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September 18, 2019

Comment Intake
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: **Debt Collection Practices (Regulation F)**
Docket No. CFPB-2019-0022

Dear Director Kraninger:

On behalf of our 38 million members and all older Americans nationwide, AARP writes today to thank you for the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) proposed rule governing debt collection practices.

Older adults are often targeted by both legitimate debt collectors and actors operating scams under the guise of collections, and therefore are in need of stronger protections in the debt collection marketplace. All levels of government should protect consumers against unfair debt collection practices, including requiring sellers of consumer debts to have documentation that the alleged debtor does, in fact, owe the debt.

The CFPB's proposed rule contains some material benefits to consumers. The prohibition on furnishing information to credit reporting agencies before notifying the debtor—known as "passive" collections—would prevent debt collectors from surprising consumers with a negative item on their credit report as a manipulative collections threat. [1] Such activities needlessly add stress to older adults looking to obtain credit while unaware of these debts. [2] Similarly, limiting the sale, transfer, or placement of debt that has already been paid, settled, discharged, or subject to an identity theft report would cut down on misleading and duplicate attempts to collect. Additionally, the ability to initiate

[1] As the CFPB has previously noted: "Older consumers report that they do not have the opportunity to correct misinformation and resolve billing matters before a medical or other type of debt is reported to the credit bureaus because they are not notified that the debt is in collection." Consumer Financial Protection Bureau, "A snapshot of debt collection complaints submitted by older consumers," November 2014, available at https://files.consumerfinance.gov/f/201411_cfpb_snapshot_debt-collection-complaints-older-americans.pdf.
[2] 84 FR 23330.

disputes and requests electronically may offer added convenience for those who choose to take advantage of that option.

At the same time, AARP has some serious concerns with several aspects of the proposed rule, as described below. While recognizing the potential value of new forms of technology, the proposed rule's protections on telephone calls, text messages, and emails fall far short of what is needed to protect older adults from abusive practices. Similarly, many of the proposed communications practices, including the use of limited-content messages, may inadvertently aid not just legitimate attempts at collection but also the growing incidence of collections scams and fraud. It is imperative that any effort to effectively revise debt collection regulations recognize the challenges some older adults face in terms of financial decision-making and susceptibility to fraud.

To that end, the CFPB should maintain its proposed provisions limiting the furnishing of information to credit reporting agencies and restricting the movement of debt that the consumer has already resolved from one holder to another. It should recognize the communications needs of older adults by making readily available -- in writing -- the contents of oral disclosures; further limiting the barrage of telephone calls a debtor may receive; requiring consumer consent for text and email communications; and restricting the frequency of these communications. Additionally, the CFPB should examine and monitor debt collection practices in order to prevent fraudulent collection attempts, adopt a strict liability standard for time-barred debt, and improve its model disclosures to better inform consumers of their rights. These recommendations are discussed below in further detail.

The debt collection environment can be a minefield for people age 50 and older.

Debt collection practices have been a frequent and persistent area of complaint by older Americans and reflects thousands of complaints to the CFPB.[3] A 2014 review found that nearly half of these complaints involved collecting on debts that the individual did not owe.[4] At the same time, aggressive collections activity has increased, raising the stakes for consumers when dealing with debt collectors. For example, in July, 2019, the *Wall Street Journal* documented multiple cases of older individuals with limited incomes facing default judgments and garnishment for decades-old debts, resulting not just in financial distress but added physical and emotional stress.[5]

The consequences of debt challenges for older adults can be severe and can involve drastic steps such as forgoing necessary home or vehicle repairs, missing medical appointments, and even

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[3] For example, Consumer Financial Protection Bureau, "Monthly Complaint Report: Vol. 23," May 2017, available at https://www.consumerfinance.gov/documents/4806/201705_cfpb_Monthly_Complaint_Report.pdf.

[4] Consumer Financial Protection Bureau, "A snapshot of debt collection complaints submitted by older consumers."

