



July 31, 2020

The Honorable Kathy Kraninger
Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: Notice of Supplemental Proposed Rulemaking on Debt Collection (Regulation F) Docket No. CFPB-2020-0010 RIN 3170-AA41

Dear Director Kraninger:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits these comments on the Bureau of Consumer Financial Protection's (Bureau or CFPB) supplemental proposed rule on *Debt Collection (Regulation F)*.¹ In May 2019, the Bureau published a proposal to amend Regulation F, 12 CFR Part 1006, which implements the Fair Debt Collection Practices Act (FDCPA), to prescribe Federal rules governing the activities of debt collectors covered by the FDCPA. The May 2019 proposal would, among other things, address communications in connection with debt collection; interpret and apply prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection; and clarify requirements for certain consumer-facing debt collection disclosures. The 2020 supplemental proposed rule would require debt collectors to make certain disclosures when collecting time-barred debts.² Advocacy is concerned about the impact that the proposal may have on small entities and encourages the Bureau to take steps to mitigate that impact.

Advocacy Background

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),³ as amended by the Small Business Regulatory Enforcement Fairness Act,⁴ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities,

¹ 85 Federal Register 12672, March 3, 2020.

² Id.

³ 5 U.S.C. § 601 et seq.

⁴ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁵ The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁶ Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."⁷

The Small Business Regulatory Enforcement Fairness Act Panel

In July 2010, the United States Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act or Dodd-Frank).⁸ Section 1011 of the Act establishes the Bureau to supervise certain activities of financial institutions. Section 1100G, entitled "Small Business Fairness and Regulatory Transparency," amends 5 U.S.C. § 609(d), to require the Bureau to comply with the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel process.

The SBREFA panel process requires the Bureau to conduct special outreach efforts to ensure that small entity views are carefully considered prior to the issuance of a proposed rule, if the rule is expected to have a significant economic impact on a substantial number of small entities. This outreach is accomplished through the work of small business advocacy review panels consisting of a representative or representatives from the rulemaking agency, the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA), and the Chief Counsel for Advocacy. The panel solicits information and advice from small entity representatives (SERs), who are individuals who represent small entities affected by the proposal. SERs help the panel better understand the ramifications of the proposed rule. The product of a SBREFA panel's work is its panel report and recommendations on the regulatory proposal under review.

The Bureau convened a SBREFA panel on debt collection on August 23, 2016. The panel held an outreach meeting in Washington, D.C. with SERs on August 25, 2016. In advance of the panel outreach meeting, the Bureau, Advocacy, and OMB held a series of telephone conferences with the SERs to describe the small business review process, obtain important background information about each SER's current business practices, and discuss selected portions of the proposals under consideration. The panel issued its report on October 19, 2016.⁹

In addition, the Office of Advocacy performs outreach through roundtables, conference calls and other means to develop its position on important issues such as time-barred debt. Advocacy discussed the debt collection proposal at its roundtable on June 26, 2019. Advocacy also participated in two roundtables that ACA International (the Association of Credit and Collection Professionals) organized for its small

⁵ Small Business Jobs Act of 2010 (PL 111-240) § 1601.

⁶ Id.

⁷ 75 U.S.C. Sec. 601 note.

⁸ Pub. L. 111-203.

⁹ *The Final Report of the Small Business Review Panel on CFPB's Debt Collector and Debt Buyer Rulemaking* (hereinafter "Panel Report"), October 19, 2016.

members in July 2018 and July 2019. In May 2020, Advocacy held a conference call with ACA International to discuss the impact that the time-barred debt proposal could have on its small members.

The Supplemental Proposed Rule

On March 3, 2020, the Bureau published a supplemental proposed rule on Debt Collection (Regulation F). The Bureau proposes to amend Regulation F, which implements the FDCPA, to require debt collectors to make certain disclosures when collecting time-barred debts. Time-barred debts are debts for which the applicable statute of limitations has expired. The Bureau proposes to require a debt collector collecting a debt that the debt collector knows or should know is time-barred to disclose: (1) that the law limits how long the consumer can be sued for a debt and that, because of the age of the debt, the debt collector will not sue the consumer to collect it; and (2) if the debt collector's right to bring a legal action against the consumer to collect the debt can be revived under applicable law, the fact that revival can occur and the circumstances in which it can occur. The Bureau proposes model language and forms that debt collectors could use to comply with the proposed disclosure requirements.¹⁰

The Initial Regulatory Flexibility Analysis Provides Limited Information About the Costs of the Supplemental Proposed Rule

The Bureau prepared an initial regulatory flexibility analysis (IRFA) for the supplemental proposed rule. The IRFA contains mostly qualitative information about the potential costs and references Section VII of the preamble of the supplemental proposed rule. Advocacy acknowledges that section 605(c) of the RFA states that duplicative analysis is not necessary. Advocacy further acknowledges that section 607 of the RFA allows for a qualitative analysis if a quantitative analysis is not practicable or reliable. However, Advocacy questions whether those provisions of the RFA apply to this IRFA.

As noted in the section VII of the preamble, some states have already implemented similar disclosures for time-barred debt. Is it possible for the Bureau to obtain information about the approximate implementation costs from those states? Moreover, is it possible for the Bureau to estimate the approximate number of attorney hours, training costs and the cost of changing systems to reflect the disclosure requirements? If so, this information should be provided. The information not only informs the public about the rulemaking. It also provides a baseline for the Bureau and the public to consider less costly alternatives.

Requiring Small Entities to Disclose that a Debt is Time-barred Will Be Problematic

As noted above, the supplemental proposed rule bars collection on debt that the collector knows or should know is barred by the statute of limitations. In the initial regulatory flexibility analysis (IRFA), the Bureau acknowledges that this requirement may not be straightforward, especially for debt collectors that operate in multiple jurisdictions.¹¹

As Advocacy stated in its letter on 2019 Debt Collection rule, whether a claim is barred by the statute of limitations is a legal defense in a judicial proceeding. Laws vary by state and it can be difficult to determine because different factors may need to be considered. Such an issue should not be determined by a debt collector who may or may not have legal training.

Indeed, the IRFA indicates that collection agencies, debt buyers, loan servicers and collection law firms would have to comply with the requirements of the supplemental proposal. The CFPB estimates that it will impact 10,250 small entities. Of the 10,250 small entities that participate in debt collection, only 950

¹⁰ 85 Fed. Reg. 12672.

¹¹ Id. at 12694.

are small law firms. Advocacy encourages the Bureau to maintain the status quo and not require debt collectors to make disclosures about time-barred debt.

If the CFPB decides to require debt collectors to provide disclosures, Advocacy encourages the CFPB to take the necessary steps to make the provisions as less burdensome as possible. For example, the CFPB could create a safe harbor for small entities that make a good faith effort to comply with the provisions. Advocacy further encourages the CFPB to perform additional outreach with small entities to develop less burdensome alternatives and to clarify any disclosures that the CFPB may decide to adopt.

Conclusion

Thank you for the opportunity to comment on this important proposal and for your consideration of Advocacy's comments. If you have any questions regarding these comments or if Advocacy can be of any assistance, please do not hesitate to contact me or Jennifer Smith at (202) 205-6943.

Sincerely,

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