

Congress of the United States
Washington, DC 20515

September 26th, 2019

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

Dear Director Kraninger:

Abusive debt collection practices are the marker of an unjust society. We write to express our deep disappointment with the Consumer Financial Protection Bureau (CFPB or the Bureau)'s proposed debt collection rule. The Bureau has the authority to stand up for consumers and rein in the worst practices of one of the leading sources of consumer complaints: debt collection. Yet, the Bureau has proposed changes to the law that will fail to constrain collectors' harmful behaviors in any meaningful way—and may make them worse. We urge the Bureau to amend the rule to protect consumers, not abusive debt collectors.

In 2017, 71 million adults in the U.S. had debt in collections.¹ The National Consumer Law Center reported that in California alone, consumers filed 69,615 complaints about abusive debt collection practices.² In 2018, the Bureau received 81,500 complaints about debt collection,³ and the FTC received 483,105.⁴ Abusive debt collection practices hurt communities across the country, but communities of color are particularly harmed. For example, while 18% of Massachusetts residents living in predominantly white areas have debt in collections, that percentage jumps to 46% in predominantly nonwhite areas.⁵

The proposed rule raises consumer protection and privacy concerns which will leave thousands of consumers—particularly borrowers of color, older borrowers, and non-English speaking borrowers, service members and their families, student loan borrowers, and consumers with medical debt—vulnerable to additional abuse.

¹ Hannah Hassani and Signe-Mary McKernan, "71 Million US Adults have Debt in Collection," Urban Wire: Income and Wealth (2018) at: <https://urban.is/2rKG4Fx>

² California Debt Collection Fact Sheet, *National Consumer Law Center* at: https://www.nclc.org/images/pdf/debt_collection/fact-sheets/California.pdf

³ "Fair Debt Collection Practices Act: [CFPB] Annual Report 2019" Consumer Financial Protection Bureau (Feb. 2019) at: https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2019.pdf

⁴ FTC Consumer Sentinel Network, <https://public.tableau.com/profile/federal.trade.commission#!/vizhome/TheBigViewAllSentinelReports/StatebyState>

⁵ Massachusetts Debt Collection Fact Sheet, *National Consumer Law Center* at: https://www.nclc.org/images/pdf/debt_collection/fact-sheets/Massachusetts.pdf

We are deeply concerned that under the proposed rule, debt collectors and collection attorneys would be allowed to:

- 1) call consumers seven times per week, per debt, potentially leading to scores of calls to consumers with multiple debts in collection,
- 2) text and email without clear limits and without consumers' consent, and send legally required notices through hyperlinks consumers might be afraid to click on,
- 3) decline to translate important notices into the language used for the original transaction,
- 4) violate consumer privacy with "limited-content" messages,
- 5) attempt to collect expired, old debt, for which the statute of limitations has passed, and
- 6) assert a safe harbor from liability if a collection attorney makes false, deceptive, or misleading statements in court filings.⁶

The Bureau's decision to implement rules that will weaken or eliminate existing protections is wrong. It is our hope that in articulating the ways in which this Rule's deficiencies will harm consumers, the Bureau will reconsider their exclusion.

First, this proposed rule would allow collectors to hound consumers with text messages and emails. Second, it would allow legally mandated notices about the debt consumers owe and their rights as borrowers to be sent electronically, including through hyperlinks, to people who may have trouble reading small smartphone screens, interacting with technology, or printing and saving records. Those consumers may not be able to read legal disclosures sent to them electronically, and if they have limited data or text plans, they may be forced to pay for each and every unilateral, harassing message. Older consumers with basic cell phones may not even be able to read texts. In addition, electronic messages could easily be caught in spam filters or otherwise not delivered to the consumer, and the rule does not require the collector to confirm the consumer has received the message.

Third, the Bureau has removed the protection in the original rule proposal that would have required the Bureau to develop model notices in other languages. This safeguard would have required collectors to use those translated notices if the initial communication took place in another language or if the collector received information from the creditor that the consumer preferred a language other than English.⁷ Thirty-five percent of Californians are not proficient in

⁶ Consumer Financial Protection Bureau, Debt Collection Practices (Regulation F), 84 Fed. Reg. 23274, May 21, 2019. "CFPB Debt Collection Rule Must Protect Consumers, Not Abusive Collectors," National Consumer Law Center (May 2019) at: https://www.nclc.org/images/pdf/debt_collection/cfpb-debt-collection-rule-summary-2019.pdf

⁷ Id.

