



Americans for Financial Reform
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Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Submitted electronically to <http://www.regulations.gov>

Re: Advance Notice of Proposed Rulemaking Debt Collection (Regulation F): 12 CFR Part 1006¹, Docket No. CFPB-2013-0033, RIN 3170-AA41

Dear Consumer Financial Protection Bureau:

Americans for Financial Reform and the undersigned consumer, civil rights and community organizations are pleased to submit comments on measures the Consumer Financial Protection Bureau (CFPB) should take to address and prevent debt collection abuses. Unfair, deceptive or abusive debt collection practices impact a substantial portion of the American population. Reforming the debt collection industry is especially important in light of the lingering effects of the financial crisis, which will be with us for years to come.

The Fair Debt Collection Practices Act (FDCPA) contains important protections, and both the Federal Trade Commission (FTC) and now the CFPB have brought a number of enforcement actions. But illegal debt collection practices remain widespread, and additional rules are needed to address newer debt collection problems. We urge you to adopt strong rules to prevent and deter violations of the FDCPA; ensure that collectors have all relevant information; prevent abuses by first party creditors; stop debt buyers and collectors from collecting stale debt; address credit reporting impacts; deal with the special issues posed by medical debt; protect students and servicemembers from abusive debt collections; and prevent forced arbitration clauses from being used as a get-out-of-jail free card.

1. Improve Remedies.

The basic rules of the 1977 FDCPA cover many of the problems that persist today. Despite clear rules and federal enforcement actions, compliance remains a serious problem for

¹ Advance Notice of Public Rulemaking, Bureau of Consumer Financial Protection, 12 CFR Part 1006 [Docket No. CFPB-2013-0033] RIN 3170-AA41, hereinafter referred to as "ANPRM."
http://files.consumerfinance.gov/f/201311_cfpb_anpr_debtcollection.pdf.

many collectors. Clearly, more deterrence is needed, especially for collectors who engage in repeat violations.

The CFPB should clarify that injunctive relief and multiple statutory damages for multiple violations are available remedies for violations of the FDCPA. Currently, a collector who sends a single deceptive notice to a consumer will pay the same statutory penalty as a collector who engages in numerous, egregious harassing and abusive collection efforts. Debt collectors who are deliberately and routinely violating the law have no incentive to deter bad behavior. The costs for complying with the law are higher than the costs for violating the law. Multiple violations should trigger exposure to multiple penalties.

In addition, courts should have the authority in private FDCPA litigation to deter future misconduct with an injunction and the threat of being held in contempt of court. The FTC and the CFPB cannot take enforcement action against every collector, and private enforcement is a critical partner to public efforts. Injunctive relief is especially important for the wide number of small, judgment-proof debt collectors who will not be able to pay significant penalties.

2. Require Documentation about the Debt (Questions 3, 9, 10, 14, 41, 123, 125,126,161,162).

Before any collection efforts are initiated, any collector² – including the original creditor, third party collectors, debt buyers and all subsequent collectors – must have in its possession or have accessed to basic information about the debt, the debtor, payments and disputes. Previous collectors (including original creditors) should be required to pass on all of this information (as well as the information referring to the collection process itself, see # 3).

This necessary information relating to the debt should include:

- a. A legible copy of the original contract, signed application, or other documents that provide evidence of the consumer's liability and that reveal the name of the original creditor.
- b. The name, address, phone number, Social Security number (if obtained at any point in the process) of the consumer.
- c. The amount owed on the debt, itemized between principal, interest and fees assessed.
- d. A copy of the last 12 months of account statements.
- e. All account numbers ever used by the creditor and its predecessors, if any, to identify the account. These should include the consumer's last account number prior to charge-off, the current account number, and any other account or reference numbers that the creditor used to identify the account.
- f. For retail credit cards, a document that provides the name of the issuing bank and the brand (or store) name, if any.
- g. The date, source and amount of the last payment, the date of default, the date of charge-off, and the amount owed at charge-off, if applicable.

² Unless otherwise indicated, we are using the term "collector" in these comments to refer to any party that attempts to collect a debt, including the original creditor, third party collectors, and debt buyers.

