August 19, 2019

Director Kathleen Kraninger
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Docket No. CFPB-2019-0022

Dear Director Kraninger:

The undersigned organizations advocate on behalf of working people and write to comment on the proposed debt collection rule. We urge you to improve the rule in order to better protect low-income workers.

Low-income workers are disproportionately impacted by debt collection and this rule, as currently drafted, will do real harm to workers already struggling financially. The rule could inundate workers with stressful disruptive phone calls and text messages from unknown numbers without their permission and to email addresses that may not be private. The rule could also result in messages being left with their employers, jeopardizing their jobs. We are also concerned that the proposal does not stop collectors from pursuing debt so old that the records of who owes the debt and for how much may be lost. Finally, we worry that the rule may protect collection attorneys who make false statements in court documents.

**Low- and moderate-income consumers are disproportionately impacted by debt collection activity**

After accounting for inflation, the average wage in 2018 had the same buying power it did 40 years ago, and the wage gains that have been created over those decades have gone mostly to the highest paid workers.[1]

Given this, it should come as no surprise that the lowest income households are sliding ever deeper into debt. In 2004 the typical household in the lower third of income had just under $1,500 left after annual spending. But by 2014 these households were in the red with negative $2,300.[2]

When expenses are greater than income, workers are forced make ends meet however they can, often through debt which "is almost universal among low-income workers."[3]

[1] Drew DeSilver, Pew Research Center, For most U.S. workers, real wages have barely budged in decades, August 7, 2018. https://www.pewresearch.org/fact-tank/2018/08/07/for-most-us-workers-real-wages-have-barely-budged-for-decades/.
[2] Pew Issue Brief, Household Expenditures and Income, March 30, 2016. https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/03/household-expenditures-and-income.
[3] Hlaper-Meekin, Greene, Levin, and Edin, The Rainy Day Earned Income Tax Credit: A Reform to Boost Financial Security by Helping Low-Wage Workers Build Emergency Savings, The Russell Sage Foundation Journal of the Social Sciences February 2018, 4 (2) 161-176. https://www.rsfjournal.org/content/4/2/161#sec-1.

Indeed, in a 2017 CFPB report, over half of consumers with annual household income under $20,000 reported being contacted about repaying a debt in collection, compared to just 16% of those with household income of $70,000 or more.[4]

Debt collection is very much an industry built on low wage working families. Studies have described working families often having delinquent debt causing financial and psychological stress "with the pressure of being repeatedly contacted by creditors seeking repayment."[5]

We urge the Bureau to consider the disproportionate impact debt collection has on struggling families when crafting this rule. It is especially important to consider the stress and anxiety caused by both the unrelenting communications the rule will allow and the pressure to prioritize debt over necessities like rent and groceries that debt collectors will apply.

## 1. Phone calls

The proposed rule would allow debt collectors to make seven attempted calls per debt per week to low income workers, or to their friends and family to get the contact information of the worker.

This is far too many attempted calls. Low-income workers and their friends and families will be disproportionately impacted by this portion of the proposed rule as they are more likely to have multiple debts in collection than wealthier households. CFPB's 2017 debt collection survey found that 38% of low-income households with income under $20,000 a year had been contacted about two or more debts. Some people undoubtedly had several debts. In contrast, only 11% of households with income over $70,000 had been contacted about two or more debts.

Consider a single working mother with three separate medical debts for her children, a credit card, and an old auto loan in collections. This mother juggling work, children's schedules, prioritizing bills, is now also getting up to 35 attempted calls a week about debts that collectors will be pressuring her to pay.

We recommend that the CFPB limit collectors to one conversation and three attempts per week per consumer. Large numbers of attempted calls will simply increase the stress of working families while in no way increasing their ability to repay the debts they are being called about.

## 2. Texts and Emails

Allowing texts, emails, and direct messages without consent is particularly troubling because collectors will not have to comply with the E-sign Act. Collectors will not have to ensure that important information is accessible through email or hyperlinks and so workers may be missing critical information that results in debts growing through interest or even a default judgment against them.

[4] Consumer Experiences with Debt Collection Findings from the CFPB's Survey of Consumer Views on Debt, January 2017, pg. 15. https://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf.
[5] Hlaper-Meekin, Greene, Levin, and Edin, The Rainy Day Earned Income Tax Credit: A Reform to Boost Financial Security by Helping Low-Wage Workers Build Emergency Savings, The Russell Sage Foundation Journal of the Social Sciences February 2018, 4 (2) 161-176. https://www.rsfjournal.org/content/4/2/161#sec-1 *Citing* Halpern-Meekin, Sarah, Kathryn Edin, Laura Tach, and Jennifer Sykes. 2015. It's Not Like I'm Poor: How Working Families Make Ends Meet in a Post-Welfare World. Berkeley: University of California Press.

Additionally, not everyone has the digital literacy, access to broadband, or mobile devices that the proposed rule seems to assume. According to the Department of Education, 13% of semi-skilled white-collar occupations (e.g. clerks, service workers, and shop and market sales workers) were not digitally literate in 2018 compared to just 6% of those in skilled occupations (e.g. legislators, senior officials and managers, professionals, technicians and associate professionals). The lack of digital literacy by occupation reaches 26% for semi-skilled blue-collar occupations (e.g. skilled agricultural and fishery workers, craft and related trades workers, plant and machine operators and assemblers) and 33% for unskilled occupations (e.g. laborers).[6]

While low wage workers may have email addresses, that does not mean that they regularly use email to communicate or even that they have regular and reliable internet access. There is a very real digital divide access issue for low-income workers. Low-income workers with access to a smartphone (71%) and broadband at home (56%) significantly trail those with income of $75,000 or more, 95% of whom have smartphones, and 92% of whom have broadband at home.[7] Even if a low income worker has a smartphone, electronic communications from debt collectors could impose costs on families by eating up their data plans—creating additional financial pressure. They may have slower or spottier internet access, which could make it difficult to access hyperlinks and websites.

