

September 18, 2019

Director Kathy Kraninger
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:

The 39 undersigned community, civil rights, consumer, and student advocacy organizations appreciate this opportunity to comment on the proposed rule on Debt Collection Practices (the “Proposed Rule”) by the Consumer Financial Protection Bureau (“CFPB” or “Bureau”). We write to express our concerns about the Proposed Rule’s failure to protect student loan borrowers from abusive debt collection practices.

The United States is facing an ongoing student debt crisis: outstanding student debt surpasses \$1.5 trillion, over 8 million borrowers are in default on their student loans, and every 28 seconds, yet another borrower goes into default. The burden of default falls particularly hard on minority communities. Black students borrow at higher rates and in larger amounts due to racial inequities in incomes and wealth. Black and Latinx borrowers default at twice the rate of white borrowers on their student debt. Black and Latinx students also represent nearly half of all those attending for-profit institutions, whose students make up 34 percent of student loan defaults, despite only enrolling 9% of post-secondary students.

Borrowers who attended for-profit schools are at particular risk of being negatively impacted by this rule. Even among bachelor’s degree recipients, three in 10 (30 percent) of those who started at for-profit colleges defaulted on their federal student loans within 12 years of entering college. That is seven times the rate of those who started at public colleges (4 percent) and six times the rate of those who started at nonprofit colleges (5 percent). The Proposed Rule adds insult to injury, failing to protect these borrowers who may have already been defrauded by their schools, from harmful debt collection practices. These former for-profit school students may experience default and ensuing debt collection activity because many of them earn less after graduating than they did before attending. The Bureau itself filed predatory lending lawsuits against two now-bankrupt companies that operated hundreds of now-defunct for-profit schools: Corinthian Colleges, Inc. and ITT Educational Services, Inc. The Bureau’s Proposed Rule will create yet another undue burden on a group already struggling to restart their lives.

An increasing number of older Americans are also facing the burdens of student loans: more than three million Americans over 60 years old still owe student debt, and many of them are struggling. In 2015, 37 percent of federal student loan borrowers age 65 and older were in

default. Like other creditors, both federal and private lenders routinely transfer defaulted student loans to debt collection agencies, putting borrowers at the mercy of debt collectors and the industry's abusive debt collection tactics.

Unacceptable Proposed Call Frequency

The Proposed Rule would allow 7 attempted calls per debt per week for most kinds of debts. That is an unacceptably high call volume. Borrowers with education debt have an average of 3.7 loans. That rounds up to 4, such that a borrower with the average number of student loans might receive 28 calls per week — a volume that could interfere with the borrower's ability to attend work and conduct their lives. Borrowers who have 10 loans could receive as many as 70 attempted calls per week.

In an apparent, but ineffective, effort to stave off this harassment, the Bureau's proposal would limit student loan debt collectors to seven attempted calls per account--rather than per debt--per week. Though all student loan debts that are serviced under a single account number are considered a single debt under the CFPB's proposal, servicers, lenders, and debt collectors have wildly different policies on account numbers. Student loan account numbers are not standardized. Borrowers with a single loan have a single account number, but borrowers of multiple student loans frequently have multiple accounts.

Some servicers, lenders, and debt collectors place all the loans under the same account number, but some assign account numbers by type of loan. Also, a large number of student loan borrowers have more than one loan servicer, lender, or debt collector. Under the Proposed Rule, borrowers with multiple servicers, lenders, and debt collectors and those whose loans are held by entities that assign different account numbers based on loan type will get far more calls than other borrowers.

Borrowers have no control over who collects their loans or how the servicer, lender, or debt collector chooses to organize their files, and if the CFPB's proposal goes into effect, some borrowers with the same number and type of loans will be harassed more than others for reasons beyond their control. Limiting debt collectors to seven calls per account per week sounds appealing in theory, but actually leaves student loan borrowers vulnerable to harassment. The CFPB should, instead, protect consumers by imposing a stricter cap on the number of calls per week: seven is simply too many.