3. Require Retention of and Access to Information about Debt Collection Efforts and the Consumer (Questions 5, 10, 14, 41, 49, 50, 52, 123, 125, 126, 161, 162).

Beyond information about the debt itself, in order to prevent abuses, all collectors must have full information about the consumer and previous collection efforts. This information should include:

- h. Information regarding any outstanding or unresolved disputes and fraud claims, as well as any disputes and fraud claims from 6 months prior to default.
- i. Requests and responses to validation requests or disputes.
- j. The consumer's request to stop contact.
- k. Settlements concerning the debt.
- l. Status of the debt in relation to the statute of limitations.
- m. Representation of the consumer by an attorney and attorney's contact information.
- n. Information regarding inconvenient times or places for communication.
- o. Discharge of debt or listing in bankruptcy.
- p. Illness or disability claimed by the consumer or known to the collector.
- q. Known or claimed violation of the FDCPA or other laws to date.
- r. Whether the consumer is or was a member of the military.
- s. Whether the consumer's income comes from sources exempt from garnishment, such as Social Security funds and/or SSI benefits, or VA benefits.
- t. Other information relevant to the collection of the debt.

4. Adopt Clear Responsibility for Ensuring Collectors Have Complete Information.

All parties involved in the collection or sale of a debt should be responsible for ensuring that complete information is passed on to the next party. Rules should require the original creditor and any debt buyer to pass on the information to the next buyer, and subject them to CFPB enforcement if they do not. Any debt collector should also be responsible for having and using all relevant information, before beginning to collect, to determine whether and how the debt is collectable. *Whether or not a prior party actually passed on the information*, it should be a violation of the FDCPA for any debt collector or debt buyer to collect a debt in a manner that is improper. Imposing potential liability on both the debt seller and the subsequent debt collector is important to ensure that the information is actually transmitted. Debt collectors and buyers can protect themselves through indemnity agreements with creditors and debt sellers.

For example, if the consumer exercised her right to cease communication with debt collectors, then the creditor or debt collector must pass that information on to the next collector or debt buyer. It would then be an unfair debt collection practice for the next collector to call the consumer. If the subsequent debt collector did not know about the consumer's prior request, the collector would still be responsible for violating the FDCPA, but the collector could seek indemnity from the creditor for failing to pass on required information.

5. Require Documentation to Initiate Suit (Questions 7, 10, 14, 41, 79, 123, 126, 161, 162).

Debt collectors routinely file lawsuits that they are unable to substantiate, expecting to rely on uncontested default judgments rather than the ability to prove their case. Before initiating suit, any collector must be required to have in its possession, and attach to the complaint when filed, copies of following documents:

- u. The original contract creating the liability; and
- v. If the collector is collecting on behalf of the original creditor, a document from the original creditor authorizing the collector to sue on the specific account on behalf of the original creditor;
- w. If the collector is claiming ownership of the debt, a copy of the assignment or chain of assignments of that specific account from the original creditor to the collector; or
- x. If the collector is collecting on behalf of a debt buyer, authorization from the debt buyer and a copy of the assignment or chain of assignments of that specific account from the original creditor to the debt buyer suing on the debt.

The party initiating the collection action must have these documents in a form that will meet all evidentiary requirements in the jurisdiction in which the action is filed. But the documentation should be required even in those jurisdictions that may not require these records.

6. Prohibit Abusive, Deceptive, Unfair and Harassing Debt Collection Activities by Creditors as well as Collectors (Question 93).

Some of the worst debt collection abuses are perpetrated by payday lenders and other first party creditors who are not subject to the FDCPA. The same conduct that is prohibited under the FDCPA should be considered unfair, deceptive or abusive for first party collectors (creditors). Similarly, the CFPB should explicitly state in regulations the obvious interpretation by the majority of courts: *debt buyers are subject to the FDCPA*.

