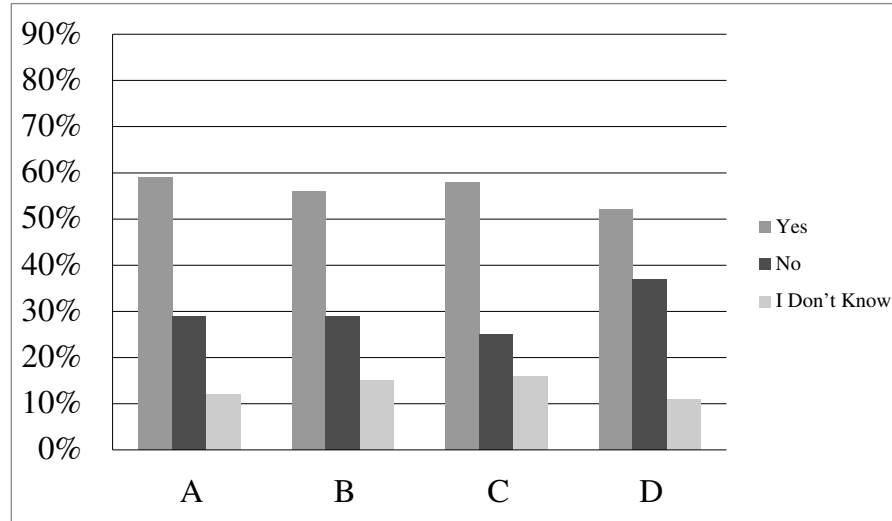
128. See *supra* Figure 2, Conditions C–D.

129. Condition B's responses also reflected a statistically significantly greater level of confusion than both C's and D's responses.

130. See *infra* app. A, question 35.

131. See *infra* Figure 3, Conditions C–D. Condition D respondents also did significantly better than Condition B. Otherwise, the differences among conditions were not significant, nor did the level of education, income, or claimed understanding of the letter produce significant differences. The responses to question 35 part 1 were significantly different from the responses to 33 part 1, indicating that respondents were more likely to think that the collector would assume the debt to be valid if the consumer notified the collector that he or she was disputing the debt via phone call than by letter. Compare Figure 3, *infra*, with Figure 2, *supra*. In fact, because §1692g(a)(3) and the *Zemeckis* notice do not require a writing, a phone call would have the same effect as a letter.

Condition	Yes			No		I don't know	
	#	%/total	% answering ¹³²	#	%	#	%
A	113	59	67	56	29	24	12
B	102	56	78	52	29	28	15
C	106	58	71	46	25	30	16
D	94	52	58	68	37	20	11



In addition, the survey inquired of respondents whether the collector would assume the debt to be valid if the respondent mailed a letter disputing the debt twenty-five days after receiving the collector's letter.¹³³ As shown in Figure 4, at least 60% of the respondents who thought they knew the answer said the collector would.¹³⁴ Yet again, the difference between Condition A's responses between those for Conditions B or C was not statistically significant, indicating that the *Zemeckis* letter did not convey the information about the assumption of validity better than a letter lacking a statement about the assumption of validity.¹³⁵ In contrast with the responses to the other questions in this sequence, however, the Condition D responses were not significantly different from the other responses.¹³⁶

Figure 4: Question 36 Part 1

Suppose that instead of writing the day after you got ABC's letter, you mailed your own letter to ABC Debt Collectors 25 days after you got

132. The % answering column consists of the percentage of those choosing yes as a percentage of those who selected either yes or no.

133. See *infra* app. A, question 36.

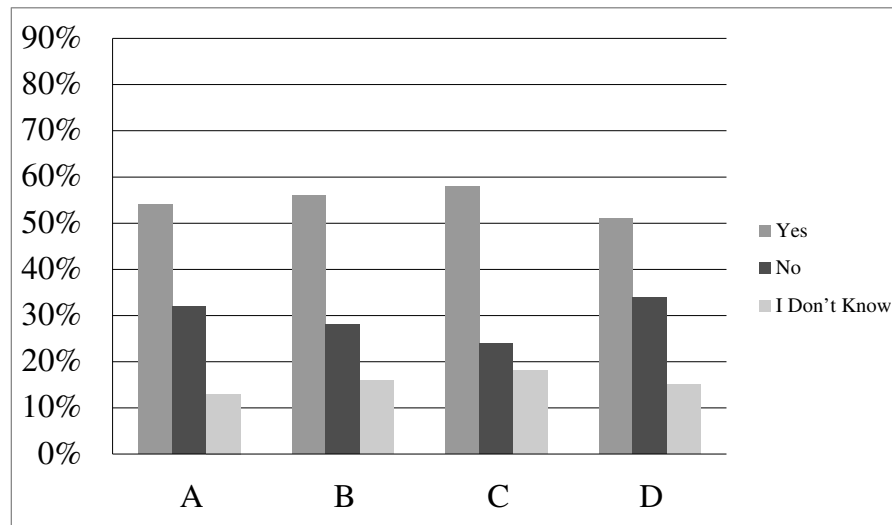
134. See *infra* Figure 4, % answering column.

135. See *infra* Figure 4, Conditions A–C.

136. No condition was significantly different from any other on this question, and level of income, education, or understanding of the letter did not make a significant difference either.

ABC's letter. You also said you didn't owe the money the letter said you did. . . . According to the letter from ABC, would ABC assume the debt was valid?

Condition	Yes			No		I don't know	
	#	%/total	% answering ¹³⁷	#	%	#	%
A	105	54	63	62	32	26	13
B	102	56	67	51	28	29	16
C	105	58	70	44	24	33	18
D	92	51	60	62	34	28	15



Two other questions shed light on what consumers understood about when the collector would assume the debt to be valid. Without regard to how the consumer communicated with the collector, question 38, part 7 asked if the letter said "If you don't dispute the debt within 30 days, ABC will assume the debt is valid."¹³⁸ Respondents reporting that the letter so stated amounted to 59% (Condition A), 46% (B), 27% (C), and 52% (D). Once again, a substantial number of respondents failed to realize that the *Zemckis* notice so stated. Assuming our sample was random, our figures give a 95% confidence level in a confidence interval of 5.03% for Conditions A and D (the conditions with a validation notice mentioning the assumption of validity), meaning that there is a 95% chance that at least 39.47% of consumers would overlook a validation notice statement that the collector will assume the debt is valid if the consumer does not dispute it within thirty days. For this question, the differences among the conditions were not statistically different except for Conditions C and D. In other words, the *Zemckis* notice did not produce significantly bet-

137. The % answering column consists of the percentage of those choosing yes as a percentage of those who selected either yes or no.

138. See *infra* app. A, question 38.

ter results on this question than the letter lacking a validation notice or the validation notice that did not address the assumption of validity.

One plausible explanation for these findings is that consumers did not understand what the *Zemeckis* notice said about when the collector would assume the debt was valid. That explanation finds support when we compare responses to question 38 part 7 to those for question 33 part 1 and question 36 part 1. A person who understood the validation notice would select question 38 part 7 (that the letter said “[i]f you don’t dispute the debt within 30 days, ABC will assume the debt is valid”) and would click “No” in response to question 33 part 1 (that if the consumer called to dispute the debt the day after receiving the collection demand, the letter indicates that the collector would assume the debt is valid) and question 36 part 1 (that if the consumer wrote a letter to dispute the debt twenty-five days after receiving the collection demand, the letter indicates that the collector would assume the debt is valid).¹³⁹ Yet only 35, or 31%, of the 113 Condition A respondents who selected question 38 part 7 also clicked “No” on question 33 part 1, and only 43, or 38%, of the same 113 respondents chose “No” on question 36 part 1. In Condition D, whose respondents saw the more prominent validation notice, of the 94 respondents who clicked question 38 part 7, 33, or 35% and 42, or 45%, selected “No” on questions 33 part 1 and 36 part 1, respectively. In other words, in both the conditions that referred to the assumption of validity, a majority of those who said that the letter mentioned the assumption of validity did not understand that a timely dispute would prevent the collector from assuming the debt was valid.¹⁴⁰

3. *Did Respondents Understand What the Letter Said About Verification?*

As the FDCPA specifies, the *Zemeckis* notice stated that consumers could make a written request for verification of the debt.¹⁴¹ We wanted to know whether respondents understood first, that the letter indicated they

139. See *infra* app. A, questions 33, 36, 38.

140. In Condition B, which included a validation notice that did not speak about the assumption of validity, 83 respondents selected question 38 part 7, and of those, 22, or 27%, and 21, or 25%, chose “No” on questions 33 part 1 and 36 part 1, respectively. In Condition C, which lacked a validation notice, 49 respondents clicked question 38 part 7, and 11, or 22%, and 8, or 16%, selected “No” on questions 33 part 1 and 36 part 1, respectively.

141. Specifically, the notice stated:

If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment, if any, and mail you a copy of such judgment or verification.

That complies with §1692g(a)(4), which requires:

[A] statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector.

15 U.S.C. §1692g(a)(4).

could request verification and second, that such requests had to be made in writing.

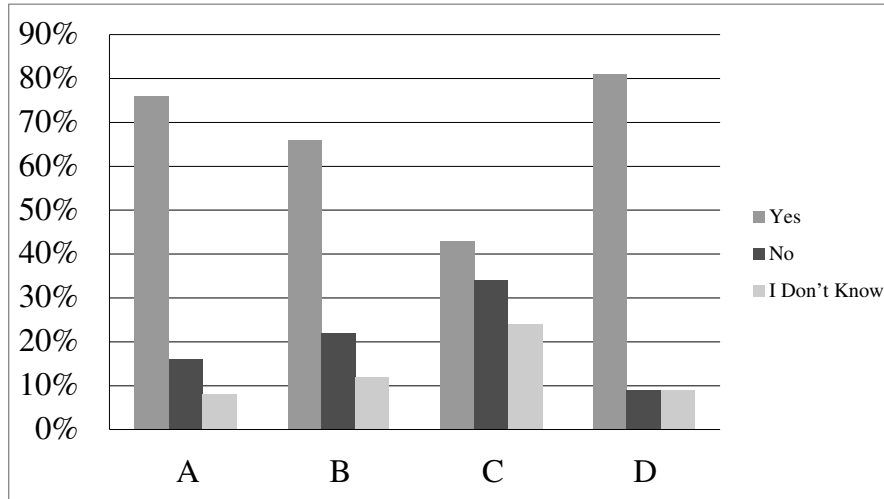
a. Did Respondents Realize the *Zemeckis* Letter Said They Could Request Verification?

Question 35 part 2 asked if ABC would send verification of the debt if, the day after receiving the dunning letter, the consumer had mailed a letter disputing the debt.¹⁴² Figure 5 shows the number of respondents who correctly understood that a written demand for verification would oblige the collector to supply verification to the consumer. The good news is that the *Zemeckis* letter conveyed to more than three-quarters of the respondents who saw it that they could demand verification of the debt, as indicated in Figure 5.¹⁴³

Figure 5: Question 35 Part 2

Instead of calling, suppose the day after you got this letter, you mailed your own letter to ABC Debt Collectors to tell them that you had never had that credit card. You also said you didn't owe the money the letter said you did. . . . According to the letter from ABC, would ABC send you verification of the debt?

Condition	Yes			No		I don't know	
	#	%/total	% answering ¹⁴⁴	#	%	#	%
A	147	76	83	31	16	15	8
B	120	66	41	40	22	22	12
C	78	43	31	61	34	43	24
D	148	81	90	17	9	17	9



142. See *infra* app. A, question 35.

143. See *infra* Figure 5, Condition A.

144. The % answering column consists of the percentage of those choosing yes as a percentage of those who selected either yes or no.

But not all the news is good. About a quarter of the *Zemeckis* letter respondents did not realize they could seek verification.¹⁴⁵ Moreover, while more Condition A respondents than B or C respondents took in that they could request verification, the difference was not large enough to reach statistical significance, again meaning that we cannot say that the *Zemeckis* letter did a better job of conveying to respondents that they can request verification than a letter that did not mention verification.¹⁴⁶ Indeed, when we compared the responses to the various conditions, the differences between only one pair were statistically significant: Condition D was significantly better than Condition C.

In addition, if we compare the difference between the Condition A and C respondents to determine the value added by the *Zemeckis* notice, we see that only one-third more A respondents who saw the *Zemeckis* letter realized that they could obtain verification than those who saw a letter that did not mention verification.¹⁴⁷ Again, while this calculation is not reliable, because the difference between them is not significant, it offers a rough guide to the limited impact of the *Zemeckis* notice on our specific respondents.

b. Did Respondents Realize Demands for Verification Required a Writing?

Our survey results suggest that to the extent that respondents realized they could obtain verification of the debt, they did not take in that such demands needed to be in writing. In the three conditions with a validation notice, a substantial majority of respondents believed a phone call would be sufficient.

Question 33 part 2, with the word “called” appearing in italics, told respondents to “[s]uppose the day after you got this letter, you *called* ABC Debt Collectors to tell them that you had never had that credit card. You also said you didn’t owe the money the letter said you did.”¹⁴⁸ The question went on to ask “According to the letter from ABC, would ABC send you verification of the debt?” Because the question stated that the consumer communicated the verification request in a phone call, the answer under the *Zemeckis* notice should have been “No.”

Figure 6: Question 33 Part 2

Suppose the day after you got this letter, you *called* ABC Debt Collectors to tell them that you had never had that credit card. You also said

145. See *supra* Figure 5, Condition A.

146. Some respondents may have interpreted Condition B’s statement that respondents could dispute the collector’s claim and that the collector would cease collection efforts until it had replied to the consumer as referring to verification, but as Condition C’s letter did not have any validation notice, much less a reference to verification, it provides a better check on the effectiveness of the *Zemeckis* letter in conveying the right to obtain verification of the debt.

147. See *supra* Figure 5, Conditions A, C.

148. See *infra* app. A, question 33.

you didn't owe the money the letter said you did. . . . According to the letter from ABC, would ABC send you verification of the debt?

Condition	Yes			No		I don't know	
	#	%/total	% answering ¹⁴⁹	#	%	#	%
A	141	73	80	35	18	17	9
B	114	63	74	41	23	27	15
C	88	48	61	56	31	38	21
D	144	79	86	24	13	14	7

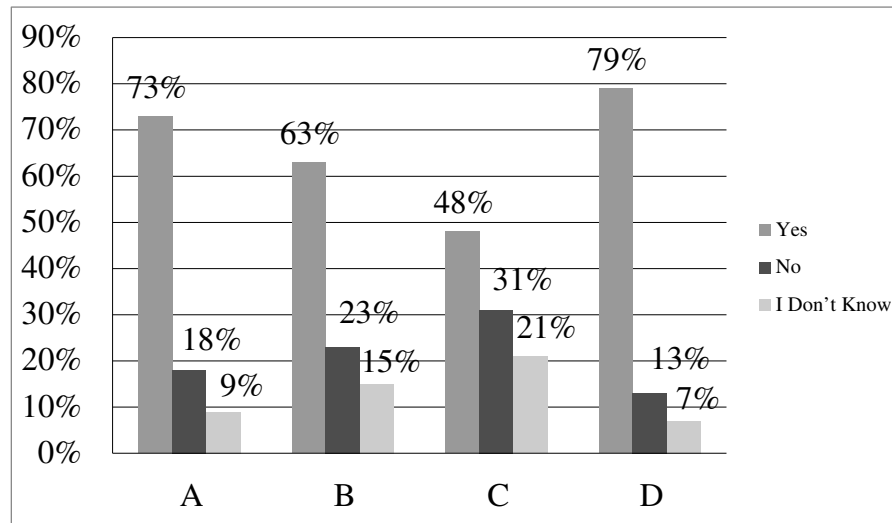


Figure 6 shows the responses. By a four-to-one majority, *Zemeckis* letter respondents incorrectly thought that an oral request for verification triggered the obligation to verify the debt.¹⁵⁰ Again, while more Condition A respondents than C thought that the letter indicated that a phone call would be sufficient to demand verification, the differences between Conditions A and C were not statistically different, and so we cannot conclude that Condition A conveyed the notice better than a letter without a validation notice.

Condition B, which used the NCLC notice, did not explicitly refer to verification but stated that if the consumer wrote to the collector “regarding (1) A question or a dispute about all or any part of the debt, or (2) A request for the name and address of the original creditor,” the collector would stop collecting until it mailed its response.¹⁵¹ Figure 6 shows the responses to the question about whether ABC would send verification of the debt if the respondent called to dispute the debt. The differences between A and B were not significant, though the differences between B

149. The % answering column consists of the percentage of those choosing yes as a percentage of those who selected either yes or no.

150. See *supra* Figure 6.

151. See *infra* app. B.

and C verged on significance.¹⁵²

As for the effectiveness of the more prominent validation notice in Condition D, the news is mixed. Condition D respondents were significantly more likely to recognize that the letter gave them a right to demand verification than Condition C respondents. On the other hand, Condition D respondents were also significantly more likely than Condition C respondents to think—incorrectly—that a phone call would be sufficient.¹⁵³ Condition B respondents were 2.57 times, and Condition D respondents were 2.99 times, as likely as Condition C respondents to say a phone call was enough.¹⁵⁴ In other words, more respondents incorrectly thought that an oral request would cause the collector to verify the debt when told explicitly in a prominent validation notice that a writing was required than when they did not see a validation notice.

By comparing the answers to questions 33 part 2—asking about a phone call—and 35 part 2—asking about a letter—we can determine how many consumers realized that the collector was required to respond to a written request but not an oral request for verification. In Condition A, only a net of six more respondents correctly stated that such a letter would trigger the verification obligation than wrongly thought that a phone call would. Similarly, the total number of respondents who thought that a call would *not* cause the collector to verify the debt was only four more than those who thought that a letter would not. These differences are not statistically significant. Along the same lines, for Condition D, in which the validation notice was more conspicuous, the numbers were also not significantly different: a net of four more respondents recognized that a writing would suffice than believed a call was enough, while a total of seven fewer respondents claimed that a call would not trigger the verification obligation than supposed that a letter would not.¹⁵⁵

152. The p value for B vs. C is .050, and technically only p values below .050 are considered significant. The differences between B and D were also not significant.

153. We carried out a logistic regression to see if participants' likelihood to say yes could be predicted by condition. The overall model was statistically significant ($\chi^2_{(1)} = 43.41$, $p < .05$; Nagelkerke's $R^2 = .10$). Condition was the only significant predictor (Wald $\chi^2_{(3)} = 29.15$, $p < .05$). No other independent variables or interactions were statistically significant.

154. The differences between Conditions A and D were not statistically significant.

155. Slightly more respondents to Condition C thought that disputing the debt in a phone call would cause the collector to verify the debt than thought a written communication sent the day after receipt of the collection letter would have such an impact, but not enough to rise to the level of significance. The differences were also not significant in Condition B, in which a writing was referred to, but not verification; six more respondents thought a writing would trigger verification than a phone call, but the number of respondents saying that the collector would not verify the debt declined by only one when respondents were asked about a writing as opposed to a call.

Of the 147 Condition A respondents who said that the collector would send verification in response to a letter so requesting sent the day after receipt of the collection letter, 125, or 85%, also thought that an oral request would suffice. Only 16 Condition A respondents, or 11%, realized that it wouldn't. Similarly, of the 148 Condition D respondents who believed that a writing sent the day after the collection letter came would trigger verification, 127, or 86% also supposed that a telephone call would elicit verification. Again, 16, or 11%, recognized that a phone call was not enough. When we compared question 33 part 2 and 36 part

Confusion about the impact of a phone call matters because the statute's plain meaning—and the *Zemeckis* notice's terms—entitle consumers to verification only upon a *written* demand.¹⁵⁶ Federal courts have concluded that an oral demand for verification is not sufficient under the statute.¹⁵⁷ Consequently, consumers who request verification only orally may believe they have invoked their legal right to verification even though the collector has no statutory obligation to verify the debt.

To make matters worse, many respondents who mistakenly believed that an oral request for verification would suffice had also indicated that if they had received a collector's demand to pay a debt they did not owe, they would request verification of the debt. The survey asked in question 18:

Now we want to ask a question about what you would do if you received a letter from a collector trying to collect a debt. Suppose the letter says that if you mailed a letter to the collector saying you didn't owe the debt and wanted them to send you verification of the debt, they would. Suppose also you believe you didn't owe the debt. Would you mail a letter to the collector saying you didn't owe the debt and requesting verification of the debt?¹⁵⁸

Of the Condition A respondents, 161, or 83%, said they would write to demand verification. Of those, 121, or 75%, mistakenly believed that an oral request would trigger verification. In other words, three-quarters of the Condition A respondents who said they would request verification believed that they could obtain verification by making a demand in a

2 the responses to the questions about a call or a letter sent 25 days after receipt of the collection letter, we found that for Condition A, of the 135 respondents who correctly saw that the letter should suffice for verification, 112, or 83% also believed that a telephone call would succeed. Sixteen, or 14% of the A respondents who knew that the letter was enough also realized that a call would not be. For Condition D, of the 134 respondents who believed a letter would work, 120, or 90% also imagined that a call would generate verification, while 13, or 11% mistakenly thought it would not.

156. See 15 U.S.C. § 1692(g)(b). While the statute does not impose an obligation on collectors to verify debts upon receipt of an oral demand to do so, we do not know how collectors actually respond to such oral demands. According to one trade association:

[W]hen in doubt, third-party debt collectors err on the side of treating consumer inquiries as disputes under the FDCPA. When the consumer does not respond, when the consumer refuses to pay the debt, or when the consumer indicates dissatisfaction with the original product, service, or creditor, a dispute is not usually inferred.

ACA INTERNATIONAL, *Comments on the Advance Notice of Proposed Rulemaking on Debt Collection* 16 (Feb. 27, 2014), <http://www.acainternational.org/assets/rulemaking/acacomment-debtcollectionanpr-2-27-14-final.pdf> [<https://perma.cc/9Y9E-G4QE>].

157. See *Fasten v. Zager*, 49 F. Supp. 2d 144, 147 (E.D.N.Y. 1999) (“[S]ince plaintiff failed to request verification of the debt in writing, as expressly required by the validation notice and section 1692g(4), defendant was under no legal obligation to provide verification of the debt. Under section 1692g(4), verification is triggered only by the consumer writing a letter to the debt collector. Here, plaintiff’s telephone call to defendant did not constitute such a request for verification.” The court’s description of the telephone call is ambiguous as to whether the consumer requested verification); *Nero v. Law Office of Sam Streeter, P.L.L.C.*, 655 F. Supp. 2d 200, 206 (E.D.N.Y. 2009) (“debt collectors have no duty to honor oral requests” for verification) (citing *Fasten*, 49 F. Supp. at 148-49.).

158. See *infra* app. A.

form that did not entitle them to verification. Because many people find it easier to call rather than write, it is likely that many consumers would indeed call rather than write. And inasmuch as the validation notice stated that consumers faced a thirty-day deadline for making such demands, by the time they learned that a writing was required—if they ever did—the deadline might have passed. In contrast, only 28, or 17%, of the Condition A respondents who said that they would seek verification realized that a telephone call did not entitle them to verification.¹⁵⁹

4. *Do Respondents Understand that Written Dispute Notices Stop Collection Attempts?*

Under the FDCPA, when a consumer disputes the debt in writing, the collector must cease attempts to collect the debt until the collector mails the consumer verification of the debt.¹⁶⁰ The statute does not require the collector to so notify the consumer, however, and the *ZemECKis* notice, in keeping with many other validation notices, did not supply that information. But some commentators have advocated adding such a disclosure to the validation notice,¹⁶¹ and the NCLC validation notice, reproduced in Condition B, states “**If you write to us within thirty days of when you get this letter, regarding . . . a dispute about all or any part of the debt, . . . we will stop collecting until we mail you our response.**”¹⁶² The survey asked respondents, “According to the letter from ABC, would ABC stop trying to collect the debt until it mails you a response to your statement?” in various scenarios, including one in which the consumer had called to dispute the debt (question 33 part 3), and others in which the consumer had written to dispute the debt (part 3 of questions 35 and 36).¹⁶³ Accordingly, as with the preceding subsection, we can test two propositions: first, did respondents take in when they were told in a collection letter that if they dispute the debt, the collector will stop collecting until the collector responds, and second, did respondents think an oral notice would suffice when the NCLC disclosure said that it should be written?

Figure 7 shows the responses for the scenario in which the consumer wrote to the collector the day after receiving the dunning letter. Of Condition B respondents who thought they knew the answer to the question, about 70% correctly stated that disputing the debt in writing the day after receiving the collection letter would cause the collector to stop collecting until it had mailed a response to the consumer, or 60% of the total. On the other hand, nearly 40% of the respondents who saw Condition B's

159. For Condition B, 145, or 80% of the respondents claimed they would seek verification, and of those, 95, or 66% thought an oral request would suffice. For Condition C, 131, or 72% reported they would seek verification, and 69, or 53%, of those thought that collectors would respond to an oral demand. Of the Condition D respondents, 149 (82%) said they would request verification, and of those, 117, or 79% believed that an oral demand was sufficient.

160. *See supra* note 30.

161. *See supra* note 31.

162. *See infra* app. B.

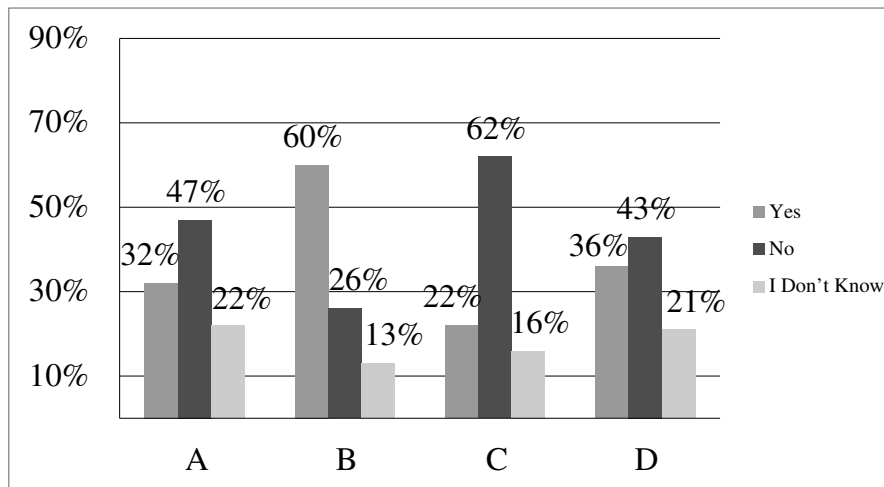
163. *See infra* app. A.

NCLC notice did not realize that a written dispute would cause the collector to stop collecting. Assuming our sample was random, our figures give a 95% confidence level in a confidence interval of 7.1%, meaning that there is a 95% chance that at least 32.9% of consumers would overlook Condition B's disclosure that disputing the debt in writing would generate a pause in collection attempts.

Figure 7: Question 35 Part 3

Instead of calling, suppose the day after you got this letter, you mailed your own letter to ABC Debt Collectors to tell them that you had never had that credit card. You also said you didn't owe the money the letter said you did. . . . According to the letter from ABC, would ABC stop trying to collect the debt until it mails you a response to your statement?

Condition	Yes			No		I don't know	
	#	%/total	% answering ¹⁶⁴	#	%	#	%
A	61	32	40	90	47	42	22
B	110	60	70	48	26	24	13
C	40	22	26	113	62	29	16
D	66	36	46	78	43	38	21



Only about 40% of the Condition A respondents who both saw the *ZemECKis* letter and believed they knew the answer to the question thought that sending the collector a written notice of a dispute would cause the collector to interrupt collection efforts.¹⁶⁵ In Condition C, which did not include a validation notice, 26% of the respondents who believed they knew the answer thought that the collector would stop try-

164. The % answering column consists of the percentage of those choosing yes as a percentage of those who selected either yes or no.

165. When we refer to respondents who believed they knew the answer to a question, we exclude from the calculation of the percentages those who selected "I don't know."

ing to collect the debt if the consumer disputed the debt, a percentage that was not significantly different from the A respondents. The differences between Condition B and both Conditions A and C were statistically significant—indeed, strongly so—thus indicating that notifying consumers that the collector will stop collecting after receiving notice of a dispute has an impact. Similarly, the C and D responses were significantly different, suggesting that consumers shown a prominent validation notice may infer that a dispute request will stop collection efforts even if the notice does not say so. On the other hand, D was not significantly different from either A or B.¹⁶⁶ In short, Condition B's NCLC notice did increase respondent awareness of the fact that disputing the debt will cause collectors to interrupt collection efforts more than a letter lacking a validation notice or the *ZemECKis* letter, but not necessarily more than a prominent validation notice that says nothing about pausing collection attempts.

One possible explanation for the significant difference between the D respondents and the C respondents—even though neither was shown a letter which referred to a pause in collection efforts—is that the D respondents may have understood that they had some protections but did not know what the protections were. In contrast, those who did not see a validation notice may be less likely to believe they have any protections. Perhaps we did not see a similar significant difference between the A and C respondents because fewer A respondents were aware of the validation notice than D respondents, given its lesser prominence.

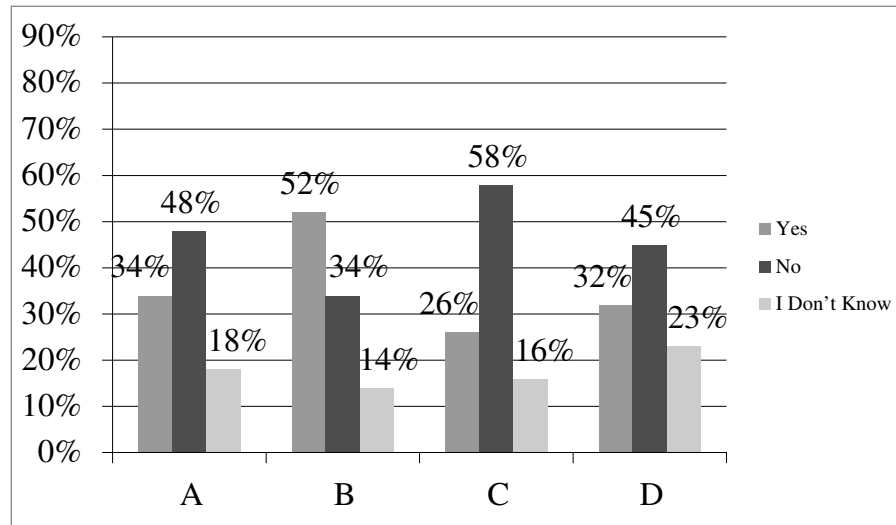
Figure 8: Question 36 Part 3

Suppose that instead of writing the day after you got ABC's letter, you mailed your own letter to ABC Debt Collectors 25 days after you got ABC's letter. You also said you didn't owe the money the letter said you did. . . . According to the letter from ABC, would ABC stop trying to collect the debt until it mails you a response to your statement?

Condition	Yes			No		I don't know	
	#	%/total	% answering ¹⁶⁷	#	%	#	%
A	65	34	41	93	48	35	18
B	94	52	60	62	34	26	14
C	47	26	31	105	58	30	16
D	59	32	42	81	45	42	23

166. Education level and income did not produce statistically significant differences. We also asked the same question about a letter sent 25 days after receipt of the dunning letter. (question 36 part 3). See Figure 8. Because that was within the thirty-day deadline, it should have elicited the same answers as question 35 part 3 about a letter sent the day after the collection letter came. But in fact, Condition B responses were significantly different from only the Condition C responses. In other words, the significant differences we saw between the Condition A and B responses on question 35 part 3 evaporated when we asked about 25 days later, rather than the day after. Nor were the C and D responses significantly different, or indeed any other responses. See *infra* app. A.

167. The % answering column consists of the percentage of those choosing yes as a percentage of those who selected either yes or no.



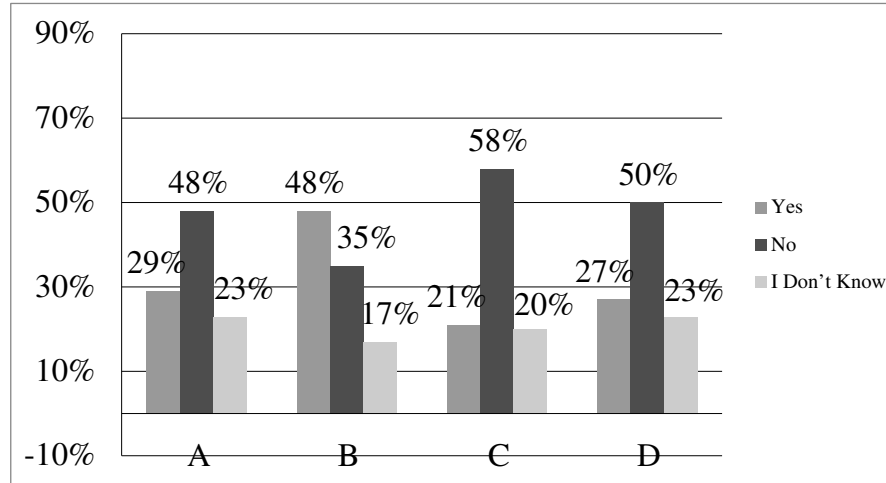
As for the second proposition—respondent awareness that the dispute notice had to be in writing to generate a hiatus in collection efforts, rather than in a phone call—Condition B’s NCLC notice was less helpful. Of the Condition B respondents shown the disclosure saying that a writing was required to stop collection efforts and who believed they knew the answer to the question, 57% wrongly thought that a phone call would cause the collector to cease its collection attempts—only 13% fewer than those who correctly said that a writing the day after would generate a break. While this difference was statistically significant, the difference between Condition B respondents saying that a telephonic request the day after (question 33 part 3) and a written request twenty-five days after receipt of the collection letter (question 36 part 3) was not significant, even though twenty-five days was still within the deadline.¹⁶⁸ In other words, the NCLC validation notice left some respondents confused as to whether an oral communication would generate a pause in collection efforts.

Figure 9: Question 33 Part 3

Suppose the day after you got this letter, you *called* ABC Debt Collectors to tell them that you had never had that credit card. You also said you didn’t owe the money the letter said you did. . . . According to the letter from ABC, would ABC stop trying to collect the debt until it mails you a response to your statement?

168. Condition B respondents also did not provide responses that were significantly different when asked if an oral response or a written communication 35 days after receipt of the dunning letter would cause the collector to interrupt collection efforts. According to the NCLC letter, neither of those would oblige a collector to stop collecting, the first because only a written communication would cause such a pause, and the second because of the 30-day deadline.

Condition	Yes			No		I don't know	
	#	%/total	% answering ¹⁶⁹	#	%	#	%
A	56	29	38	92	48	45	23
B	87	48	57	64	35	31	17
C	39	21	27	106	58	37	20
D	50	27	35	91	50	41	23



That Condition B's respondents mistakenly believed that a phone call would cause an interruption in collection efforts is seen more clearly by comparing the percentage of Condition B's respondents to the other conditions who said a phone call would have such an effect. Of the respondents to Conditions A, C, and D who thought they knew the answer, 38%, 27%, and 35%, respectively, believed a phone call would cause a pause in collection efforts.¹⁷⁰ Condition B responses were significantly different from those for C and D, but not for A. In other words, respondents who were told a written request was required were more likely to say an oral notice would suffice than those not told anything in two of the three other conditions—meaning that the NCLC notice would probably be *more* likely to mislead consumers than the other notices into thinking that the collector had to stop collecting by virtue of a phone call when in fact the collector had no such obligation.¹⁷¹

In sum, it appears that a letter that states a written dispute will cause the collector to cease collection efforts increases the number of people who realize that a dispute will generate a pause in collection attempts more than merely mentioning the possibility of disputing the debt in writing on the second page of the letter. But it also is likely to increase the number of consumers who wrongly think that a phone call will cause the

169. The % answering column consists of the percentage of those choosing yes as a percentage of those who selected either yes or no.

170. *See supra* Figure 9.

171. When we compared A to C, A to D, and C to D, we did not find significant differences in the responses.

collector to pause its collection efforts. And more than a quarter of respondents did not realize a written dispute would generate a pause in collection efforts under any condition, suggesting that some consumers will not be aided by any of the disclosures we tested on this point.

5. *Did Respondents Understand That There Was a Thirty-Day Deadline?*

The *Zemeckis* validation notice, in common with the FDCPA itself, included three thirty-day deadlines.¹⁷² We wanted to know how aware respondents were of these deadlines. Figure 10 shows the results for question 40, which asked “According to the letter, how long would you have to tell ABC that you want ABC to verify the debt after you receive its letter?” The more prominent disclosure in Condition D—in which the validation notice appeared on the first page and the body of the dunning letter was briefer—produced significantly better results than Conditions B or C, but not A.¹⁷³ More than four-fifths of D respondents recognized that the deadline was thirty days. The fact that Condition D respondents were more likely to realize they faced a thirty-day deadline than Condition B respondents suggests that the more prominent validation notice had more of an impact than the simpler validation notice in conveying the deadline, though the failure of the B notice to use the word “verify” may also have contributed to the difference.

