

Comments from

**Consumer Federation of America
Access Humboldt
Action Center on Race and the Economy
Americans for Financial Reform Education Fund
Atlanta Legal Aid Society, Inc.
California Reinvestment Coalition
Center for Digital Democracy
Charlotte Center for Legal Advocacy
Common Sense Media
Consumer Action
Consumer Federation of California
Delaware Community Reinvestment Action Council, Inc.
Electronic Privacy Information Center (EPIC)
Florida Silver Haired Legislature Inc.
Independent Party of Florida
Maryland Consumer Rights Coalition
Media Alliance
Montana Organizing Project
Mountain State Justice, Inc.
National Association of Consumer Advocates
National Center for Law and Economic Justice
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
North Carolina Justice Center
New York Legal Assistance Group Inc.
Oregon Consumer League
Oregon Food Bank
Privacy Rights Clearinghouse
Public Citizen
Public Justice Center
Public Knowledge
SC Appleseed Legal Justice Center
THE ONE LESS FOUNDATION
U.S. PIRG
Virginia Citizens Consumer Council
Woodstock Institute**

**To the Bureau of Consumer Financial Protection
RE: Docket No. CFPB-2019-0022
RIN 3170-AA41
September 18, 2019**

The thirty-six consumer, privacy, civil rights and public interest organizations listed above welcome the opportunity to comment on the amendments¹ to Regulation F, which the Bureau of Consumer Financial Protection (hereinafter referred to as the Bureau) has proposed to implement the Fair Debt Collection Practices Act (FDCPA), from the perspective of how they would impact the privacy and security of sensitive information about consumers. Indeed, privacy was one of the major concerns prompting enactment of the FDCPA, as cited in the Congressional findings and declarations of purpose:

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.²

The restrictions the statute imposes on debt collectors' communications with consumers and others are essential for protecting consumers' privacy. For example, the debt collector cannot communicate with any third party about the debt without the consumer's prior consent (with some exceptions, such as the creditor, a credit reporting agency, a court, or the consumer's attorney; the debt collector may communicate with third-parties to try to locate a consumer, but cannot disclose that the consumer owes a debt).

Another important privacy provision of the FDCPA is that the debt collector cannot communicate with a consumer at an unusual time or place that it knows or should know is inconvenient. In the absence of information to the contrary, it is assumed that between 8 a.m. and 9 p.m. local time would be convenient for the consumer. A debt collector cannot communicate with a debtor at his or her place of employment if it knows or should know that the employer prohibits such communications. A debt collector must cease communicating with the consumer if the consumer tells it to do so in writing.

Debt collectors are also barred from engaging in any conduct "the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt."³ This includes privacy-invasive actions such as causing a telephone to ring or engaging in phone conversations repeatedly or continuously with intent to annoy, abuse, or harass the person at the called number. Debt collectors cannot publish a list of consumers who allegedly refuse to pay debts or advertise information about debts for sale to coerce consumers to pay.

In attempting to interpret the statute and take into account new means of communications, we are concerned that the Bureau is opening the door to more potential privacy

¹ A Proposed Rule by the Consumer Financial Protection Bureau, Federal Register, [84 FR 23274](#) (May 21, 2019)

² 15 USC 1692 (a)

³ 15 USC 1692 (d)

abuses and security problems. This comes at a time when there are already serious concerns about rampant robocalling, online privacy, data breaches, and identity theft.

The Frequency of Communications Is a Privacy Concern

The need to protect consumers from unwanted communications has long been recognized in public policy. In 1991, the Telephone Consumer Protection Act (TCPA)⁴ was enacted to “protect the privacy interests of residential telephone subscribers by placing restrictions on unsolicited, automated telephone calls to the home.”⁵ Citing advances in technology that were making automated telephone calls more cost-effective and increasing consumer complaints about the number and intrusiveness of such calls, the Senate Committee on Commerce, Science and Transportation concluded that “Federal legislation is necessary to protect the public from automated telephone calls. These calls can be an invasion of privacy, an impediment to interstate commerce, and a disruption to essential public safety services.”⁶ The rules promulgated to implement the statute have been amended over time to strengthen consumers’ privacy protection; for instance, eliminating the exemption from having prior consent to make robocalls to consumers’ cell phones if there is an established business relationship.⁷