Those with less digital literacy may also be less able to distinguish between legitimate emails and virus attacks or phishing scams. We are concerned that the proposal to allow debt collectors to send notices by hyperlink could be exploited by criminals and could endanger working families. Or, people will be afraid to click on a hyperlink in an email from someone they do not know and will miss important information about their rights. The CFPB should not let debt collectors use hyperlinks.

To better protect low income workers, the rule should require consumer consent before contacting consumers via electronic communications. Collectors should have to comply with the E-Sign Act to make sure that workers truly are able to access information before sending it electronically. Consumers should be allowed to stop emails, texts or other direct messages by simply replying "stop" or by contacting the collector in any other reasonable way.

### 3. Time-barred debt

"Zombie," or time-barred debt, is so old that collectors can no longer sue a consumer to collect it. When a debt is too old sue over is determined by the applicable statute of limitation. These laws exist to ensure that any litigation happens when facts are fresh.

As currently drafted, the proposed rule will increase confusion around already complicated statues of limitation by: (1) only prohibiting collectors from filing or threatening a lawsuit against the consumer if the collector "knows or should know" the statute of limitation has run; (2) allowing collectors to trick consumers into restarting the statute of limitations, by extracting small payments that restart the clock on the window to sue in many states; and (2) relying on disclosures to educate consumers about zombie debt—which are bound to be inadequate for non-expert consumers.

[6] U.S. Department of Education, Stats In Brief, A Description of U.S. Adults Who Are Not Digitally Literate, NCES 2018-161, Pg. 12, Fig. 10, May 2018. https://nces.ed.gov/pubs2018/2018161.pdf.
[7] Monica Anderson, Pew Research Center, Mobile Technology and Home Broadband 2019, June 13, 2019. https://www.pewinternet.org/2019/06/13/mobile-technology-and-home-broadband-2019/.

Low income workers who are already juggling to stay afloat should not be pressured – and likely deceived -- to pay debts that can no longer be collected through a judgment and that have been sold for pennies on the dollar to a collector. Unscrupulous debt collectors might think that the rule as written would give them legal cover to pursue such debts aggressively, and so the CFPB should ban collection of time-barred debt in and out of court.

4. **False lawsuits pose costs on low wage workers**

We are also concerned that the proposal could protect debt collection attorneys who do not do their homework and do not have evidence, exposing workers to lawsuits on debts they may not even owe. It is very difficult for hourly workers to take time off work to dispute a lawsuit. They may lose out on wages they desperately need or even jeopardize their job. Consequently, workers may end up with default judgments against them even if they have legitimate defenses.

Therefore it is critical that collection attorneys be held to high standards when they file lawsuits. Unfortunately, far too many file mass lawsuits based only on spreadsheets that may not even be accurate or show up in court without any evidence to prove a debt.

Attorneys who put false, deceptive or misleading information in lawsuits should not get a safe harbor from liability. The proposal does not say what information they have to review and does not provide any assurance that the attorney will legitimately determine that claims in a lawsuit are accurate. Instead, the CFPB should require attorneys to review original account documents and to have admissible evidence before filing a lawsuit.

**Conclusion**

The disproportionate impact on low income workers from debt collection means that the CFPB should ensure that any rule provides strong protections for workers. We urge you to adopt the recommendations in this letter as well as the additional recommendations suggested in the longer comments that will be submitted by other consumer advocacy groups.

Sincerely,

9to5
Adelante Alabama Worker Center
AFL-CIO
Alliance for Justice
American Family Voices
Americans for Democratic Action (ADA)
Americans for Financial Reform Education Fund
Asian Pacific American Labor Alliance, AFL-CIO
Atlanta Legal Aid Society, Inc.
Big Sky CLC
Center for Popular Democracy
Coalition on Human Needs
Colorado Fiscal Institute

Economic Policy Institute
Equal Rights Advocates
Georgetown Law Center Workers’ Rights Institute
Interfaith Worker Justice
Justice for Migrant Women
Kentucky Equal Justice Center
Legal Aid at Work
Louisiana Budget Project
Louisiana Budget Project
Maine AFL-CIO
Michigan League for Public Policy
Mountain State Justice
National Advocacy Center of the Sisters of the Good Shepherd
National Employment Law Project
National Employment Lawyers Association
National LGBTQ Task Force
National Partnership for Women & Families
National Women's Law Center
Oklahoma Policy Institute
PathWays PA
Patriotic Millionaires
People's Action
Policy Matters Ohio
Public Justice Center
Public Law Center
Service Employees International Union
Shriver Center on Poverty Law
Strong Economy For All Coalition
The Bell Policy Center (Denver, Colorado)
The Commonwealth Institute for Fiscal Analysis
Virginia Citizens Consumer Council
Voices for Progress
West Virginia Center on Budget and Policy
William E. Morris Institute for Justice
Woodstock Institute
Workplace Fairness