

84 Consumer, Civil and Human Rights, Community and Legal Services Organizations

August 3, 2020

Comment Intake
Bureau of Consumer Financial Protection
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, CFPB Docket CFPB-2020-0010, RIN 3170-AA41

The 84 undersigned consumer, civil and human rights, community and legal services organizations hereby submit these comments on the Consumer Financial Protection Bureau's proposed time-barred debt disclosures.

The proposed rule is a fundamentally misguided effort that will harm consumers and serve only to protect and encourage debt collectors that engage in inherently unfair, deceptive and abusive collection of time-barred debt. The proposal will provide a safe harbor from liability for debtor collectors who take advantage of consumers' misunderstanding and trick people into paying – and potentially reviving – old zombie debts that cannot be collected in court and are no longer affecting their credit reports and credit scores.

Collection of Time-Barred Debt is Fundamentally Abusive and Disclosures Will Not Protect Vulnerable Consumers.

Under the proposal, debt collectors will be communicating two contradictory messages to consumers: (1) they must pay a debt, and (2) nothing will happen to them if they do not, and in fact making a payment could harm them by giving the collector renewed permission to sue them. The first message – pressure to pay – will be communicated loudly, insistently and repeatedly in multiple communications by the collector. The second one will be short, scripted, and only in the initial communication.

Consumers will not understand why they are being contacted about a debt that is too old to sue on or how making a small payment or acknowledgement could end up reviving the statute of limitations on a debt. Rather, aggressive debt collectors will be able to comply with the letter of the disclosure requirements while continuing to use high pressure collection tactics that overshadow any disclosures. Consumers will be pushed to make payments that compromise their ability to meet current expenses such as rent or medical care, while opening themselves up to lawsuits on ancient debts – many of which may even be inaccurate and may not even be owed.

The CFPB's consumer testing confirms that, even in the unrealistic setting of paid testers who are instructed to read disclosure language, a third of consumers – more than half in some scenarios – did not understand the disclosure. Comprehension was significantly lower for respondents with lower incomes and less education. The CFPB itself acknowledges that

consumers are even less likely to understand when receiving the disclosure in real life. The CFPB also did not test oral disclosures, even though the proposal allows oral disclosures in some situations.

Many consumers subject to collection of time-barred debt will not even receive disclosures.

Under the CFPB's broader pending debt collection proposal, debt collectors will be allowed to send disclosures electronically without the consumer consent required under federal law. The disclosure could be sent to an old, inactive email given to the original creditor years ago.

The CFPB has even proposed to allow debt collectors to send disclosures through hyperlinks in emails or texts – requiring consumers to ignore warnings that they should never click on hyperlinks in communications from unknown parties. The time-barred debt disclosures could be part of those hyperlinked disclosures.

Similarly, under the proposal, collectors must send the disclosure only if the collector “knows or should know” that a debt is time-barred. This murky standard disincentivizes collectors from knowing the status of the debt. As debt passes from hand to hand, information about the debt decays, and fringe collectors will be able to take advantage of their ignorance to make misleading statements to consumers. Under the CFPB's pending proposal, collectors will even be allowed to sue on these time-barred debts if they claim not to meet the “know or should know” standard. Instead, debt collectors should be responsible for knowing if a debt is time-barred.

Conclusion

To truly protect consumers from abusive collection practices, the CFPB should abandon this proposal and ban collection of time-barred debt in and out of court. If the Bureau continues to allow collection of zombie debt, collection should be in writing only, not orally, with disclosures in every communication.

Moreover, should the CFPB decide to go forward, it should not finalize any proposal without doing further consumer testing under more realistic settings and without studying the effectiveness of disclosures currently required under consent decrees and some state laws. We are confident that real-world testing and research will confirm that time-barred debt disclosures will not protect consumers and will instead only give legal cover to abusive practices by debt collectors.

Americans for Financial Reform Education Fund
Consumer Action
Consumer Federation of America
Consumer Reports
Leadership Conference on Civil & Human Rights
NAACP
National Association of Consumer Advocates
National Center for Law and Economic Justice

National Consumer Law Center (on behalf of its low income clients)
Prosperity Now
Public Citizen
Woodstock Institute
U.S. PIRG Education Fund
Alaska PIRG
Center for Economic Integrity
WHEAT (World Hunger Education Advocacy & Training)
Wildfire: Igniting Community Action to End Poverty in Arizona
Arizona PIRG Education Fund
Arkansans Against Abusive Payday Lending
Center for Responsible Lending
Consumer Federation of California
East Bay Community Law Center
Home Preservation and Prevention Inc. dba HPP Cares
Housing and Economic Rights Advocates
Legal Aid Society of San Diego, Inc.
Public Counsel
Public Law Center
CALPIRG Education Fund
CoPIRG Foundation
Connecticut Legal Services, Inc.
ConnPIRG Education Fund
Tzedek DC
Jacksonville Area Legal Aid, Inc.
Legal Aid Society of Palm Beach County, Inc.
Florida PIRG Education Fund
Atlanta Legal Aid Society, Inc.
Georgia PIRG Education Fund
Legal Aid Chicago
Illinois PIRG Education Fund
Iowa PIRG Education Fund
Kentucky Equal Justice Center
Maine Center for Economic Policy
CASH Campaign of MD
Housing Options & Planning Enterprises, Inc.
Maryland Consumer Rights Coalition
Maryland Legislative Coalition
Public Justice Center
The Woodside Foundation
Maryland PIRG Foundation
Greater Boston Legal Services
MASSPIRG Education Fund
Michigan League for Public Policy
PIRGIM Education Fund (PIRG in Michigan)
MoPIRG Foundation

NHPIRG Education Fund
Consumers League of New Jersey
Legal Services of New Jersey
NJPIRG Law & Policy Center
NMPIRG Education Fund
Empire Justice Center
New York Legal Assistance Group
Charlotte Center for Legal Advocacy
North Carolina Council of Churches
Reinvestment Partners
Reinvestment Partners
NCPIRG Education Fund
Ohio PIRG Education Fund
OSPIRG Foundation (Oregon PIRG)
Community Legal Services of Philadelphia
The One Less Foundation
PennPIRG Education Fund
RIPIRG Education Fund
SC Appleseed Legal Justice Center
Tennessee Citizen Action
United Neighborhood Health Services (dba "Neighborhood Health")
Every Texan
United Way of Southern Cameron County
TexPIRG Education Fund
Legal Aid Justice Center
Virginia Citizens Consumer Council
Virginia Poverty Law Center
Statewide Poverty Action Network
WashPIRG Foundation
WISPIRG Foundation