Figure 10: Question 40

Suppose you wanted to notify ABC Debt Collectors that you want ABC to verify the debt. According to the letter, how long would you have to tell ABC that you want ABC to verify the debt after you receive its letter?

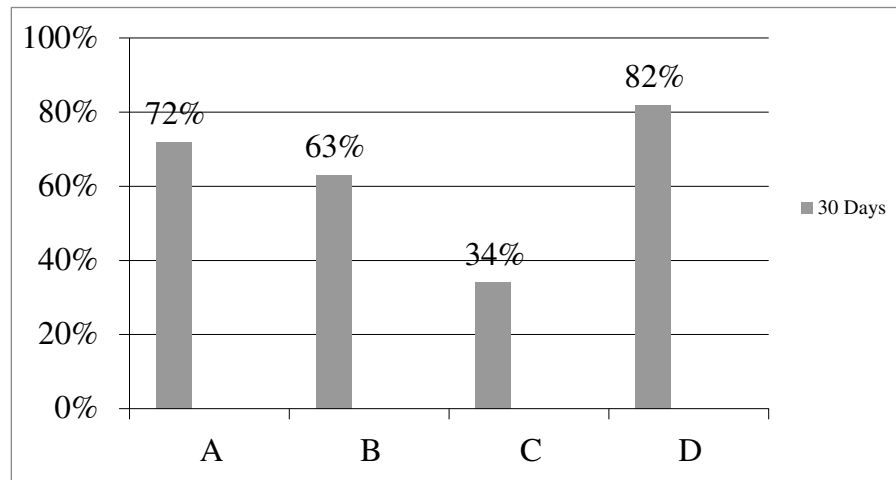
172. The validation notice said:

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment, if any, and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from the current creditor.

Because the *Zemeckis* letter identified the original creditor and its address, we did not ask about that.

173. Cramer’s $V = .37$.

	A		B		C		D	
	#	%	#	%	#	%	#	%
1 week	8	4	3	2	12	7	4	2
2 weeks	9	5	6	3	6	3	4	2
3 weeks	2	1	2	1	8	4	6	3
30 days	139	72	114	63	61	34	149	82
60 days	3	2	4	2	5	3	2	1
A different amount of time	2	1	3	2	8	4	1	1
The letter does not state a deadline.	14	7	34	19	68	37	6	3
I don't know	16	8	16	9	14	8	10	5



The Seventh Circuit in *Zemeckis* ruled that admonishing the consumer to pay “now” and call “today” did not overshadow the validation notice.¹⁷⁴ Our results did not contradict that conclusion as to Condition A. But we cannot be certain that the *Zemeckis* letter’s admonitions had no impact. The admonitions might account for the significant difference in results between Conditions B and D, though the greater prominence of the Condition D notice might also have contributed.

While nearly three-quarters of the respondents to Condition A understood that they faced a thirty-day deadline, those results were not statistically different from the responses to Condition C.¹⁷⁵ In other words, respondents who saw the *Zemeckis* letter were not significantly more likely to be aware of the thirty-day deadline than those who saw a letter without the deadline.

Another concern is that 28% of the Condition A respondents did not realize that they faced a thirty-day deadline. Assuming our sample was random, our figures give a 95% confidence level in a confidence interval of 6.34%, meaning that there is a 95% chance that at least 21.67% of

174. See *Zemeckis v. Glob. Credit & Collection Corp.*, 679 F.3d 632, 634, 636 (7th Cir.), cert. denied, 133 S.Ct. 584 (2012).

175. The B responses were significantly different from the C responses while the A responses were not significantly different from the B responses as to selection of the thirty days. See *supra* Figure 10.

consumers shown the *Zemeckis* letter would not recognize that the deadline was thirty days. Even the D letter left 18% of the respondents confused about the deadline.¹⁷⁶

In another attempt to test awareness of the thirty-day deadline, we asked whether respondents thought they would lose any legal rights if they waited twenty-five days (question 44), and in a separate question, thirty-five days (question 46), to communicate with the collector. As for twenty-five days, there was a statistically significant difference between Condition C respondents—who did not see a validation notice—and respondents to the other conditions, indicating that those seeing a validation notice were more likely to recognize that they faced a thirty-day deadline. The percentage of respondents shown a validation notice who thought they would lose legal rights by waiting only twenty-five days to communicate with the collector ranged from 17–19%.¹⁷⁷

A misconception that the deadline is shorter than it actually is would not be harmless. Consumers who have not acted within twenty-five days—still within the deadline—but who mistakenly believe they have missed the deadline might forego asserting rights that are still available to them. We invited respondents who thought they would lose rights if they did not respond within twenty-five days to identify the lost rights in question 39. Among the rights respondents who saw a validation notice listed were:

to provide me with verification a bank report of that where I “spent”
that money and to also fight in court if they open a file agaist [sic] me
the right to aruge [sic]
to fight paying the debt
STOP FROM BEING SUED
Ability to dispute in a court of law
to dispute the debt [said multiple times by different respondents]
the right to fight the charges
the right to argue how much the debt is
Right to attorney [said multiple times by different respondents]
The right to contest the validity of the debt
the right to challenge
the right to say they are false charges, and end up having to pay
them anyway
to dispute the debt and fight in a court of law
Rights to make a possible objection to the debt
The right to appeal [said multiple times by different respondents]
to prove I didn’t [sic] it
The right to defend myself
my consumer rights
The ability to contest the debt

176. While reported education and income levels did not affect awareness of the deadline, those who indicated that they understood a greater percentage of the letter were more likely to select thirty days. *See supra* Figure 10.

177. When we compared A to B, A to D, and B to D, we did not find significant differences in the responses. *See supra* Figure 10.

Your right to fight the debt
 that I would get stuck paying for something I did not do
 The right to prove I didn't [sic] owe the money
 Claiming that I don't owe the debt
 The right to challenge the debt

Many respondents shown a validation notice calling for action within thirty days did not agree that they would lose any legal rights if they waited thirty-five days to correspond with the collector, as shown in Figure 11. The percentages saying that they would lose rights after thirty-five days ranged from 49% for Condition B, to 52% for Condition D, to 56% for Condition A. Condition C respondents, who did not see a thirty-day deadline, said they would lose legal rights 32% of the time. Condition A responses were not significantly different from Condition C's, meaning that the *ZemECKis* notice did not do significantly better in conveying that rights would be lost than not providing a notice. The more prominent notice in Condition D did produce significantly different results from Condition C, and when we include the "I don't know" responses, both Condition B's and Condition D's responses are different from Condition C's. Put another way, a prominent notice and a simpler notice did better than no notice, but a less prominent notice did not.¹⁷⁸

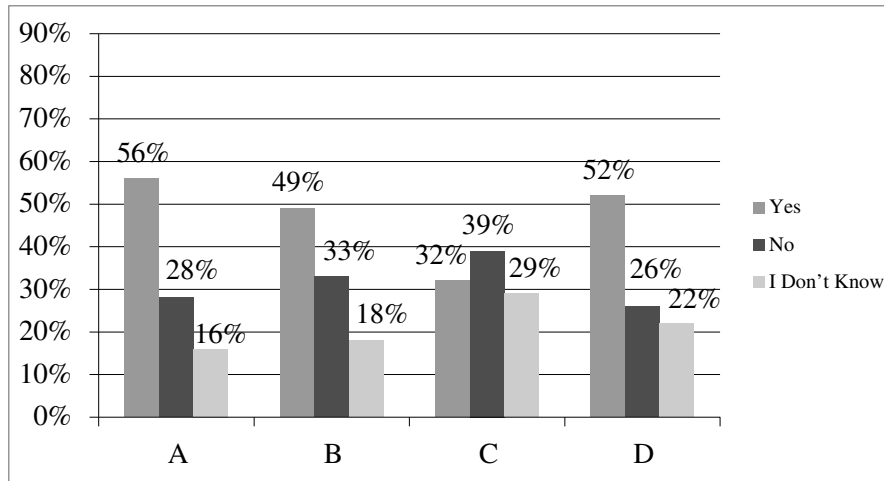
Figure 11: Question 46

Do you think you would lose any legal rights if you waited 35 days to communicate with ABC?

Condition	Yes			No		I don't know	
	#	%/total	% answering ¹⁷⁹	#	%	#	%
A	108	56	67	54	28	31	16
B	89	49	59	60	33	33	18
C	58	32	45	71	39	53	29
D	95	52	67	47	26	40	22

178. When we compared only the yes/no responses, B and C results were not significantly different. When we included the "I don't know," and compared A to B, A to D, and B to D, we did not find significant differences in the responses.

179. The % answering column consists of the percentage of those choosing yes as a percentage of those who selected either yes or no.



Another way we tested respondent awareness of the thirty-day deadline was to ask respondents in question 36 part 2 if the collector would verify the debt in response to a letter sent twenty-five days after the consumer received the dunning letter, and also ask in question 37 part 2 if the collector would send verification if the consumer waited thirty-five days after getting the collection letter. In each condition in which the respondent saw a validation notice—Conditions A, B, and D—the differences between the answers to those two questions were significant, again indicating that many respondents noticed the thirty-day deadline. In contrast, the answers on Condition C, whose respondents did not see a validation notice, were not significantly different from each other. On the other hand, 39% of the respondents who were shown the *Zemeckis* letter believed that the letter said that if they requested verification thirty-five days after they received the dunning letter, the collector would provide it, suggesting that while many took in the thirty-day deadline, others did not.

In sum, many of those who saw the *Zemeckis* notice recognized that the validation notice imposes a thirty-day deadline, but a sizable minority did not. When we compared awareness of the thirty-day deadline between those who saw the *Zemeckis* letter and those who did not see a validation notice, the results were mixed.

We also asked in question 42, which did not identify when the deadline was, about the consequences of missing the deadline in the collection letter. Specifically, we asked “Suppose that you don’t owe the money that the letter says you owe but you missed the deadline stated in the letter for notifying ABC Debt Collectors that you dispute the validity of the debt. Which of the following do you think is correct?” The survey then offered several choices. One of these was “I would have to pay the debt.” Respondents who selected this option in the various conditions (the differences among the conditions were not statistically significant) were

15% (A), 17% (B), 19% (C), and 18% (D).¹⁸⁰ In other words, a minority of respondents believed that missing the deadline would oblige them to pay a debt that they did not owe. Similarly, a small group believed that a consequence of not meeting the deadline was that “If ABC Debt Collectors sued me, I could not argue in court that I didn’t owe the money.” The percentage of respondents suffering from this misconception, which also did not produce significant variances among the conditions, was 15% (A), 10% (B), 14%(C), and 13%(D).¹⁸¹ The percentage of respondents who selected *either* of these two items was 21.2% (A), 23.1% (B), 26.9% (C), and 24.7% (D).¹⁸² Put another way, more than a fifth of the respondents erroneously believed that missing the collection letter’s deadline meant either that they would have to pay the debt or could not argue in court that they did not owe the money, even though they did not in fact owe the money in question. Respondents also had the option of selecting “all of the above” on this question. The percentage of respondents who selected any of the three answers (they would have to pay the debt; they couldn’t defend in court; or all of the above) was 39.9% (Condition A), 39.6% (B), 39.6% (C), and 41.8% (D). At the end of the day, then, more than a third of the respondents thought a failure to respond within thirty days would oblige them to pay the debt or make it impossible to defend against a claim in court even though they did not owe the debt.

6. *How Did Respondents Interpret the References to a Lawsuit?*

Some debt collectors may want the debtor to worry about being sued if the consumer does not pay the debt. A consumer fearful about debt litigation may pay that debt ahead of others to avoid a law suit. But not all collectors intend to sue. Consequently, the FDCPA bars a threat to “take any action that cannot legally be taken or that is not intended to be taken.”¹⁸³ The *Zemeckis* letter may represent an attempt to frighten consumers into paying without actually violating that provision. Thus, the collector alluded to a lawsuit (“XYZ Credit Card Company has not yet made a decision to file a lawsuit”), legal action (“If we cannot get this matter resolved soon and your account charges off, XYZ Credit Card Company may be forced to take legal action.”), and their outcome, a judgment (“This could result in a judgment against you”).

To determine how consumers interpreted this language, question 48 asked:

What, if anything, did the letter say about XYZ’s intention to sue if you don’t pay the debt? (If you wish to see the letter again, please click here for the first page and here for the second. If the letter is too small for comfortable reading, please use your browser control to

180. The responses also did not vary significantly by level of education or income.

181. The responses also did not vary significantly by level of education or income.

182. The differences were not statistically significant by condition, level of education, or income.

183. See 15 U.S.C. § 1692e(5).

zoom in. You also have the option of hitting the back button to review the earlier presentation of the letter.)

The letter did not say anything about either¹⁸⁴ XYZ suing.

The letter said XYZ would sue if I don't pay the debt.

The letter said XYZ has not yet made a decision to sue.

The letter said XYZ would not sue.

I don't know.¹⁸⁵

The letters in Conditions A, B, and C all said that XYZ had not yet made a decision to file a lawsuit, making that the correct answer for those conditions. Condition D's letter did not refer to litigation, making the correct answer for that condition that the letter did not say anything about XYZ suing. Figure 12 shows the answers for the various conditions. Thirty percent of the respondents to Condition A interpreted the letter as saying that the collector would sue if the consumer did not pay the debt. A quarter of the respondents to Condition B believed the same, while 27% of the respondents to Conditions C thought XYZ would sue. Only in Condition D, in which litigation was not mentioned, was the number who anticipated such a suit smaller, at 11%. The differences between Conditions C and D were statistically significant,¹⁸⁶ but not the differences between D and either A or B. In other words, respondents seeing letters containing both a validation notice and statements about a lawsuit were not significantly more likely to think that the letter threatened suit than a letter that did not refer to legal action, but respondents who saw the letter referring to legal action without a validation notice were significantly more likely to think the letter said the collector would sue than respondents who saw the letter without such references.¹⁸⁷

Figure 12: Question 48

What, if anything, did the letter say about XYZ's intention to sue if you don't pay the debt?

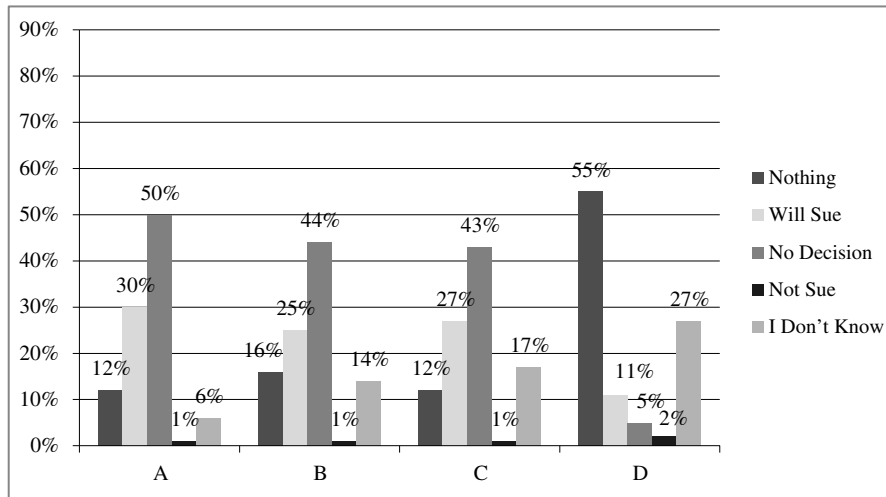
184. Unfortunately, the word "either" was left over from an earlier version of the question and should have been omitted.

185. See *infra* app. A, Question 48.

186. Cramer's $V = .17$. Condition C respondents were 3.85 times as likely to say that XYZ would sue as D respondents.

187. Respondents who were more educated or said they understood the letter better were less likely to say that the letter said the collector would sue than other respondents.

	A		B		C		D	
	#	%	#	%	#	%	#	%
The letter did not say anything about either ¹⁸⁸ XYZ suing.	24	12	29	16	21	12	100	55
The letter said XYZ would sue if I don't pay the debt.	58	30	46	25	50	27	20	11
The letter said XYZ has not yet made a decision to sue.	97	50	80	44	79	43	10	5
The letter said XYZ would not sue.	2	1	2	1	1	1	3	2
I don't know.	12	6	25	14	31	17	49	27



B. COMPARING CONDITIONS: THE FOREST

Part V.A presented the answers to individual questions. The wealth of data on individual questions when comparing responses to four different questions makes it easy to lose track of bigger themes. This section focuses more on the overall patterns in the data. We asked respondents a variety of questions about the validation notice. By comparing their responses to those questions across conditions, we can determine how each letter did in conveying the information required by the statute. We ultimately compared the responses to seventeen questions we viewed as particularly revealing of consumer understanding.¹⁸⁹ This section reports on our findings.

188. Unfortunately, the word “either” was left over from an earlier version of the question and should have been omitted.

189. The seventeen questions were 16 part 5 (initial look; assumption of validity); 16 part 2 (initial look; verification); 38 part 7 (assumption of validity); 42 part 1 (assumption of validity); 35 part 2 (written verification request); 33 part 3 (oral written dispute stops collection); 40 (30 days to request verification); 16 part 3 (initial look; disputing debt); 33 part 1 (call; assumption of validity); 33 part 2 (oral verification request); 38 part 3 (can dispute validity of debt); 44 (25 day deadline); 46 (35 day deadline); 35 part 1 (letter day after validity assumption); 36 part 1 (letter 25 days after validity assumption); 35 part 3 (written dispute stops collection) and 36 part 3 (letter 25 days after stops collection). See *infra* app. A.

