Center for Responsible Lending
The Leadership Conference on Civil and Human Rights
NAACP
National CAPACD
UnidosUS

Comments to the Consumer Financial Protection Bureau
Notice of Proposed Rulemaking Debt Collection Practices (Regulation F)
12 CFR Part 1006
[Docket No. CFPB-2020-0010]
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The Center for Responsible Lending (CRL) is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. Over 40 years, Self-Help and its affiliates have provided over $8.5 billion in financing through 159,000 loans to homebuyers, small businesses, and nonprofits. It serves more than 150,000 mostly low-income members through 60 retail credit union locations in California, Florida, Illinois, North Carolina, South Carolina, Virginia, and Wisconsin.

The Leadership Conference on Civil and Human Rights is a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States. Through advocacy and outreach to targeted constituencies, The Leadership Conference works toward the goal of a more open and just society - an America as good as its ideals. The Leadership Conference is a 501(c)(4) organization that engages in legislative advocacy. It was founded in 1950 and has coordinated national lobbying efforts on behalf of every major civil rights law since 1957.

The National Association for the Advancement of Colored People (NAACP), founded in 1909 is our nation's oldest, largest and most widely known grassroots civil rights organization. The principal objectives of NAACP are to ensure the political, educational, social and economic equality of all citizens; to achieve equality of rights and eliminate racial prejudice among the citizens of the United States; to remove all barriers of racial discrimination through democratic processes; to seek enactment and enforcement of federal, state and local laws securing civil rights; to inform the public of the adverse effects of racial discrimination and to seek its elimination; to educate persons as to their constitutional rights and to take all lawful action to secure the exercise thereof.

National Coalition for Asian Pacific American Community Development (National CAPACD) is a progressive coalition of local organizations that advocate for and organize in low-income Asian American and Pacific Islander (AAPI) communities and neighborhoods. We strengthen and mobilize our members to build power nationally and further our vision of economic and social justice for all. Our members include more than 100 community-based organizations in 21 states and the Pacific Islands. They implement innovative affordable housing, community development and community organizing strategies to improve the quality of life for low-income AAPI communities.

UnidosUS, previously known as NCLR (National Council of La Raza), is the nation's largest Hispanic civil rights and advocacy organization. Through its unique combination of expert research, advocacy, programs, and an Affiliate Network of nearly 300 community-based organizations across the United States and Puerto Rico, UnidosUS simultaneously challenges the social, economic, and political barriers at the national and local levels. For 50 years, UnidosUS has united communities and different groups seeking common ground through collaboration, and that share a desire to make our country stronger.

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I. Introduction and Executive Summary

The undersigned consumer and civil rights organizations appreciate the opportunity to submit comments on the Consumer Financial Protection Bureau's (CFPB or Bureau) 2020 Supplemental Notice of Proposed Rulemaking (supplemental proposed rule) on debt collection.[1] As organizations dedicated to eliminating abusive financial practices – particularly focused on communities of color and low- to moderate-income consumers – we are deeply concerned about the supplemental proposed rule's content and impact.

The Bureau proposes in its supplemental proposed rule that collectors would be permitted to collect time-barred debt if collectors disclose to consumers during the initial contact and on any required validation notice that the debt is time-barred.[2] As described in Section V, the supplemental proposed rule provides model language and forms that debt collectors may use to comply with the proposed time-barred debt disclosure requirements. We have deep concerns about the proposed disclosures as well as the research the CFPB relied upon to formulate the disclosures.

Furthermore, as part of its May 2019 Notice of Proposed Rulemaking (2019 NPRM), the Bureau is considering whether to adopt a "know or should know" standard or a strict liability standard with respect to collecting time-barred debt.[3] We shared our concerns with the Bureau on this critical issue in our comments on the 2019 NPRM and reiterate our main concerns herein. We continue to urge the Bureau to ban the collection of time-barred debt in and out of court, as well as to adopt a strict liability standard for debt collectors in knowing whether a debt is time-barred. We also urge the Bureau to prohibit the revival of time-barred debt.

Without major changes, the Bureau's approach to time-barred debt and the proposed disclosures will perpetuate abusive practices, harm already struggling families, and widen the racial wealth gap. We urge the Bureau to:

1) Ban all collection of time-barred debt;
2) Implement a strict liability standard for debt collectors pursuing time-barred debt in court;
3) Prohibit threats of suit and the revival of debt that was formerly time-barred; and
4) Abandon the disclosures proposed and conduct further testing, if the Bureau determines not to ban all collection of time-barred debt.

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[1] Debt Collection Practices (Regulation F), 85 Fed. Reg. 12672, 12672 (proposed March 3, 2020) (to be codified at 12 C.F.R. pt. 1006).
[2] *Id*.
[3] Debt Collection Practices (Regulation F), 84 Fed. Reg. 23274, 23329 (proposed May 21, 2019) (to be codified at 12 C.F.R. pt. 1006).

II. Systemic Economic Conditions are Driving Increased Debt Loads for the Average Family, and the COVID-19 Public Health and Economic Crisis is Perpetuating Families' Struggles, Particularly for Families of Color.

Wage stagnation, as well as already high and rising housing, health care, and education costs have dramatically increased debt loads for the average family.[4] For most of the past generation, pay has lagged farther and farther behind overall productivity.[5] From 1973 to 2013, hourly compensation of a typical worker increased just nine percent, while productivity increased 74 percent.[6] And, there has been extraordinarily rapid growth of annual wages for the top 1 percent compared to everyone else. Since 1979, the top one percent's wages rose 138 percent, while wages of the bottom 90 percent rose just 15 percent.[7] Between 1979 and 2013, the hourly wages of middle-wage workers were stagnant, increasing just six percent – or less than 0.2 percent per year.[8] In fact, except for the late 1990s, the wages of middle-wage workers were totally flat or in decline over the 1980s through the 2000s. Low-wage workers have fared even worse, with wages falling five percent from 1979 to 2013.[9] The hourly wages of high-wage workers increased 41 percent.[10] Additionally, wage stagnation affects even the one-third of workers who have earned a four-year college degree. In 2013, inflation-adjusted hourly wages of young college graduates were lower than they were in the late 1990s.[11]

Moreover, recovery from the Great Recession has been uneven. Data show that families of color, Americans born after 1970, and households earning less than $60,000 are the least likely to have recovered the wealth they lost in the financial crisis.[12] In lower-income communities and communities of color across the nation, homeownership has not recovered from the far-reaching damage of the Great Recession. In fact, the Great Recession wiped out 30 years of homeownership gains for Black Americans. It exacerbated the already large racial homeownership gap, with Black homeownership rates falling to levels that predate the passage

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[4] Tsosie, C., et. al. (2018, December 10). 2018 American Household Credit Card Debt Study. *NerdWallet*. Retrieved from https://www.nerdwallet.com/blog/average-credit-card-debt-household/; Maldonado, C. (2018, July 24). Price of College Increasing Almost 8 Times Faster Than Wages. *Forbes.* Retrieved from https://www.forbes.com/sites/camilomaldonado/2018/07/24/price-of-college-increasing-almost-8-times-faster-than-wages/#3b04b6e766c1.

