

The Consumer Financial Protection Bureau (CFPB)'s [supplemental debt collection rulemaking](#) proposes disclosures for consumers when debt collectors attempt to collect after the statute of limitations (the deadline to sue) has expired. These accounts are called time-barred debts.

This document summarizes the proposed disclosures, outlines significant concerns, provides recommendations, and explains how to file comments. **Comments are due August 4, 2020.**

## PROPOSED TIME-BARRED DEBT DISCLOSURES

The CFPB previously [proposed rules](#) to prohibit lawsuits or threat of lawsuits on time-barred debt if debt collectors know or should know that the debt is time-barred. This [supplemental proposal](#) requires debt collectors collecting debt out of court to make disclosures if they know or should know that the debt is time-barred.

Debt collectors comply with the proposed disclosure requirement if they use the appropriate model disclosure or other “substantially similar” disclosures. The proposed model disclosures inform consumers that the debt is time-barred and whether and how the time limit to sue can be restarted (revived) under the relevant state law.

The CFPB proposes [four model disclosures](#) (text of model disclosures in italics):

- **Debt Cannot Be Revived:** *The law limits how long you can be sued for a debt. Because of the age of this debt, we will not sue you for it.*
- **Debt Revived by Payment or Written Acknowledgement:** *The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you make a payment or acknowledge in writing that you owe this debt, then we can sue you to collect it.*
- **Debt Revived by Payment:** *The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you make a payment, then we can sue you to collect it.*
- **Debt Revived by Written Acknowledgement:** *The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you acknowledge in writing that you owe this debt, then we can sue you to collect it.*

## DISCLOSURES WON'T PROTECT VULNERABLE CONSUMERS

Unfortunately, as discussed in the next section, disclosures will not adequately protect vulnerable consumers who 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. Aggressive debt collectors will be able to comply with the letter of the disclosure requirements while continuing to use high pressure collection tactics and limiting the likelihood that consumers will be protected by such disclosures.

The CFPB **must ban collection of time-barred debt in and out of court** in order to protect all consumers from abusive collection of time-barred debt. Alternatively, at a bare minimum, it must prohibit lawsuits on revived debts and limit collections of time-barred debts to only written communications to maximize protections for vulnerable consumers.

## IF RETAINED, DISCLOSURES MUST BE IMPROVED

This section outlines concerns and contains recommendations that highlight how the CFPB can improve the proposed disclosures if they do not adopt the necessary ban.

- **Consumer Comprehension** – In consumer testing, [35% did not understand the time-barred debt disclosure](#), even under ideal testing conditions. Comprehension was significantly lower for [respondents with lower incomes and less education](#).

**Recommendation:** More testing is needed to develop disclosure language that will be understandable by vulnerable consumers.

- **No Real World Testing** – Whether consumers notice, read, understand, and act upon time-barred debt disclosures in the real world is likely to be very different than in ideal testing conditions with paid testers who are instructed to read disclosure language.

**Recommendation:** Evaluate changes in collection rates before and after consent orders or the implementation of state laws requiring time-barred debt disclosures to assess likely effectiveness of disclosures in the real world.

- **Disclosure Might Only Be Given Orally** – Where [validation notices](#) or certain [time-barred debt disclosure](#) are provided orally, collectors would not be required to provide written disclosures. Oral disclosures were never tested, raising questions about consumer comprehension.

**Recommendation:** Only allow collection of time-barred debt in writing to allow time for consumers to understand disclosures and seek assistance if necessary.

- **Collection After Disclosure** – The proposed rule requires the debt collector to make, at most, [two disclosures](#) that the debt is time-barred, but an account may be in collection with that same collector for months after the disclosure. The consumers may forget the debt is time-barred or become confused about which one is time-barred if there are multiple accounts in collection.

**Recommendation:** Require a time-barred debt disclosure in every communication.

- **Disclosure Can Be Incorrect** – Collectors can give time-barred debt disclosures on accounts that they believe are time-barred. As long as that collector does not sue on the account itself, it [is not liable](#) for incorrectly determining that the account was time-barred even if someone else later sues on the account.

**Recommendation:** All subsequent debt collectors should be bound by a determination that a debt is time-barred.

- **When Time Limit is Unclear, Collectors May Not Make Disclosure** -- Debt collectors only need to provide disclosures when they [know or should know](#) that the debt is time barred. They could be collecting a time-barred debt and fail to make disclosures.

**Recommendation:** 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.

- **Consumers May Not Receive Electronic Disclosures** – The original proposed rule would allow debt collectors to provide validation notices electronically in the body of an email or via a hyperlink [without first obtaining E-SIGN Act consent](#) from the consumer. As a result, consumers may not receive the notice or their only time-barred debt disclosure.

**Recommendation:** Require debt collectors to comply with the E-SIGN Act before sending validation notices electronically.

- **Conflicts with State Disclosures** – Nine states and two cities have their own time-barred debt disclosure requirements. The proposed rule says that state disclosures can be delivered [on the back](#) of the validation notice. However, some jurisdictions require their disclosure on the front. Moreover, the content or other aspects of the disclosure may differ, causing confusion for consumers.

**Recommendation:** More testing is needed to evaluate the effects of multiple disclosures on consumer comprehension.

## HOW YOU CAN COMMENT (DEADLINE: AUGUST 4, 2020)

- Email directly to [2020-NPRM-DebtCollection@cfpb.gov](mailto:2020-NPRM-DebtCollection@cfpb.gov).
- Submit comments to [www.regulations.gov](http://www.regulations.gov).
- By mail to Comment Intake-CFPB, 1700 G Street, NW, Washington, DC 20552

Whatever method you choose, be sure to include Docket No. CFPB-2020-0010.

## TOPICS TO ADDRESS IN YOUR COMMENT

- How frequently do you see collection of time-barred debt and alleged revival of time-barred debt?
- Will consumers understand the proposed time-barred debt disclosures?
- How should the CFPB improve its proposed rules for the collection of time-barred debt?

**Questions? Contact April Kuehnhoff ([akuehnhoff@nclc.org](mailto:akuehnhoff@nclc.org)) or Andrea Bopp Stark ([astark@nclc.org](mailto:astark@nclc.org)). For more about the CFPB's debt collection rulemaking, see <https://www.nclc.org/issues/debt-collection-rulemaking-at-the-cfpb.html>.**