Today, robocalls – that is, calls and texts made using Automated Telephone Dialing Systems, prerecorded messages, or both – are a major headache for consumers, notwithstanding the provisions of the TCPA. According to YouMail, there were 4.7 billion robocalls made in the US in July 2019, an average of 14.2 calls per person, and of those, nearly 21 percent were “payment reminders.”⁸ Most robocalls are made by legitimate companies, including debt collectors, not by scammers. Debt collectors can make robocalls to consumers’ landlines without prior consent, but they must have consumers’ prior consent to make robocalls to their cell phones (there is an exception for collecting debts owed to the federal government).

Testimony about robocalls submitted to Congress earlier this year by the National Consumer Law Center on behalf of its low-income clients and other consumer organizations provided several egregious examples of abusive robocalls to collect debts, with consumers being called hundreds, even thousands of times, in some cases several times a day.⁹ In response to the

⁴ 47 USC 227

⁵ See Report 102-178 from Senate Committee on Commerce, Science and Transportation recommending passage of S. 1462 (October 8, 1991), available at <http://tcpablog.com/wp-content/uploads/2015/09/S.-Rep.-102-178-1991.pdf>.

⁶ *Id.*

⁷ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, FCC CG Docket No. 02-278, Report and Order (February 15, 2012), https://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0215/FCC-12-21A1.pdf.

⁸ YouMail, Robocall Index (July 2019), <https://robocallindex.com/>.

⁹ Testimony before the Senate Committee on Commerce, Sciences & Transportation Subcommittee On Communications, Technology Innovation And The Internet Regarding “Illegal Robocalls: Calling All to Stop the

robocall epidemic, the Federal Communications Commission (FCC) recently issued an order to clarify how voice service providers can offer consumers programs to block unwanted calls.¹⁰

Consumer groups support the FCC's efforts and argue that voice service providers should be required to offer such programs. Furthermore, in their response to the FCC's request for further comment, several consumer organizations said that consumers should be able to opt-in to block entire categories of robocalls, "regardless of whether they are legal or not."¹¹ Consumer and public interest groups also support efforts in Congress to strengthen the protections against robocalls and a related problem, spoofed Caller ID.¹²

Another federal law that protects consumers from unwanted communications is the CAN SPAM Act.¹³ While it pertains specifically to unsolicited emails sent for commercial purposes, the findings note that email has become an important and popular means of communication for Americans, that accessing and dealing with emails create costs for individuals, and that a large number of unwanted messages "decreases the convenience of electronic mail and creates a risk that wanted electronic mail messages, both commercial and noncommercial, will be lost, overlooked, or discarded amidst the larger volume of unwanted messages, thus reducing the reliability and usefulness of electronic mail to the recipient."¹⁴

Robocalls and emails provide inexpensive means to send communications to consumers, on a massive scale. This can be a boon to businesses but a bane for individuals who feel that their privacy is being invaded by a deluge of calls, texts and emails that they did not initiate. A recent nationally-representative survey by Consumer Reports found 70 percent of U.S. consumers have stopped answering their phones if they don't recognize the number or if the caller's number is anonymous. Sixty-two percent said they let most calls go to voicemail, and 53 percent said they have educated family members about potential threats and scams from robocalls and how to protect themselves.¹⁵ Many email providers now routinely employ spam filters to protect

Scourge" (April 11, 2019), available at <https://consumerfed.org/wp-content/uploads/2019/04/NCLC-TCPA-Testimony.pdf>

¹⁰ In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls, FCC CG Docket No. 17-59, Declaratory Ruling and Third Further Notice of Proposed Rulemaking (June 6, 2019), <https://docs.fcc.gov/public/attachments/FCC-19-51A1.pdf>.

¹¹ Comments of Consumer Reports, National Consumer Law Center on behalf of its low-income clients, Consumer Action, Consumer Federation of America, National Association of Consumer Advocates, and Public Knowledge (July 24, 2019), available at <https://consumerfed.org/wp-content/uploads/2019/07/Consumer-Group-Comments-CG-Docket-17-59-WC-Docket-17-97-7.24.19-FINAL.pdf>.