[5] Mishel, L., et al. (2015). Wage Stagnation in Nine Charts. *Economic Policy Institute*. Retrieved from https://www.epi.org/publication/charting-wage-stagnation/.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] Long, H. (2019, July 24). This Doesn't Look Like the Best Economy Ever: 40% of Americans Say They Still Struggle to Pay Bills. *Washington Post.* Retrieved from https://www.washingtonpost.com/business/economy/this-doesnt-look-like-the-best-economy-ever-40percent-of-americans-say-they-still-struggle-to-pay-bills/2019/07/04/855c382e-99b5-11e9-916d-9c61607d8190_story.html.

of the Fair Housing Act more than 50 years ago.[13] The current homeownership rate for Black families is only 47 percent, as compared to 76 percent for white families.[14]

Asian American and Pacific Islanders (AAPIs) also lag behind the white homeownership rate by almost 15 percentage points, with a homeownership rate of 57.4 percent, while the rate for Pacific Islanders alone is even lower at just over 38 percent in 2015.[15] Although the AAPI community is the fastest growing racial group in the United States, it is also one of the fastest growing poverty populations with more than half of all poor AAPIs living in only 10 Metropolitan Statistical Areas (MSAs), the majority of which are concentrated in the most expensive markets.[16] The majority of the over 2 million AAPIs in poverty live in zip codes with housing costs above the national median for both rental housing and homeownership.[17]

The COVID-19 health and economic crisis has laid bare existing inequities and will perpetuate these families' economic struggles. Before the crisis, many lower-income families had little to no margin for an unexpected expense and were just one financial shock away from the risk of eviction or homelessness. The pandemic *is* that financial shock to many lower-income families. Massive unemployment and lost wages are also worsening the affordable housing crisis, with a particularly harsh impact on renter households, which are more likely to be people of color. Before the COVID-19 crisis, according to the National Low Income Housing Coalition, a full-time worker would have to make an hourly wage of $22.96 on average, more than three times the federal minimum wage, to afford to rent a modest two-bedroom apartment or house in the United States.[18] Now, as a result of the COVID-19 crisis, millions of renters across the country have been unable to make rental payments. Families are at dire risk of mass evictions and homelessness, particularly now as the federal and many state eviction moratoria have expired.[19]

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[13] Goodman, L., McCargo, A., & Zhu, J. (2018, February 13). A Closer Look at the Fifteen-Year Drop in Black Homeownership. *Urban Institute*. Retrieved from https://www.urban.org/urban-wire/closer-look-fifteen-year-drop-black-homeownership.

[14] U.S. Census Bureau. (2020, July). *Quarterly Residential Vacancies and Homeownership, Second Quarter 2020*. Retrieved from https://www.census.gov/housing/hvs/files/currenthvspress.pdf.

[15] National Equity Atlas. (2018). *Homeownership: Percent owner-occupied households by race/ethnicity and ancestry: United States, Asian or Pacific Islander, All people, 2015.* Retrieved from https://nationalequityatlas.org/indicators/Homeownership/By_ancestry:38501/United_States/false/Race~ethnicity:Asian_or_Pacific_Islander/Nativity:All_people/Year(s):2015/.

[16] United States Census Bureau. (2017, June 22). *The Nation's Older Population Is Still Growing, Census Bureau Reports*. (Release Number CB17-100). Retrieved from https://www.census.gov/newsroom/press-releases/2017/cb17-100.html; Ishimatsu, J. & Hasgawa, L. Spotlight on Asian American and Pacific Islander Poverty: A Demographic Profile. *Ford Foundation and the National Council of La Raza.* Retrieved from https://www.frbsf.org/community-development/files/LA_AAPI_Poverty_Overview_JMoon_08-15-13.pdf.

[17] National Coalition for Asian Pacific Americans Community Development (CAPACD). *AAPI Poverty Profiles*. Retrieved from https://www.nationalcapacd.org/aapi-poverty-profiles/; US Census, 5-Year American Community Survey, 2016. 64 percent of AAPIs in poverty live in zip codes where the median rent for rental housing in the zip code is higher than the US national median rent, and for homeownership 65 percent of AAPIs in poverty live in zip codes where the median home value is more expensive than the US national median home value.

[18] Aurand, A.; Cooper A.; Emmanuel, D.; Rafi, I.; & Yentel, D. (2019). Out of Reach 2019. *National Low Income Housing Coalition*. Retrieved from https://reports.nlihc.org/oor/about.

[19] Raymond, A. (2020, July 24). As the Federal Eviction Moratorium Expires, Millions of Americans Face Disaster. *New York Magazine*. Retrieved from https://nymag.com/intelligencer/article/federal-eviction-moratorium-expires.html.

Of the 110 million Americans living in rental households, 20 percent are at risk of eviction by September 30, with Black and Latino renters expected to be hardest hit.[20]

And, once again, people of color are disproportionately impacted; the COVID-19 health and economic crisis cuts against them harder in housing, healthcare, employment, infection rates, and deaths.[21] Most tragically, data indicates that COVID-19 is infecting and killing people of color at a much higher rate.[22] Data has shown that the virus has disproportionately affected Black and Latino individuals, who each have hospitalization rates approximately 4.7 and 4.6 times that of non-Hispanic whites, according to data from the Centers for Disease Control and Prevention.[23]

Additionally, unemployment rates are at their highest levels since the Great Depression – especially among Black, Latino and Asian workers (16.8%, 17.6% and 15% in May compared to 12.4% for whites).[24] The unemployment crisis is disproportionately impacting people of color, as they are disproportionately in jobs impacted by the stay-at-home orders and social distancing mandates. Communities of color are also overrepresented among essential workers who are generally not able to work from home and are more likely to encounter the virus.[25]

Thus, the CFPB's debt collection rule must consider the health and economic crisis our country is facing, as well as the existing and growing racial wealth divide. Families are already vulnerable. The final rule must protect consumers and not increase the likelihood that consumers will encounter abusive debt collection practices, such as collectors tricking consumers into making payments on stale debt that cannot be pursued in court. In the face of the evidence that debt collection hurts communities of color the most, which includes collectors' pursuit of this stale debt, it is clear that now is *not* the time to craft policies that drives marginalized families deeper into poverty.

[20] Merle, R. (2020, July 6). Evictions Are Likely to Skyrocket This Summer as Jobs Remain Scarce. Black Renters Will be Hard Hit. *Washington Post*. Retrieved from https://www.washingtonpost.com/business/2020/07/06/eviction-moratoriums-starwood/.

[21] *See, e.g.*, Health Equity Considerations and Racial and Ethnic Minority Groups. (2020, July 24). Centers for Disease Control and Prevention. Retrieved from https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html.

[22] Ford, T.; Reber, S.; & Reeves, Richard V. (2020). Race Gaps in COVID-19 Are Even Bigger Than They Appear, *Brookings*. Retrieved from https://www.brookings.edu/blog/up-front/2020/06/16/race-gaps-in-covid-19-deaths-are-even-bigger-than-they-appear/.

[23] COVIDView: A Weekly Surveillance Summary of U.S. COVID-19 Activity. Key Updates for Week 29, ending July 18, 2020. Centers for Disease Control and Prevention. Retrieved from https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html.

[24] Thorbecke, C. and Mitropoulos, A. (2020, June 28). 'Extreme Inequality Was the Preexisting Condition': How COVID-19 Widened America's Wealth Gap. *ABC News*. Retrieved from https://abcnews.go.com/Business/extreme-inequality-preexisting-condition-covid-19-widened-americas/story?id=71401975.

[25] Thorbecke, C. (2020, May 22). 'Heroes or Hostages?': Communities of Color Bear the Burden of Essential Work in Coronavirus Crisis. *ABC News*. Retrieved from https://abcnews.go.com/Business/heroes-hostages-communities-color-bear-burden-essential-work/story?id=70662472.

III. The Proposed Supplemental Rule Will Exacerbate the Racial Wealth Gap.

Permitting debt collectors to pursue consumers for time-barred debt out of court and putting the burden on consumers to raise the statute of limitations as a defense in court will hurt communities of color the most. As further discussed below, communities of color have less wealth due to systemic racism, and are disproportionately impacted by debt collection, including collection lawsuits, judgments, and wage garnishment. The wealth gap drives higher debt loads for families of color. Black families are twice as likely as white families to lack liquid savings to pay each month's expenses. Community support networks typically have less wealth, again because historical and systemic discrimination has plagued the entire community. In an emergency, most Black families would not know someone who could lend them $3,000.[26] Thus, without family wealth to fall back on, many Black families are forced to take on increasing debt loads to make ends meet or cover unexpected expenses. As discussed above, the COVID-19 crisis has only perpetuated these disparities.