1. *How Did the Validation Notice Letters Compare to the Letter Lacking a Validation Notice?*

a. *The Zemeckis Letter*

By comparing responses to Condition A—the *Zemeckis* notice—with the responses to Condition C—the *Zemeckis* letter without any validation notice—we can evaluate the impact of the *Zemeckis* validation notice. Of the seventeen questions on which we compared responses, respondents to Condition A performed significantly better on only two. Responses by Condition A and C respondents to the remaining fifteen questions were not significantly different.¹⁹⁰ Accordingly, we cannot say that the *Zemeckis* letter performed appreciably better than a letter without a validation notice. Of course, from a collector's point of view, a notice that does no better than no notice is ideal.

b. *The Simple NCLC Notice*

Of the seventeen questions we compared, Condition B respondents—who saw the NCLC notice—did better on seven than Condition C respondents—who did not see a validation notice; Condition C respondents outperformed Condition B respondents on three; and on seven the differences were not significant.¹⁹¹ That slightly understates the impact of the NCLC notice, however, because one of the questions on which Condition C respondents surpassed Condition B was question 33 part 1 (call; assumption of validity), a question on which respondents seem to have been confused about the concept that collectors would assume the validity of the debt. It thus seems fair to say that the NCLC notice did a somewhat better job of conveying to consumers their rights than no validation notice at all.

c. *The Simple Letter*

Respondents who saw the simple letter of Condition D, which included the validation notice on the first page, did significantly better in recognizing their rights than Condition C respondents—who were not shown a

190. Condition A respondents performed better than Condition C respondents on questions 44 (25 day deadline) when we took into account the “I don’t knows;” when we consider only the yeses and noes, the results were not significantly different; and on 16 part 5 (initial look; assumption of validity). They also were not significantly different on 33 part 1 (call; assumption of validity) when we included the “I don’t knows;” when we include only the yeses and noes, A produced significantly better responses.

191. Condition B respondents performed significantly better than Condition C respondents on 16 part 3 (initial look; disputing debt), 38 part 3 (can dispute validity of debt), 35 part 3 (written dispute stops collection), 40 (30 days to request verification), 44 (25 day deadline) (when we included the “I don’t knows;” if we consider only the yes-no answers, the responses are not significantly different), 46 (35 day deadline), and 36 part 3 (letter 25 days after stops collection) while Condition C respondents did significantly better on 33 part 2 (oral verification request) (if we consider only the yes-noes on this one, then strictly speaking, the two sets of responses were not significantly different because significance is considered to require a p value of less than .05, and the p value was exactly .05), 33 part 3 (oral dispute stops collection), and 33 part 1 (call; assumption of validity).

validation notice—on twelve of the seventeen questions. Of the remainder, the responses were not significantly different on three, and on two the Condition C respondents outstripped the Condition D respondents. The two on which Condition C respondents outdid the Condition D respondents were question 33 part 1 (call; assumption of validity), as to which the explanation may be confusion about the meaning of the assumption of validity, and 33 part 2 (oral verification request), where respondents who saw that they had a right to request verification mistakenly assumed that that right could be asserted orally, rather than in writing.¹⁹² It thus seems that consumers understand their validation rights much better from seeing a simple letter with a more prominent validation notice than from a letter that does not state those rights.

2. *Did the Zemeckis Letter Convey the Mandated Information Better Than the Simple Letter or Simple Validation Notice?*

For the most part, the differences in responses between Condition A's Zemeckis letter, on the one hand, and the NCLC Notice—Condition B—and the simple letter of Condition D were not significant.¹⁹³ The Condition A respondents outperformed Condition B's on one question, while Condition B's outstripped Condition A's on one as well; responses on fifteen of the questions did not elicit responses that were significantly different.¹⁹⁴ The A responses and D responses were also not significantly different on sixteen of the questions; A respondents did better on one question.¹⁹⁵

3. *Did Respondents Perform Better with a Simpler Validation Notice or a Simpler Letter and More Prominent Validation Notice?*

This competition produced a slight edge for the simpler letter, with D respondents showing greater understanding on four questions, B respondents leading in one, and the remaining twelve not demonstrating significant differences.¹⁹⁶ Again, however, because the sole victory for B respondents came on a question—33 part 1 (call; assumption of validity)—on which respondents may have been confused by the assumption

192. The three questions on which the answers were not significantly different were 33 part 2 (oral verification request) (yes-noes only), 36 part 1 (letter 25 days after validity assumption), and 36 part 3 (letter 25 days after stops collection).

193. Cf. BEN-SHAHAR & CHILTON, *supra* note 46, ("we found that the simplification of [privacy] disclosures did not change people's understanding of them, nor their ensuing behavior, in any meaningful direction.").

194. Condition A's respondents did better on question 16 part 5 (initial look; assumption of validity) while Condition B's did better on question 35 art 3 (written dispute stops collection).

195. Condition A's respondents did better on question 33 part 1 (call; assumption of validity), though as noted above, that may reflect consumer misunderstanding about the assumption of validity.

196. Condition D's respondents did better on 16 part 2 (initial look; verification), 40 (30 days to request verification), 33 part 3 (oral dispute stops collection) and 33 part 1 (letter day after validity assumption) while B respondents did better on 33 part 1 (call; assumption of validity).

of validity—it may be misleading to describe the B respondents as having outperformed the D respondents on that question.

4. A Brief Observation

We were not able to test the efficacy of a simple validation notice on the first page of a collection letter using otherwise simple language. We hope that future research can explore how well such a notice works. In the meantime, it appears that the *Zemeckis* letter does little to convey the information the FDCPA obliges collectors to provide to consumers.

VI. COURTS AND VALIDATION NOTICES

Our findings about the ineffectiveness of the *Zemeckis* notice are hard to square with the Seventh Circuit’s approval of the *Zemeckis* notice. Nor is *Zemeckis* out of the mainstream of cases interpreting the FDCPA. This Article now turns to those decisions to explore the discrepancy between our findings and the courts’ holdings.

The short explanation is that courts interpreting the validation provision typically examine not what actual consumers take away from it but rather what the disclosure says, and interpret it making unrealistic assumptions about consumers. They do this all while stating that Congress “added the validation of debts provision specifically to ensure that debt collectors gave consumers adequate information concerning their legal rights. . . . the notice Congress required must be *conveyed effectively* to the debtor”¹⁹⁷ and validation notices “make the rights and obligations of a potentially hapless debtor as pellucid as possible.”¹⁹⁸ But they interpret those requirements in terms of what is said rather than what is understood. It recalls the old saying about the teacher who claims to have taught the material, but complains that the students failed to learn it. Though courts observe that the FDCPA should be “broadly construed in order to give full effect to [its] purposes,”¹⁹⁹ understanding seems not to be among those purposes.

An approach that better serves the goal of “conveying effectively” would ask whether consumers actually took in the information such that

197. See *Swanson v. S. Oregon Credit Serv., Inc.*, 869 F.2d 1222, 1225 (9th Cir. 1988) (emphasis added); see also *Pollard v. Law Office of Mandy L Spaulding*, 766 F.3d 98, 106 (1st Cir. 2014) (“a debt collector bears the burden of apprising the consumer of her validation rights in an effective manner.”); *Caprio v. Healthcare Revenue Recovery Group, LLC*, 709 F.3d 142, 148 (3d Cir. 2013) (“the required notice must . . . be conveyed effectively to the debtor.”) (quoting *Wilson v. Quadramed Corp.*, 225 F.3d 350, 354 (3d Cir. 2000)); *Fed. Home Loan Mortgage Corp. v. Lamar*, 503 F.3d 504, 509 (6th Cir. 2007); *Wilson v. Quadramed Corp.*, 225 F.3d 350, 354 (3d Cir. 2000) (“the debt validation provisions . . . were included by Congress to guarantee that consumers would receive adequate notice of their rights under the law. . . .”); *Savino v. Computer Credit, Inc.*, 164 F.3d 81, 85 (2d Cir. 1998) (“A debt collection notice is overshadowing or contradictory if it fails to convey the validation information clearly and effectively and thereby makes the least sophisticated consumer uncertain as to her rights.”); *Miller v. Payco-Gen Am. Credits, Inc.*, 943 F.2d 482, 484 (4th Cir. 1991).

198. See, e.g., *Jacobson v. Healthcare Fin. Serv., Inc.*, 516 F.3d 85, 95 (2d Cir. 2008).

199. *Caprio*, 709 F.3d at 148.

they could act on it if they chose. Ben-Shahar and Schneider have offered a similar “standard of success” for disclosures: “providing information that equips discloseses to understand their choice well enough that they analyze it and make a well-informed, well-considered decision.”²⁰⁰ The validation notice is not able to contribute to Congress’s purpose of eliminating the problem of “collectors dunning the wrong person” if consumers do not absorb the message it conveys.²⁰¹ But instead of focusing on consumers, courts have tended to examine the collector’s behavior, approving or disapproving the validation notice regardless of whether the consumer understood, was aware of, or even read the notice.²⁰² Put starkly, that approach lets collectors have their cake and eat it too; they can avoid liability for violating the validation requirement, but still not risk many consumers understanding and asserting their rights. Thus, the *Zemckis* notice satisfied the court, but informs few consumers.

What are the validation notice requirements that courts enforce? As already noted, the collector’s other communications and activities may not overshadow or be inconsistent with the validation notice.²⁰³ In addition, the FDCPA prohibits collectors from using “any false, deceptive or misleading representations or means in connection with the collection of any debt.”²⁰⁴ At least some courts see “an apparent, though not an actual contradiction” involving the validation notice as another potential FDCPA violation.²⁰⁵

Courts have created an elaborate set of rules to determine if collectors’ activities meet these requirements. Thus, courts have found validation notices overshadowed if (1) the dunning letter’s physical layout obscures the validation notice—if, for example, the collector printed the validation notice in small print;²⁰⁶ (2) the collector’s actions are likely to distract the consumer from paying attention to the validation notice—if, for example, the collector includes the validation notice with a summons and complaint;²⁰⁷ or (3) the collector, without explanation, imposes a deadline to

200. BEN-SHAHAR & SCHNEIDER, *supra* note 48, at 12. See also *id.* at 35 (“disclosure’s purpose [is] equipping people to make unfamiliar and complex decisions in transactions with more knowledgeable and not always friendly parties.”).

201. See *Terran v. Kaplan*, 109 F.3d 1428, 1431 (9th Cir. 1997); see also *Swanson*, 869 F.2d at 1225.

202. See *Bartlett v. Heibl*, 128 F.3d 497, 499 (7th Cir. 1997) (noting that the consumer had not read the debt collector’s letter).

203. See 15 U.S.C. § 1692g(b).

204. See 15 U.S.C. § 1692e. The FDCPA also proscribes harassment, oppressive, or abusive conduct, 15 U.S.C. § 1692d, or unfair or unconscionable conduct, 15 U.S.C. § 1692f, but these strictures tend not to be germane to the validation notice.

205. See *Bartlett*, 128 F.3d at 500. See also *Johnson v. Revenue Mgmt. Corp.*, 169 F.3d 1057, 1060 (7th Cir. 1999) (“a court must inquire whether the letter is confusing.”).

206. See, e.g., *Pollard v. Law Office of Mandy L. Spaulding*, 766 F.3d 98, 104 (1st Cir. 2014) (“Overshadowing is a phenomenon that can take diverse forms. Typically, however, overshadowing is based upon the visual characteristics of a collection letter, such as when a letter demands payment in large, attention-grabbing type and relegates the validation notice to fine or otherwise hard-to-read print.”); *Swanson v. S. Oregon Credit Serv., Inc.*, 869 F.2d 1222, 1225 (9th Cir. 1988).

207. See *Martinez*, 266 B.R. 523, 533-540 (Bankr. S.D. Fla. 2001), *aff’d*, 271 B.R. 696 (S.D.Fla. 2001), *aff’d* 311 F.3d 1272 (11th Cir. 2002); see also *Ellis v. Solomon & Solomon*,

act—such as to pay the debt—before the thirty days provided in the validation notice has expired.²⁰⁸ The First Circuit has explained “the inquiry reduces to whether a particular collection letter would confuse the unsophisticated consumer. . . . a collection letter is confusing if, after reading it, the unsophisticated consumer would be left unsure of her right to dispute the debt. . . . The emphasis then is on practical effect.”²⁰⁹

While most circuits evaluate the collector’s conduct using the least sophisticated consumer standard, the First, Seventh, and Eighth Circuits inquire whether an unsophisticated consumer would be misled.²¹⁰ Courts have elaborated on both standards in numerous decisions.²¹¹ Thus, they have explained that the least sophisticated consumer “is neither irrational nor a dolt”²¹² nor does he or she succumb to “bizarre or idiosyncratic interpretations”;²¹³ though the least sophisticated consumer can be gulli-

P.C., 591 F.3d 130, 137 (2d Cir. 2010) (serving consumer with summons and complaint during the validation period overshadows the validation notice unless collector provides consumer “an explanation of the lawsuit’s impact or—more accurately, lack of impact—on the disclosures made in the validation notice”). *But see* Fed. Home Loan Mortgage Corp. v. Lamar, 503 F.3d 504, 509–11 (6th Cir. 2007) (FDCPA not violated when validation notice is included within the summons and complaint without explanatory text and the summons and complaint have a twenty day deadline).

208. *See infra* notes 228, 232 and accompanying text.

209. *Pollard*, 766 F.3d at 104.

210. *Compare* *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2d Cir. 1993) (“least sophisticated consumer” standard), *with* *Caprio v. Healthcare Revenue Recovery Group, LLC*, 709 F.3d 142, 149 (3d Cir. 2013) (same); *Terran v. Kaplan*, 109 F.3d 1428, 1431–32 (9th Cir. 1997) (same); *Gammon v. GC Services Ltd. Partnership*, 27 F.3d 1254, 1257 (7th Cir. 1994) (“unsophisticated consumer” standard); *Zemeckis v. Global Credit & Collection Corp.*, 679 F.3d 632, 635 (7th Cir.), *cert. denied*, 133 S.Ct. 584 (2012) (same); *Pollard v. Law Office of Mandy L. Spaulding*, 766 F.3d 98, 100 (1st Cir. 2014) (same); *Peters v. General Serv. Bureau, Inc.*, 277 F.3d 1051, 1054 (8th Cir. 2002) (same). It remains unclear whether the two standards actually produce different results. *Compare* *Avila v. Rubin*, 84 F.3d 222, 227 (7th Cir. 1996) (concluding that there is not “much of a practical difference in application”); *Pollard v. Law Office of Mandy L. Spaulding*, 766 F.3d 98, n.4 (1st Cir. 2014), *with* *Laurie A. Lucas & Alvin C. Harrell, Consumer Standards Under the Fair Debt Collection Practices Act: A Case for Regulatory Expansion*, 62 CONSUMER FIN. L.Q. REP. 232, 233 (2008) (“from the perspective of consumers, the unsophisticated consumer standard is problematic, while debt collectors believe the same is true of the alternative standard.”).

211. The circuits are also split on whether determinations of overshadowing are questions of law or fact. *See generally* Christian Stueben, Note, *Judge or Jury? Determining Deception or Misrepresentation under the Fair Debt Collection Practices Act*, 78 FORDHAM L. REV. 3107 (2010). The Seventh Circuit typically sees such issues as questions of fact, see *Muha v. Encore Receivable Mgmt., Inc.*, 558 F.3d 623, 628 (7th Cir. 2009) (“When it is neither clear that a challenged statement is misleading nor clear that it is not, the question whether it is misleading is one of fact.”); *Walker v. Nat’l Recovery, Inc.*, 200 F.3d 500, 503 (7th Cir. 1999). The Third, Sixth, Eighth, and Ninth Circuits view these issues as questions of law. *See* *Wilson v. Quadrumed Corp.*, 225 F.3d 350, 353 n.2 (3d Cir. 2000); *Terran*, 109 F.3d at 1432; *Fed. Home Loan Mortgage Corp. v. Lamar*, 503 F.3d 504, 508 (6th Cir. 2007); *Peters v. Gen. Serv. Bureau, Inc.*, 277 F.3d 1051, 1056 (8th Cir. 2002).

212. *See* *Ellis v. Solomon & Solomon, P.C.*, 591 F.3d 130, 135 (2d Cir. 2010) (“While protecting those consumers most susceptible to abusive debt collection practices, this Court has been careful not to conflate lack of sophistication with unreasonableness.”).

213. *See, e.g.*, *Caprio v. Healthcare Revenue Recovery Group, LLC*, 709 F.3d 142, 149 (3d Cir. 2013) (least sophisticated consumer); *Fed. Home Loan*, 503 F.3d at 510; *Peters v. Gen. Serv. Bureau, Inc.*, 277 F.3d 1051, 1054 (8th Cir. 2002) (unsophisticated consumer). *See also* *Pollard v. Law Office of Mandy L. Spaulding*, 766 F.3d 98, 104 (1st Cir. 2014) (using the unsophisticated consumer standard: “A debt collector will not be held liable

ble,²¹⁴ naïve, and trusting.²¹⁵ What would deceive the least sophisticated or unsophisticated consumer is to be determined by an objective standard.²¹⁶

But these standards, however articulated, seem largely uninformed by actual consumer behavior.²¹⁷ Thus, despite the considerable evidence, discussed in Part III, that consumers do not read disclosures, courts say they hold the least sophisticated consumer to “a willingness to read with care. . . . even the ‘least sophisticated debtor’ is expected to read any notice in its entirety.”²¹⁸ In other words, the least sophisticated consumer is expected to be more careful than most consumers are known to be. Indeed, even judges themselves, including the most sophisticated, have been known to eschew reading notices in their entirety.²¹⁹

Zemeckis illustrates how courts believe that they may determine what will baffle consumers without surveying consumers. There, a consumer had brought suit under the FDCPA claiming a debt collection letter had overshadowed the validation notice.²²⁰ After the district court dismissed her case, the consumer appealed, arguing that she should have been per-

based on an individual consumer’s chimerical or farfetched reading”); *Taylor v. Cavalry Investment, LLC*, 365 F.3d 572, 574-75 (7th Cir. 2004) (“If it is apparent from a reading of the letter that not even ‘a significant fraction of the population’ would be misled by it—if . . . the interpretation attested to by the plaintiff is a ‘fantastic conjecture’—the court should reject it without requiring evidence beyond the letter itself.”).

214. *See Clomon*, 988 F.2d at 1318; *Fed. Home Loan*, 503 F.3d at 509.

215. *See Jang v. A.M. Miller Assoc.*, 122 F.3d 480, 484 (7th Cir. 1997).

216. *See Ellis*, 591 F.3d at 135 (least sophisticated consumer); *Terran*, 109 F.3d at 1432 (same); *Pollard*, 766 F.3d at 104 (unsophisticated consumer).

217. An exception is the Seventh Circuit which occasionally calls for use of survey evidence. *See Johnson v. Revenue Mgmt. Corp.*, 169 F.3d 1057, 1060 (7th Cir. 1999):

The two dispositions in the district court share an additional assumption: that whether a dunning letter is “confusing” is a question to be answered solely by applying the rules of logic to the text of the letter. But why should that be so? . . . Unsophisticated readers may require more explanation than do federal judges; what seems pellucid to a judge, a legally sophisticated reader, may be opaque to someone whose formal education ended after sixth grade. To learn how an unsophisticated reader reacts to a letter, the judge may need to receive evidence. A concurring opinion in *Gammon* suggested that this evidence might include the kind of surveys used to measure confusion in trademark cases.

