

# United States Senate

WASHINGTON, DC 20510

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<sup>1</sup> and 457,517<sup>2</sup> 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.<sup>3</sup>

The debt collection industry's failure to verify the accuracy of the debt information they purchase is well documented.<sup>4</sup> 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.<sup>5,6</sup> More recently, the CFPB took action against Forster & Garbus, a law

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<sup>1</sup> "Fair Debt Collection Practices Act Annual Report 2019," CFPB, March 2019, [https://files.consumerfinance.gov/f/documents/cfpb\\_fdcpa\\_annual-report-congress\\_03-2019.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2019.pdf)

<sup>2</sup> "Consumer Sentinel Network Data Book 2018," Federal Trade Commission, February 2019, [https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer\\_sentinel\\_network\\_data\\_book\\_2018\\_0.pdf](https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf)

<sup>3</sup> "CFPB Survey Finds Over One-In-Four Consumers Contacted By Debt Collectors Feel Threatened," CFPB, January 12, 2017, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-survey-finds-over-one-four-consumers-contacted-debt-collectors-feel-threatened/>

<sup>4</sup> Jake Halpern, "Paper Boys: Inside the Dark, Labyrinthine, and Extremely Lucrative World of Consumer Debt Collection," *New York Times*, August 15, 2014, <https://www.nytimes.com/interactive/2014/08/15/magazine/bad-paper-debt-collector.html>

<sup>5</sup> "CFPB Takes Action Against the Two Largest Debt Buyers for Using Deceptive Tactics to Collect Bad Debts," CFPB, September 9, 2015, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-the-two-largest-debt-buyers-for-using-deceptive-tactics-to-collect-bad-debts/>

<sup>6</sup> "CFPB, 47 States and D.C. Take Action Against JPMorgan Chase for Selling Bad Credit Card Debt and Robo-Signing Court Documents," CFPB, July 8, 2015, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-47->

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.<sup>7</sup> 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.<sup>8</sup> The prevalence of default judgments 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

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states-and-d-c-take-action-against-jpmorgan-chase-for-selling-bad-credit-card-debt-and-robo-signing-court-documents/

<sup>7</sup> "Consumer Financial Protection Bureau Files Suit Against Forster & Garbus, LLP," CFPB, May 17, 2019, <https://www.consumerfinance.gov/about-us/newsroom/bureau-files-suit-against-forster-garbus-llp/>

<sup>8</sup> See J. David Greiner et al., "Self-Help, Reimagined," *Indiana Law Journal* 92, Issue 3, Summer 2017, <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=11255&context=ilj>, n. 83.

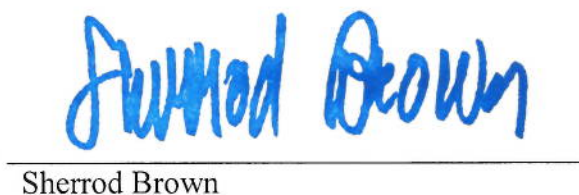
Bureau's failure to include a verification and substantiation requirement could encourage collectors to practice willful ignorance about the status of debt they collect. If a consumer is deceived into even a partial payment of an unenforceable debt, the payment can restart the clock and make the consumer 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.

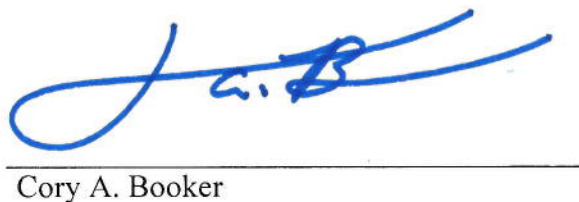
Given the number of American families harmed by abusive debt collection practices, we request that you reconsider this rulemaking and pursue more meaningful reforms that put consumers, not the debt collection industry, first. A serious proposal from the CFPB would create fairness for good actors in the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

Sincerely,

  
Robert Menendez

  
Sherrod Brown

  
Catherine Cortez Masto

  
Cory A. Booker

  
Kirsten Gillibrand

  
Chris Van Hollen



*Richard Blumenthal*

Richard Blumenthal

*Tammy Duckworth*

Tammy Duckworth

*Jack Reed*

Jack Reed

*Elizabeth Warren*

Elizabeth Warren

*Benjamin L. Cardin*

Benjamin L. Cardin

*Kamala D. Harris*

Kamala D. Harris

*Tammy Baldwin*

Tammy Baldwin

*Edward J. Markey*

Edward J. Markey

*Doug Jones*

Doug Jones

*Angus King, Jr.*

Angus S. King, Jr.

*Dianne Feinstein*

Dianne Feinstein

*Richard J. Durbin*

Richard J. Durbin

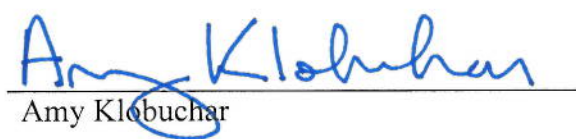
*Bernard Sanders*

Bernard Sanders

*Tina Smith*

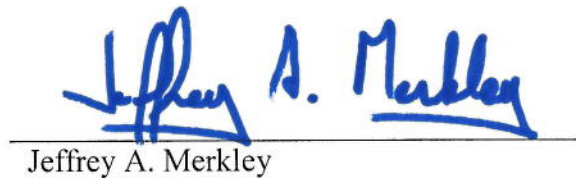
Tina Smith

  
Sheldon Whitehouse

  
Amy Klobuchar

  
Brian Schatz

  
Mazie K. Hirono

  
Jeffrey A. Merkley

  
Ron Wyden