Communities of color are also more often subject to wage garnishments. Much of the uneven impact is due to historic discrimination and systemic racism – a legacy the Bureau must not continue to perpetuate. Communities of color require *substantive* protections from abusive debt collection and litigation practices, not simply disclosures. Disclosures will not help protect communities that have been systematically targeted for abuse. Rather, debt collectors must be held strictly liable for knowing that the statute of limitations has run. There must be no opportunity for overly aggressive collectors to play fast and loose with the law. Problematic disclosures and abusive collection practices will result in consumers, particularly consumers of color, being deceived – intentionally or not – into making payments for debts they do not owe.

A. Communities of color are disproportionately impacted by debt and unfair debt collection practices.

Debt collection, collection lawsuits and judgments, and wage garnishments are more common in communities of color, due to systemic and historical discrimination in financial services, housing and employment. Forty-five percent of borrowers living in areas that are predominantly communities of color had debt in collections versus 27 percent of borrowers living in predominantly white areas.[27] In addition, in a 2017 survey, the CFPB found that 44 percent of borrowers of color reported having been contacted about a debt, compared to 29 percent of white respondents.[28] And, even when accounting for differences in income, communities of color are disproportionately impacted by debt collection litigation.

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[26] Noel, N., Pinder, D., Stewart, S., & Wright, J. (2019, August). The economic impact of closing the racial wealth gap. *McKinsey & Company*. Retrieved from https://www.mckinsey.com/industries/public-sector/our-insights/the-economic-impact-of-closing-the-racial-wealth-gap.

[27] Ratcliff et. al., 2017.

[28] Consumer Financial Protection Bureau (2017, January). Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt. *Consumer Financial Protection Bureau*. Retrieved from https://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf.

One investigation revealed that in three major cities—St. Louis, Chicago, and Newark—the rate of judgments for debt collection lawsuits was twice as high in mostly Black neighborhoods as in mostly white neighborhoods.[29] Furthermore, studies indicate that a greater percentage of debt buyer cases end in default judgments when the consumers are from communities of color or low- and moderate-income communities. A study of 365 debt buyer cases in New York City found that default judgments obtained by debt buyers were disproportionately concentrated among these consumers.[30] Of those cases, 91 percent of people sued and 95 percent of people with default judgments against them lived in low- and moderate-income communities. About half of the people sued by debt buyers (51 percent) and with default judgments entered against them (56 percent) lived in communities that had majority Black or Latino populations. Similarly, a study of New York State debt-collection cases found that the ten zip codes with the highest concentrations of default judgments per 1,000 residents were all predominantly (75 percent or more) communities of color.[31] Indeed, many default judgments are entered despite the reality that debt buyers are abusing the court system and prevailing even when there is a common pattern of suing the wrong person for the wrong amount.

Furthermore, monetary sanctions and resulting debt experienced by communities of color due to disparate criminal legal system involvement, contributes to the racial wealth gap. Whether it be criminal legal fines, fees or cash bail, these sources of income extraction disproportionately impact Black and Latino communities, as they have historically been over-surveilled, over-policed and over-incarcerated. The Department of Justice's 2015 investigation of the Ferguson Police Department following Michael Brown's murder, for example, found that between 2012 and 2014, Black people accounted for 85 percent of vehicle stops, 90 percent of citations and 93 percent of arrests, despite the city's population being only 67 percent Black.[32] In 2018, the combined state and federal imprisonment rate for Black males was 5.8 times the rate for White males.[33] With cash bail in particular, research has shown that bail amounts are typically set higher for individuals in these communities compared to their white peers. According to the Pretrial Justice Institute, Black men receive bail amounts 35 percent higher than white men charged for the same crime with the same criminal history; for Latino men, bail is set 19 percent higher.[34]

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[29] Kiel, P. & Waldman, A. (2015, October 8). The Color of Debt: How Collection Suits Squeeze Black Neighborhoods. *ProPublica*. Retrieved from https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods.

[30] Wilner, C. & Sheftel-Gomes, N. (2010, May). Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower Income New Yorkers. *New Economy Project*. Retrieved from https://www.neweconomynyc.org/wp-content/uploads/2014/08/DEBT_DECEPTION_FINAL_WEB-new-logo.pdf.

[31] Shin, S. & Wilner, C. (2013, June). The Debt Collection Racket in New York: How the Industry Violates Due Process and Perpetuates Economic Inequality. *New Economy Project*. Retrieved from http://www.neweconomynyc.org/wp-content/uploads/2014/08/DebtCollectionRacketUpdated.pdf.

[32] U.S. Department of Justice. 2015. https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.)

[33] Bureau of Justice Statistics. (2020, April). Prisoners in 2018. Retrieved from https://www.bjs.gov/content/pub/pdf/p18_sum.pdf.

[34] Pretrial Justice Institute. Why We Need Pretrial Reform. Retrieved from https://www.pretrial.org/get-involved/learn-more/why-we-need-pretrial-reform/.

In recent years, and especially after the 2008 financial crisis, state and municipal courts across the country have come to rely more heavily on fees as a means to fund criminal legal system operations, in response to budget shortfalls. In their report, "At All Costs," the ACLU of North Carolina found that in the past twenty years, the number of fee categories utilized in North Carolina district courts, for instance, swelled from 4 to 45.[35] Debt caused by these excessive sanctions not only impact justice-involved individuals themselves, but also their extended community of family and friends, who often contribute towards these payments. Low-income people struggling to make timely payments are often further penalized with late fees, interest, surcharges and possible re-incarceration, which can in turn have collateral effects on credit scores, housing and employment opportunities.[36] The lifespan of this disparate debt burden can extend from one's pretrial experience to years if not decades post release, *after* an individual has completed their sentence and is seeking to build a better life.

While these debts are typically owed to local and state governments, as opposed to the civil debts owed to private actors that today's Fair Debt Collection Protection Act (FDCPA) covers, they leave Black and Latino communities – overexposed as they are to the criminal legal system – generally less financially equipped to pay other debts they may incur across all categories. The Federal Reserve's report on the Economic Well-Being of U.S. Households in 2019 highlighted this compounding debt load among its survey respondents, finding that "43 percent of those whose family had unpaid [legal expenses, fines or court costs] also had outstanding medical debt [and] [t]hose with outstanding legal fees were also disproportionately likely to have credit card debt and more likely to carry student loan debt[.]"[37] Moreover, the report found that those whose family held criminal legal debt were less likely to have financial stability compared to those not saddled with this type of debt.[38] In trying to pay down criminal legal system debt, families may likely turn to high cost financial products. A 2018 Alabama Appleseed report found, for example, that 44 percent of the close to 1,000 Alabamian survey respondents have relied on payday or car title loans to cover this debt.[39] This increased debt burden—especially predatory debt burden—shouldered by Black and Latino communities has economic consequences that hamper generational wealth-building, and leaves them overexposed to debt collection.

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[35] ACLU of North Carolina. (2019, April). The Consequences of Rising Fines and Fees in North Carolina: At All Costs. Retrieved from https://www.acluofnorthcarolina.org/sites/default/files/field_documents/aclu_nc_2019_fines_and_fees_report_17_singles_final.pdf.

[36] Liu, P., Nunn, R. & Shambaugh. (2019, March). Nine facts about monetary sanctions in the criminal justice system. *Brookings Institute.* Retrieved from https://www.brookings.edu/research/nine-facts-about-monetary-sanctions-in-the-criminal-justice-system/.