[5] "AM Solutions LLC, a debt-buying company, sued Adolph Muir and Doris Muir in 2017 in a Philadelphia court to foreclose on the couple's home and collect more than $83,000 for allegedly defaulting on a $6,500 mortgage dating to 1983. The debt was acquired in 2016 from a defunct mortgage lender. The Muirs said they paid $4,500 cash for the house in 1978 and didn't later take out a mortgage against the property, a red three-story row house in North Philadelphia. 'I kept saying I'd lose my house,' said Mrs. Muir, 79 years old. 'I lost my appetite. I lost 30 pounds.' She said she spends much of her time looking after her husband, a former building doorman who is 93 and blind. The Muirs contested the proceeding and 15 months later prevailed in court. The company had a copy of an old mortgage but didn't provide account documentation addressed to the Muirs." Yuka Hayashi, "Debt collectors wage comeback," *The Wall Street Journal*, July 5, 2019, available at https://www.wsj.com/articles/debt-collectors-wage-comeback-11562319002.

skipping meals.[6] Additionally, people experiencing cognitive declines can face greater challenges with regard to financial decisions. People experiencing cognitive declines may also receive help making financial decisions from a relative, friend, caregiver, or professional.[7] As a result, legitimate debt collection activity must take into account the limitations of a particular debtor and the need to have clear information and choices available, as well as the consumer's ability to share this information with others who may help make decisions and manage household finances.

The need to share information requires heightened communications standards. For example, the proposed rule's reliance on oral disclosures that are "clear and conspicuous if they are given at a volume and speed sufficient for a consumer to hear and comprehend them"[8] are not sufficient. The proposed rule should be amended to require that communications provided orally must also be easily made available in writing in order to provide an adequate record for debtors and those helping them manage their money. Otherwise, collection attempts and communications have the potential to be manipulative and damaging to individuals' finances at a time when many face higher levels of financial stress.

In addition, the proposed rule's caps on telephone calls, while a valuable starting point, still have the potential to be highly invasive and disruptive to consumers and their families. Under the CFPB's current proposal limiting debt collectors to seven attempted calls per debt per week, an individual who may owe multiple debts could nevertheless potentially face dozens of collections calls each week. The public is already inundated with unwanted telephone calls; Americans received 4.7 billion robocalls in May of 2019 alone, or more than 14 calls per capita.[9] The cap on telephone calls should be lowered to restrict debt collectors to no more than three attempted phone calls per consumer each week, regardless of the number of debts that consumers may potentially owe that collector.

Evolving communications technologies provide both benefits and risks.

Historical gaps in technology adoption are increasingly narrowing. A 2018 AARP Research survey found that approximately three-quarters of adults age 50 or older in the United States have a smartphone.[10] This is consistent with other research estimating that 79 percent of adults age 50-64, and 53 percent of adults age 65 or older, have smartphones.[11] This offers added convenience to

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[6] National Council on Aging, "Older Adults and Debt: Trends, Trade-offs, and Tools to Help," 2018, available at https://www.ncoa.org/wp-content/uploads/NCOA-Older-Adult-Issue-Debt-Brief.pdf.
[7] Keith Jacks Gamble, "Challenges for Financial Decision Making at Older Ages," in Pension Research Council, *Financial Decision Making and Retirement Security in an Aging World*, Olivia S. Mitchell, P. Brett Hammond, and Stephen P. Utkus, eds., Oxford University Press, 2017.
[8] 84 FN 23335.
[9] Katherine Skiba, "New, Shocking Statistics About Robocalls," AARP, June 7, 2019, available at https://www.aarp.org/money/scams-fraud/info-2019/robocalls-statistics.html.
[10] Brittne Nelson Kakulla, "Older Americans' Technology Usage Keeps Climbing: 2019 Tech Trends and the 50+," AARP Research, January 2019, available at https://www.aarp.org/content/dam/aarp/research/surveys_statistics/technology/2019/2019-technology-trends.doi.10.26419-2Fres.00269.001.pdf.
[11] Monica Anderson, "Mobile Technology and Home Broadband 2019," Pew Research Center, June 13, 2019, available at https://www.pewinternet.org/2019/06/13/mobile-technology-and-home-broadband-2019/.

consumers and their families, and may in turn help some of them to more easily manage their financial lives.[12]

Yet the proposed rule's approach toward permitting unlimited text and email communications takes a step too far. Consumers are not accustomed to such messages and may have difficulty distinguishing them as legitimate. The rule should be amended to provide consumers with the right to opt into text and email communications with each debt collector and be able to revoke that consent rather than be required to repeatedly opt themselves out of collection communications once they have already begun. Additionally, the CFPB should impose limits on the frequency of text and email communications just as it proposes limiting telephone calls, especially given that these could lead to added costs depending on one's mobile coverage.

