August 4, 2020

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552
2020-NPRM-DebtCollection@cfpb.gov

RE: Debt Collection Practices (Regulation F)
   Docket No. CFPB-2020-0010, RIN 3170-AA41

Dear Director Kraninger:

AARP, on behalf of our 38 million members and all older Americans nationwide, thanks you for the opportunity to comment on the Consumer Financial Protection Bureau’s (CFPB) proposed rule governing debt collection practices for time-barred debt.

In its rulemaking, the CFPB notes the importance of informing consumers of their rights regarding debts in collections beyond the applicable statute of limitations—also known as time-barred debt. As noted in AARP’s September 2019 comments to the CFPB regarding its debt collection rulemaking, 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. As collections activity has become more aggressive in recent years, older individuals with limited incomes are particularly vulnerable to inappropriate collections practices over decades-old debts that may lead not only to financial distress but also added physical and emotional stress.

2 As one example: “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, https://www.wsj.com/articles/debt-collectors-wage-comback-11562319002.
AARP reiterates our position that the CFPB should establish a strict liability standard for collectors attempting to pursue time-barred debt. By only requiring disclosures in cases where the debt collector “knows or should know” of a debt’s time-barred status, collectors have a reduced incentive to fully and accurately determine the status of a debt. Meanwhile, pressure is unfairly placed on the consumer to understand that making a payment may reset the clock and restart the statute of limitations on the debt. This potential scenario is confusing to individual consumers, as the CFPB notes in its own qualitative research: “Consumers find the concept of revival counterintuitive—that is, consumers believe that making a payment should avert the negative consequences of nonpayment, which is in tension with being subject to the risk of a lawsuit.”

Improved time-barred debt disclosures, as proposed by the CFPB, have some limited potential to clarify this ambiguity. The proposed rule would require a debt collector that knows or should know a debt is time-barred to provide a disclosure statement to that effect. This statement must disclose that the collector will not sue to collect this debt under present circumstances, and also identify the circumstances in which that debt may be revived, including for a partial payment. Yet, while these disclosures are important, the CFPB’s own quantitative disclosure testing reveals that, as proposed, they are insufficient. Even disclosure study participants with a bachelor’s degree or higher only correctly answered about half of the comprehension questions about the applicability of revival provisions.

For these disclosures to be effective, they must be fully accessible to the needs of older adults and anyone helping them with their finances. Oral and electronic disclosures may be inappropriate in some circumstances and must not be the only forms of disclosure. Generally speaking, the proposed rule’s disclosure provisions are insufficient on these grounds. As noted in AARP’s September 2019 comments, oral disclosure provisions are particularly concerning in cases where people experiencing cognitive declines may be receiving help making financial decisions from a relative, friend, caregiver, or professional. Consumers must have clear information and choices available to them, as well as the ability to share this information with others who may help manage household finances.

Communications provided orally should also be delivered in writing in order to provide an adequate record for individuals and those helping them manage their money. For example, in one situation the proposed rule anticipates in which a debt becomes time-barred and the first communication of this change in status is oral, AARP considers it imperative that this disclosure also be provided in the first subsequent written communication. Furthermore, the disclosure of time-barred debt status and applicable revival provisions should also be made as part of all subsequent communications with the consumer, regardless of format. Consumer information

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3 85 FR 12675.
6 85 FR 12682.
about a debt’s time-barred status and revival circumstances should also be retained by the debt collector for future consumer inquiries. Relying solely on oral disclosures—or on one-time or otherwise infrequent disclosures, without a consistent paper trail—has the potential to be manipulative and damaging to older adults and their families.

Similarly, any reliance on electronic-only disclosure methods may prove to be problematic for some older adults. Granted, there are some cases in which electronic approaches may be attractive, and technology adoption has grown rapidly in recent years. More than three-quarters of people age 50+ owned a smartphone in 2019, an increase from only 48 percent five years prior. At the same time, both access to these services and comfort with them are not ubiquitous. Only about half of households headed by someone age 50 to 64, and about 3 in 10 households headed by someone age 65 or older, rely primarily on a cell phone, tablet, or computer to access their bank accounts. This suggests it would be unlikely for electronic disclosures in a debt collection context to be broadly accepted and understood. The negative impacts of unreceived or unclear electronic disclosures apply to more than just older workers and retirees—they could also be particularly severe for lower wage workers, workers with lower educational attainment, persons who live in rural communities, and racial minorities.

In addition, AARP remains concerned about the extent to which older adults are 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. Consumers may have difficulty differentiating between legitimate and fraudulent uses of debt collection communications. Widespread adoption of electronic disclosures—such as those through email or text messages—without appropriate safeguards, could facilitate identity theft through “spear-phishing” techniques or financial extortion through “phantom debt collection” scams. The CFPB, along with other agencies, should develop improved ways to differentiate legitimate collection attempts and counter fraudulent collections efforts.

In summary, AARP urges that the CFPB should: (1) adopt a strict liability standard for time-barred debt; (2) require a time-barred debt disclosure on every communication with a debtor; (3) address the important limitations of disclosures for older adults and those helping them manage their finances: and, (4) examine whether proposed disclosure methods or language have the potential to inadvertently encourage fraudulent activity. These steps would provide greater clarity to consumers and prevent them from suffering greater financial harm as a result of incomplete, inconsistent, or misleading information about prior debts they may have incurred.

Once again, AARP appreciates the opportunity to share our thoughts on the CFPB’s proposed rule regarding Debt Collection Practices. If you have any questions, please feel free to contact

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8 AARP tabulations of 2017 FDIC National Survey of Unbanked and Underbanked Households.
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Sincerely,

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