¹² See, for example, letter from dozens of groups to members of the U.S. House of Representatives in support of the "Stopping Bad Robocalls Act" (July 23, 2019), available at <https://consumerfed.org/wp-content/uploads/2019/08/Robocalls-SBRA-joint-consumer-letter-to-House-7-23-19-FINAL.pdf>.

¹³ 15 USC 1701 *et seq.*

¹⁴ 15 USC 1701 (a) (4)

¹⁵ Octavio Blanco, *Mad About Robocalls?* Consumer Reports (April 2, 2019), <https://www.consumerreports.org/robocalls/mad-about-robocalls/>.

customers from unsolicited emails (which may not only be unwanted but could threaten their privacy and security by delivering malware to their computers).

Given these concerns, the Bureau's proposals concerning the frequency of contacts by debt collectors are surprising and disappointing. It has proposed to allow debt collectors to call a consumer seven times within a period of seven days about a particular debt, or seven days from having a telephone conversation with a consumer about the debt, and is refraining to place any limits on the number of emails or texts that may be sent.

The Bureau's own survey of consumers found that, of those who had been contacted about a debt in collection, 22 percent who were contacted less than once a week said that was too often, 74 percent who were contacted between one and three times a week said that was too often, 88 percent who were contacted between four to seven times a week said that was too often, and 91 who were contacted eight or more times a week said that was too often.¹⁶ Twenty-eight percent of those contacted said the debt wasn't even theirs.¹⁷

Based on the Bureau's own research, nearly nine in ten consumers would view seven calls in one week about a debt as "too often." Compounding this is the finding from the Bureau's survey that only about a quarter of consumers who had been contacted about a debt said it concerned a single debt; 57 percent had been contacted about two to four debts, 16 percent about five or more debts.¹⁸ The number of potential calls to consumers with multiple debts is staggering; for example, consumers with five debts could be called 35 times in a seven-day period. *On top of this*, those consumers could also receive an unlimited number of texts and emails.

What did consumers mean when they said that a certain number of contacts were "too often?" It is fair to assume they meant that those contacts were an inappropriate imposition on their privacy – their right, as Samuel D. Warren and Louis D. Brandeis put it in their famous law review article, "to be left alone."¹⁹ While businesses, including debt collectors, are free to contact consumers, reasonable boundaries must be placed on such conduct in light of the core human right to privacy. The Bureau's proposal concerning the frequency of contacts is not reasonable.

We believe that a debt collector should be limited to three attempted calls and one conversation per consumer per week, regardless of the number of debts the firm is attempting to

¹⁶ Consumer Financial Protection Bureau, *Consumer Experiences with Debt Collection*, Table 16, page 31 (January 2017) https://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf.

¹⁷ *Id.* Table 9, page 24.

¹⁸ *Id.* Table 1, page 13.

¹⁹ Samuel D. Warren and Louis D. Brandeis, *The Right to Privacy*, Harvard Law Review, Vol. 4, No. 5. (Dec. 15, 1890), pp. 193-220, available at <http://www.cs.cornell.edu/~shmat/courses/cs5436/warren-brandeis.pdf>.

collect from that consumer. We understand that in cases where a debt collector is handling multiple accounts pertaining to a consumer, those accounts may be assigned to different personnel within the firm. With modern technology, however, there is no reason why information about calls to consumers cannot be internally shared and coordinated. We also do not agree that each debt needs to be discussed separately. There is no evidence to suggest that consumers would prefer to receive separate calls for each debt, resulting in *more* calls, especially since the evidence clearly shows that the more frequent the contacts are, the more consumers find them objectionable.

Furthermore, it should be easy for consumers who want to protect their telephone privacy to simply say “stop calling me” at any time and have those calls cease.

We also believe that the Bureau should set similar limits on the frequency of texts and emails.