Collection by Electronic Communication Channels Without Requisite Consent

In addition to receiving large numbers of attempted phone calls a week (as many as 28 for the average borrower), the CFPB's proposal does not specify a limit on the number of text messages, emails, and social media direct messages a debt collector can use to contact a borrower with student debt, which means a borrower can be inundated with messages from all of these different sources. This is for all practical purposes harassment.

Although the E-Sign Act requires borrowers to affirmatively opt in before electronic communications are used to replace information that must be provided to a consumer in writing,

the CFPB proposes to allow debt collectors to do the exact opposite: contact borrowers without getting their consent first. This increases the likelihood that a borrower will not receive important information sent to them by email or text if they have not indicated that this is a good method of communication for them. Even worse, there is a greater risk that their privacy will be violated because a debt collector could use a phone number from an old file that is incorrect or now belongs to someone else, or an old email address.

Collections Past the Statute of Limitations on Private Student Loans

The CFPB's proposal does not prevent a debt collector from contacting a student loan borrower to try to get them to make payments on a private student loan even after the statute of limitations has passed. In many states, if a student loan borrower makes a payment on that private student loan past the statute of limitations, that payment gives the debt collector the right to sue the borrower again by reviving the debt. What this means is that a debt collector can make 7 attempted calls per week and send unlimited texts or emails to the borrower to try to get them to make a payment on debts beyond the deadline to bring a lawsuit, and then turn around and use the borrower's good faith efforts to pay against them by reviving the debt collector's right to sue.

Moreover, the proposal only prohibits collectors from filing or threatening a lawsuit if the collector "knows or should know" that the legal time limit to sue has expired. Courts have held that a debt collector is responsible for knowing a debt is too old for a lawsuit, and the CFPB should do the same. Frequently, old debts have been transferred multiple times and their records are lost, incomplete, or inadequate. The collector may have the wrong person or wrong amount, and it is nearly impossible to avoid mistakes or deception in trying to collect debts beyond the statute of limitations. Many private student loan borrowers have already been harmed by illegitimate for-profit schools or improper loan servicing, and thus it is especially important that the CFPB not allow debt collectors to prey on them once again. The CFPB should completely prohibit the collection of time-barred debt in and out of court and require the debt collector to ascertain the status of the debt and behave accordingly.

At a time when the burdens of student debt are not just burying borrowers, but holding back the economy, the Bureau should be acting to relieve borrowers of harassment, not open the floodgates to abuse. The proposed rule abdicates the Bureau's responsibility to protect consumers, instead enabling more harassment by debt collectors, including harassment of borrowers with the least ability to pay.

We thank you for the opportunity to comment. We hope that you will seriously consider the comments we have set forth, and modify the proposal to ensure that borrowers are protected from harassment and abuse. For questions, please contact Alexis Goldstein at alexis@ourfinancialsecurity.org.

Sincerely,

ACTION (Allied Communities of Tulsa Inspiring Our Neighborhoods) Oklahoma

Action Center on Race and the Economy
Alaska Public Interest Research Group (AkPIRG)
American Federation of Teachers
Americans for Financial Reform Education Fund
Anti-Poverty Network of New Jersey
Atlanta Legal Aid Society, Inc.
California Reinvestment Coalition
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Consumer Federation of California
Delaware Community Reinvestment Action Council, Inc.
Empire Justice Center
Generation Progress
Missouri Faith Voices
Mobilization for Justice
Montana Organizing Project
Mountain State Justice, Inc.
National Advocacy Center of the Sisters of the Good Shepherd
National Association of Consumer Advocates
National Center for Law and Economic Justice
National Consumer Law Center (on behalf of its low-income clients)
New Jersey Citizen Action
Organization for Black Struggle
People's Action
Progressive Leadership Alliance of Nevada
Public Citizen
Public Counsel
Public Justice Center
Public Law Center
Student Debt Crisis
Texas Appleseed
The Institute for College Access & Success
THE ONE LESS FOUNDATION
U.S. Public Interest Research Group (USPIRG)
Virginia Citizens Consumer Council
VOICE - OKC
Woodstock Institute