



August 4, 2020

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

Re: Comments on Debt Collection Practices (Regulation F) Supplemental Proposal on Time-Barred Debt
85 Fed. Reg. 12676, Docket No. CFPB-2020-0010, RIN 3170-AA41

Dear Director Kraninger:

We, the undersigned representatives of Georgia-based organizations, write in opposition to the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") proposed supplemental debt collection rule ("rule"). We represent the interests of the approximately 40% of families, veterans and individuals stuck in a cycle of debt throughout the state of Georgia.¹ While we appreciate that the CFPB's efforts to provide some consumer protections around debt collection, we believe the current proposal for out-of-court collection of time-barred debt ("TBD") is wholly inadequate as the disclosure requirements do not go far enough to protect the economic security of Georgia residents. The Fair Debt Collection Practices Act ("FDCPA") prohibits misleading representations, abusive and unfair practices in debt collection. The proposal would allow consumers to continue to be misled and provide safe harbor for abusive collectors to take advantage of consumers' misunderstanding. The CFPB must go further to stop abusive collectors from attempting to collect old debts after the statute of limitations has expired (debts also known as "time-barred" debts). We urge the CFPB to reject the proposal and, instead, strengthen the rule to fulfill the Bureau's obligation to faithfully implement the FDCPA.

Communications around time-barred debt often confuse consumers. The proposed rule does not go far enough to require clear, understandable TBD disclosures. The CFPB's own consumer testing revealed that 35% of consumers did not understand the time-barred debt disclosures, even under ideal testing conditions.² Comprehension was significantly lower for respondents with lower incomes and less education.³ In one sentence, debt collectors may require the consumer pay a debt, while another sentence informs them that they cannot be sued to recover the debt. These confusing communications from debt collectors leave many consumers unsure of how the debt affects them and what choice is right for them. More testing is needed to develop disclosure language that will be accessible and easy to understand for vulnerable consumers.

¹ In 2019, approximately 40% of adults with a credit report in Georgia had a debt in collection, according to the National Consumer Law Center. See "Debt Collection in the States," *National Consumer Law Center*, available at https://www.nclc.org/images/pdf/debt_collection/fact-sheets/fact-sheet-debt-collection-complaints-in-states.pdf.

² Disclosure of Time-Barred Debt and Revival: Findings from the CFPB's Quantitative Disclosure Testing (February 2020), pp. 20-21, available at https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-quantitative-disclosure-testing_report.pdf.

³ Id.



Lack of written notices further exposes consumers to harm. Under the proposed rule, where validation notices or certain TBD disclosures are provided orally, collectors would not be required to provide written disclosures. In addition to the above-noted consumer comprehension concerns, this oral disclosure provision fails to provide consumers time to seek assistance if necessary. Moreover, oral disclosures make consumers vulnerable to abusive and deceptive debt collection practices. In 2018 alone, the Federal Trade Commission compiled 42,532 complaints from Georgians about abusive, unfair, and deceptive debt collection practices.⁴ 24% of those complaints concerned false representations about debt.⁵ To protect consumers, the CFPB should require written notices for all collections of TBD.

Lack of disclosures may lead to consumer confusion regarding whether a debt is time-barred. The proposed rule requires the debt collector to make, at most, two disclosures that the debt is time-barred. This requirement insufficiently addresses the need for transparent, timely, and adequate communication regarding time-barred debts. The consumer may forget the debt is time-barred or become confused about which debt is time-barred if there are multiple accounts in collection. To remedy this problem, the CFPB should require time-barred debt disclosures in every communication.

Reducing debt collector liability for incorrect disclosures harms consumers. The proposed rule states that collectors can give time-barred debt disclosures on accounts *they believe* are time-barred. The rule further provides that if the debt collector does not sue on the account itself, it is not liable for incorrectly determining the account was time-barred even if someone else later sues on the account. The rule only requires debt collectors who “know or should know” that a debt is time-barred to disclose this to the consumer. Essentially, the rule disincentivizes collectors from making accurate assessments of the status of a debt. As a debt passes from hand to hand, information about the debt decays, enabling fringe collectors to take advantage of the unknown status of the debt to make misleading statements to consumers. To address this problem, the CFPB should hold debt collectors strictly liable for providing inaccurate information. Debt collectors should be responsible for knowing if a debt is time-barred. When in doubt, they should treat the debt as time-barred to protect consumers. The CFPB should require all subsequent debt collectors be bound by a determination that a debt is time-barred.

In summary, the rule as proposed opens Georgians up to confusing representations and potential abuse from debt collectors. Moreover, it protects debt collectors and collection attorneys who pursue debts after the legal deadline or with false, deceptive, or misleading representations. To reduce abuses and protect consumers, we recommend the CFPB:

- Conduct more testing to develop disclosure language to ensure understanding by vulnerable consumers;

⁴ “Georgia: Debt Collection Fact Sheet.” *National Consumer Law Center (2018)*, available at https://www.nclc.org/images/pdf/debt_collection/fact-sheets/Georgia.pdf.

⁵ *Id.*



- Only allow collection of time-barred debt in writing to provide time for consumers to understand disclosures and seek assistance if necessary;
- Require a time-barred debt disclosure by the debt collector in every communication with the consumer;
- Require all future debt collectors to treat the account as time-barred if a prior debt collector provided a time-barred debt disclosure; and
- Hold debt collectors accountable for delivering time-barred debt disclosures by using a strict liability standard rather than a “know or should know” standard.

The current proposal runs counter to the core principle of the FDCPA, to protect consumers from abusive, unfair, and deceptive debt collection practices. For this reason, we urge the Bureau to reject this proposal and start over to ensure any proposed disclosure requirements provide sufficient consumer protections and put the rights and well-being of consumers first.

On behalf of Georgia consumers, thank you for your consideration of these comments.

Sincerely,

Elizabeth B. Coyle
Executive Director

On behalf of these Georgia organizations: