

Director Kathleen Kraninger
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
Submitted electronically via <https://www.regulations.gov>

September 18, 2019

**Re: Comments on Proposal to Amend Regulation F of the Fair Debt Collections Practices Act (FDCPA)
Docket No. CFPB-2019-0022 or RIN 3170-AA41**

Dear Director Kraninger:

On behalf of the Maryland Consumer Rights Coalition and the undersigned organizations, we appreciate the opportunity to comment on Maryland's experiences with the debt collection industry, our concerns with the proposed rule, and our recommendations for strengthening the proposed rule to better protect consumers.

The Maryland Consumer Rights Coalition (MCRC) advances economic rights and financial inclusion through research, advocacy, education, organizing, and direct service. Our 8,500 supporters and members work with us to mobilize for systemic policy change through research, advocacy, education, organizing, and direct service.

Overview of Debt Issues in Maryland

The cost of living in Maryland has dramatically increased in the past few decades, and our rules to protect working families in financial distress have not kept pace. Between 1990-2016, poverty in Maryland increased by 19.1%. Currently, 576,835 Marylanders are living in poverty across our state. More than 20% of Marylanders are asset-poor, meaning that if they lost their income, they would not have enough money to survive. Black households comprise 34.3% of the asset poor. In fact, Maryland has the second highest average debt load in the country at \$284,851 owed with only Hawaii exceeding ¹ average indebtedness.

¹ <https://howmuch.net/articles/americans-debt-by-state>

Housing Affordability

While poverty is deepening, concomitantly, housing costs are rising. The average cost of a home has increased by 45% since 1998, while wages have not kept pace. In 2016, nationwide, home prices rose twice as fast as inflation . As a result, it is more and more difficult to buy a home, despite the ² wealth-building opportunity it affords. Yet, many individuals continue to pursue homeownership. In Maryland, this pursuit comes with a large debt burden. Maryland ranks third in the country for the highest average mortgage debt of \$49,320.

While homeownership, while expensive, at least provides owners with equity and wealth-building. , renting depletes rather than builds assets. Rental costs are skyrocketing, making it often far beyond the reach of a low-wage worker. Today, a person would have to earn \$28.87 per hour to be able to afford a market-rate, two-bedroom. According to Prosperity Now, 50.5% of renters are cost-burdened. A [recent study on rental housing](#) by the National Low Income Housing Coalition (NLIHC) found that Maryland faces a shortage of 118,810 affordable and accessible rental units for extremely low income households. For every 100 extremely low income households in Maryland, only 33 rental dwellings are affordable and available.

As poverty has increased, so has indebtedness.

Medical Costs

Alongside rising housing costs, health care costs have skyrocketed. Over 288,000 Marylanders purchase their own health insurance. CareFirst, Maryland's largest insurer has proposed premium hikes that will result in costs ranging from \$1,030 to \$1,500 per year. These insurance costs, coupled with unexpected medical emergencies, may lead to medical debt – one of the biggest drivers of consumer debt. A report from the Consumer Financial Protection Bureau (CFPB) found that 59% of individuals who had been contacted by a debt collector stated it was due to owing medical debt.

Medical debt in Maryland disproportionately impacts Black residents: medical debt comprised 21% of debt in collection in communities of color compared to 15 % in predominantly white areas. A recent report by the AFLCIO and National Nurses United found that Johns Hopkins Hospital sued 2,483 individuals for medical debt over the past 9 years. By far, the zipcode with the largest number of individuals sued by Johns Hopkins for medical debt is 90% Black with a poverty rate of 28 percent.

² <https://www.cnbc.com/2017/06/23/how-much-housing-prices-have-risen-since-1940.html>

Student Loans

Student loan debt has been an increasing issue in Maryland, as it has been across the country. In Maryland, 54% of students graduate with debt, and the average debt is \$27,455. Maryland borrowers-of-color are more likely to take out loans for higher education and face a higher rates of default than white borrowers. In Maryland, 20% of non-white individuals had student loan debt compared to 14% of white residents. Additionally, 15% of non-white student loan borrowers has student debt in collections, compared to 9% of white borrowers.

Moreover, financially fragile students of color in Maryland are aggressively recruited by for-profit colleges, which MCRC's report *Making the Grade* found generally costs three to five times more than a comparable program at a public college. Students at for-profit colleges hold higher debt loads and have higher default rates than their peers at public colleges in Maryland.

Disparate Impact on Black Borrowers

For a number of reasons, consumer debt collection lawsuits and the resulting judgements are disproportionately carried out in communities-of-color throughout Maryland. In 2011, there were more than 130,000 debt collection judgements rendered. In 2016, there were 46,719 debt collection judgements in Prince George's, Baltimore County, and Baltimore City alone. While there may be many reasons that these jurisdictions experienced such a large number of collection suits, ProPublica's analysis from three other states found that, even accounting for income, rates of collection lawsuits are twice as high in majority Black communities compared to predominantly white ones.