In other cases, however, the Seventh Circuit has found the use of survey evidence unnecessary to reach a result. *See, e.g., Zemeckis v. Glob. Credit & Collection Corp.*, 679 F.3d 632, 637 (7th Cir.), *cert. denied*, 133 S.Ct. 584 (2012).

218. *Caprio*, 709 F.3d at 149 (3d Cir. 2013; *see also Ellis*, 591 F.3d at 135 (“the least sophisticated consumer can be presumed to possess a rudimentary amount of information about the world and a willingness to read a collection notice with some care.”) (quoting *Greco v. Trauner, Cohen & Thomas, L.L.P.*, 412 F.3d 360, 363 (2d Cir. 2005)); *Fed. Home Loan*, 503 F.3d at 510 (the “standard ‘assumes that a Validation Notice is read in its entirety, carefully and with some elementary level of understanding.’”) (quoting *In re Martinez v. Law Offices of David J. Stern, P.A.*, 266 B.R. 523, 532 (Bankr. S.D. Fla. 2001)).

219. *See Chief Justice Roberts Admits He Doesn’t Read the Computer Fine Print*, ABA J. (Oct 20, 2010), http://www.abajournal.com/weekly/article/chief_justice_roberts_admits_he_doesnt_read_the_computer_fine_print?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email; *Judge Posner Admits He Didn’t Read Boilerplate for Home Equity Loan*, ABA J. (Jun 23, 2010), http://www.abajournal.com/weekly/article/judge_posner_admits_he_didnt_read_boilerplate_for_home_equity_loan.

220. *Zemeckis*, 679 F.3d at 632.

mitted to conduct a consumer survey.²²¹ The Seventh Circuit noted that while the question of whether dunning letters are confusing is a question of fact, confusion claims can be dismissed as a matter of law when it is “apparent from a reading of the letter that not even a significant fraction of the population would be misled by it.”²²² Finding the collector’s letter “clear as a matter of law,” the Seventh Circuit affirmed.²²³ While the court observed that consumer surveys are “one means by which to illustrate the confusing nature of a dunning letter,”²²⁴ the court concluded that they were unnecessary when “no reasonable person, however unsophisticated, could construe the wording of the communication in a manner that . . . violate[s] [Section 1692g(b)].”²²⁵ For that to be true, though, many of the respondents to our survey could not have been reasonable persons, which seems improbable, or else the definition of “reasonable person” would have to be based on something other than how actual human beings behave—which would make the phrase “reasonable person” a fiction.

Zemeckis argued that the collector’s letter overshadowed the validation notice’s thirty-day deadline because it urged the consumer to act “now” and call the collector “today,” as well as threatened legal action, thus causing consumers to think, Zemeckis claimed, that failing to pay the debt or call the collector before the thirty days elapsed would lead to litigation.²²⁶ The court rejected this view, saying that the statements “at worst, contain[ed] puffery.”²²⁷ The Seventh Circuit contrasted cases that set a specific deadline for the consumer to pay the debt, such as within a week or ten days.²²⁸ In other words, the court opined that deadlines overshadow the validation notice or confuse consumers, while asking for action “now” or “today” does not.²²⁹ This conclusion was based not on

221. *Id.*

222. *Id.* at 636 (quoting *Taylor v. Calvary Inv. L.L.C.*, 365 F.3d 572, 574 (7th Cir. 2004)) (internal quotations omitted).

223. *Id.* at 637.

224. *Id.*

225. *Id.* at 637 (quoting *McMillan v. Collection Prof’ls, Inc.*, 455 F.3d 754, 760 (7th Cir. 2006)).

226. *Zemeckis*, 679 F.3d at 635.

227. *Id.* at 636.

228. *Id.* The cited cases include: *Avila v. Rubin*, 84 F.3d 222, 225 (7th Cir. 1996) (“If the above does not apply to you, we shall expect payment or arrangement for payment to be made within ten (10) days from the date of this letter.”); *Bartlett v. Heibl*, 128 F.3d 497, 502 (7th Cir. 1997) (“if you wish to resolve this matter before legal action is commenced, you must do one of two things within one week of the date of this letter: pay \$316 . . . or get in touch with [the creditor] and make suitable arrangements for payment. If you do neither, it will be assumed that legal action will be necessary.”); *Taylor v. Calvary Inv., L.L.C.*, 365 F.3d 572, 575 (7th Cir. 2004) (“act now”). *See also* *Johnson v. Revenue Mgmt Corp.*, 169 F.3d 1057, 1059 (7th Cir. 1999) (“An unelaborated demand that the debt be paid ‘immediately’ (or, as in *Bartlett*, ‘within one week’), or a threat of immediate suit, violates the Act by implying that the debtor does not have 30 days to ask for verification—or at least could convey this message to an unsophisticated consumer.”).

229. Courts have found that requests for “immediate payment,” without an explanation of how the validation rights fit with the demand for payment, unlike requests to act “now,” however, do overshadow the validation notice. *See Savino v. Comput. Credit, Inc.*, 164 F.3d 81, 86 (2d Cir. 1998). But a letter that says “Our client has placed your account with us for

evidence of consumer understanding but on an apparent ipse dixit: “Even the most unsophisticated debtor would realize that debt collectors wish to expedite payment, and urging him to hurry does not confuse or undermine his right to his validation period.”²³⁰ The First Circuit has offered this explanation of the difference:

Unexplained demands for payment immediately or within thirty days confuse the unsophisticated consumer because they contain an apparent contradiction that renders her unsure of her rights . . . Such collection letters can readily be distinguished from those that merely contain “puffery” (such as encouragement to “act now”). . . .²³¹

It may well be that consumers will feel less pressure to overlook the thirty-day validation period if the collector demands action “now” or “today” as opposed to demanding payment in ten days,²³² though it is just as plausible that the immediacy of “now” and “today” will have the same or even a greater impact than a ten day deadline.²³³ The truth is that courts

immediate collection. We shall afford you the opportunity to pay this bill immediately,” and lacks such an explanation does not. *See Wilson v. Quadramed Corp.*, 225 F.3d 350, 352–357 (3d Cir. 2000) (distinguishing *Savino* on the ground that the *Savino* collector “insists on immediate payment” and the validation notice appeared on the back of the letter and “all that the debtor is told on the front is to ‘[p]lease see important notice on back.’”). Similarly, a letter that said “Unless an immediate telephone call is made . . . we may find it necessary to recommend to our client that they proceed with legal action” did not overshadow the validation notice. *See Terran v. Kaplan*, 109 F.3d 1428, 1430–1434 (9th Cir. 1997) (distinguishing the situation in which collector calls for payment immediately). Professor Elwin Griffith has criticized *Terran*, observing “The collector had a strategy to confuse the consumer . . . The sanction for the consumer’s failure to make contact was that the collector would encourage the creditor to sue the consumer. Surely the collector did not expect the consumer to call merely for social conversation.” *See Elwin Griffith, The Search for More Fairness in the Fair Debt Collection Practices Act*, 12 J. BANKR. L. & PRAC. 151, 165–66 (2003). Another view appears in *Johnson v. Revenue Mgmt Corp.*, 169 F.3d 1057, 1062–63 (7th Cir. 1999) (Eschbach, J., concurring):

[D]etermining a difference between “immediate” and “prompt” is a fine distinction. Still, one exists, and I believe it is one that even the unsophisticated consumer could understand . . . However, I am not persuaded that an unsophisticated consumer would, without a doubt, grasp this subtle distinction.

230. *Zemeckis*, 679 F.3d at 636; *see also Taylor*, 365 F.3d at 575–76 (“‘Act now to satisfy your debt’ is in the nature of puffing, in the sense of rhetoric designed to create a mood rather than to convey concrete information or misinformation (‘Buy Now!’ ‘Best Deal Ever!’ ‘We Will Not Be Undersold!’), as it is perfectly obvious to even the dimmest debtor that the debt collector would very much like him to pay the amount demanded straight off.”).

231. *Pollard v. Law Office of Mandy L. Spaulding*, 766 F.3d 98, 106 (1st Cir. 2014). *See also Wilson*, 225 F.3d at 360 n.6 (“[G]eneral threats of future action against the debtor for nonpayment do not convey the same urgency and pressure upon the debtor to pay as threats of immediate legal action, reporting the debtor to the credit bureau, or causing a negative credit rating.”).

232. *See Swanson v. S. Or. Credit Serv., Inc.*, 869 F.2d 1222, 1225–26 (9th Cir. 1988) (letter stating “IF THIS ACCOUNT IS PAID WITHIN THE NEXT 10 DAYS IT WILL NOT BE RECORDED IN OUR MASTER FILE AS AN UNPAID COLLECTION ITEM” overshadowed the 30-day validation notice, which was printed in smaller print, because it “represents an attempt ‘on the part of the collection agency to evade the spirit of the notice statute and mislead the debtor into disregarding the [required debt validation] notice.”) (quoting *Ost v. Collection Bureau, Inc.*, 493 F. Supp. 701, 703 (D.N.D. 1980)).

233. In possible contrast, *Pollard v. Law Office of Mandy L. Spaulding*, concluded that threatening to “pursue the next logical course of action without delay” did overshadow the

do not know what effect any of these has on consumers—but they make rules as if they do, despite acknowledging that, as Judge Easterbrook has observed, “district judges are not good proxies for the ‘unsophisticated consumers’ whose interests the statute protects.”²³⁴ Though courts seem to realize that the question of overshadowing is often not clear cut when they write, for example, that “[o]vershadowing is rarely a black-or-white proposition; there are many shades of gray,”²³⁵ they act as if overshadowing can be determined without knowing how the letter affects actual consumers. And they proclaim that “[p]ractical effect is what counts,”²³⁶ without undertaking to determine what that practical effect is.

In fact, our survey raises questions about whether the admonitions to act now had an impact on respondents. Condition D respondents—who did not see those admonitions—were significantly more likely to say that they faced a thirty-day deadline to seek verification than the Condition B or C respondents were. In other words, the admonitions may have overshadowed the validation notice for Condition B respondents.

The *Zemeckis* court also held that placement of the validation notice on the back of the letter did not violate the FDCPA, in light of the capitalized instruction on the front of the letter to see the reverse side for “important information,” and the fact that the validation notice was printed in bold.²³⁷ Other courts have concluded that printing the validation notice on the back of the letter without referring to it on the front *did* overshadow the notice.²³⁸ As with its other conclusions, the *Zemeckis* court did not rest its decision on actual evidence about consumer awareness of the validation notice. Our survey does not show that the *Zemeckis* court guessed wrong on this score, because we mostly did not find statistically significant differences between the responses in Conditions A and D.

A fundamental problem with the cases is that the “least sophisticated consumer” or “unsophisticated consumer,” however the courts style her, may not exist. This theoretical consumer, in contrast to most consumers and at least some judges themselves in some contexts, carefully reads the disclosure and then compares the disclosure to other items in the letter, seeking out contradictions. Courts believe that “immediately” means one thing to this consumer; “now” means something else. If the disclosure is not contradicted, or overshadowed, this consumer receives everything the

validation notice when the notice appeared in smaller print than other provisions of the letter and the letter referred to collecting the debt “through whatever legal means are available.” The letter also included what the court described as “hopelessly scrambled syntax” concerning the thirty-day period.

234. See *Walker v. Nat’l Recovery, Inc.*, 200 F.3d 500, 501 (7th Cir. 1999).

235. See *Pollard*, 766 F.3d at 106; *Wilson v. Quadramed Corp.*, 225 F.3d 350, 353 (3d Cir. 2000). (“[T]he debt collection letter here presents a close question.”).

236. See *Pollard*, 766 F.3d at 106.

237. *Zemeckis v. Glob. Credit & Collection Corp.*, 679 F.3d 632, 636–37 (7th Cir.), *cert. denied*, 133 S.Ct. 584 (2012).

238. See, e.g., *Caprio v. Healthcare Revenue Recovery Grp., LLC*, 709 F.3d 142, 148 (3d Cir. 2013).

consumer is entitled to in terms of the validation notice. It does not matter if it would take three years of graduate school to understand the validation notice,²³⁹ or if half the consumers who read it misinterpreted it.

This imaginary least sophisticated or unsophisticated consumer appears to be a variant of what Richard H. Thaler and Cass R. Sunstein call “econs,” or “homo economicus.”²⁴⁰ Traditional economics often assumes that people behave rationally. But extensive experimentation has enabled social scientists to identify ways in which people are consistently and predictably irrational.²⁴¹ Behavioral economics, as well as law, is attempting to come to grips with these revelations. Just as we now know that humans often do not behave rationally and economists are attempting to incorporate that insight into economic models, law-makers should attempt to fashion rules that accommodate the behavior of actual people rather than fictitious ones. To draw an analogy to Thaler’s and Sunstein’s work, classical legal rules, like court assumptions about the least sophisticated or unsophisticated consumer, assume that people are “Homo Lex”, or “lex-ons,” who read disclosures fully and carefully.²⁴² But as explained in Part III, such people are rare, if they even exist. This Article is, in part, an effort to identify the respects in which an existing set of disclosure rules falls short so that lawmakers can fashion replacement rules which will serve the consumer protection goals of the FDCPA.

In fairness, it is hard to blame courts for basing decisions on their own judgments, because of course courts lack the resources to survey consumers. While the Seventh Circuit has expressed a preference for using survey evidence, even it, as noted above, is willing to dispense with surveys sometimes.²⁴³ And there are good reasons for not requiring the parties to tender survey evidence every time a consumer claims that a letter confuses consumers or overshadows validation notices. Survey evidence adds to the cost of litigation, a particular problem when small stakes are at issue, as they often are in consumer litigation.²⁴⁴ Many of the consumers who might be obliged to conduct surveys are having problems paying their debts, after all. In addition, attempts to use surveys in court often

239. As discussed *supra* note 82 and accompanying text, the notice approved in *Zemeckis* would have required three years of graduate school to understand, according to one widely-used test of readability.

240. See RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* 6–8 (2d ed. 2009); RICHARD H. THALER, *MISBEHAVING: THE MAKING OF BEHAVIORAL ECONOMICS* 4–5 (2015).

241. See, e.g., DANIEL KAHNEMAN, *THINKING FAST AND SLOW* 411 (2011); MISBEHAVING, *supra* note 240, at 6–7; DAN ARIELY, *PREDICTABLY IRRATIONAL: THE HIDDEN FORCES THAT SHAPE OUR DECISIONS* xix–xxii (2009).

242. See *NUDGE*, *supra* note 240, at 6–8.

243. See *supra* notes 224, 225 and accompanying text.

244. See *Johnson v. Revenue Mgmt. Corp.*, 169 F.3d 1057, 1063 (7th Cir. 1999) (Eschbach, J., concurring) (“[A] system which places this additional cost [of conducting surveys] on litigants will make the cost of filing suit under the FDCPA prohibitive.”). Private suits under the FDCPA already face impediments. See Neil L. Sobol, *Protecting Consumers from Zombie Debt Collectors*, 44 N.M. L. REV. 327, 366 (2014) (“Limited penalties and a short statutory limitations period also serve as obstacles to private actions under the FDCPA.”).

fail to meet court approval.²⁴⁵ But the consequence of this approach is that court determinations of what confuses or overshadows are untethered from reality.

Assuming that courts continue to try to meet the needs of the least sophisticated or unsophisticated consumer, how should they identify such consumers? One approach would identify proxies for sophistication and then use notices that passed muster when shown to people at the lower end of such proxies.²⁴⁶ But our study raises doubt about what those proxies could be. On most questions, neither level of education nor income produced statistically significant results, suggesting that they could not be used as proxies. We were unable to identify any proxy for sophistication that consistently enabled identification of those less able to understand the validation disclosure.

In the absence of a proxy (and perhaps others will yet identify one), the only way to ensure that truly unsophisticated consumers can understand a validation notice is to survey them. But that too requires a judgment: what percentage of consumers must be confused before we say that a communication fails?

Taking the least sophisticated consumer test at its word implies that for a notice to be satisfactory, no consumer should be confused. But that is obviously not what the courts intend, especially as the courts largely disregard actual consumer confusion. Because it may be impossible to write a validation notice that all consumers understand, such a requirement would force collectors to cease all communications with consumers,

245. See *DeKoven v. Plaza Assoc.*, 599 F.3d 578, 582 (7th Cir. 2010) (“Suits under the Fair Debt Collection Practices Act have repeatedly come to grief because of flaws in the surveys conducted by the plaintiff’s experts”); Stueben, *supra* note 211, at 3147–48 (citations omitted):

[S]urvey evidence is extremely difficult to admit. . . . survey evidence must comport with the professional standards broadly stated in Federal Rule of Evidence 702. A survey must not contain any “[l]eading questions, clearly define all terms, and include a control group. Survey evidence cannot be too broad, and the expert must be able to explain the methodology behind the data. . . . The plaintiff must offer objective evidence, not subjective expert “readability and design” testimony. Finally, the survey evidence (or equivalent) must clearly measure the level of consumer confusion caused by the disputed language in the letter, contain a sufficient sample size, and possess other measures designed to ensure objectivity.

Cases rejecting the use of survey evidence in FDCPA cases include *DeKoven*, 599 F.3d at 582 (control group too small, among other problems); *McCabe v. Crawford & Co.*, 272 F. Supp. 2d 736, 740 (N.D. Ill. 2003) (excluding report as “filled with legal conclusions and inappropriate opinions”); *Hernandez v. Attention, LLC*, 429 F. Supp. 2d 912, 917 (N.D. Ill. 2006) (“The survey’s fatal flaw is that it did not make use of a control group.”); *Jackson v. Nat’l Action Fin. Servs., Inc.*, 441 F. Supp. 2d 877 (N.D. Ill. 2006) (rejecting survey because of failure to define key term, among other reasons); *Muha v. Encore Receivable Mgmt, Inc.*, 558 F.3d 623, 625–26 (7th Cir. 2009) (rejecting use of survey because questions were leading and survey lacked control group).