[37] Division of Consumer and Community Affairs (2020, May). Report on the Economic Well-Being of U.S. Households in 2019, Featuring Supplemental Data from April 2020. *Federal Reserve Board.* Retrieved from https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf.

[38] *Id.*

[39] Alabama Appleseed, UAB-TASC, Greater Birmingham Ministries & Legal Services Alabama. (2018, October). Under Pressure: How fines and fees hurt people, undermine public safety, and drive Alabama's racial wealth divide. Retrieved from https://www.alabamaappleseed.org/wp-content/uploads/2018/10/AA1240-FinesandFees-10-10-FINAL.pdf.

B. Debt burdens are linked to negative health outcomes and abusive debt collection practices will only exacerbate poor health, especially for communities of color.

In this difficult economic context – a global economic crisis, lack of affordable housing, wage stagnation, high student loan costs, and racial and income wealth gaps – a family that experiences a medical emergency may find that debt collection has a compounding effect, with broad impacts on health and wellbeing. Indeed, a growing body of research linking debt with health outcomes suggests that regardless of the type of debt (including credit card, mortgage, medical, payday loans, student loans), there is a concerning link between debt and stress – despite changes in the economic market over time. One research study posits that "since the beginning of organized study in the health fields, health problems have been linked to poor economic circumstances."[40] If harassing debt collection practices are added into this cauldron of financial woes, stress will be further amplified.

All studies that have looked at the impact of debt on health outcomes have shown a link between debt and negative health outcomes, including anxiety, depression, and high blood pressure. One meta-analysis of 65 studies found that "overall results suggest that unsecured debt increase the risk of poor health,"[41] and "the relationship with depression has been studied most frequently and relationships appear to be strong and robust...."[42] Research has further found that debt has substantial impacts on health, family life and job performance, with payday loans being the main source of debt stress.[43]

Furthermore, a study from the Federal Reserve of Atlanta found that severe delinquency was linked with higher mortality.[44] This is significant in the debt collection context, as consumers who are severely delinquent on one or more debts are more likely to be contacted by debt collectors. Another study found "support for credit card debt and medical debt as particular potent predictors of foregone medical care."[45]

Racial disparities in debt and debt stress are present as well. Research reveals that when compared to a white population, Black individuals have higher overall debt stress and higher debt loads, which may contribute to racial health outcome disparities between white and Black individuals.[46] One study found being African American was associated with being more likely in debt and "being in debt was associated with higher depressive symptomatology, anxiety and anger…indebtedness is a key component underlying the relationship between socioeconomic

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[40] Dunn, L. & Mirzaie, I. (2012). Determinants of Consumer Debt Stress: Differences by Debt Type and Gender. Working Paper. *Ohio State University*. Retrieved from chrr.ohio-state.edu/content/surveys/cfm/doc/DSI-Working-Paper-07-19-12.pdf.
[41] Richardson, T., Elliott, P., & Roberts, R. (2013). The relationship between personal unsecured debt and mental and physical health: A systematic review and meta-analysis. *Clinical Psychology Review 33*(8), 1148-1162.
[42] *Id*.
[43] Dunn & Mirzaie, 2012.
[44] Argys, L.M., Friedson, A.I., & Pitts, M.M. (2016). Killer Debt: The impact of debt on mortality. *Federal Reserve Bank of Atlanta.* Retrieved from https://www.frbatlanta.org/-/media/documents/research/publications/wp/2016/14-killer-debt-the-impact-of-debt-on-mortality-2017-04-10.pdf.
[45] Kalousova & Burgard, 2013.
[46] Ratcliff et. al., 2017; Drentea & Lavrakas, 2000.

position and mental health."[47] Chronic stress introduces a particular health concern, given the presence of a number of health outcomes due in part to stress, such as psychological effects (such as anxiety or depression), reduced immune functions, increased cortisol levels and several others.[48]

A recent study used a representative sample of people in Dorchester, Massachusetts to learn about the qualitative aspects of debt. In the study, Lisa, an African American woman who lives in Dorchester, described her experience with debt as one of profound grief for the life she felt was lost as a result of it: "I was grieving what my life would be like if I didn't have debt…I'll have the breakdown, I'll have the tears, I'll grieve the life I'm hoping I'll one day have, and I'll grieve it because I think it's not going to be possible with all this debt."[49]

Additionally, medical debt is another major concern. Indeed, many families fear accessing medical care, including for COVID-19 related illness, due to concerns about debt. Sadly, this fear is grounded. Millions of Americans are without health insurance or underinsured. In 2018, 8.5 percent of people, or 27.5 million, did not have health insurance at any point during the year.[50] The uninsured rate and number of uninsured increased from 2017, which stood at 7.9 percent or 25.6 million. According to a 2018 national poll from NORC at the University of Chicago and the West Health Institute, about 40 percent of Americans report skipping a recommended medical test or treatment due to the cost. And 44 percent say they did not go to a doctor when they were sick or injured in the last year.[51] The justified fear of debt does long-term damage to people's health.[52]

The body of public health research suggests the damaging effects of chronic debt stress on health outcomes. Thus, such negative health outcomes support a debt rule that does not cause additional stress from collectors pursuing stale, zombie debt.

IV. The Bureau's May 2019 Proposed Rule Fails to Protect Families Against Deceptive and Abusive Collection of Time-Barred, "Zombie" Debt.

The Bureau should ban all collection of time-barred debt because, as discussed in this section and in section V, disclosures are insufficient to protect consumers from the harms created by

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[47] Drentea & Lavrakas, 2000.

[48] MacMillan, A. (2014, August 20). 7 Ways Debt Is Bad for Your Health. *Health*. Retrieved from https://www.health.com/stress/7-ways-debt-is-bad-for-your-health; Sweet, E., Nandi, A., Adam, E., & McDade, T. (2013, August). The high price of debt: Household financial debt and its impact on mental and physical health. *Social Science & Medicine 91*, 94-100.

[49] Sweet E., DuBois, Z, & Stanley, F. (2018, May 14). Embodied Neoliberalism: Epidemiology and the Lived Experience of Consumer Debt. *International Journal of Health Services 48*(3), 495-511.

[50] Berchick, E., Barnett, J., & Upton, R. (2019, Nov. 8). Health Insurance Coverage in the United States 2018. Report Number P60-267 (RV). U.S. Census Bureau. Retrieved from https://www.census.gov/library/publications/2019/demo/p60-267.html.

[51] Japsen, B. (2018, Mar. 26). Poll: 44% of Americans Skip Doctor Visits Because of Cost. *Forbes*. Retrieved from https://www.forbes.com/sites/brucejapsen/2018/03/26/poll-44-of-americans-skip-doctor-visits-due-to-cost/#1c89f3a26f57.