7. Limit the Number of Telephone Contacts Per Week (Question 92).

Telephone harassment is one of the most common and frustrating types of debt collection abuse. Both creditors and collectors should be subject to specific and strict limits on telephone communications, as follows:

- a. The collector should not be permitted to call the consumer (i.e., let the telephone ring) more than three times per week (subject to additional limits below). Consumers often do not answer the phone because they do not want to talk to the collector. Even hearing the phone ring constantly is stressful, and it can be a special problem when collectors call cell phones that consumers have in their cars and workplaces.
- b. Voicemail messages, if otherwise permissible, should be left no more than once per week.
- c. Unless the consumer consents, collectors should not be permitted to call back within seven days of actually speaking with the consumer.

8. Require Collectors to Honor Oral Requests to Cease Communication (Question 20).

Consumers are most likely to tell collectors to stop contacting them when contacted by telephone. Collectors should be required to tell consumers about their right to cease communication in every call and to honor an oral request to cease communication.

9. Mandate a Simpler Notice of the Right to Verification and to Cease Communication (Question 19).

The current notices used by debt collectors are confusing and do not clearly communicate the consumer's right to get verification of the debt or to cease communication. The notice should convey the information mandated by Congress in plain language, in large type, on the front page, set off by typography, margins, or in a boxed area:

“You can dispute this debt at any time, either orally or in writing. If you write to us within thirty days of when you get this letter, regarding:

(1) A question or a dispute about the debt, or

(2) The name and address of the original creditor,

we will stop collecting until we mail you our response.

Also, we will stop calling or writing you if you tell us [in writing] that you refuse to pay or want us to stop communicating with you.”

10. Mandate Itemization and Meaningful Investigations of Disputes (Questions 17, 32, 41, 43, 45, 46, 162).

In response to a request for verification of the debt, collectors should be required to itemize the principal, interest and fees charged on the account.

If a consumer questions or disputes a debt, the collector should be required to respond with fully responsive documentation specifically addressing the details of the consumer's dispute or question. In cases of disputes about the identity of the debt, merely comparing personal identifiers (name, SSN, DOB, address) does not constitute a reasonable investigation. The debt collector or buyer also must be required to contact the original creditor or consumer as needed to resolve a dispute.

11. Stop Collection of Time-Barred Debt (Question 133).

The CFPB should codify cases holding that it is a violation of the FDCPA to file a lawsuit, or threaten to do so, for old debts that are time-barred.

But the CFPB should go farther and prohibit all efforts to collect old debt that is beyond the statute of limitations. The collector would be permitted to accept a voluntary, unsolicited payment, but no affirmative collection activities should be permitted. Lost records, faded memories, and abusive collection practices plague older debts even if collection efforts are

outside of court. Older debts can follow consumers to their grave and get passed down to fringe debt collectors who are less likely to follow the law and more likely to engage in abusive tactics.

If the CFPB decides to permit collectors to engage in out-of-court efforts to collect time-barred debts, it should permit collection activities only under strict rules:

- a. Collectors must identify the statute of limitations for the debt before initiating any collection activity.
- b. Any collection activities must be in writing; no calls should be permitted.
- c. Collectors must disclose to the consumer in any communication (written or oral, if oral contacts are permitted) explaining that the debt is time-barred.
- d. Any reports to consumer reporting agencies must accurately reflect the time-barred nature of the debt, and no reporting should be permitted of debts that are more than seven years old.
- e. Once a debt has become or been determined to be time-barred, it must remain time-barred, and it cannot be revived by payments on the debt, consumer acknowledgement, or a revised determination by a subsequent debt collector.

The last item is particularly critical. Any effort to seek a payment on a time-barred debt should be viewed as per se unfair and abusive if it could expose the consumer to a previously barred lawsuit.

The notice to the consumer must be in plain, clear language, such as the following:

Please Note –

- We CANNOT SUE YOU to collect this debt, because it is too old.
- We are providing information about the debt in case you wish to pay it.
- [Include only if the CFPB does not prohibit the revival of a time-barred debt.] But IF YOU MAKE ANY PAYMENTS to us on this debt, OR IF YOU AGREE that you owe us this debt, WE MAY BE ABLE TO SUE YOU for the entire debt.

However, we reiterate our view that disclosures will not solve the abuses associated with time barred debt, as many consumers will overlook or not understand such a notice. The better course is to prohibit any collection of time-barred debt, or at most to limit collection activities to written materials that can be more easily monitored and regulated.

