



August 4, 2020

Kathy Kraninger, Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

RE: Debt Collection Practices (Regulation F) - Docket No. CFPB-2020-0010; RIN 3170-AA41

Dear Director Kraninger:

Consumer reports¹ appreciates the opportunity to comment on the Bureau's supplemental proposed rule regarding debt collection practices.

Amid a global coronavirus pandemic impacting the financial well-being of many Americans², we support federal standards that better inform consumers and strengthen transparency in the debt collection system. In theory, requiring debt collectors to make certain disclosures when collecting time-barred debts is one way to accomplish this. However, the proposed disclosures do not adequately protect consumers from the complexities and subsequent consequences associated with time-barred debt and revival.

Time-barred debts should be uncollectible — period

In our experience talking with consumers and consumer attorneys about their cases, most individuals contacted by a debt collector do not understand time-barred debt or how it operates. This places consumers at a tremendous disadvantage when a debt collector is attempting to collect on a time-barred debt. It is an intimidating process that

¹ Consumer Reports is an expert, independent, non-profit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. Consumer Reports works for pro-consumer policies in the areas of financial services, as well as telecommunications, health care, food and product safety, energy, telecommunications, privacy and data security, and competition and consumer choice, among other issues, in Washington, DC, in the states, and in the marketplace. Consumer Reports is the world's largest independent product-testing organization, using its dozens of labs, auto test center, and survey research department to rate thousands of products and services annually. Founded in 1936, Consumer Reports has 6 million subscribers to its magazine, website, and other publications.

² See Lora Jones, Daniele Palumbo & David Brown, *Coronavirus: A visual guide to the economic impact*, BBC News, June 30, 2020, available at <https://www.bbc.com/news/business-51706225> (The article provides data on how the coronavirus has impacted the stock market, unemployment, furloughs, and hiring.).

is likely to create the false impression that the debt is legally enforceable in court. Consumers do not have to be put in this uncomfortable and confusing position.

The clearest and simplest approach the Bureau could take would be to expressly prohibit all collection attempts on time-barred debt. This includes collection practices in and out of court. Alternatively, debt collectors should be prohibited from suing on a time-barred debt and only be allowed to communicate with a consumer about the debt in writing. During a financial crisis, consumers should not be put in a position to decide between paying off an expired debt or purchasing household necessities.

Disclosures are insufficient to protect consumers

Although we support the concept of model disclosures, the Bureau's current proposal falls short of what is necessary to adequately inform and protect consumers. In the survey conducted by the Bureau, about 35% of survey participants given a notice containing a time-barred debt disclosure incorrectly stated they could be sued on the debt.³ In addition, when revival disclosures were provided, about 30% of participants reported incorrectly that the debtor can't be sued after making a partial payment and about 42% reported incorrectly that the debtor can't be sued after writing the debt collector to acknowledge the debt.⁴ This means that between 30-42% of participants did not understand the proposed disclosures and highlights the fact that more testing needs to be done to identify language that facilitates widespread understanding of time-barred debt.

Further, as the study indicates, disclosure comprehension was significantly lower for participants with less education and lower income.⁵ Also, the study failed to consider the effectiveness of disclosures among minorities, who are disproportionately impacted by debt collection.⁶ We encourage the Bureau to expand their testing to incorporate the impact of disclosures on minority populations.

Disclosures need to cite legal authority

Given the adversarial nature of collection notices, the Bureau should consider implementing language that identifies the legal authority requiring the disclosure. This could add an element of trust that is otherwise lacking in collection notices. For example, Massachusetts' disclosure states, "We are required by regulation of the

³ See *Bureau of Consumer Fin. Prot., Disclosure of Time-Barred Debt and Revival: Findings from the CFPB's Quantitative Disclosure Testing*, Feb. 2020, at appendix table 8, available at https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-quantitative-disclosure-testing_report.pdf.

⁴ *Id.* at appendix table 9-10.

⁵ *Id.* at appendix table 21-22.