Similarly, the CFPB's proposed policy of permitting debt collectors to offer "limited content" messages in order to identify and solicit potential debtors and to allow collectors to rely on hyperlinks to convey critical information both must also be examined in light of the potential for confusion and consumer harm. In both cases it may be difficult for consumers to differentiate between legitimate and fraudulent uses of debt collection communications. As a result, these policies could open the door for scammers attempting to obtain personal information, either directly or through the use of "spear-phishing" techniques in which the consumer willingly provides personal information that could enable identity theft.[13]

Federal regulators, including the Federal Trade Commission (FTC) and CFPB, are already grappling with the rise of "phantom debt collection" scams.[14] The CFPB, in conjunction with other agencies, should monitor and counter the growth of these fraudulent attempts at collection that both frustrate consumers and impede legitimate collection efforts, and seek ways to better differentiate actual collections from fraud. Guidance from the CFPB and other agencies regarding debt collection practices should continually be made available to aging organizations and the general public.

Consumers should be protected from collections on time-barred debt and their rights must be made clear.

The proposed rule also has the potential to weaken provisions governing time-barred debt, also known as "zombie" debt. The CFPB notes that "in many States, a consumer's partial payment on a

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[12] Joe Valenti, "Banking by Hand(set): Using Mobile Banking to Expand Financial Access," Center for American Progress, June 13, 2013, available at https://www.americanprogress.org/issues/economy/reports/2013/06/13/66305/banking-by-handset/.

[13] For example, Federal Trade Commission, "Spear phishing scammers want more from you," Consumer Information blog, October 31, 2018, available at https://www.consumer.ftc.gov/blog/2018/10/spear-phishing-scammers-want-more-you.

[14] "The FTC calls it the 'phantom debt collection' scam. You'll get a call from someone who identifies him- or herself as a debt collector, or as an attorney from a law firm with a legitimate-sounding name. The caller will insist you have a delinquent payday loan, credit card balance or some other sort of consumer debt and demand immediate payment of hundreds or thousands of dollars. He or she may threaten arrest or other legal action, even warning that a police officer or process server is headed at that very moment to your home or workplace. … In recent years, federal authorities have cracked down on phantom-debt predators, permanently banning close to 180 individuals and collection agencies and hitting some with multimillion-dollar fines. But the problem remains widespread: Phantom debt accounts for 39 percent of complaints about collectors fielded by the U.S. Consumer Financial Protection Bureau (CFPB), making it by far the most rampant form of debt collection abuse." AARP Fraud Resource Center, "Debt Collection Scams," 2019, available at https://www.aarp.org/money/scams-fraud/info-2019/debt-collector.html.

time-barred debt or acknowledgement of a time-barred debt in writing restarts the statute of limitations period and ‘revives’ the debt collector’s right to sue for the full amount.”[15] Yet, the proposed rule only prohibits collecting on zombie debt in cases where the owner of the debt “knows or should know” of the time-barred status.[16] This unfairly places the burden on consumers who could still make a payment and unknowingly reset the clock. Instead, the CFPB should establish a strict liability standard for collectors attempting to collect on time-barred debt.

The proposed model form[17] also has the potential to mislead in several areas. Providing resources about consumer rights in debt collection on the CFPB’s website while leaving them out of customer communications, and mentioning that consumers may dispute the validity of a debt by “calling” or “writing” while only invoking verification rights for written disputes will both only add to confusion and potential for harm. Similarly, as currently designed, the proposed rule’s approach to combine payment disclosures with validation information[18] has the potential to mislead consumers. Individuals receiving a debt validation notice containing payment information may be unsure about their options to dispute the debt. The CFPB should make sure information on consumer rights is available throughout the collections process and make clear what steps a consumer must take to exercise those rights. The CFPB should also continue testing and revising this form to ensure that consumers know their rights in collections and are not deceived into improperly disputing a debt, or making a payment by virtue of the payment coupon’s placement on the statement.

<u>Conclusion</u>

AARP appreciates the opportunity to address our concerns with the CFPB’s proposed rule governing debt collection practices. AARP urges the CFPB to require debt collectors to fully take into account the needs of older adults to ensure that they do not make payments they do not owe and are protected from unreasonable or illegal debt collection practices. To that end, the CFPB should also restrict communications practices with the potential to mislead, and seek to differentiate legitimate collection attempts from scams and fraud. If you have any questions, please feel free to contact Cristina Martin Firvida, Vice President of Financial Security & Consumer Affairs, at (202) 434-6194 or at CMfirvida@aarp.org.

Sincerely,

David Certner
Legislative Counsel and Legislative Policy Director

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[15] 84 FR 23329.
[16] 84 FR 23329.
[17] 84 FR 23344.
[18] 84 FR 23350.