English—the highest percentage in the country.⁸ Collectors should not be allowed to contact and harass consumers in their native language but then send in English legally mandated information about those consumers' rights. The original contracts were in consumers' native languages and accordingly so should all debt disclosures. Both the collector and also the borrower benefit when a borrower be able to read critical communications.

Fourth, the proposed rule would give debt collectors who violate the privacy of borrowers a safe harbor from penalties under the Fair Debt Collection Practices Act (FDCPA) if the information they transmit to a third party about the debt is "limited." Exempting any communications from privacy requirements can have harmful consequences. Even if a collector only provides the name of the consumer, if a third party receives a message about that consumer's "account," it would be easy to guess that the call is coming from a debt collector.

Fifth, the proposed rule fails to stop debt collectors from pursuing debt so old that the time limit to sue has passed. The proposal only prohibits collectors from suing or threatening to sue a consumer if the collector "knows or should know" that the statute of limitations has passed. Any collector who files or threatens a lawsuit should have a duty to know if the time limit has passed. Threats of legal action should not be abused as a scare tactic. Requiring collectors to confirm that a consumer's debt is still subject to legal collection before threatening serious consequences is eminently reasonable. The rule even deletes the original proposal that would have prohibited a collector from duplicitously soliciting a small payment from a consumer on a time-barred debt as a way to restart the clock and bring so-called zombie debt back from the dead.

Finally, the CFPB is inexplicably protecting collection attorneys who make false, deceptive, or misleading statements in court documents. The proposal gives attorneys a safe harbor from liability if they can claim to have reviewed minimal, unspecified "information" about the debt, even if those attorneys never looked at original account documents and legitimate (and thus admissible) evidence about the debt. In combination, the safe harbors discussed will encourage collectors to pursue time-barred debt against the wrong person or for the wrong amount.

Abusive debt collection practices hurt a growing body of consumers. The rising costs of higher education and health care have created a student debt crisis and an explosion of medical debt, including "surprise" medical billing that was reasonably unanticipated by the patient.⁹ As Americans take on more debt, the CFPB must act to protect consumers from the worst conduct of the debt collection industry.

⁸ Christopher Ingraham, "Millions of U.S. citizens don't speak English to one another. That's not a problem," *Washington Post* (May 2018) at: https://www.washingtonpost.com/news/wonk/wp/2018/05/21/millions-of-u-s-citizens-dont-speak-english-to-each-other-thats-not-a-problem/?utm_term=.93a6e81999cc

⁹ The median amount of debt in California is \$795 for medical debt, \$9,526 for student loans, and \$1,400 for other debt. California Debt Collection Fact Sheet, *National Consumer Law Center* at: https://www.nclc.org/images/pdf/debt_collection/fact-sheets/California.pdf In Massachusetts, the corresponding median amounts are: \$349, \$9,787, and \$1,002. Massachusetts Debt Collection Fact Sheet, *National Consumer Law Center* at: https://www.nclc.org/images/pdf/debt_collection/fact-sheets/Massachusetts.pdf

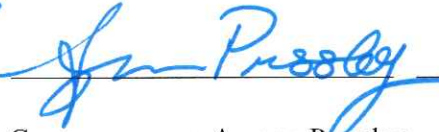
know their rights and debt collectors know their limitations.”¹⁰ You have failed in both of your ostensible goals. Instead of complementing the Fair Debt Collection Practices Act, the rule undermines the bill’s goals to stop harassment, protect consumer privacy, and ensure correct collection action.