[52] Chen, J., Rizzo, J., & Rodriguez, H. (2011, Apr. 8). The Health Effects of Cost-Related Treatment Delays. *Am J Med Qual*. 2011;26(4):261-271. Retrieved from https://pubmed.ncbi.nlm.nih.gov/21478458/.

permitting the practice. The Bureau has authority to make rules "necessary or appropriate" to its ability to enforce the FDCPA and "to prevent evasions thereof",[53] as well as general authority to issue "rules with respect to the collection of debts by debt collectors."[54] Banning all collection of time-barred debt is necessary to enforce the FDCPA's prohibition against "false, deceptive, or misleading" statements in violation of section 1692e, and from "unfair or unconscionable" debt collection practices in violation of section 1692f.[55] Apart from its FDCPA rulemaking authority, the Bureau also has independent authority to ban unfair, deceptive, or abusive acts or practices.[56] The Bureau should ban the practice of collecting on time-barred debt because it is unfair, deceptive, and abusive.[57]

Rather that banning all collection of time-barred debt, however, the Bureau's 2019 NPRM focuses on the question of the collector's knowledge of whether a debt is time-barred. According to the 2019 NPRM, the prohibition on a debt collector bringing or threatening to bring legal action would apply only if the debt collector knows or should know that the debt is time-barred.[58] Yet, this approach does not go nearly far enough to protect consumers, and will have an outsized impact on borrowers of color, as they are more likely to face abusive debt collection. In our comments on the 2019 NPRM, we urged the Bureau to ban the collection of time-barred debt in and out of court as well as hold debt collectors accountable for knowing a debt is time-barred by implementing a strict liability standard.[59] We further urged the Bureau to prohibit threats of suit and prohibit the revival of time-barred debt.[60] We re-emphasize those recommendations in this comment, as we understand the Bureau has not yet made a final decision on these points, but is intending to issue a final rule in October 2020.[61]

A. Time-barred debt and related concepts, such as "revival," are exceptionally confusing for consumers to understand.

Concepts related to statutes of limitations are notoriously challenging for consumers to understand. Confusing and ineffective disclosures will not protect consumers from abusive

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53 12 U.S.C. § 5512.
54 15 U.S.C. § 1692l(d).
55 *See* 15 U.S.C.A. §§ 1692e, 1692f.
56 12 U.S.C. § 5531.
57 *See* Kuehnhoff, A. & Saunders, M. (2015). Zombie Debt: What the CFPB Should do About Attempts to Collect Old Debt. Retrieved from https://www.nclc.org/images/pdf/debt_collection/report-zombie-debt-2015.pdf; NCLC Comment to the CFPB (2019, Sept. 18). Retrieved from https://www.nclc.org/images/pdf/debt_collection/comments-debt-collection-sept2019.pdf.
58 Debt Collection Practices (Regulation F), 84 Fed. Reg. 23274, 23403 (proposed May 21, 2019) (to be codified at 12 C.F.R. pt. 1006) ("FDCPA section 807 generally prohibits debt collectors from using 'any false, deceptive, or misleading representation or means in connection with the collection of any debt,' and FDCPA section 807(2)(A) specifically prohibits falsely representing 'the character, amount, or legal status of any debt.' The Bureau interprets FDCPA section 807 and 807(2)(A) to prohibit debt collectors from suing or threatening to sue consumers on debts they know or should know are time-barred debts because such suits and threats of suit explicitly or implicitly misrepresent, and may cause consumers to believe, that the debts are legally enforceable.").
59 CRL Comment to the CFPB (2019, Sept. 18). Retrieved from https://www.regulations.gov/document?D=CFPB-2019-0022-9404.
60 *Id.*
61 CFPB Debt Collection Rulemaking. Retrieved from https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202004&RIN=3170-AA41.

collectors. This is a particular issue in states that permit a consumer to "revive" a debt and reset the statute of limitations by making a partial payment or acknowledging the debt in writing.[62] As the Bureau has already recognized, "most consumers are unaware of the potential legal consequences of making a payment or acknowledging a debt in writing. Indeed, many consumers may find it counterintuitive that making a payment—which they believe ought to have positive consequences for them—may actually have negative consequences.[63] In response to these broad concerns, some states have enacted laws stating that partial payments or acknowledgment does not revive the statute of limitations.[64] While state action on this issue is critical, the patchwork of state laws does not sufficiently protect consumers.

Furthermore, while most courts will dismiss lawsuits filed on time-barred debt if the consumer presents the statute of limitations as an affirmative defense, the burden should not be on consumers to raise the issue. Consumers are often uncertain about their rights concerning time-barred debt—including the fact that they must raise it as a defense. In fact, the CFPB's own consumer testing supports this assertion.[65] Consumers may fail to recognize that the debt is time-barred, and that time-barred debts are unenforceable in court. That said, because consumers often lack the knowledge and the resources at the outset of collections lawsuits to defend themselves, the case will often result in a default judgment and a wage garnishment will be levied against them for a claim that was time-barred in the first place.[66] In contrast, debt buyers have ample resources and are best positioned to demand information from debt sellers and evaluate the statute of limitations before they pursue collection on a debt. Thus, they should be obligated to do so.

As discussed below, the Bureau should use its authority to enact a comprehensive and just set of rules on time-barred debt.

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[62] Consumer Financial Protection Bureau. (2016). *Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered*. Retrieved from https://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf.

[63] *Id*.

[64] *See, e.g.*, Conn. Gen. Stat. § 36a-814(b) (2019); Me. Stat., tit. 32, § 11013(8) (2019); Md. Code Ann. Cts. & Jud. Proc. § 5-1202(b) (LexisNexis 2019) H.B. 996, 86th Reg. Sess., 2019 Tex. Gen. Laws ch. 1055; H.B. 1730, 2019 Wash. Sess. Laws ch. 377.

[65] Fors Marsh Group. (2014, August). *Debt Collection Focus Groups*. Retrieved from https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_fmg-focus-group-report.pdf; Fors Marsh Group. Debt Collection Cognitive Interviews. *Consumer Financial Protection Bureau.* Retrieved from https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_fmg-cognitive-report.pdf; Fors Marsh Group. (2016, February). Debt Collection Validation Notice Research: Summary of Focus Groups, Cognitive Interviews, and User Experience Testing. *Consumer Financial Protection Bureau*. Retrieved from https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_fmg-summary-report.pdf; Federal Trade Commission. (2010, July). *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration*.

[66] Stifler, L., Feltner, T., & Sajadi, S. (2018). Undue Burden: The Impact of Abusive Debt Collection Practices in Oregon. *Center for Responsible Lending*. Retrieved from https://www.responsiblelending.org/research-publication/undue-burden-impact-abusive-debt-collection-practices-oregon; Federal Trade Commission, 2013; Consumer Financial Protection Bureau, January 2017.

B. The Bureau should ban the collection of time-barred debt in court by adopting a strict liability standard, not one that relies on the collector's knowledge at the time of filing.

The 2019 NPRM would prohibit collectors from filing suit, or threatening suit only when the collector knows or should know the debt is time-barred.[67] As courts have held however, either filing suit, or threatening to file suit for time-barred debt, violate the FDCPA's prohibition on false or misleading representations[68] and the FDCPA's prohibition on unfair practices,[69] or both.[70] As such, both collecting and threatening to collect this debt in court should be banned outright to adequately protect consumers from the obvious harm that these practices cause.

Enforcement actions brought by the New York Attorney General reveal the widespread practice of debt buyers threatening suit and filing suit on debts that are beyond the statute of limitations. For example, in a 2015 action by the New York Attorney General against national debt buyer, Encore Capital Group, the Attorney General found that "despite the clear requirements of New York law, Encore brought debt collection claims that were untimely under the statutes of limitations where the causes of action accrued. Given that most consumers fail to respond when they are sued by a debt collector, Encore obtained default judgments in its favor based on these time-barred claims."[71] The New York Attorney General brought similar suits against three other large debt buyers, including Portfolio Recovery Associates, and as a result, more than 7,500 judgments have been vacated, worth more than $34 million.[72] The Bureau's own actions against Encore Capital Group and Portfolio Recovery Associates further establish these widespread practices and the consumer harms that stem from suits on time-barred debt.[73]

It is unsurprising that debt buyers are so often suing consumers for debts that are time-barred; a 2013 Federal Trade Commission (FTC) analysis estimated that debt buyers did not receive any documentation for the debt for approximately 94 percent of accounts at the time of purchase.[74] Ultimately, this process leaves debt buyers with murky and often inaccurate information,

