

## **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