Closing the loopholes we have articulated is exactly the purpose and jurisdiction of the CFPB, particularly when the practices the Bureau could codify are beneficial to both parties to these contracts. We ask that you revise the rule to demonstrate your commitment to upholding the mission of the Bureau, to “regulate the offering and provision of consumer financial products or services under the federal consumer financial laws and educate and empower consumers to make better-informed financial decisions.”¹¹

Very Truly Yours,



Congresswoman Katie Porter



Congresswoman Ayanna Pressley



Chairwoman Maxine Waters



Congressman Bill Foster



Congressman Jim McGovern



Congresswoman Ilhan Omar



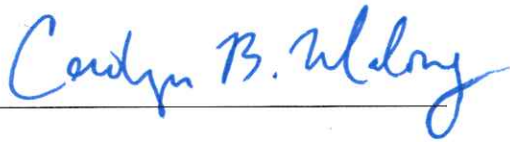
Congresswoman Alexandria Ocasio-Cortez



Congressman Jesus G. “Chuy” Garcia

¹⁰ “Consumer Financial Protection Bureau Proposes Regulations to Implement the Fair Debt Collection Practices Act,” *Consumer Financial Protection Bureau* (May 2019) at: <https://www.consumerfinance.gov/about-us/newsroom/bureau-proposes-regulations-implement-fair-debt-collection-practices-act/>

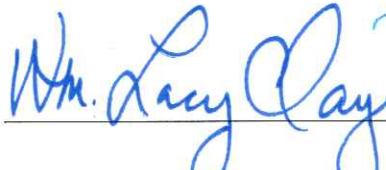
¹¹ “Strategy, budget and performance,” *Consumer Financial Protection Bureau* at: <https://www.consumerfinance.gov/about-us/budget-strategy/>



Congresswoman Carolyn B. Maloney



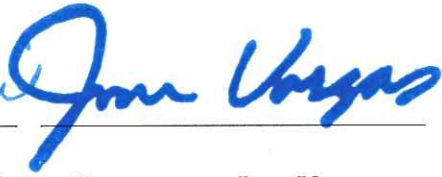
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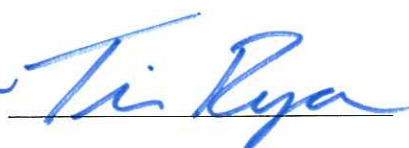
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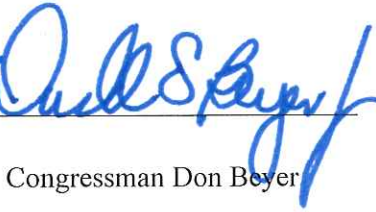


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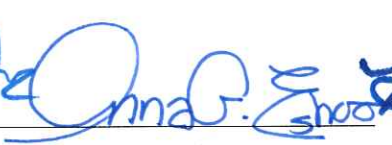

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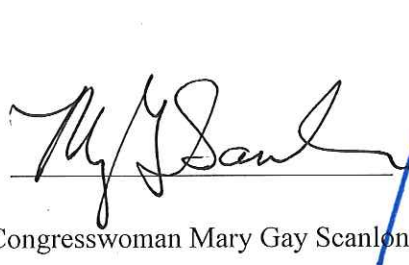

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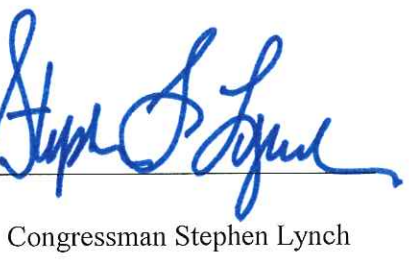

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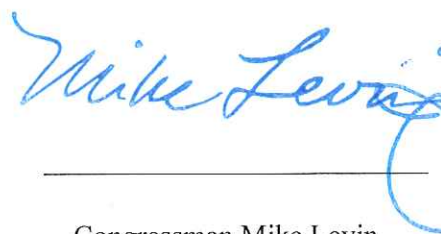

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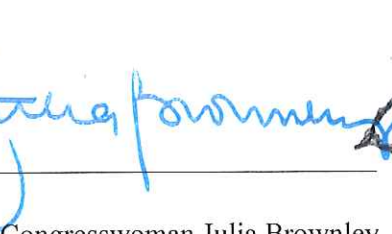

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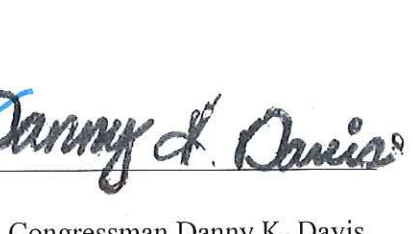

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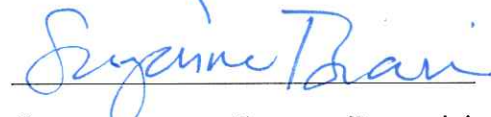
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