246. See, e.g., *Walker v. Nat’l Recovery, Inc.*, 200 F.3d 500, 503 (7th Cir. 1999) (seeming to suggest that high school dropouts are unsophisticated consumers when it says “Perhaps a survey would show that four out of five high school dropouts would take the reference to ‘immediate collection’ to demand ‘immediate payment’ notwithstanding the statutory time to request verification. Perhaps not.”).

which is inconsistent with the FDCPA's goal of regulating collector communications with consumers rather than prohibiting them.²⁴⁷

Courts casting about for an option might find guidance in Federal Trade Commission (FTC) interpretations of the Federal Trade Commission Act. Because the FTC Act prohibits deceptive acts,²⁴⁸ the FTC also had to determine what percentage of consumers must be misled before a statement can be considered deceptive. Courts have upheld FTC determinations of deception when the FTC found 15% or fewer of consumers to be misled.²⁴⁹

The *Zemeckis* letter fails that threshold. More than 15% (in some cases, far more) mistakenly reported that a collector would assume a debt timely disputed to be valid; wrongly believed that a call would trigger verification of the debt; incorrectly thought that a timely letter would not trigger validation; imagined that the validation notice deadline was something other than thirty days; erroneously supposed that if they missed the deadline they would either have to pay the debt they did not owe or could not defend in court on the ground that they did not owe the money; and incorrectly interpreted the letter as saying the company would sue if the consumer did not pay the debt. In fact, even if the threshold is raised to 20%, the *Zemeckis* letter misses the mark as to all but one of these. In fairness, the other conditions do not do much better, but of course we tested only a limited range of options. We did not test, for example, the simple NCLC notice with the simple letter of Condition D, or other variations that might have produced greater understanding. But in any event, if the validation notice is to convey information effectively to at least 80% of consumers, our survey suggests that it is a failure.

VII. RECOMMENDATIONS

In 2010, Congress created the Consumer Financial Protection Bureau (CFPB) and authorized it to promulgate regulations implementing the

247. Consumers do have the option of demanding that collectors stop calling them. See 15 U.S.C. § 1692c(c) (2012) (“If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt.”).

248. See 15 USC § 45(a)(1) (2012).

249. See *Firestone Tire & Rubber Co. v. F.T.C.*, 481 F.2d 246, 249 (6th Cir. 1973) (Here, the advertiser's consumer survey found that 15.3% of consumers misunderstood the ad, and the court wrote, “We find it hard to overturn the deception findings of the Commission if the ad thus misled 15% (or 10%) of the buying public.”); see also *POM Wonderful, LLC v. F.T.C.*, 777 F.3d 478, 490 (D.C. Cir. 2015) (The FTC “considers whether ‘at least a significant minority of reasonable consumers,’ would ‘likely’ interpret the ad to assert the claim.”) (citing *Telebrands Corp.*, 140 F.T.C. 278, 291 (2005), *aff'd*, 457 F.3d 354 (4th Cir. 2006)); *Rhodes Pharmacal*, 49 F.T.C. 263, 283 (1952) (9% “sufficient showing of the deceptive nature of respondents’ advertisements.”); *Benrus Watch Co., Inc.*, 64 F.T.C. 1018 (1964) (14% sufficient); *In re Friedman's-Georgia, Inc.*, 74 F.T.C. 1056 (1968) (hearing officer's opinion adopted as opinion of Commission states that survey finding of 5% deceived is sufficient, but notes that the ad “is capable of deceiving a much higher percentage of the public.”).

Fair Debt Collection Practices Act (FDCPA).²⁵⁰ The Bureau issued an Advance Notice of Proposed Rulemaking in 2013 in which it posed questions about validation notices,²⁵¹ and in July 2016 issued an outline of its proposed regulations, which addressed validation notices.²⁵² Our study confirms that validation notices do indeed require attention.

Given the limited nature of our study—only four versions of collection letters, which tested only two validation notices—more study is required to determine how best to convey the information Congress wanted consumers to absorb concerning validation. Pending that additional study, we suggest the following:

A. CONGRESS OR THE CFPB SHOULD EXPLORE ADDITIONAL WAYS
FOR COLLECTORS TO CONVEY TO CONSUMERS
THEIR VALIDATION RIGHTS

Our study suggests that many respondents failed to take in information in the written disclosure. When respondents shown a letter with a validation notice did not perform significantly better than those who were shown a letter lacking a validation notice—despite having been shown the letter twice and having had numerous opportunities to review the letter—the disclosure has not succeeded. If the statute is to succeed in its goal of communicating validation rights to consumers, some other mechanism is needed.

Congress or the CFPB should consider requiring oral disclosures of the information appearing in the validation notice when collectors communicate orally with consumers.²⁵³ Collectors often communicate with consumers over the telephone and the FDCPA already regulates those calls.²⁵⁴ Another study conducted by one of us conducted found that consumers were significantly more likely to act on an oral disclosure than written disclosures.²⁵⁵ While that study involved a different disclosure, we recommend that the CFPB at least explore whether oral validation notices are more effective than written disclosures for some consumers.²⁵⁶

250. 15 U.S.C. § 1992l(d) (2012).

251. See CFPB, *Advance Notice of Proposed Rulemaking*, 78 Fed. Reg. at 678 (Nov. 6, 2013), http://files.consumerfinance.gov/f/201311_cfpb_anpr_debtcollection.pdf [<https://perma.cc/6BTW-GSHD>].

252. See CFPB, *supra* note 22, at 15–18.

253. See *Johnson v. Revenue Mgmt. Corp.*, 169 F.3d 1057, 1061 (7th Cir. 1999) (“For unsophisticated consumers a careful oral explanation may be more helpful than a lengthy and painfully complete written exercise in legalese, so potential confusion from the writing would not become actual confusion.”).

254. See, e.g., 15 U.S.C. § 1692c(a)(1) (time for placing calls); § 1692d(5) (calling with intent to annoy, abuse, harass); 1692d(6) (placing calls without meaningful disclosure of caller’s identity).

255. Jeff Sovern, *Written Notice of Cooling-Off Periods: A Forty-Year Natural Experiment in Illusory Consumer Protection And The Relative Effectiveness of Oral And Written Disclosures*, 75 U. PITT. L. REV. 333, 358–380 (2014).

256. We express no opinion about the scope of the CFPB’s rule-making power under the FDCPA. To the extent that our suggestions exceed the Bureau’s rule-making authority, we hope that Congress takes the necessary steps either to extend that authority or to enact the suggestions into law as appropriate.

The Bureau could even mandate a script for collectors to use that includes questions (“Would you like us to verify that you owe the debt?”) that would make it easier for consumers to assert their rights.

To be sure, because it can be more difficult to insure compliance with directives mandating oral disclosure than written ones, collectors may attempt to evade compliance. When journalist Fred Williams worked at a collection agency, he observed collectors disconnecting calls while making required disclosures in order to create the impression that either the consumer had hung up or the call disconnected for some other benign reason.²⁵⁷ But a collector who engages in a disproportionate number of such hangups is likely to be caught. In these days of electronics, such difficulties are not insurmountable. The FDCPA already requires oral disclosures in some circumstances,²⁵⁸ as do other laws.²⁵⁹ The CFPB could also require collection calls to be recorded, as are many commercial calls to consumers already.²⁶⁰

Kathleen Engel has pointed out that one downside of oral disclosures is that consumers may have questions that poorly-trained call center staff are not able to answer. See e-mail from Kathleen Engel to Jeff Sovern (July 27, 2016) (on file with the author). That problem could probably be addressed by better training or escalation of calls to supervisors. In any event, that problem also exists when consumers have questions as to the result of a written notice.

257. FRED WILLIAMS, *FIGHT BACK AGAINST UNFAIR DEBT COLLECTION PRACTICES* 96 (2011).

258. See 15 U.S.C. § 1692e(11) (collectors must disclose in the “initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, [and must] disclose in subsequent communications that the communication is from a debt collector.”).

259. See, e.g., ARIZ. REV. STAT. ANN. § 44-1276 (2016); ARK. CODE ANN. § 4-89-108 (West 2016); CAL. CIV. CODE § 1689.7 (West 2016); CONN. GEN. STAT. ANN. § 42-135a (West 2016); DEL. CODE ANN. TIT. 6, § 4404 (2016); IDAHO CODE ANN. § 48-1004 (2016); IOWA CODE ANN. § 555a.4 (West 2016); MD. CODE ANN., COM. LAW § 14-302 (LexisNexis 2016); MASS. GEN. LAWS ANN. CH. 93, § 48 (West 2016); MINN. STAT. ANN. § 325g.08 (West 2017); NEV. REV. STAT. ANN. § 598.280 (West 2015); N.M. STAT. ANN. § 57-12-21 (West 2017); N.Y. PERS. PROP. LAW § 428 (McKinney 2016); N.D. CENT. CODE § 51-18-02 (West 2017); OHIO REV. CODE ANN. § 1345.23 (West 2016); OR. REV. STAT. § 83.730 (West 2016).

260. See Maria E. Recalde, *Is Your Business Complying With Applicable Call Recording Laws?* SHEEHAN, FINNEY, BASS & GREEN (Sept. 18, 2013), <https://www.sheehan.com/good-company/is-your-business-complying-with-applicable-call-recording-laws/> [https://perma.cc/62GE-5ACY]. (“Businesses often record and monitor telephone calls involving their customer service representatives or call center agents”); Tonia Klausner et al. *Monitoring and Recording Consumers’ Calls in California Can be a Risky Practice*, WSGR DATA ADVISOR (June 15, 2016) <http://www.wsgrdataadvisor.com/2016/06/monitoring-and-recording-consumers-calls-in-california-can-be-a-risky-practice-2/> [https://perma.cc/FC59-KAB7] (“Many businesses monitor or record customer service, telemarketing, and other telephone calls with consumers to help them improve customer service and for evidentiary reasons.”)

B. CONGRESS OR THE CFPB SHOULD CONSIDER LIMITING THE
NUMBER OF WORDS AND CONTENT OF MESSAGES IN
COLLECTION LETTERS THAT INCLUDE
VALIDATION NOTICES

The comparison between Conditions C and D produced the largest number of differences. Whether that is because Condition D's validation notice appeared on the first page, or because the Condition D letter eliminated much of the dunning language in the collection letter, or both, is impossible to know without further testing—and we certainly recommend more testing. But pending more testing, we speculate that a more succinct message increased the likelihood that consumers noticed and understood the validation notice, at least in part because of the well-established phenomenon known as information overload.²⁶¹ Even debt collectors have expressed concern about overload.²⁶² Consumer organizations also worry

261. See, e.g., Byung-Kwan Lee & Wei-Na Lee, *The Effect of Information Overload on Consumer Choice Quality in an On-Line Environment*, 21 PSYCHOL. & MKTG. 159, 177 (2004) (finding that increasing “the number of attributes from 9 to 18 significantly imposed information overload on subjects and led to negative effect[s] on choice quality”). See generally John C. Bergstrom & John R. Stoll, *An Analysis of Information Overload with Implications for Survey Design Research*, 12 LEISURE SCI. 265 (1990); Kevin Lane Keller & Richard Staelin, *Effects of Quality and Quantity of Information of Decision Effectiveness*, 14 J. CONSUMER RES. 200, 211–12 (1987); Naresh K. Malhotra, *Information Load and Consumer Decision Making*, 8 J. CONSUMER RES. 419, 419–20 (1982). Early studies included Jacob Jacoby et al., *Brand Choice Behavior as a Function of Information Load: Replication and Extension*, 1 J. CONSUMER RES. 33, 34–36 (1974) and Jacob Jacoby et al., *Brand Choice Behavior as a Function of Information Load*, 11 J. MKTG. RES. 63, 68 (1974). For criticism of the early Jacoby studies, see, for example, Naresh K. Malhotra, *Reflections on the Information Overload Paradigm in Consumer Decision Making*, 10 J. CONSUMER RES. 436, 439 (1984), suggesting that information overload does occur but that the early Jacoby studies did not demonstrate it. See also, e.g., J. Edward Russo, *More Information is Better: A Re-evaluation of Jacoby, Speller and Kohn*, 1 J. CONSUMER RES. 68, 71–72 (1974); John O. Summers, *Less Information Is Better?*, 11 J. MKTG. RES. 467, 467 (1974) (finding that the conclusion of an early Jacoby study “is not an accurate representation of the results of [his] study”); William L. Wilkie, *Analysis of Effects of Information Load*, 11 J. MKTG. RES. 462, 463 (1974) (re-analyzing data from Jacoby study and noting that “[i]t is not apparent that the results for ‘correct choices’ in fact reveal dysfunctional consequences with increased information load”). For Jacoby’s replies, see Jacob Jacoby et al., *Constructive Criticism and Programmatic Research: Reply to Russo*, 2 J. CONSUMER RES. 154, 154–55 (1975) and Jacob Jacoby, *Information Load and Decision Quality: Some Contested Issues*, 14 J. MKTG. RES. 569, 570–71 (1977). For studies rebutting the information overload effect, see Naresh K. Malhotra et al., *The Information Overload Controversy: An Alternative Viewpoint*, 46 J. MKTG. 27 (1982), Thomas E. Muller, *Buyer Response to Variations in Product Information Load*, 69 J. APPLIED PSYCHOL. 300, 300–01 (1984), and Debra L. Scammon, “*Information Load*” and *Consumers*, 4 J. CONSUMER RES. 148 (1977). For criticism of these last studies, see Jacob Jacoby, *Perspectives on Information Overload*, 10 J. CONSUMER RES. 432, 432–34 (1984). For criticism of the Keller and Staelin study cited above, see Robert J. Meyer & Eric J. Johnson, *Information Overload and the Nonrobustness of Linear Models: A Comment on Keller and Staelin*, 15 J. CONSUMER RES. 498, 503 (1989). For Keller and Staelin’s response, see Kevin Lane Keller & Richard Staelin, *Assessing Biases in Measuring Decision Effectiveness and Information Overload*, 15 J. CONSUMER RES. 504, 508 (1989).

262. See DBA International, *Response to the Consumer Financial Protection Bureau’s Advance Notice of Proposed Rulemaking* 17 (Feb. 28, 2014), www.insidearm.com/wp-content/uploads/DBA-Final-ANPR-Response.docx?279849 [https://perma.cc/4SMR-YZZE] (DBA is wary of adding additional information to the validation notice that could prove to be overwhelming or confusing to consumers.”).

about it.²⁶³ The law has long recognized that disclosures can be obscured by less important information and, in other contexts, has mandated that disclosures not be combined with extraneous information.²⁶⁴ Accordingly, we recommend that Congress or the CFPB consider reducing the likelihood of overload by defining overshadowing as including more than some specified number of words accompanying the validation notice.

All four conditions we tested included on the second page extensive disclosures required by the law of various states.²⁶⁵ No respondent would have been covered by more than one of these disclosures, and some would not have been affected by any. Consequently, many of the state disclosures served only to distract. Further testing is again required to be certain, but it is quite possible that those disclosures obscured the validation notice, especially in Conditions A and B, in which the state disclosures appeared on the same page as the validation notice. In addition, we recommend that the CFPB consider barring the use of certain words that tend to arouse anxiety in consumers and so reduce the likelihood that they would focus on the validation notice. The absence of the references to a lawsuit, legal action, a judgment, and the like may also have contributed to the improved performance in Condition D vis-à-vis Condition C.²⁶⁶

One concern we have in so recommending, however, is that the Condition D responses were largely not significantly different from the Condition A responses, which undercuts the argument that the simpler disclosures of the D letter strongly affected comprehension of the validation notice. Consequently, the CFPB should consider additional testing of the impact of limiting the length or content of communications containing validation notices.

263. See, e.g., Nat'l Consumer Law Ctr., *Comments to the Bureau of Consumer Financial Protection: Advance Notice of Proposed Rulemaking Regarding Debt Collection*, 78 Fed. Reg. 67848, 66 (Feb. 28, 2014) (to be codified at 12 C.F.R. pt. 1006), http://www.nclc.org/images/pdf/debt_collection/comments-cfpb-debt-collection-anprm-2-28-14.pdf [<https://perma.cc/4F6P-HHAG>].

Too often the validation notices are crowded with extraneous information, making the actual information in the notice required by the FDCPA harder to see and appreciate. There should be a clear requirement for the validation notice to be separate and clear and conspicuous—perhaps on the upper fold of the first page of the communication, by itself.

State law disclosures are usually on the reverse side, and are rarely tailored to the recipient's state. They should be tailored to the consumer's state, as this would not be difficult in today's sophisticated technological world.

264. For example, Truth in Lending's "Federal Box" discloses specified closed end credit terms and may not include any items not directly related to those terms. See 12 C.F.R. § 1026.17(a)(1) (2016).

265. We hope states test their required disclosures to verify that they are accomplishing their purposes and not confusing or distracting consumers.

266. Some have gone even further in suggesting limits on collector communication with consumers when making the validation disclosures. See Elwin Griffith, *The Role of Validation and Communication in the Debt Collection Process*, 43 CREIGHTON L. REV. 429, 468–69 (2010) (calling for change in the law to require debt collectors to give consumers a grace period after they provide the validation notice before they can demand payment); Elwin Griffith, *Identifying Some Trouble Spots in the Fair Debt Collection Practices Act: A Framework for Improvement*, 83 NEB. L. REV. 762, 786–87 (2005).

C. CONGRESS OR THE CFPB SHOULD ELIMINATE STATEMENTS
ABOUT WHEN THE COLLECTOR WILL ASSUME
THE DEBT TO BE VALID

Our survey indicates considerable consumer confusion about when collectors will assume a debt to be valid. It may be that additional testing will produce a phrasing that better communicates this concept, but we doubt that much would be gained even if that is so. It is not clear what value this disclosure has: how are consumers who understand the disclosure to use the information disclosed? We agree with the NCLC judgment that this aspect of the disclosure should be abandoned. If this suggestion exceeds the CFPB's power to interpret the statute, the assumption of validity provision is ripe for legislative action.

D. CONGRESS OR THE CFPB SHOULD DIRECT COLLECTORS TO
TREAT ORAL VERIFICATION DEMANDS AS IF
THEY WERE IN WRITING

The survey demonstrates that even consumers who take in the fact that they may request verification often fail to absorb that such requests must be made in writing. Conceivably alternate wording could cure that problem, but we are skeptical. Both the *ZemECKis* notice and the NCLC notice stated twice that a consumer had to notify the collector in writing, seemingly without much effect.

Nothing in the statute compels collectors to verify debts in response to an oral request. As a result, consumers may be misled into thinking that they have demanded something that they have not in fact met the requirements for asserting. Congress or the CFPB should oblige collectors to act on oral demands for verification, as well as through other forms of communication regularly used in the electronic age, such as texts and email and on web sites.

The CFPB's outline of its proposal indicates that it is considering requiring a "tear-off" at the bottom, which consumers could remove from the bottom of the collection letter, fill out, and return.²⁶⁷ This would certainly be an improvement over the current system, which requires consumers either to create their own form or find one elsewhere, such as on the internet. But many people find it more convenient to communicate via telephone call, email, or the internet. In other contexts in which consumers have had to send mailings to obtain a benefit—such as to secure rebates²⁶⁸—they often do not bother. Accordingly, the CFPB should consider alternative ways for consumers to communicate verification requests if the statute can properly be so interpreted—and if not, Congress should amend the statute.