MCRC's research in Maryland affirms ProPublica's analysis in other states. MCRC found that there are more debt collection suits filed in Maryland counties that have large communities of color. Our findings reinforce a 2009 study of Maryland debt collection cases which also found that communities of color were over-represented in debt collection cases.

As a result, debt collection actions disproportionately affect Black borrowers and widen an already large racial wealth gap through collection activities.

Debt collection issues in Maryland

In Maryland, 32 percent of residents have debt in collections. Rising costs-of-living combined with stagnant wages and a widening racial wealth gap contribute to the reasons financially fragile households struggle to pay bills on time.

Yet current rules on debt collection fail to protect Maryland residents. In 2017, Marylanders filed 10,500 complaints about debt collection companies. Moreover, Maryland residents reported a number of debt collection violations including:

- 30% received calls after the firm received a “Stop Calling” notice;
- 28% reported that collectors called repeatedly;
- 22% stated that the collector made a false representation about the debt;
- 11% found that the debt collector failed to identify themselves as such;
- 5% noted that the debt collector informed someone else about the consumer’s debt; and,
- 4 % had other complaints

In many ways, Maryland’s District Courts have become an extension of the debt collection industry. In the state, a lawsuit filed by a creditor for a principal amount that is \$5,000 or below is considered a small claim and is heard in District Court, where there are few or no rules of evidence applied, and few procedural safeguards.

The current process is riddled with problematic procedures that favor creditor attorneys over alleged debtors. First, many individuals never receive notice that they are being sued; notices are sent to outdated addresses, particularly in cases where the alleged debtor is sued by a property manager and may be experiencing housing insecurity as a result. Maryland allows personal service to include service by mail, by a sheriff, or a process server to the individual or someone residing at the same address. There have been a number of documented cases of “sewer service” in Maryland, when a process server has falsely claimed to have served a summons to an individual. Finally, for many low-income individuals, other concerns including the inability to take a day off of work, find child-care, or get to the court via public transit may prevent alleged debtors from attending a hearing. For those that do attend a hearing, the majority have little understanding of their rights, and only a fraction have access to legal counsel.

As a result, low-income borrowers face an onerous process within the courts and many consumers face debtors prisons, wage, and bank account garnishments which fuel a deepening debt spiral.

While the proposed CFPB Debt Collection rule has some positive aspects which we believe could be further strengthened, on balance, the proposed rule provides far more protections for abusive debt collectors than it does for consumers. The proposed rule further empowers debt collectors to harass consumers, protects debt collection mills, and opens the door for collection of predatory ‘zombie’ debt.

Given the blatant disregard debt collectors have already exhibited in abiding by current law, the proposed rule will codify many coercive practices and provide an enabling environment for debt collectors to harass individuals.

Positive Provisions in the Proposed Rule

Before describing our concerns, we do want to note that there are provisions in the proposed rule that we support but believe could be strengthened.

Communications

Limitations on calls. We support limiting collectors to one call a week. This should be sufficient to convey needed information related to the debt and discuss options with a consumer.

Recommendation: However, we recommend that collectors be limited to one conversation per week per consumer rather than per debt as currently proposed. The rationale for this is clear when one considers certain types of debt such as medical or student debt. In both cases, there are often several loans collected under a single account number. Individuals who owe medical debt may find some services covered, other services partially covered, while still other services and/or providers are considered out-of-network. Similarly, several different student loans may be collected under the same account number.

Ability to stop calls or other communication. We support the ability for consumers to stop certain types of communications without stopping all communications. This enables the individual to halt communications that are particularly burdensome.

Recommendation: We believe that the provision could be strengthened by 1) clarifying that oral requests to “stop calling” should be included in the rule and should apply to all calls from the collector, unless specified otherwise by the consumer.

Prohibition of communication on public, social media platforms. We support prohibiting communication activities on social media platforms. However, the proposed rule should go further in seeking affirmative consent.

Recommendation: We believe that the collector should be required to obtain affirmative consent from the consumer to be contacted on any social media platform, even if the messaging is limited to private direct messages.

Prohibitions

Prohibitions on the sale of certain debts. We support the provision that a collector could not sell accounts that were paid, discharged in bankruptcy, or where an identity theft was filed.