⁶ See *Debt in America: An Interactive Map*, The Urban Institute, Dec. 17, 2019, available at https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections (Showing the share of overall debt in collections belonging to communities of color is 42%, whereas, white communities is at 26%).

Massachusetts Attorney General to notify you of the following information.”⁷ Similarly, New York’s disclosure requires the following language, “We are required by regulation of the New York State Department of Financial Services to notify you of the following information.”⁸ We recommend that any disclosure adopted by the Bureau includes language specifying either that federal law or CFPB regulations require the disclosure to be in the notice.

Know or should know standard is flawed; strict liability should be the standard

The Bureau’s proposal regarding time-barred debt is also concerning because it would only require a disclosure when the debt collector “knows or should know” that a debt is time-barred. This standard not only disincentivizes collectors from accurately assessing a debt before communicating with a consumer, but it also exploits consumers who rarely have access to a lawyer to help them determine the status of their debt. Collectors – and their attorneys – are in the best position to determine whether a debt is time-barred under applicable state law. They should be wholly responsible, under a strict liability standard, for knowing if a debt is time-barred before contacting a consumer. In the event that a collector is uncertain about the status of a debt, they should treat it as time-barred and include a disclosure in their communications at a minimum, if they are allowed to pursue the debt at all.

Revival is fundamentally unfair

The revival of a time-barred debt is an inherently unfair practice that entices consumers to acknowledge or make partial payment on a debt without fully understanding the consequences—it renews both the obligation to pay the debt in full and the collector’s right to sue for the debt. Given the severity of revival, the strongest approach would be to prohibit collectors from treating such payments and acknowledgements as a revival of debt. Alternatively, the Bureau should require clear notice of the consequences partial payments and acknowledgements can have. New Mexico’s required disclosures could serve as a model:

“You can renew the debt and start the time for the filing of a lawsuit against you to collect the debt if you do any of the following: make any payment of the debt; sign a paper in which you admit that you owe the debt or in which you make a new promise to pay; sign a paper in which you give up (“waive”) your right to stop the debt collector from suing you in court to collect the debt.”⁹

This kind of plain-language disclosure would help consumers understand the type of actions that would accidentally trigger a lawsuit or otherwise worsen their situation. The Bureau should consider this language along with visual formatting (e.g., a bullet point list) that makes it easy to read.

⁷ Mass Code Regs., tit. 94 7.07(24)(a).

⁸ N.Y. Comp. Codes R. & Regs., tit. 23, 1.3(c).

⁹ N.M. Admin. Code § 12.2.12.9.

Conflicts with State Law Disclosures

Currently, nine states have laws or regulations requiring some version of time-barred debt disclosures.¹⁰ Under the proposed rules, state disclosures would be placed on the reverse side of the notice, while the federal disclosure must appear on the front. This is troublesome for a number of reasons. First, some states like New Mexico require their disclosures to be placed on the front page.¹¹ Second, the content and other aspects of state disclosures may differ from the proposed federal disclosures, potentially creating even more confusion. Lastly, the Bureau failed to study what effect two different disclosures would have on a consumer's ability to understand time-barred debt and revival.

More testing should be done to evaluate how dual disclosures impact consumer comprehension.

Conclusion

With the coronavirus pandemic continuing to impact the economic security of consumers, it is time for the Bureau to reevaluate and promulgate sensible standards that address the current challenges facing the debt collection system. We urge the Bureau to put consumers first and look forward to working on proposed regulations in the future.

Sincerely,



Antonio Carrejo
Policy Counsel

¹⁰ Cal. Civ. Code 1788.52(d); Conn. Gen. Stat. 36a-805(a)(14); Mass Code Regs., tit. 904, 7.07(24); Nev. Rev. Stat. 649.332(2); N.M. Admin. Code 12.2.12.9; N.Y. Comp. Codes R. & Regs. tit. 23, 1.3; N.C. Gen. Stat. 58-70-115; 6 Code of Vt. Rules 031-004-Rule CF 104.05; W. Va. Code 46a-2-128(f).

¹¹ N.M. Admin. Code § 12.2.12.9(B).