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[67] Debt Collection Practices, 84 Fed. Reg. at 23403.
[68] 15 U.S.C. § 1692(e).
[69] 15 U.S.C. § 1692(f).
[70] *See, e.g.*, *Pantoja v. Portfolio Recovery Assocs., LLC*, 852 F.3d 679, 683–84 (7th Cir. 2017); *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010, 1020 (7th Cir. 2014); *Phillips v. Asset Acceptance, LLC*, 736 F.3d 1076, 1079 (7th Cir. 2013); *Huertas v. Galaxy Asset Mgmt.*, 641 F.3d 28, 33 (3d Cir. 2011); *Goins v. JBC & Assocs., P.C.*, 352 F. Supp. 2d 262, 273 (D. Conn. 2005); *Kimber v. Fed. Fin. Corp.*, 668 F. Supp. 1480, 1487–89 (M.D. Ala. 1987).
[71] Office of the New York Attorney General. (2015, January 9). *Press Release: A.G. Schneiderman Obtains Settlement From Major Debt Buyer Who Filed Thousands Of Time-Barred Debt Collection Actions*. Retrieved from https://ag.ny.gov/press-release/2015/ag-schneiderman-obtains-settlement-major-debt-buyer-who-filed-thousands-time.
[72] Stifler, L. & Becker, C. (2015, April). State, Federal Regulator Actions Highlight Widespread Debt Buyer Abuses. *Center for Responsible Lending.* Retrieved from https://www.responsiblelending.org/research-publication/state-federal-regulator.
[73] Consent Order, *In re Encore Capital Grp.*, 2015–CFPB–0022 (Sept. 9, 2015), http://files.consumerfinance.gov/f/201509_cfpb_consentorder-encore-capital-group.pdf; Consent Order, *In re Portfolio Recovery Assocs.*, LLC, 2015–CFPB– 0023 (Sept. 9, 2015), http://files.consumerfinance.gov/f/201509_cfpb_consentorder-portfolio-recovery-associates-llc.pdf.
[74] Federal Trade Commission. (2013). *The Structure and Practices of the Debt Buying Industry*. Retrieved from https://www.ftc.gov/reports/structure-practices-debt-buying-industry.

including whether the debt is time-barred. However, despite this persistent lack of proof, litigation filed by debt buyers is successful in a vast majority of cases,[75] in large part because buyers' claims go unchallenged by consumers in almost 75 percent of all cases.[76] In fact, Encore's 2019 10-K filing confirms that quickly securing judgments on insufficient evidence lies at the heart of how they operate, and that requiring more documentation and review of that documentation would damage their business.[77] Encore asserts that when courts require certain account documents at the time of filing including requiring that a copy of the account statements or applications be attached to the pleadings in order to obtain a judgment against consumers and they cannot produce them, "these courts could deny [their] claims, and [their] business, financial condition and operating results may be adversely affected."[78]

Furthermore, this lack of documentation is coupled with the fact that debt is bought and sold multiple times, and the low purchase price "reflects the risk that the buyer is taking that the debt will ultimately be uncollectible."[79] These factors altogether increase the likelihood that collectors suing to obtain the debt have time-barred debt on their hands.

The consumer protection harms associated with these practices are clear, and the practices of suing or threatening to sue on time-barred debt serves no legitimate business purpose. Thus, only a strict liability rule that bans both of these practices, regardless of whether a collector knew or should have known the action was time-barred, will sufficiently protect consumers.

C. The Bureau should ban the collection of time-barred debt out of court, including prohibiting threats of suit and prohibiting the revival of time-barred debt.

The Bureau should ban threats of suit on time-barred debt outright to adequately protect consumers from the harms that debt collectors cause through false and misleading claims and unfair practices. Unfortunately, the 2019 NPRM's proposed §1006.26(2)(b) would prohibit collectors from threatening to bring suit out of court only when the collector knows or should know the debt is time-barred. But, as courts have held, threats of suit on time-barred debt in court violate the FDCPA's prohibitions on false or misleading representations and unfair practices.[80]

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[75] Stifler, L. (2017, Winter). Debt in the Courts: The Scourge of Abusive Debt Collection Litigation and Possible Policy Solutions. *Harvard Law and Policy Review 11*(1), 91-139.
[76] Consumer Financial Protection Bureau, January 2017.
[77] Encore Capital Group, Inc. (2019). *Form 10-K 2018*. Retrieved from https://encorecapital.gcs-web.com/static-files/fa7d7ed6-93d2-474c-8a9f-fae8e1c868b4.
[78] *Id*.
[79] Jiménez, D. (2015, September 19). Dirty Debts Sold Cheap. *Harvard Journal on Legislation 52*, 41-124.
[80] *See* 15 U.S.C. §§ 1692(e) and 1692(f); *see also Pantoja v. Portfolio Recovery Assocs., LLC*, 852 F.3d 679, 683–84 (7th Cir. 2017) ("[A] debt collector also violates the Act by threatening to sue to collect such a debt."); *see also McMahon v. LVNV Funding, LLC*, 744 F.3d 1010, 1020 (7th Cir. 2014) ("The proposition that a debt collector violates the FDCPA when it misleads an unsophisticated consumer to believe a time-barred debt is legally enforceable, regardless of whether litigation is threatened, is straightforward under the statute. Section 1692e(2)(A) specifically prohibits the false representation of the character or legal status of any debt."); *see also Huertas v. Galaxy Asset Mgmt.*, 641 F.3d 28, 32-33 (3d Cir. 2011) ("[W]hen the expiration of the statute of limitations does not invalidate a debt, but merely renders it unenforceable, the FDCPA permits a debt collector to seek voluntary repayment of the time-barred debt so long as the debt collector does not initiate or threaten legal action in connection with its debt collection efforts."); *see also Goins v. JBC & Assocs.*, P.C., 352 F. Supp. 2d 262, 272 (D.

The Bureau should prohibit the revival of time-barred debt that occurs when collectors deceptively solicit payment from consumers or solicit some other acknowledgment of the debt to restart the statute of limitations. Yet, the Bureau's 2019 NPRM does not prohibit misleading consumers into re-starting the lawsuit deadline. In numerous states, a small payment on a debt will restart the statute of limitations and permit lawsuits on debt that was time-barred.
One way debt collectors unjustly take advantage of consumers' lack of awareness of the consequences for making payments on, or in acknowledging time-barred debt, is by threatening suit on time-barred debt. Collectors expressly state or imply that they are legally entitled to enforce the debt in court, which induces consumers to pay debts they would otherwise not have paid, and even for debts they do not actually owe, on their mistaken belief that they need to prevent future litigation.

Moreover, in violation of the FDCPA, collectors readily engage in the deceptive collection practice of implying time-barred debt is collectable to solicit payments that could restart the statute of limitations. In its actions against Encore Capital Group and Portfolio Recovery Associates (PRA), the Bureau focused, among other issues, on collection activities related to old debt. The Bureau found that over roughly a two-year period, Encore sent thousands of letters offering a time-limited opportunity to "settle" without revealing that the debt was too old for litigation, when "[i]n truth and in fact, [c]onsumers do not have a legally enforceable obligation to pay [d]ebt that is beyond the applicable statute of limitations."[81] And, over a three-year period, PRA sent similar letters with "settlement offers" to consumers, likewise failing to disclose the debt was time-barred.[82] In addition to these letters, both debt buyers filed and threatened to file lawsuits on debt that was beyond the statute of limitations.[83]

Given how difficult statutes of limitations laws are for consumers to understand, coupled with the reality that so few consumers will have legal representation, disclosures as proposed in this 2020 Supplemental NPRM will be insufficient to protect consumers from the harm caused by allowing the collection of time-barred debt, and the revival of such debt. Despite these clear harms, the proposed rule neither prohibits threats of suit outright, nor does it prohibit the revival of time-barred debt, and therefore, the Bureau sanctions collectors' continued abuse of consumers.

D. The Bureau disregards its obligation under the Regulatory Flexibility Act to provide a well-reasoned justification for rejecting alternatives proposed during the SBREFA process.