Negative Aspects of the Proposed Rule

Communications

Opens the Door to Aggressive Contacts for Debt Collectors The proposed rule will allow debt collectors to make 7 attempts per debt, per week. For certain kinds of debt, particularly medical and student loan debt, as proposed, consumers may receive up to 56 or more calls per week. For individuals contending with medical debt, for example, there may be a number of charges that are all listed under one account number. Some charges may be covered by insurance; other charges may be partially covered; while still other providers and services may not be covered at all, either because the provider is out-of-network or the services are not covered by the policy. Similarly, multiple student loans may be collected under the same account number. The proposed rule will debt collectors to inundate and overwhelm individuals.

Recommendation: We recommend that the final rule limit collectors to one conversation and three attempts per week, per consumer rather than per debt.

Allows unlimited texts, emails, and direct messages without consumer consent. There are a number of grave concerns with this provision. First, there are no specified limits on the number of texts, emails, or

direct messages which, when combined with the high number of phone calls may overwhelm individuals. Secondly, these kinds of messages may contain information that is difficult for some consumers to access. For example, many individuals may have email but no computer at home and spotty internet

access. A recent report found that an estimated 74,116 households in Baltimore have no internet access. This digital divide disproportionately impacts low-income communities of color in Baltimore.

Other individuals may have smart-phones but encounter difficulties viewing, printing, or saving legal notices on smartphone screens. Moreover, smartphone usage may be costly for those with limited data plans, subscribers to programs such as Lifeline, and since the CFPB is not requiring collectors to use free-to-end user text messaging, the CFPB is shifting the costs from debt collectors to financially vulnerable consumers.

As written, this proposal also raises security risks. Clicking on certain hyperlinks may make consumers vulnerable to hackers. At the same time, collectors may send required links to consumers that they are reluctant to click. In Maryland alone, more than 1.1 million people had their personal information misused in the [Cambridge Analytica scandal](#) while 3 million Maryland residents were among the 170 million people whose data was leaked from Equifax, potentially as a [result of a hack](#) by a hostile foreign state.

While the proposal does require an opt-out right, it may be conveyed in a way that is difficult to exercise which means it doesn't provide meaningful protections.

The proposal expands the number of ways in which debt collectors can contact consumers without simultaneously extending and deepening essential consumer protections.

Recommendation: Debt collectors must require affirmative consent before contacting consumers via electronic communications, allow opt-out via any communication channel used by collector, and require full compliance with the E-Sign Act before collectors can send key notices electronically.

Permits violations of consumer privacy. Debt collectors could leave "limited content" messages. While the limited content messages would not include any specific information about the debt, the consumer

will know there is a need to call back about an account related to a debt. The inclusion of 'limited content' messages is deeply troubling and amounts to an end-run around the Fair Debt Collection Practices Act (FDCPA) as these types of messages are exempt from

from the definition of "communications" under the FDCPA. Consequently, consumers would be inundated by limited content text or direct messages at any time of the day or night and allow voicemail, text, and direct message for consumers without basic disclosures.

Recommendation-The CFPB should not exempt any forms of communication from the FDCPA and must require collectors to respect privacy in all communications.

Provision of a Safe Harbor Protecting Debt Collection Mill Lawyers. The current proposed rule protects attorneys from claims that they have violated false, deceptive, or misleading representation as long as the lawyer reviews certain unspecified information. The provision does not require the attorney to review admissible evidence before filing a lawsuit.

In effect, the CFPB is given a green light and the promise of protection to debt mill attorneys who file thousands of collection lawsuits each year without regard to the validity of the debt, the process of service, or the documentation required.

In Maryland, there are collection attorneys that file thousands of collection lawsuits each year often without sufficient review of the original account information. For example, a 2008 Baltimore Sun article on medical debt lawsuits profiled one solo practitioner lawyer who had filed 13,000 medical debt collection lawsuits on behalf of a dozen hospitals in five years. In 2016, Maryland passed legislation to increase protections for consumers by expanding the standards debt collectors must abide by for the chain of assignment. Despite expanding requirements by debt collectors before filing suit, myriad problems remain.

In *Brown vs. Johns Hopkins Bayview*, a debt mill collection attorney received approval to garnish Mr. Brown's wages to satisfy a 10 year-old judgement on medical debt. However, the judgement was against an individual with the same name but with no relation to one another. The two individuals differ in

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height, weight, address, zip code, and social security number. Despite providing proof that Johns Hopkins was garnishing the wrong person, the lawyer continued to garnish Mr. Brown's wages and even opposed (and defeated) Mr. Brown's motion to strike the garnishment. Mr. Brown was never served the summons or complaint in the underlying action, and in a November 2016 hearing, the lawyer admitted that he did not have the original collection file.

In other cases, despite the prohibition on the use of confessed judgement promissory notes as unfair and deceptive, two recent class action suits in Maryland addressed the use of confessed judgements by debt

collection attorneys which resulted in a number of vulnerable Maryland consumers experiencing wage and bank garnishments without knowledge of or ability to assert their rights and defend themselves.