267. See CFPB, *supra* note 22, app. F, 2.

268. See generally Jeff Sovern, *Toward a New Model of Consumer Protection: The Problem of Inflated Transaction Costs*, 47 WM. & MARY L. REV. 1635, 1638–38 n. 5–7 (2006).

E. CONGRESS OR THE CFPB SHOULD CONSIDER STATING IN THE
VALIDATION NOTICE THAT MISSING THE DEADLINE WILL
NOT AFFECT THE CONSUMER'S RIGHTS
TO CONTEST PAYMENT

Our study indicated that more than a third of the respondents believed that if they failed to meet the thirty-day deadline, they would either have to pay a debt they did not owe or would not be able to argue in court that they didn't owe the debt. The courts that said they will disregard idiosyncratic interpretations of validation notices might treat this misconception with disdain.²⁶⁹ But it appears that this particular misunderstanding is common. We do not know how many consumers must share a mistaken interpretation before a court would no longer consider it idiosyncratic—but then, courts that do not survey consumers do not know how widely-shared a particular misunderstanding is either. Our study suggests that courts should be wary of dismissing a particular understanding as bizarre or idiosyncratic, at least until they can be confident of how common that bizarre and idiosyncratic view is.

Respondents who miss the thirty-day deadline may actually find themselves in worse shape by virtue of having received the validation notice, rather than if they had not, because they may be misled into paying the unowed debt by their misconception about the effect of missing the deadline, rather than contesting it. To avoid such confusion, Congress or the CFPB should consider including a statement in the validation notice that missing the deadline does not prevent a consumer from disputing a debt. One concern we have about this is that it will increase the length of validation notices, thus exacerbating the information overload problem, but pending testing, we believe that cost is worth incurring.

F. CONGRESS OR THE CFPB SHOULD CONSIDER REQUIRING
COLLECTORS TO PROVIDE SOME INFORMATION ABOUT
DEBTS EVEN IF CONSUMERS DON'T
REQUEST VERIFICATION

As discussed in Part III, considerable evidence suggests that consumers do not read or understand disclosures. Consequently, no matter how clearly and simply consumers are told about their validation rights, some may not understand them sufficiently well enough to act on them. Certainly nothing in our study gives any confidence that it is possible to communicate validation rights in a way that will reach all consumers. A statute that is intended to protect the least sophisticated or unsophisticated consumer fails in its objectives if it depends on consumers to protect themselves, especially when those consumers lack the ability to do so.²⁷⁰ Accordingly, Congress or the CFPB should consider requiring collectors

269. See *supra* note 213 and accompanying text.

270. See generally Jeff Sovern, *Can Cost-Benefit Analysis Help Consumer Protection Laws? Or at Least Benefit Analysis?* 4 UC IRVINE L. REV. 1241, 1243–44 (2014).

to undertake at least some aspects of verification even if the consumer does not so request.²⁷¹ It appears that the CFPB is indeed considering doing so.²⁷²

Some states already impose such obligations upon collectors. For example, New York obliges collectors to provide an itemized accounting of the debt, including interest and other fees accrued after the debt was charged off.²⁷³ Such requirements reduce the need for consumers to request verification. On the other hand, they may increase the expense of collecting debts. Consequently, we do no more than raise the possibility of exploration of the issue.

G. THE CFPB SHOULD CONSIDER CREATING AND REQUIRING A MODEL VALIDATION NOTICE

Regulators, including the CFPB, have created a variety of model consumer disclosures.²⁷⁴ Among the advantages of model forms is that they make it harder on a discloser who would rather the consumer overlook the disclosure. Model forms also reduce uncertainty about how to comply with statutory directives, and that reduction may also result in less litigation over whether a particular form complies. While model forms reduce the room for creativity, validation notices do not seem like a good outlet for the use of imagination. But model forms that still permit collectors to use lengthy dunning letters or language that comes close to threatening litigation or other anxiety-provoking conduct are not, by themselves, likely to be enough. In July 2016, the CFPB indicated that it was considering such a model form.²⁷⁵

H. COURTS SHOULD CONSIDER REQUIRING COLLECTORS TO DEMONSTRATE THAT CONSUMERS TAKE IN AND UNDERSTAND THEIR VALIDATION RIGHTS

Until CFPB regulations take effect, courts will continue to grapple with validation notices. Courts state that validation notices should “convey effectively” the required information and that they focus on practical ef-

271. See Federal Trade Commission, *Collecting Consumer Debts: The Challenges of Change* 26 (2009), <https://www.ftc.gov/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report> [<https://perma.cc/NQY3-FV3K>] (“[T]he FTC recommends that validation notices include: . . . an itemization of the principal, total interest, and total fees that make up the debt.”). But see ACA INTERNATIONAL, *Comments on the Advance Notice of Proposed Rulemaking on Debt Collection* 12 (Feb. 27, 2014), <http://www.acainternational.org/assets/rulemaking/acacomment-debtcollection-anpr-2-27-14-final.pdf> [<https://perma.cc/9Y9E-G4QE>] (“[A]dditional information and documentation is unwarranted when sending the validation notice and would be unduly burdensome.”).

272. See CFPB, *supra* note 22, at 16.

273. See 23 NYCRR § 1.2(b).

274. See, e.g., 12 CFR pt. 226, app. G. (open-end credit model forms); 12 CFR pt. 226, app. H. (closed-end credit model forms).

275. CFPB, *supra* note 22, at 16. Kathleen Engel has suggested that the Bureau require collectors to test their notices before using them and make the test results public. See e-mail from Kathleen Engel to Jeff Sovern (July 27, 2016) (on file with the author).

fect.²⁷⁶ But our survey raises serious doubts about whether existing validation notices accomplish that goal, and absent other survey evidence, courts cannot determine whether other validation notices do so. That leaves open the question of what courts should require of collectors until the anticipated regulations take effect.

One option would be to continue the existing approach. But that would overlook the problems with validation notices and essentially write the requirement that validation notices be effective out of the law. Another option would be to adopt an approach similar to the FTC's Advertising Substantiation Policy.²⁷⁷ That policy obliges advertisers making claims about their products to have a reasonable basis for the claims before they disseminate the advertisement. Rather than guessing or requiring consumers to demonstrate after the fact that a validation notice has not succeeded, courts should require collectors to have evidence before they use a validation notice that it will achieve Congress's goals. Otherwise, collectors will continue to receive a free pass for frustrating the legislative goals.

VIII. CONCLUSION

Our survey of consumers raises serious questions about the effectiveness of the validation notice the Seventh Circuit approved in *Zemeckis*. On most questions, respondents did not show statistically significantly better understanding of the validation notice in the *Zemeckis* letter than on a letter without any validation notice at all. More than half the *Zemeckis* letter respondents seemed confused by the phrasing about the assumption of validity. About a quarter did not realize they could request verification of the debt, and nearly all who did so realize also thought that an oral request for verification was sufficient even though both the statute and notice specify that a writing is required. If the *Zemeckis* notice were measured by the FTC's standards for finding deception in surveys, it would be found deceptive.

To make matters worse, our study may have understated the error rate in the population the statute is intended to protect. Though the cases interpreting the statute purport to measure the notice's effectiveness by asking if the notice would confuse the least sophisticated or unsophisticated consumer, our survey did not exclude people based on their levels of sophistication. Had we been able to do so, our questions might have shown even greater levels of confusion among those the courts say the statute is intended to protect.

The news is not all bad. Respondents shown a notice indicating that a written statement disputing the debt would cause the collector to inter-

276. See *infra* notes 197, 209 and accompanying text.

277. See F.T.C., Policy Statement Regarding Advertising Substantiation *appended to* Thompson Med. Co., 104 F.T.C. 648, 839 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987), <https://www.ftc.gov/public-statements/1983/03/ftc-policy-statement-regarding-advertising-substantiation> [<https://perma.cc/7HK7-UEL3>].

rupt collection efforts were significantly more likely to realize that the letter so stated than respondents shown the *Zemeckis* letter, suggesting that such a disclosure can be effectively conveyed to at least some consumers. Even that notice, however, seemed to mislead respondents into thinking a telephonic notice would be sufficient, when a written notice was required.

Unfortunately, rather than relying on surveys to measure consumer confusion, courts have generally interpreted validation notices by making unrealistic assumptions about what consumers take away from such notices. The result is that courts approve debt collection letters containing validation notices that do little better than such letters without validation notices, while imposing liability on collectors for validation notices for defects that may or may not actually impair understanding. Consequently, collectors can avoid liability by providing validation notices that seemingly satisfy the statute without accomplishing the statute's purpose of enabling consumers to protect themselves. We urge courts to consider our findings and recommendations in determining when to impose liability under the FDCPA for failure to meet validation notice obligations and to use survey evidence when it is available.

The CFPB is considering promulgating regulations to improve the manner in which collectors convey the validation notice. We recommend that in so doing, the Bureau explore correcting the problems our study suggests exist with validation notices.

APPENDIX A

1. St. John's University School of Law is conducting a survey into how well consumers understand a letter asking a consumer to pay a debt. Thank you for taking the time to participate in this research. First, we are going to show you a letter. Then we will ask you some questions about it. If you need to make the print size bigger, please use your browser's controls to do so. Before we can ask you the questions, we are required to show you a consent form and ask you to read it and click on the box that says you are willing to answer our questions. By clicking "Yes" below, you agree to participate in this survey of your own free will. You may refuse to participate or withdraw at any time. If at any time you decide not to participate, you will not be penalized in any way, except that you will not get paid for your time. You have the right to skip a question. You have a right not to answer any question you prefer not to answer. There are no known risks associated with your participation in this research beyond the risks of everyday life. There are two benefits you will receive if you complete the survey. First, you will receive the promised benefit after you complete the survey. Second, your answers may help consumers and researchers. Your identity will remain confidential. We will not make public your participation. Is there anything about the study or your participation in it that is unclear or you do not understand? If so, please contact Professor Jeff Sovern at 718-990-6429 or sovernj@stjohns.edu or through St. John's University at 8000 Utopia Parkway, Jamaica, New York, 11439. If you have any questions about your rights as a research participant, please contact the University's Institutional Review Board at 718-990-1440.

Do you consent to answer the questions?

☐ Yes

2. We appreciate your willingness to take this survey. We will start by asking you some questions about you. Please tell us your age.

3. What is your gender?

☐ Male

☐ Female

4. If you wish to say more about your answer, you may do so here

5. Which is the highest level of education you have attained?

☐ Did not graduate from high school.

☐ High school graduate or GED.

☐ Some college or post-secondary work.

☐ College graduate.

☐ Post-graduate work.

6. If you wish to say more about your answer, you may do so here:

7. Which racial or ethnic group in this list best describes you? You can select more than one.

- ☐ White (including Middle Eastern or Arab)
- ☐ Black/African-American
- ☐ Hispanic/Latino/a
- ☐ Asian
- ☐ American Indian/Alaska Native
- ☐ Native Hawaiian/Other Pacific Islander
- ☐ Other
- ☐ Prefer not to answer.

8. If you wish to say more about your answer, you may do so here:

9. We will now ask about your total annual household income.

- ☐ Less than \$24,000.
- ☐ At least \$24,000 but less than \$51,000.
- ☐ At least \$51,000 but less than \$81,000.
- ☐ At least \$81,000 but less than \$144,000.
- ☐ At least \$144,000.
- ☐ Prefer not to answer.

10. What state do you live in?

11. Imagine that you received the following letter addressed to you. The letter is two pages. Please give it the exact same amount of attention you would if it had just been mailed to you. This is not a test. Rather, we want to learn how you and other consumers interpret such letters in your everyday life. After you are finished with each page, please click the arrow at the bottom right of the survey to move forward.

[The text of the letter appeared at this point, varying according to which condition the respondent saw.]

PO Box XXXXXX, Dept. XXXX
Anywhere, USA

ABC

CREDIT&COLLECTIONCORP

February 23, 2015

XYZ Credit Card Company
PO Box XXXXX
Anywhere, USA
1-XXX XXX-XXXX



AUTO**MIXED AADC 350
[Your name]

86

Client	XYZ Credit Card Company
Account No.	XXXXXXXX
Global ID	XXX
Amount Due	\$1708.40

Your delinquent account now meets XYZ Credit Card Company’s guidelines for legal action if it charges off.

Your account has been placed with ABC Credit & Collection Corp., a collection agency. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

XYZ Credit Card Company has not yet made a decision to file a lawsuit, there is still time for you to work with us in resolving this matter.

If we cannot get this matter resolved soon and your account charges off, XYZ Credit Card Company may be forced to take legal action. This could result in a judgment against you. If XYZ Credit Card Company obtains a judgment against you, they can take whatever actions they deem advisable to enforce it. In addition, judgments are a matter of public record, and employers, landlords, and other creditors can check your credit and see that the judgment has been taken against you.

It is not too late to fix this situation: We urge you to act now.

Call our office today at 1-XXX XXX-XXXX to make arrangements to resolve this matter, if you cannot make your minimum payment, we can go over the options available to you.

Prior to any judgment, you will be notified and able to raise defenses. XYZ Credit Card Company’s remedies will be subject to applicable property exemptions.

Ms. Smith
1-XXX XXX-XXXX

If you would like to make your payment directly to XYZ Credit Card Company, please visit our website.

SEE NEXT PAGE FOR IMPORTANT INFORMATION.
Detach and Return Bottom Portion with Payment

Please print address changes below using blue or black ink.

Street		Apt. #
City	State	ZIP
Home Phone		Alternate Phone
[Your name]		

Total Balance: \$1708.40
Total Enclosed: _____



INFORMATION NOTICE OF YOUR RIGHTS UNDER FEDERAL LAW

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment, if any, and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from the current creditor.

WE ARE ACTING AS A DEBT COLLECTOR. THIS LETTER IS AN ATTEMPT TO COLLECT THIS DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

We are required under state law to give you the following notices, some of which refer to rights you also have under federal law. This list does not contain a complete list of the rights which consumers or commercial businesses have under state and federal law. Note the following which apply in the specified states:

STATE	APPLICABLE NOTICE
California	The state Rosenthal Fair Debt Collection Practices Act and the Federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov .
Colorado	A consumer has the right to request in writing that a debt collection or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt. FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.COLORADOATTORNEYGENERAL.GOV/CA .
Massachusetts	NOTICE OF IMPORTANT RIGHTS: YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT MAY NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN DAYS OF SUCH REQUEST, YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE DEBT COLLECTOR. ABC Credit & Collection Corp. Office in Massachusetts: Anywhere, USA. Hours of operation: Monday to Thursday 10:00am - 3:00pm.
Michigan	Michigan requires us to give the following notice, however, all consumers have these rights under federal law: The failure of a consumer to dispute the validity of a debt shall not be construed as an admission of liability by the consumer.
Minnesota	This collection agency is licensed by the Minnesota Department of Commerce.
New York	New York City Department of Consumer Affairs license numbers are -XXXX. In accordance with tile requirements of NY Code Section 20-493.1 we are disclosing that ABC Credit and Collection Corporation's contact person is Mr. Jones, telephone number 1-XXX XXX-XXXX.
North Carolina	North Carolina Department of insurance permit numbers are -XXXX.
Tennessee	This collection agency is licensed by the Collection Service Board of the Department of Commerce and Insurance. Tenn. Code. Ann ss 62-20-III(b).
Washington	ABC Credit & Collection Corp. licensed address in Washington is: Anywhere, USA.
Wisconsin	This collection agency is licensed by the Administrator of the Division of Banking, Anywhere, U

OFFICE HOURS:
Sunday: 9:00 am EST- 3:00 pm EST
Monday- Thursday: 8:30 am EST- 9:00 pm EST Friday: 8:30 am EST- 6:00 pm EST
Saturday: 9:00 am EST- 3:00 pm EST

12. What kind of document did you just see?

- ☐ A cell phone contract.
- ☐ A letter summoning you to serve on a jury.
- ☐ A letter requesting payment of a credit card bill.
- ☐ An offer of a rebate for buying a television

13. What percentage of the letter did you read and understand?

14. The letter you just saw said many things. We would like to know what you remember. Please put down a word or phrase for as many things as you recall. You do not need to repeat the actual words. For example, if you remember seeing the amount of the debt, you can put that down.

15. The letter referred to a credit card debt. Suppose you had never had a credit card with this company and you did not owe that debt. What, if anything, would you do? If you would do more than one thing, please list all the things you would do, in the order in which you would do them.

16. Which of the following did the letter say? Please click as many as you think correct.

- ☐ You have a right to know how much of the amount you owe is interest.
- ☐ ABC will send you verification of the debt if you ask for it.
- ☐ You may dispute the validity of the debt.
- ☐ You have a right to be told the date you last charged something on the credit card.
- ☐ If you don't dispute the debt within 30 days, ABC will assume the debt is valid.
- ☐ All of the above.
- ☐ None of the above.

17. If you wish to say more about your answer, you may do so here.

18. Now we want to ask a question about what you would do if you received a letter from a collector trying to collect a debt. Suppose the letter says that if you mailed a letter to the collector saying you didn't owe the debt and wanted them to send you verification of the debt, they would. Suppose also you believe you didn't owe the debt. Would you mail a letter to the collector saying you didn't owe the debt and requesting verification of the debt?

- ☐ Yes
- ☐ No
- ☐ I don't know.

19. If you wish to say more about your answer, you may do so here.

20. What do you think verification of the debt means?

21. Suppose the day after you got this letter, you had mailed the collector your own letter requesting verification of the debt. Which of the following would the collector have to do? Please click as many as you think correct.

- ☐ The collector would have to check with the original credit card company.
- ☐ The collector would have to conduct a reasonable investigation to determine if the debt was valid.
- ☐ The collector would have to provide you the name of the original creditor.
- ☐ The collector would have to tell you the date and amount of your last payment on the credit card.
- ☐ The collector would have to give you a copy of the last statement for the credit card.
- ☐ The collector would have to give you a copy of the original contract or credit application with your signature.
- ☐ The collector would have to tell you the last date an amount other than interest was charged to the account and how much that amount was.
- ☐ The collector would have to tell you the original account number.
- ☐ The collector would have to tell you the date the account was opened.
- ☐ The collector would have to tell you the name and address of the current owner of the debt.
- ☐ The collector would have to tell you how much of the debt consisted of fees and interest.
- ☐ All of the above.
- ☐ None of the above.
- ☐ I don't know.