CFPB rulemakings must comport with the Regulatory Flexibility Act (RFA).[84] Among other things, the RFA requires that the agency consider the impact on small entities. Furthermore, the

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Conn. 2005) ("As the statute of limitations would be a complete defense to any suit, however, the threat to bring suit under such circumstances can at best be described as a "misleading" representation, in violation of § 1692e.").
[81] Consent Order, *In re Encore Capital Grp., Inc.*, 2015–CFPB-0022, para. 112-114 (Sept. 9, 2015), https://files.consumerfinance.gov/f/201509_cfpb_consent-order-encore-capital-group.pdf.
[82] Consent Order, *In re Portfolio Recovery Assocs.*, LLC, 2015–CFPB–0023, para. 56 (Sept. 9, 2015), http://files.consumerfinance.gov/f/201509_cfpb_consentorder-portfolio-recovery-associates-llc.pdf.
[83] *Id*. at para. 56; Consent Order, *In re Encore Capital Grp., Inc.*, 2015–CFPB-0022, para 112-114.
[84] 5 U.S.C. § 603 *et seq*.

Bureau must address alternatives considered and explain why these alternatives were not adopted.[85] Yet, in the supplemental proposed rule, the Bureau fails to provide a well-reasoned justification for rejecting alternatives that it previously indicated it was considering proposing.

In 2016, the Bureau released *the Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered* (Outline) as part of the 2016 Small Business Regulatory Enforcement Fairness Act (SBREFA) consultation process.[86] While the SBREFA Outline did not take a position on the knowledge requirement, it did propose two beneficial provisions that the Bureau subsequently abandoned. First, the Bureau stated at the SBREFA stage that it was considering prohibiting the collection of time-barred debt that can be revived under state law, unless the right to sue is waived.[87] This would prevent the problematic practice of reviving old debt and suing on it.

Second, the Bureau stated it was considering prohibiting a debt collector from accepting a consumer's payment on a time-barred or obsolete debt until it obtained the consumer's written acknowledgment that they received a time-barred debt and obsolescence disclosure.[88] If the consumer cannot be subject to either lawsuits or credit reporting, the Bureau stated it believed "it is especially important for them to know about their rights to ensure they do not pay as a result of a debt collector's unlawful conduct."[89] Although we contend that collectors should not be able to collect time-barred debt, period, requiring written acknowledgement from the borrower, per the SBREFA Outline, does provide a stronger safeguard than only providing the disclosure.

The RFA analysis in the supplemental proposed rule references the alternative proposal requiring collectors to waive their right to sue on time-barred debt that can be revived. In assessing the merits of this alternative proposal, the Bureau acknowledges the consumer protection benefit: "Such a requirement could have benefits for consumers relative to the supplemental proposal, because it would mean debt would generally not be revived regardless of whether consumers read and understood a disclosure about revival."[90] The Bureau also finds that the alternative proposal would be more burdensome for debt collectors because it would prevent the collector from suing to recover debts when the consumer had taken actions that revive the debts. The Bureau ultimately disregards the benefit to consumers and sides with the interests of the debt collection industry, based on pure speculation and taking the industry at its word: "[T]he differences in consumer benefits and in debt collector costs from this alternative could be quite small assuming that, as industry has claimed, collectors do not in fact sue to recover debts that have been revived."[91] The Bureau's conclusion does not rely on facts, data, or even "describe the impact of the proposed rule on small entities"[92] in any level of detail. It relies entirely on the

[85] *See* 5 US.C. § 603(c).
[86] Consumer Financial Protection Bureau. (2016). Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered. Retrieved from https://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf.
[87] *Id*.
[88] *Id*.
[89] *Id.* at 22.
[90] Debt Collection Practices, 85 Fed. Reg. at 12690-12692.
[91] *Id.*
[92] 5 U.S.C § 603(a).

industry's claim that they do not sue to recover debts that have been revived. The Bureau also ignores its own findings on the confusing nature of revival and how consumers may inadvertently revive the statute of limitations. In the SBREFA outline, the Bureau states:

> Consumer protection concerns exist even when a debt collector attempts to collect time-barred debt without suing or threatening suit. Again, this is because few consumers know the statute of limitations applicable to any particular debt or whether the limitations period has run. Consumers may take away from an attempt to collect a debt the implied claim that the debt is enforceable in court if they do not pay—a claim that is false for time-barred debts.[93]

By relying exclusively on industry's claims without examining further evidence, including the actual impact on the industry, the Bureau fails to provide a well-reasoned justification for rejecting its alternative proposal on the revival of time-barred debt. The final flexibility analysis must contain a robust analysis grounded in evidence, not speculation.

V. The Bureau's Supplemental Proposed Rule Recommending Disclosures Fails to Protect Families Against Time-Barred Debt.

The proposed model disclosures attempt to inform consumers that the debt is time-barred and whether and how the time limit to sue can be restarted or revived under the relevant state law. The disclosures would need to be provided "clearly and conspicuously," which is further defined in the proposed rule, and would need to provide the disclosure in the collector's initial communication and in the validation notice.[94] Under Section 809(a) of the FDCPA, debt collectors must provide consumers with a validation notice when trying to collect a debt.[95] Congress enacted section 809(a) in response to "the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid."[96] The validation notice's purpose is to convey essential information to the consumer, including specific information about the debt and how to dispute the debt.[97]

The aim of these disclosures is to correct misleading interpretations about the time-barred debt's lack of enforceability and possibility of revival, as "[k]nowing a debt is time barred may help a consumer understand the costs, benefits, and risks associated with paying or not paying a debt."[98] The CFPB proposes four model disclosures it its Appendix B to the proposed rule as follows:

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[93] Consumer Financial Protection Bureau. (2016). Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered. Page 20. Retrieved from https://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf.
[94] Debt Collection Practices, 85 Fed. Reg. at 12701.
[95] See 15 U.S.C. § 1692(g) (stating that within 5 days after the initial communication with the consumer about the collection of any debt, the collector must send the consumer a written notice—barring certain circumstances— that contains information about the amount of the debt, the name of the creditor, how to dispute the debt, and how the consumer can obtain information about the original creditor).
[96] S. Rep. No. 95-382, at 4 (1977).
[97] 15 U.S.C. § 1692(g).
[98] Debt Collection Practices, 85 Fed. Reg. at 12672, 12678.

- Debt Cannot Be Revived: "The law limits how long you can be sued for a debt. Because of the age of this debt, we will not sue you for it."[99]
- Debt Revived by Payment or Written Acknowledgement: "The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you make a payment or acknowledge in writing that you owe this debt, then we can sue you to collect it."[100]
- Debt Revived by Payment: "The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you make a payment, then we can sue you to collect it."[101]
- Debt Revived by Written Acknowledgement: "The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you acknowledge in writing that you owe this debt, then we can sue you to collect it."[102]

Per the proposal, which of the above disclosures is offered by a collector would differ depending on applicable state law.[103]

The CFPB's Supplemental NPRM would provide a safe harbor to debt collectors that collect on time-barred debts as long as the debt collector either uses the Bureau's model disclosure forms, or its own forms that include the model disclosure's "relevant content" that is "substantially similar."[104] To the extent that the Bureau relies on case law to support its safe harbor, however, it should exercise extreme caution.

A. FDCPA time-barred debt case law neither holds that disclosures necessarily protect the "least sophisticated" or "unsophisticated" consumer, nor dictates an objective standard for adequate disclosures; rather, whether a disclosure is deceptive or misleading is a fact-specific determination.