Recommendation: The CFPB should require collection attorneys to review original account-level documentation of indebtedness and make an independent determination that they are filing a lawsuit against the right person, for the right amount, and that their client has the legal authority to do so.

Allows collection of 'zombie debts'. The proposal would prohibit a debt collector from suing or threatening to sue on a debt that the debt collector *knows or should know* is time-barred.

Recommendation: This section needs to be strengthened to unequivocally ban time-barred debt. We are concerned that it may be difficult to determine whether a "know or should have known" standard has been met. As proposed, this standard creates ambiguity, essentially providing a loophole which debt collectors could exploit to take advantage of consumers. Such uncertainty could increase litigation costs and make enforcement more difficult. 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.

The statute of limitations for debt collection in most cases in Maryland is three to four years. In 2016, Maryland passed legislation barring the collection of time-barred debt and affirming that any additional payment would not revive the debt. Yet despite this law, Maryland still has the fifth highest number of complaints about firms attempting to collect time-barred debt in the country with 38.65 complaints per 100,000 residents . Rather than creating clarity, the proposed language seems to open the door for debt³ collectors to circumvent state law like Maryland's and claim willful ignorance as to the status of the

³ <https://www.cbsnews.com/news/5-states-with-the-most-zombie-debt-complaints/>

debt. This deceptive practice must be clearly prohibited by clarifying the standard and eliminating qualified language that simply serves to muddy the waters and make enforcement more difficult and costly.

Shortfalls in Required Notice. Proposals related to the required notice for consumers fall short, particularly for speakers for whom English is not their first language. The CFPB will require debt collectors to provide some validation notice, although as discussed earlier, the proposed rule provides a safe harbor for debt collection attorneys who may fail to provide adequate notice. Yet, the requirements for the validation notice allow for the notice to be provided orally, which may create confusion given the

amount of information that will be provided. Moreover, it is better to have information in writing from the debt collector, should a dispute arise.

The proposed rule includes a model notice which, as proposed, is confusing for consumers. As written, consumers may believe that they must make a payment in order to submit a dispute. Most concerning, the proposed rule suggests that language access is optional. Specifically, the required notice, states that Spanish-speaking consumers with limited English proficiency may benefit from a Spanish-language disclosure informing them of their ability to request a Spanish language translation, *if a debt collector chooses to make such a translation available*. The rule continues to allow debt collectors to opt to provide validation information in Spanish or disclosures. The rule is silent on other non-Spanish languages that those with limited English proficiency may speak.

Maryland is a state with a rich, diverse culture and a large number of foreign-born residents. In Montgomery County, Maryland, 40.6% of its citizens speak a non-English language, nearly double the national average of 21 percent. Native Spanish speakers comprise 16.6% of non-English speakers in the county, followed by 3.95% Chinese speakers, and 3.15% speakers of African languages.

Moreover, many predatory businesses have used contracts in a consumer's non-native language to confuse and entrap an individual in costly transaction. In a Maryland case, *Cisneros & Santizo v. Andrews & Lawrence Professional Services, LLC et al*, Ms. Cisneros, who speaks Spanish as her native language and is unable to read or write English, was told she was required to sign a Confessed Judgement Promissory Note. The debt collection lawyers did not provide Ms. Cisneros with a translation of the Confessed Judgement Promissory note, nor did they provide her with an interpreter.

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Recommendation: The CFPB should require validation notices to be provided by mail unless the consumer opts in to electronic delivery; improve the model notice; require collectors to include a written statement of rights in a consumer's native language and use the guidelines in plainlanguage.gov for government documents to ensure clarity as well as precision.

While we welcome the opportunity to comment on the proposed rule, as written, it provides far more protections for debt collectors than it does for consumers. Maryland has worked for a number of years to limit deceptive practices and regulate debt collectors. The rule is a real setback for the work that has been done in our state and may increase the harm we see from unscrupulous and predatory debt collectors. We urge the CFPB to adopt the recommendations we have provided above to afford protections to consumers in Maryland and throughout the country.

Sincerely,

Archbishop Spalding High School
Capital Area Guide Dog Users Inc.
CASH Campaign of Maryland
CCCSMD
Civil Justice, Inc.
Consumer Action
Fair Housing Action Center of Maryland
Greater Baltimore Community Housing Resource Board
Housing Options & Planning Enterprises, inc.
Maryland Consumer Rights Coalition
Maryland Legal Aid
Maryland Legislative Coalition
PBMC, Inc.
Prince George's CASH Campaign
Public Justice Center
Reinvestment Partners
Roots of Mankind Corporation
St. Mary's Outreach Center

Woodside Foundation
Youth Empowered Society

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