Debt Collectors Should Get Consumers’ Affirmative Consent for Electronic Communications and Fully Comply with “E-Sign” Requirements

While the Bureau found that the predominant methods by which the consumers surveyed were contacted about debts were by phone and letter, debt collectors will surely increase the use of texts and emails if they are permissible because of the low costs of those forms of communication.

Emails and texts can be even more privacy-intrusive than calls. Unlike landline phone numbers, there are no public directories of consumers’ email addresses or cell phone numbers. Just as with a phone ringing, the frequent ping-pong of a computer or cellphone when emails or texts arrive can be disruptive and annoying. These messages can clog up consumers’ inboxes and use up data on their cellphones, and result in charges for consumers who have limited data plans.

Furthermore, texts and emails are not necessarily “private.” Cell phones and computers may be shared with family members or others in a household. Text messages may appear on the screen of a cell phone even if it has not been unlocked. As the Bureau noted, texts and emails may be monitored in a consumer’s workplace. There is also the potential, as the Bureau acknowledges, for text messages to be sent to cell phone numbers that have been reassigned to other individuals, and for emails to be sent to people who are no longer at that address but that might still be seen by others. Moreover, electronic communications may contain malware that can jeopardize consumers’ privacy and security.

Consumers should be asked for their affirmative consent if they wish to allow communications from debt collectors by email or text. It is not acceptable, as the Bureau

proposes, to let a debt collector send a notice to a consumer that it intends to communicate with that person via a specific non-work email address or by text to a certain non-work cell phone number and place the burden on the consumer to opt-out. Silence on the consumer's part does *not* constitute agreement.

The Bureau also proposes to allow a debt collector to send messages to non-work email addresses and texts to non-work cell phone numbers that the creditor or a previous debt collector obtained from the consumer to communicate about the debt and had used recently to do so, provided that the consumer did not ask those entities to stop using it and it did not lead to a prohibited disclosure (as far as the debt collector can determine).

In addition, the Bureau proposes to allow a debt collector to communicate with a consumer via *any* email address or text to *any* cell phone number that the consumer recently used to contact the debt collector (except to opt-out). Moreover, the Bureau would provide a safe harbor for claims that these communications were unfair and unconscionable means to collect or attempt to collect a debt.

Just because the creditor or a prior debt collector sent an email or a text to the consumer in the past does not mean that the consumer received it, or that the consumer would be able to receive it now. Circumstances in peoples' lives change. The consumer may no longer have that email address or cell phone number, or may no longer wish to use it to communicate about the debt.

Nor should it be presumed that a consumer who uses a particular email address or cell phone to contact a debt collector wishes to receive emails or texts from the debt collector via that address or phone number on an ongoing basis. A consumer may feel some urgency to contact the debt collector and use a certain email address or cell phone to do so, without intending to establish that as a regular means of contact. In some cases the consumer might even be using someone else's email or cell phone.

The obvious solution is for debt collectors who wish to communicate with consumers electronically to obtain their prior affirmative consent to use a particular email address or cell phone number for that purpose.

For information that is required to be provided to consumers in writing, debt collectors who would like the option of providing it electronically should fully comply with the consent requirements of Electronic Signatures in Global and National Commerce Act (E-Sign).²⁰ This section of the statute was enacted to enable consumers to protect their privacy and security by

²⁰ 15 USC 7001 (c)

giving them the power to decide if electronic communications are acceptable for these purposes and to ensure that they are actually capable of receiving and retaining the information.

We reiterate that even for electronic communications that do not fall under E-Sign, debt collectors should be required to obtain the consumer's affirmative consent, in the manner that E-Sign describes, to use a particular email address or cell phone number. This would help protect both debt collectors and consumers from inappropriate disclosures and ensure that consumers are actually able to receive and respond to the information about the debts.

Furthermore, if consumers agree to receive electronic communications, they should not have to jump through unreasonable hoops to stop them. The Bureau should specify that among the options provided to withdraw consent, consumers must be able to use the same means as the communications themselves – that is, they must be able to stop further emails via email and texts via text.