12. Prevent Abuses of Credit Reports (Questions 42 and 127).

Debt collectors often use their power to furnish information to credit reporting agencies (CRAs), as well as consumer misunderstanding of the credit reporting or scoring process, as tools in collecting debts. The CFPB should:

- Prohibit debt collectors from furnishing information about a debt to a CRA unless the collector has documentation that substantiates the debt (as set forth in #2 above).
- Issue rules and conduct examinations to ensure that creditors and collectors are not re-aging debts and are reporting the correct date of delinquency for the debt, which impacts how long the debt can be reported.

- If a debt collector has reported an account to the credit bureaus, it should be required to also report a dispute. The item must be marked as disputed and not considered in the consumer's credit score.

Additionally, the CFPB should require debt collectors and buyers to make the following disclosures:

- If a debt is already reported on the consumer's credit report: *"Paying this debt will not remove it from your credit report. It will only show that the account has been paid. Paying this debt could, but might not necessarily, improve your credit record or score."*
- If a debt is not obsolete, does not show up on a credit report, and the creditor or collector does not have the current ability to report it because it is not currently a furnisher to the NCRAs: *"This debt does not show up on your credit report. Paying this debt will not help your credit record or score."*
- If a debt is obsolete: *"This debt is too old to be included in your credit report. Paying this debt will not help your credit record or score."*

13. Protect the Privacy of Servicemembers and Other Consumers (Questions 75, 76).

Debt collectors should not be permitted to communicate with servicemembers' commands, except to verify employment and address. In the absence of prior written notice and authorization to speak with the spouse, the debt collector should be prohibited from speaking with anyone other than the debtor. In instances where the debtor has provided notice that he or she does not want communication or is deployed, there should not be further communication.

14. Protect Consumers in Medical Debt Collections.

Consumers who owe medical debts face unique issues. The most prudent consumers can be hit with enormous debts they cannot afford. The insurance system is confusing and consumers often do not know how much they owe or when all insurance claims have been processed. These consumers need substantial protections including rules:

- Establishing minimum periods before collectors can report unpaid medical bills to CRAs;
- Requiring CRAs and collectors to provide a special notation when medical debts are caused by insurance disputes or billing errors;
- Prohibiting collection of excessive medical charges from consumers who qualify for charity care or financial assistance under the Affordable Care Act.

15. Protect Consumers in Student Loan Debt Collections.

Collectors of both federal and private student loans engage in unfair tactics. Collectors of private loans often deceive consumers about the remedies available for private student loans. The CFPB should require clearer notice about the limited remedies available to non-federal debt collectors. Collectors of federal loans often harass borrowers instead of helping them access help available under federal law. Those collectors should be required to provide more information about forgiveness or debt reductions programs that the collector is required to

consider, and also about the consumers' rights under the Higher Education Act. The CFPB should work with the Department of Education to analyze the commission system for student loan collectors to identify the abuses that the incentive system is likely to foster and target additional protections and enforcement activities accordingly.

16. Ban enforcement of forced arbitration clauses when consumers assert claims of illegal debt collection.

Collectors get to have their cake and eat it too: they use the court system to seek default judgments and to garnish consumer wages, yet they prevent consumers from accessing the courts to hold the collectors accountable for debt collection abuses. The CFPB should ban forced arbitration of debt collection disputes.

* * *

Thank you for considering long needed reforms to the debt collection system and for considering our comments.

Sincerely,

Americans for Financial Reform
Consumer Action
Consumers League of New Jersey
Consumers Union
Legal Services of New Jersey
MFY Legal Services, Inc.
NAACP
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National People's Action
Public Citizen
Public Justice Center
The Greenlining Institute
The Midas Collaborative
The National Fair Housing Alliance
U.S. PIRG
Washington Statewide Poverty Action Network (on behalf of our low-income members)
Woodstock Institute

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- AARP
- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Center for Effective Government
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Green America
- Greenlining Institute
- Good Business International

- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defender's League
- Information Press
- Institute for Agriculture and Trade Policy
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club

- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

List of State and Local Partners

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC

- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- New Economy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending

- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- UNET

