

MERKLEY, WYDEN JOIN COLLEAGUES IN CALLING ON TRUMP ADMINISTRATION TO PROTECT CONSUMERS FROM ABUSIVE DEBT COLLECTION TACTICS

New proposed rule gives debt collectors green light to inundate consumers with unlimited text messages, e-mails

Friday, June 7, 2019

WASHINGTON, D.C. – Oregon’s U.S. Senators Jeff Merkley and Ron Wyden have joined 24 colleagues in calling on Consumer Financial Protection Bureau (CFPB) Director Kathy Kraninger to reverse a proposed rule that would, for the first time, allow debt collection companies to send unlimited texts and e-mails to consumers. Just last year, often abusive and threatening debt collection tactics led to some 82,000 consumer complaints to the CFPB and nearly 458,000 to the Federal Trade Commission.

“By allowing debt collectors to send consumers unlimited text messages and e-mails without first receiving affirmative consent for such a method of communication, the proposed rule permits collectors to overwhelm consumers with intrusive communications,” the senators wrote in a letter to Kraninger. “Furthermore, since the CFPB is not requiring collectors to use free-to-end-user text messaging, the CFPB is placing the cost burden of these text messages on the consumer.”

The senators also raised concerns over other components of the Administration's proposal, including allowing a debt collector to call a consumer seven times a week per debt.

“For a consumer with six medical debts, the proposed rule means that the consumer could receive up to 42 calls per week,” they wrote. “Given the number of American families harmed by abusive debt collection practices, we request that you reconsider this rulemaking and pursue more meaningful reforms that put consumers, not the debt collection industry, first.”

In addition to Merkley and Wyden, the letter was signed by Senators Bob Menendez (D-N.J.), Sherrod Brown (D-Ohio),

Catherine Cortez Masto (D-Nev.), Kirsten Gillibrand (D-N.Y.), Cory Booker (D-N.J.), Richard Blumenthal (D-Conn.), Chris Van Hollen (D-Md.), Angus King (I-Maine), Tammy Duckworth (D-Ill.), Dianne Feinstein (D-Calif.), Elizabeth Warren (D-Mass.), Ben Cardin (D-Md.), Kamala Harris (D-Calif.), Tammy Baldwin (D-Wisc.), Edward Markey (D-Mass.), Doug Jones (D-Ala.), Tina Smith (D-Minn.), Jack Reed (D-R.I.), Richard Durbin (D-Ill.), Bernie Sanders (I-Vt.), Sheldon Whitehouse (D-R.I.), Amy Klobuchar (D-Minn.), Brian Schatz (D-Hawaii), and Mazie Hirono (D-Hawaii).

The full letter is below.

June 6, 2019

The Honorable Kathleen Kraninger

Director

Consumer Financial Protection Bureau

1700 G St., N.W.

Washington, D.C. 20552

Director Kraninger:

Debt collector abuses consistently rank as a top issue reported to the Consumer Financial Protection Bureau's (CFPB) public Consumer Complaint Database. In 2018, the CFPB and the Federal Trade Commission received 81,500^[1] and 457,517^[2] consumer complaints, respectively, about debt collection. These complaints are filled with abusive debt collection practices, including attempts to collect debt that has already been paid or collect debts from the wrong person, threatening phone calls, confrontations and physical intimidation tactics as well as threats of legal action. We are deeply disappointed that you did not take this opportunity to meaningfully improve the lives of the 70 million consumers who are contacted by debt collectors annually.^[3]

The debt collection industry's failure to verify the accuracy of the debt information they purchase is well documented.^[4] In 2015, the CFPB took action against the country's largest debt buyers, Encore Capital Group and Portfolio Recovery, ordering the companies to refund \$61 million to consumers after the companies engaged in deceptive practices to collect bad debts. The CFPB has used its enforcement authority against Encore Capital, Portfolio Recovery and others to stop abusive debt collection tactics such as robo-signing court filings and utilizing inaccurate information.^{[5][6]} More recently, the CFPB took action against Forster & Garbus, a law firm that filed more than 99,000 debt collection lawsuits where, in many cases, consumers did not owe the debt or did not owe the amount claimed by the collection firm.^[7] Yet, the CFPB's proposed rule contains no requirement that a debt collector have original

documentation or other information to substantiate that the debt they are attempting to collect is legitimately owed by the consumer they are contacting. This is especially troubling since more than four in five debt collection lawsuits lead to default judgments against consumers.^[8] The prevalence of default judgements means collectors can far too often collect unsubstantiated court judgments against consumers who did not even have an opportunity to challenge the debt alleged. Failure to require verification and substantiation by debt collectors will ensure that the debt collection industry remains rife with consumer abuses.

As it is currently written, the proposed debt collection rule will only exacerbate and increase troubling harassment tactics. By allowing debt collectors to send consumers unlimited text messages and emails without first receiving affirmative consent for such a method of communication, the proposed rule permits collectors to overwhelm consumers with intrusive communications. Furthermore, since the CFPB is not requiring collectors to use free-to-end-user text messaging, the CFPB is placing the cost burden of these text messages on the consumer.

Requiring consumers to receive information by clicking on hyperlinks in electronic communications from unknown parties also raises security concerns. Additionally, the assumption that electronic communications are received by a consumer as long as they are not returned “undeliverable” ignores the reality of mail filters and other communication failures that are no fault of the consumer. The rule authorizes new forms of communication between debt collectors and consumers without extending essential consumer protections, creating a situation that is ripe for consumer harm.

We also are concerned that the CFPB's proposed debt collection rule effectively permits debt collectors to inundate consumers with calls. The proposed rule allows a debt collector to call a consumer seven times a week per debt. For a consumer with six medical debts, the proposed rule means that the consumer could receive up to 42 calls per week. Furthermore, creating an exemption for "limited content" messages that could be overheard on a voicemail or delivered to third parties like an employer is an invasion of basic privacy that should not be endorsed by the Bureau.

The rule also weakens protections for consumers whose debts are no longer enforceable under state or federal law. Rather than simply banning collection of time-barred debt by third party collectors, the CFPB's rule provides collectors with a loophole to mislead borrowers into unknowingly accepting liability for those debts. Because the rule only prohibits filing or threatening a lawsuit if the collector "knows or should know" that debt is not enforceable, the Bureau's failure to include a verification and substantiation requirement could encourage collectors to practice willful ignorance about the status of debt they collect. If a consumer is deceived into even a partial payment of an unenforceable debt, the payment can restart the clock and make the consumer liable in court for the entire amount.

Finally, recent enforcement actions by the Bureau demonstrate that attorneys who engage in debt collection must be held to a higher standard, not be granted a safe harbor to engage in abusive and deceptive practices. It is especially abhorrent that in a climate where forced arbitration regularly denies consumers their right to court proceedings, debt collectors can inappropriately threaten court actions without risk of penalty for unfair, deceptive or abusive practices.

Given the number of American families harmed by abusive debt collection practices, we request that you reconsider this rulemaking and pursue more meaningful reforms that put consumers, not the debt collection industry, first. A serious proposal from the CFPB would create fairness for good actors in the debt collection marketplace and ensure that hardworking families keep their paychecks rather than line the pockets of predatory collection firms.

Sincerely,?

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