



Department of Financial Services

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Governor

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Superintendent

September 17, 2019

Via Regular Mail and Email

Comment Intake – Debt Collection
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552
2019-NPRM-DebtCollection@cfpb.gov

Re: Proposed Rulemaking: Debt Collection Practices, Regulation F
(Docket No. CFPB-2019-0022; RIN 3170-AA41)

Dear Director Kraninger:

I write as Superintendent of the New York Department of Financial Services (“NYDFS”) to submit comments concerning the above-referenced proposed rulemaking of the Consumer Financial Protection Bureau (“CFPB”), which proposes to amend Regulation F, 12 CFR Part 1006, which implements the Fair Debt Collection Practices Act (“FDCPA”), to update Federal rules governing the activities of debt collectors.

Within the notice of proposed rulemaking, the CFPB asserts that the new regulations are intended to clarify the FDCPA’s application to certain communication technologies that did not exist when the FDCPA was enacted in 1977 and which have been the subject of inconsistent court decisions, resulting in legal uncertainty, and additional cost for the industry, as well as increased risk for consumers. The stated aim of this proposed regulation is to provide clarity to the industry and consumers regarding newer communication technologies as well as clarity regarding consumer disclosure requirements. However, because the proposed regulation: (1) significantly expands the available methods of communication without limiting the quantity of those communications; (2) permits debt collectors to use such new communication methods without first seeking the consumer’s consent; and (3) does not require debt collectors to verify in advance that the debt they are attempting to collect on belongs to the person the debt collector contacted, I urge the CFPB to reconsider and to strengthen the regulation to better protect consumers.

NYDFS supervises approximately 2,900 institutions with assets of approximately \$7.3 trillion, including state-chartered, domestic, and foreign banks operating in New York; U.S. and foreign insurance companies operating in New York; and licensed lenders, money transmitters, and other non-bank financial institutions, some of which are also supervised by the CFPB. NYDFS is a

fierce advocate for consumers subject to abusive debt collection practices and has promulgated and enforced strict regulations on collection activities by third-party debt collectors and debt buyers.

Debt collection is a pervasive industry that affects a significant number of Americans every year. Abusive debt collection practices have been found to contribute to a large number of personal bankruptcies, marital instability, loss of jobs, and invasions of individual privacy.¹ In the second quarter of 2019, consumer debt reached a staggering \$13.86 trillion.² About 28 percent of consumers that have a credit file have a trade line listed for a debt that a third party is attempting to collect.³ Student loan debt alone has plagued 45 million borrowers, and outstanding student loan debt has grown to \$1.52 trillion. In New York State, student loan debt was at a staggering \$82 billion in 2015 and continues to increase. In response, on November 14, 2014, NYDFS adopted 23 NYCRR 1, which regulates debt collection by third-party debt collectors and debt buyers. This rule requires debt collectors to: (1) provide additional disclosures beyond what the FDCPA requires;⁴ (2) protect consumers from harmful electronic communications by requiring debt collectors to seek consumers' consent to electronic correspondence before a debt collector may use the medium⁵; and (3) deliver more documentation to consumers that dispute the validity of a charged-off debt or the right of the debt collector to collect on a charged-off debt.⁶

Of the approximately 81,500 complaints about debt collection in 2018,⁷ 13% of complaints were about communication tactics, with many of them about phone communications, while 40% of all complaints, approximately 32,600 complaints, referenced attempts to collect debt not owed.⁸ With so many complaints referencing these common themes that are not reflected in the current proposal of the rules, the CFPB should amend the rule to protect consumers against these patterns of inappropriate behavior.

The notice of proposed rulemaking does not go far enough to protect consumers from harassing and excessive communications, particularly for new methods of communication. While the FDCPA should be updated for new methods of communication not available in 1977, it should do so in a way that accounts for risks that new technologies entail. For example, the proposal would allow sending required documents via hyperlink, thus blessing and normalizing a delivery method frequently used by scammers and hackers. NYDFS has been a leader in protecting consumer data by passing a ground-breaking cybersecurity regulation, and while hyperlinks can

¹ 15 U.S.C.A. § 1692.

² Federal Reserve Bank of New York's Center for Microeconomic Data, *Total Household Debt Climbs for 20th Straight Quarter as Mortgage Debt and Originations Rise* (August 13, 2019), available at <https://www.newyorkfed.org/newsevents/news/research/2019/20190813>.

³ BUREAU OF CONSUMER FINANCIAL PROTECTION, *Fair Debt Collection Practices Act Annual Report 2019* (March 2019), at p. 9, available at https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2019.pdf.

⁴ 23 NYCRR 1 §§ 1.2, 1.3.

⁵ *Id.* at § 1.6.

⁶ *Id.* at § 1.4.

⁷ BUREAU OF CONSUMER FINANCIAL PROTECTION, *supra* note 3, at p. 1.

⁸ *Id.* at p. 16.

be a useful technology, NYDFS does not wish to see regulatory endorsement of their use in a context as urgent as debt collection communications.⁹

Moreover, the regulation must limit the number of times that a collector may use new communication methods. As currently written, a debt collector can leave an unlimited number of messages via email, text, and social media, all without consumers opting in to the medium. And while the proposal's attempt to include a bright line rule for phone calls is a good start, its limit to seven calls within a seven-day period *per* debt leaves open the probable possibility that a consumer has more than one debt and may receive dozens of phone calls a week.

Finally, the rule does not go far enough to protect consumers from collection on debts not owed. The rule should provide additional protections for consumers complaining about collectors attempting to collect debts not owed, for example, by requiring debt collectors to obtain verification of the debt or a copy of the judgment and review it prior to attempting to collect on the debt.

Accordingly, to protect consumers, NYDFS urges the CFPB to work in partnership with New York and other states to formulate standards that adequately protect consumers. It is imperative that consumers are protected against abusive debt collection practices. The current proposal would severely harm the financial futures and social well-being of millions of consumers in New York State and nationwide.

Very truly yours,



Linda A. Lacewell
Superintendent of Financial Services

⁹ Additionally, the Federal Trade Commission has advised consumers to "Never click links, reply to text messages or call numbers you don't recognize" to avoid being a victim of a scam or fraud. See FEDERAL TRADE COMMISSION, *Avoid the Temptation of Smishing Scams* (November 9, 2018), available at <https://www.fcc.gov/avoid-temptation-smishing-scams>.