22. If you wish to say more about your answer, you may do so here:

23. Suppose you did nothing after receiving ABC's letter. What, if anything, do you think ABC would do? If you think ABC would do more than one thing, please list everything you think they would do.

24. Suppose that you had written to ABC Debt Collectors the day after you received the letter to say that you didn't owe the money the letter says you owe. You also said that you wanted ABC to verify the debt. You never heard back from ABC. Two months later, you received a letter from another company called DEF Debt Collectors. DEF asked for payment of the same debt the ABC letter had asked for. What, if anything, would you do in response to the DEF letter?

25. Now we want to ask some questions about you. Have you ever received a request for payment from a debt collector?

- ☐ Yes
- ☐ No
- ☐ I don't know.

26. If you wish to say more about your answer, you may do so here:

27. Are you an attorney or law student?

- ☐ Yes
- ☐ No

28. If you wish to say more about your answer, you may do so here:

29. Have you ever worked as or for a debt collector?

- ☐ Yes
- ☐ No

30. If you wish to say more about your answer, you may do so here:

31. Now that you have answered questions about the letter you saw, we would like to show you the letter again and then ask you some more questions. This time, you will be able to go back to the letter as often as you want while answering the questions. Thank you again for taking the time to take our survey. First, here is the letter again:

[The text of the letter appeared at this point, varying according to which condition the respondent saw.]

32. Starting with the next screen, you will see some of the questions again, as well as new questions.

33. Suppose the day after you got this letter, you *called* ABC Debt Collectors to tell them that you had never had that credit card. You also said you didn't owe the money the letter said you did. (If you wish to see the letter again, please click here for the first page and here for the second. If the letter is too small for comfortable reading, please use your browser control to zoom in. You also have the option of hitting the back button to review the earlier presentation of the letter.)

	Yes (1)	No (2)	I don't know (3)	If you wish to say more about your answer, you may do so here: (1)
According to the letter from ABC, would ABC assume the debt was valid? (1)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
According to the letter from ABC, would ABC send you verification of the debt? (2)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
According to the letter from ABC, would ABC stop trying to collect the debt until it mails you a response to your statement? (3)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
Suppose you also told ABC you couldn't afford an attorney. Did the letter from ABC say that if you can't afford an attorney, one would be appointed to represent you for free? (4)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

34. Please click "No" from the answers below:

- ☐ Yes
☐ No
☐ I don't know.

If No Is Not Selected, Then Skip To End of Block

35. Instead of calling, suppose the day after you got this letter, you mailed your own letter to ABC Debt Collectors to tell them that you had never had that credit card. You also said you didn't owe the money the letter said you did. (If you wish to see the letter again, please click [here](#) for the first page and [here](#) for the second. If the letter is too small for comfortable reading, please use your browser control to zoom in. You also have the option of hitting the back button to review the earlier presentation of the letter.)

	Yes (1)	No (2)	I don't know (3)	If you wish to say more about your answer, you may do so here: (1)
According to the letter from ABC, would ABC assume the debt was valid? (1)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
According to the letter from ABC, would ABC send you verification of the debt? (2)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
According to the letter from ABC, would ABC stop trying to collect the debt until it mails you a response to your statement? (3)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
Suppose you also told ABC you couldn't afford an attorney. Did the letter from ABC say that if you can't afford an attorney, one would be appointed to represent you for free? (4)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

36. Suppose that instead of writing the day after you got ABC's letter, you mailed your own letter to ABC Debt Collectors 25 days after you got ABC's letter. You told them that you had never had that credit card. You also said you didn't owe the money the letter said you did. (If you wish to see the letter again, please click [here](#) for the first page and [here](#) for the second. If the letter is too small for comfortable reading, please use your browser control to zoom in. You also have the option of hitting the back button to review the earlier presentation of the letter.)

	Yes (1)	No (2)	I don't know (3)	If you wish to say more about your answer, you may do so here: (1)
According to the letter from ABC, would ABC assume the debt was valid? (1)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
According to the letter from ABC, would ABC send you verification of the debt? (2)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
According to the letter from ABC, would ABC stop trying to collect the debt until it mails you a response to your statement? (3)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
Suppose you also told ABC you couldn't afford an attorney. Did the letter from ABC say that if you can't afford an attorney, one would be appointed to represent you for free? (4)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

37. Now suppose that 35 days after you got this letter, you mailed your own letter to ABC Debt Collectors to tell them that you had never had that credit card. You also said you didn't owe the money the letter said you did. (If you wish to see the letter again, please click [here](#) for the first page and [here](#) for the second. If the letter is too small for comfortable reading, please use your browser control to zoom in. You also have the option of hitting the back button to review the earlier presentation of the letter.)

	Yes (1)	No (2)	I don't know (3)	If you wish to say more about your answer, you may do so here: (1)
According to the letter from ABC, would ABC assume the debt was valid? (1)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
According to the letter from ABC, would ABC send you verification of the debt? (2)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
According to the letter from ABC, would ABC stop trying to collect the debt until it mails you a response to your statement? (3)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
Suppose you also told ABC you couldn't afford an attorney. Did the letter from ABC say that if you can't afford an attorney, one would be appointed to represent you for free? (4)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

38. Which of the following did the letter say? Please click as many as you think correct. (If you wish to see the letter again, please click [here](#) for the first page and [here](#) for the second. If the letter is too small for comfortable reading, please use your browser control to zoom in. You also have the option of hitting the back button to review the earlier presentation of the letter.)

- ☐ You have a right to know how much of the amount you owe is interest.
- ☐ ABC will send you verification of the debt if you ask for it.
- ☐ You may dispute the validity of the debt.
- ☐ You have a right to be told the date you last charged something on the credit card.
- ☐ All of the above.
- ☐ None of the above.
- ☐ If you don't dispute the debt within 30 days, ABC will assume the debt is valid.

39. If you wish to say more about your answer, you may do so [here](#):

40. Suppose you wanted to notify ABC Debt Collectors that you want ABC to verify the debt. According to the letter, how long would you have to tell ABC that you want ABC to verify the debt after you receive its letter? (If you wish to see the letter again, please click [here](#) for the first page and [here](#) for the second. If the letter is too small for comfortable reading, please use your browser control to zoom in. You also have the option of hitting the back button to review the earlier presentation of the letter.)

- ☐ 1 week.
- ☐ 2 weeks
- ☐ 3 weeks
- ☐ 30 days
- ☐ 60 days
- ☐ A different amount of time (you may state the amount of time in the space for comments below)
- ☐ The letter does not state a deadline.
- ☐ I don't know.

41. If you wish to say more about your answer, you may do so [here](#):

42. Suppose that you don't owe the money that the letter says you owe but you missed the deadline stated in the letter for notifying ABC Debt Collectors that you dispute the validity of the debt. Which of the following do you think is correct? Please select as many as you think correct. (If you wish to see the letter again, please click [here](#) for the first page and [here](#) for the second. If the letter is too small for comfortable reading, please use your browser control to zoom in.

You also have the option of hitting the back button to review the earlier presentation of the letter.)

- ☐ ABC Debt Collectors would assume that the debt was valid.
- ☐ I would have to pay the debt.
- ☐ If ABC Debt Collectors sued me, I could not argue in court that I didn't owe the money.
- ☐ All of the above.
- ☐ None of the above is correct.
- ☐ I don't know.

43. If you wish to say more about your answer, you may do so here:

44. Do you think you would lose any legal rights if you waited 25 days to communicate with ABC? (If you wish to see the letter again, please click [here](#) for the first page and [here](#) for the second. If the letter is too small for comfortable reading, please use your browser control to zoom in. You also have the option of hitting the back button to review the earlier presentation of the letter.)

- ☐ Yes
- ☐ No
- ☐ I don't know.

45. If you think you would lose legal rights, what rights?

46. Do you think you would lose any legal rights if you waited 35 days to communicate with ABC? (If you wish to see the letter again, please click [here](#) for the first page and [here](#) for the second. If the letter is too small for comfortable reading, please use your browser control to zoom in. You also have the option of hitting the back button to review the earlier presentation of the letter.)

- ☐ Yes
- ☐ No
- ☐ I don't know.

47. If you think you would lose legal rights, what rights?

48. What, if anything, did the letter say about XYZ's intention to sue if you don't pay the debt? (If you wish to see the letter again, please click [here](#) for the first page and [here](#) for the second. If the letter is too small for comfortable reading, please use your browser control to zoom in. You also have the option of hitting the back button to review the earlier presentation of the letter.)

- ☐ The letter did not say anything about either XYZ suing.
- ☐ The letter said XYZ would sue if I don't pay the debt.
- ☐ The letter said XYZ has not yet made a decision to sue.
- ☐ The letter said XYZ would not sue.
- ☐ I don't know.

49. If you wish to say more about your answer, you may do so [here](#):

50. Did the letter say anything directed to residents of your state? (If you wish to see the letter again, please click [here](#) for the first page and [here](#) for the second. If the letter is too small for comfortable reading, please use your browser control to zoom in. You also have the option of hitting the back button to review the earlier presentation of the letter.)

- ☐ Yes
- ☐ No
- ☐ I don't know

51. If the letter said anything directed to residents of your state, what was it? (If you wish to see the letter again, please click [here](#) for the first page and [here](#) for the second. If the letter is too small for comfortable reading, please use your browser control to zoom in. You also have the option of hitting the back button to review the earlier presentation of the letter.)

PO Box XXXXXX, Dept. XXXX
Anywhere, USA

APPENDIX B

ABC

CREDIT&COLLECTIONCORP

XYZ Credit Card Company
PO Box XXXXX
Anywhere, USA
1-XXX XXX-XXXX

February 23, 2015

|||||

AUTO**MIXED AADC 350

[Your name]

86

Client	XYZ Credit Card Company
Account No.	XXXXXXXX
Global ID	XXX
Amount Due	\$1708.40

Your delinquent account now meets XYZ Credit Card Company’s guidelines for legal action if it charges off.

Your account has been placed with ABC Credit & Collection Corp., a collection agency. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

XYZ Credit Card Company has not yet made a decision to file a lawsuit, there is still time for you to work with us in resolving this matter.

If we cannot get this matter resolved soon and your account charges off, XYZ Credit Card Company may be forced to take legal action. This could result in a judgment against you. If XYZ Credit Card Company obtains a judgment against you, they can take whatever actions they deem advisable to enforce it. In addition, judgments are a matter of public record, and employers, landlords, and other creditors can check your credit and see that the judgment has been taken against you.

It is not too late to fix this situation: We urge you to act now.

Call our office today at 1-XXX XXX-XXXX to make arrangements to resolve this matter, if you cannot make your minimum payment, we can go over the options available to you.

Prior to any judgment, you will be notified and able to raise defenses. XYZ Credit Card Company’s remedies will be subject to applicable property exemptions.

Ms. Smith
1-XXX XXX-XXXX

If you would like to make your payment directly to XYZ Credit Card Company, please visit our website.

SEE NEXT PAGE FOR IMPORTANT INFORMATION.

Detach and Return Bottom Portion with Payment

Please print address changes below using blue or black ink.

Street

Apt. #

City

State

ZIP

Home Phone

Alternate Phone

[Your name]

Total Balance: \$1708.40

Total Enclosed: _____

|||||

718HC

1-XXX XXX-XXXX

INFORMATION NOTICE OF YOUR RIGHTS UNDER FEDERAL LAW

You can dispute this debt at any time, either orally or in writing.

If you write to us within thirty days of when you get this letter, regarding:

- (1) A question or a dispute about all or any part of the debt, or
- (2) A request for the name and address of the original creditor

we will stop collecting until we mail you our response.

Also, we will stop calling and writing you if you tell us in writing that you refuse to pay or want us to stop calling and writing.

WE ARE ACTING AS A DEBT COLLECTOR. THIS LETTER IS AN ATTEMPT TO COLLECT THIS DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

We are required under state law to give you the following notices, some of which refer to rights you also have under federal law. This list does not contain a complete list of the rights which consumers or commercial businesses have under state and federal law. Note the following which apply in the specified states:

STATE	APPLICABLE NOTICE
California	The state Rosenthal Fair Debt Collection Practices Act and the Federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov .
Colorado	A consumer has the right to request in writing that a debt collection or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt. FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.COLORADOATTORNEYGENERAL.GOV/CA .
Massachusetts	NOTICE OF IMPORTANT RIGHTS: YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT MAY NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN DAYS OF SUCH REQUEST, YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE DEBT COLLECTOR.
ABC Credit & Collection Corp. Office in Massachusetts: Anywhere, USA. Hours of operation: Monday to Thursday 10:00am - 3:00pm.	
Michigan	Michigan requires us to give the following notice, however, all consumers have these rights under federal law: The failure of a consumer to dispute the validity of a debt shall not be construed as an admission of liability by the consumer.
Minnesota	This collection agency is licensed by the Minnesota Department of Commerce.
New York	New York City Department of Consumer Affairs license numbers are -XXXX. In accordance with tile requirements of NY Code Section 20-493.1 we are disclosing that ABC Credit and Collection Corporation's contact person is Mr. Jones, telephone number 1-XXX XXX-XXXX.
North Carolina	North Carolina Department of insurance permit numbers are -XXXX.
Tennessee	This collection agency is licensed by the Collection Service Board of the Department of Commerce and Insurance. Tenn. Code. Ann ss 62-20-III(b).
Washington	ABC Credit & Collection Corp. licensed address in Washington is: Anywhere, USA.
Wisconsin	This collection agency is licensed by the Administrator of the Division of Banking, Anywhere, USA.

OFFICE HOURS:

Sunday: 9:00 am EST- 3:00 pm EST

M Monday- Thursday: 8:30 am EST- 9:00 pm EST Friday: 8:30 am EST- 6:00 pm EST

Saturday: 9:00 am EST- 3:00 pm EST

PO Box XXXXXX, Dept. XXXX
Anywhere, USA

APPENDIX C

ABC

CREDIT&COLLECTIONCORP

XYZ Credit Card Company
PO Box XXXXX
Anywhere, USA
1-XXX XXX-XXXX

February 23, 2015

86

ClientXYZ Credit Card Company

Account No. XXXXXXXX

Global ID XXX

Amount Due\$1708.40

86

ClientXYZ Credit Card Company

Account No. XXXXXXXX

Global ID XXX

Amount Due\$1708.40

Your delinquent account now meets XYZ Credit Card Company’s guidelines for legal action if it charges off.

Your account has been placed with ABC Credit & Collection Corp., a collection agency. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

XYZ Credit Card Company has not yet made a decision to file a lawsuit, there is still time for you to work with us in resolving this matter.

If we cannot get this matter resolved soon and your account charges off, XYZ Credit Card Company may be forced to take legal action. This could result in a judgment against you. If XYZ Credit Card Company obtains a judgment against you, they can take whatever actions they deem advisable to enforce it. In addition, judgments are a matter of public record, and employers, landlords, and other creditors can check your credit and see that the judgment has been taken against you.

It is not too late to fix this situation: We urge you to act now.

Call our office today at 1-XXX XXX-XXXX to make arrangements to resolve this matter, if you cannot make your minimum payment, we can go over the options available to you.

Prior to any judgment, you will be notified and able to raise defenses. XYZ Credit Card Company’s remedies will be subject to applicable property exemptions.

Ms. Smith
1-XXX XXX-XXXX

If you would like to make your payment directly to XYZ Credit Card Company, please visit our website.

SEE NEXT PAGE FOR IMPORTANT INFORMATION.

Detach and Return Bottom Portion with Payment

Please print address changes below using blue or black ink.

StreetApt. #

CityStateZIP

Home PhoneAlternate Phone

Total Balance: \$1708.40

Total Enclosed: _____

718HC

1-XXX XXX-XXXX

INFORMATION NOTICE OF YOUR RIGHTS UNDER FEDERAL LAW

WE ARE ACTING AS A DEBT COLLECTOR. THIS LETTER IS AN ATTEMPT TO COLLECT THIS DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

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Colorado	A consumer has the right to request in writing that a debt collection or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt. FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.COLORADOATTORNEYGENERAL.GOV/CA .
Massachusetts	NOTICE OF IMPORTANT RIGHTS: YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT MAY NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN DAYS OF SUCH REQUEST, YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE DEBT COLLECTOR. ABC Credit & Collection Corp. Office in Massachusetts: Anywhere, USA. Hours of operation: Monday to Thursday 10:00am - 3:00pm.
Michigan	Michigan requires us to give the following notice, however, all consumers have these rights under federal law: The failure of a consumer to dispute the validity of a debt shall not be construed as an admission of liability by the consumer.
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New York	New York City Department of Consumer Affairs license numbers are -XXXX. In accordance with tile requirements of NY Code Section 20-493.1 we are disclosing that ABC Credit and Collection Corporation's contact person is Mr. Jones, telephone number 1-XXX XXX-XXXX.
North Carolina	North Carolina Department of insurance permit numbers are -XXXX.
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Washington	ABC Credit & Collection Corp. licensed address in Washington is: Anywhere, USA.
Wisconsin	This collection agency is licensed by the Administrator of the Division of Banking, Anywhere, USA.

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Saturday: 9:00 am EST- 3:00 pm EST

PO Box XXXXXX, Dept. XXXX
Anywhere, USA

February 23, 2015

|||||

AUTO**MIXED AADC 350
[Your name]

86

ABC

CREDIT&COLLECTIONCORP

XYZ Credit Card Company
PO Box XXXXX
Anywhere, USA
1-XXX XXX-XXXX

Client	XYZ Credit Card Company
Account No.	XXXXXXXX
Global ID	XXX
Amount Due	\$1708.40

Your account with XYZ Credit Card Company has been placed with ABC Credit & Collection Corp., a collection agency. Call our office at 1-XXX XXX-XXXX to make arrangements to resolve this matter, if you cannot make your minimum payment, we can go over the options available to you.

Ms. Smith
1-XXX XXX-XXXX

If you would like to make your payment directly to XYZ Credit Card Company, please visit our website.

INFORMATION NOTICE OF YOUR RIGHTS UNDER FEDERAL LAW

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment, if any, and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from the current creditor.

SEE NEXT PAGE FOR IMPORTANT INFORMATION.
Detach and Return Bottom Portion with Payment

Please print address changes below using blue or black ink.

Street

Apt. #

City

State

ZIP

Home Phone

Alternate Phone

Total Balance: \$1708.40

Total Enclosed: _____



[Your name]

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M Monday- Thursday: 8:30 am EST- 9:00 pm EST Friday: 8:30 am EST- 6:00 pm EST

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