Communications via Social Media Platforms and Private Messaging Services are Inherently Unsafe for Privacy and Security

The Bureau is proposing to allow debt collectors to communicate with consumers by posting messages on webpages of social media platforms or sending direct messages to them through those platforms as long as the messages are not viewable by others. But social media platforms cannot be trusted to keep information private from outsiders or from their own voracious data collection activities. For one thing, privacy settings are not infallible, as the 2018 incident in which Facebook inadvertently made private posts public demonstrated.²¹ Facebook was also accused this year of spying on users' private messages and data.²² In the absence of a strong federal law that limits data collection and use, and requires adequate security, there is no way to ensure that messages that are posted on or sent through social media platforms are truly private and secure.²³

Other private messaging services also present potential privacy and security pitfalls. Not all use end-to-end encryption, and the metadata that can be gleaned by the app providers can

²¹ Andrew Griffin, *Facebook Says Millions of People's Posts Were Accidentally Made Public So Anyone Could See Them*, Independent (June 8, 2018), <https://www.independent.co.uk/life-style/gadgets-and-tech/news/facebook-posts-public-private-settings-personal-data-scandal-privacy-a8388801.html>.

²² Zak Doffman, *Facebook Has Just Been Caught Spying on User's Private Messages and Data – Again*, Forbes (January 30, 2019), <https://www.forbes.com/sites/zakdoffman/2019/01/30/facebook-has-just-been-caught-spying-on-users-private-messages-and-data-again/#151747d631ce>.

²³ Lauren Goode, *Private Messages Are the New (Old) Social Network*, Wired (January 27, 2019), <https://www.wired.com/story/private-messages-new-social-networks/>.

reveal very sensitive information, including with whom a consumer is in contact.²⁴ Again, there is no federal law that protects consumers' privacy and security in using these services.

To protect consumers' privacy and security, debt collectors should not be allowed to use social media platforms or direct messaging as a means of communicating with them.

“Limited-Content” Messages Would Put Privacy at Risk

We are concerned about the privacy implications of permitting collectors to relay “limited-content messages” related to the debt to the consumer and to third-parties in an attempt to locate the consumer. Even a seemingly innocuous message such as “*This is Robin Smith trying to reach Sam Jones. Please contact me at 1-800-555-1212.*” is likely to raise questions about who Mr. Smith is and why he is trying to reach Mr. Jones.

The option to include a reference to an “account” is even more worrisome. Reasonable people would conclude that this refers to a debt. Moreover, with an estimated 71 million Americans with debt in collections, any standard message that the Bureau creates would eventually be understood by most who hear it as a message from a debt collector. In our view, these messages would violate the FDCPA provisions to prevent harassment and abuse, including intrusion on consumer privacy.

Limited content messages threaten consumers' ability to keep information about debts private and may indicate that consumers owe debts when in fact they do not. We believe that this proposal should not be implemented.

Hyperlinks Present Privacy and Identity Theft Risks

The FDCPA requires debt collectors to send validation notices to consumers, which are critical to verify whether or not a debt is legitimate and to provide other important information. The Bureau has proposed to allow debt collectors to send texts or emails to consumers containing hyperlinks to the validation notice, a practice which a federal appeals court recently found to violate the FDCPA.²⁵ As the Bureau has noted, consumers are warned about clicking on links in messages because of the dangers of malware. For instance, the Federal Trade Commission advises consumers, “Instead of clicking on a link in an email, type the URL of a trusted site directly into your browser.”²⁶ The Bureau's proposal would make it easier for

²⁴ Ben Dickson, *How Secure Is Your Messaging App?* PC (December 26, 2018), <https://www.pcmag.com/news/365605/how-secure-is-your-messaging-app>.

²⁵ *Lavallee v. Med-1 Solutions, LLC*, No. 17-3244, (7th Cir. Aug. 9, 2019).

²⁶ See Federal Trade Commission, *Malware*, <https://www.consumer.ftc.gov/articles/0011-malware>.

scammers and phishers to exploit this new loophole and pose as debt collectors, as some are already known to do.²⁷

Furthermore, directing consumers to a website would enable debt collectors to track the computers or mobile devices they are using, potentially providing highly personal information about their online activities, and about their movements if they are accessing the internet via mobile devices. Moreover, creating dashboards for consumers entails collecting and storing personal information which could be subject to data breaches and other abuses.

None of the disclosures that debt collectors are required to give consumers should be allowed to be provided via hyperlinks. Consumers should not be forced to choose between the risk to their privacy and security and the ability to receive important information about debts and their rights in that regard.

The Privacy Harms From Debt Collection Abuses, both Tangible and Intangible, Are Real

As we noted previously, the findings in the FDCPA itself refer to invasions of personal privacy as a primary concern in regard to abusive debt collection practices. The resulting harms can be tangible, but even those that are intangible are no less real for consumers. Relentless contacts by debt collectors can exacerbate the stress and anxiety that coping with financial problems already causes for consumers. On top of that, disclosure of debts to third parties can be embarrassing, humiliating, and damaging to the consumer's reputation.

In its notice of proposed rulemaking, the Bureau provides some examples in which consumers have alleged harms from violations of the FDCPA, such as the woman who felt harassed, stressed, upset, aggravated, inconvenienced, frustrated, shaken up, intimidated, and threatened by repeated debt collection calls, and the man whose treatment at work after receiving debt collection calls caused him to quit and take a job elsewhere at lower pay.²⁸ Not only can consumers lose their jobs when their employers learn about their debt problems, but they may find themselves barred from continuing to work in their chosen field.²⁹ Among other impacts, job loss or lower pay resulting from debt collection abuses can inhibit the consumer's ability to repay a debt.

²⁷ See Federal Trade Commission, *Fake Debt Collectors*, <https://www.consumer.ftc.gov/articles/0258-fake-debt-collectors>.

²⁸ *Supra*, footnote 286, page 132.

²⁹ Martha C. White, *Yikes-When Debt Costs You a Job*, TIME (Sept. 17, 2012), <http://business.time.com/2012/09/17/yikes-when-debt-costs-you-a-job/>.

Dealing with debt is also a major challenge for people in relationships,³⁰ and unfair debt collection practices can obviously add to that stress. Threats of violence can even occur due to debt collection abuses.³¹

In addition, identity theft, whether it stems from malware on consumers' computers or breaches of the highly sensitive personal information that debt collectors retain about them, can also cause a variety of harms. It is estimated that identity fraud – that is the use of individuals' stolen personal information – resulted in \$1.7 billion in out-of-pocket costs for victims in 2018, more than double the losses in 2016.³² The impact may go well beyond financial loss, however, as identity theft can cause a range of emotional problems which, in turn, can have real physical consequences.³³

Privacy and Security Must be at the Forefront of Regulation F

The privacy and security of consumers' personal information must be at the forefront as the Bureau crafts regulations to curb abusive, deceptive, and unfair debt collection practices.

Consumers do not choose to be in debt; they often find themselves in that situation because of an unexpected illness, job layoff, or other sudden reversal of fortune. Debt collection firms, however, choose to be in that business and must be responsible for conducting it properly, with respect for consumers' privacy and care for their security.

Thank you for considering our views on these important consumer issues.

³⁰ Fidelity Investments, *2018 Fidelity Investments Couples & Money Study* (2018), https://www.fidelity.com/bin-public/060_www_fidelity_com/documents/pr/couples-fact-sheet.pdf.

³¹ Brenda Craig, *Tales from the Dark Side of Debt Collection*, Lawyers and Settlements (Nov. 30, 2013), <http://www.lawyersandsettlements.com/articles/Bill-Collector-Harassment/interview-debt-collector-lawsuit-bill-2-19312.html>.

³² Javelin Strategy & Research, *Consumers Increasingly Shoulder Burden of Sophisticated Fraud Schemes, According to 2019 Javelin Strategy & Research Study*, press release (March 6, 2019), <https://www.javelinstrategy.com/press-release/consumers-increasingly-shoulder-burden-sophisticated-fraud-schemes-according-2019>.

³³ See Identity Theft Resource Center, *The Aftermath: The Non-Economic Impacts of Identity Theft* (2018), https://www.idtheftcenter.org/wp-content/uploads/2018/09/ITRC_Aftermath-2018_Web_FINAL.pdf.