To determine whether attempting to collect on time-barred debt violates the FDCPA, courts apply either the "least sophisticated" or "unsophisticated" consumer standard.[105] Ultimately, debt collectors violate the FDCPA by making a representation in a collection letter that would be deceptive or misleading to the "least sophisticated" or "unsophisticated" recipient of the letter –

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[99] Debt Collection Practices, Appendix B, B-4 *Model Form for Time-Barred Debt Disclosure*, 85 Fed. Reg. at 12697.
[100] Debt Collection Practices, Appendix B, B-5 *Model Form for Time-Barred Debt Disclosure*, 85 Fed. Reg. at 12698.
[101] Debt Collection Practices, Appendix B, B-6 *Model Form for Time-Barred Debt Disclosure*, 85 Fed. Reg. at 12699.
[102] Debt Collection Practices, Appendix B, B-7 *Model Form for Time-Barred Debt Disclosure*, 85 Fed. Reg. at 12700.
[103] Debt Collection Practices, 85 Fed. Reg. at 12682.
[104] Debt Collection Practices, 85 Fed. Reg. at 12681-82.
[105] *See LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1193, 1201 (11th Cir. 2010) (explaining that the "least sophisticated" consumer standard applies to determine whether a debt collector has violated §§ 1692e or 1692f of the FDCPA); *Pantoja*, 852 F.3d at 685 (explaining that the "unsophisticated" consumer standard applies to determine whether a debt collector has violated §§ 1692e or 1692f of the FDCPA).

that is, "the FDCPA prohibits a debt collector from luring debtors away from the shelter of the statute of limitations without providing an unambiguous warning that an unsophisticated consumer would understand."[106] The FDCPA prohibits debt collectors from making "false, deceptive, or misleading" statements in violation of section 1692e, and from "unfair or unconscionable" debt collection practices in violation of section 1692f.[107] Further, while attempting to collect on time-barred debt is not *per se* an "unfair or unconscionable" debt collection practice, it may still constitute a "false, deceptive, or misleading statement" even if the debt collector does not expressly threaten litigation.[108]

Significantly, FDCPA time-barred debt case law neither holds that disclosures *per se* protect the "least sophisticated" or "unsophisticated" consumer, nor dictates an objective standard for adequate disclosures. Instead, whether specific language violates the FDCPA is a *question of fac*t, evaluated through the "least sophisticated" or "unsophisticated" consumer standard on a *case-by-case basis*.[109] Thus, since the blanket use of uniform model disclosures and what constitutes their "relevant content" is not supported by caselaw,[110] the Bureau must be extremely cautious and ensure that its disclosures are strongly supported by high-quality research and testing.

B. FDCPA time-barred debt case law has significant limitations and does not support the blanket use of disclosures.

Contrary to the proposal, no courts have offered model disclosure language to correct consumers' impressions regarding time-barred debt.[111] Rather, some courts have suggested that certain disclosure language provided by the debt collector itself, and specific to the particular case at issue, was sufficient to correct potential misimpressions.[112] Moreover, while courts hold

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[106] *Id.*
[107] 15 U.S.C.A. §§ 1692e, 1692f; *Holzman*, 920 F.3d at 1269.
[108] *See, e.g., Holzman*, 920 F.3d at 1271; *Tatis v. Allied Interstate, LLC*, 882 F.3d 422, 429 (3d Cir. 2018); *Daugherty v. Convergent Outsourcing Inc*., 836 F.3d 507, 509 (5th Cir. 2016); *Buchanan v. Northland Grp., Inc*., 776 F.3d 393, 398-99 (6th Cir. 2015).
[109] *Holzman v. Malcolm S. Gerald & Assocs., Inc*., 920 F.3d 1264, 1269 (11th Cir. 2019) ("whether a representation made in a collection letter would be deceptive or misleading to the least-sophisticated consumer, or a collection practice would be unfair or unconscionable when applied to the least-sophisticated consumer, generally is a question of fact to be decided by a jury."); *Pantoja v. Portfolio Recovery Assocs., LLC*, 852 F.3d 679, 686 (7th Cir. 2017) ("When assessing whether a dunning letter violates the FDCPA, whether an unsophisticated consumer would find certain debt-collection language misleading is often a question of fact."); *Lox v. CDA, Ltd*., 689 F.3d 818, 822 (7th Cir. 2012); *Walker v. Nat'l Recovery, Inc*., 200 F.3d 500, 503 (7th Cir. 1999).
[110] It should be noted that the proposition that caselaw does not support an objective, blanket model disclosure form does not preclude the viability of a class action lawsuit where the same or similarly defective notices are sent to many consumers.
[111] 85 Fed. Reg. at 12674 (citing two cases, *Tatis v. Allied Interstate, LLC*, 882 F.3d 422 (3d Cir. 2018), and *Pantoja v. Portfolio Recovery Assocs., LLC*, 852 F.3d 679 (7th Cir. 2017), and stating that "[s]ome courts have provided debt collectors with model disclosure language").
[112] *See Tatis*, 882 F.3d at 430 ("Nor do we impose any specific mandates on the language debt collectors must use, such as requiring them to explicitly disclose that the statute of limitations has run."); *Pantoja,* 852 F.3d at 685–86 ("We will not attempt to prescribe exact language for debt collectors to use when writing such letters, but the language would need to be clear, accessible, and unambiguous to the unsophisticated consumer."); *Buchanan*, 776 F.3d at 399 (stating that one of *Northland's* new letters adequately corrects misimpressions).

that attempting to collect on a time-barred debt does not *per se* violate the FDCPA, doing so may open the door to serious misunderstandings, intentional or not. The Seventh Circuit, in dicta, recently expressed its skepticism that *any* validation notice for time-barred debt could adequately correct misleading statements, especially for the "unsophisticated" consumer:

> The creditor retains the legal right to appeal to the debtor to honor the debt out of a sense of moral obligation even if the legal obligation can no longer be enforced in court. Nevertheless, the opportunities for mischief and deception, particularly when sophisticated parties aim carefully crafted messages at unsophisticated consumers, may well be so great that *the better approach is simply to find that any such efforts violate the FDCPA's prohibitions on deceptive or misleading means to collect debts, § 1692e, and on "unfair or unconscionable means" to attempt to collect debts, § 1692f.*[113]

Whether intended or not, any letter seeking to collect on a time-barred debt poses some risk that consumers will mistake the sending of the letter itself either as a threat to take them to court if they do not repay the debt, or to imply that they are better off paying *something*, rather than nothing.[114] And, this potential confusion is further exacerbated when the validation notice includes not only disclosure language, but also an option to make a payment. At a minimum, to reduce confusion resulting from mixed messaging, the validation notice should not include an option to make a payment, as described below.

C. The Bureau should, at a minimum, modify the validation notice to remove the option to pay and highlight the time-barred language.

The Bureau's proposed validation notice as provided in the 2019 NPRM includes a "tear-off" form to be returned to the debt collector.[115] The form explicitly states at the top, "How do you want to respond?" and provides the consumer with a range of options, including: disputing the debt; requesting information about the original creditor; requesting the form in Spanish; and making a payment.[116]

However, the validation notice *should not* include an option to make a payment, particularly in the same place where the consumer indicates an intent to file a dispute. Including the option to pay in this context may confuse consumers into thinking they must make a payment to lodge a dispute. The confusion is perpetuated by adding a time-barred debt disclosure to the same form. On the one hand, a consumer is warned of the potential effect of making a payment, while on the other hand, a consumer is provided the option to make a payment. These conflicting messages are likely to confuse consumers about their rights and options. At a minimum, the option to pay

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[113] *Pantoja*, 852 F.3d at 684 (emphasis added) (holding that the collector's letter was deceptive and misleading and violated the FDCPA without addressing whether collecting on a time-barred debt *per se* violates the FDCPA, as "[t]he plaintiff does not argue for that broad rule here, however, and we can decide this case on narrower grounds").
[114] *See Buchanan*, 776 F.3d at 399 (6th Cir. 2015) ("The other problem with the letter is that an unsophisticated debtor who cannot afford the settlement offer might nevertheless assume from the letter that some payment is better than no payment. Not true: Some payment is worse than no payment.").
[115] Debt Collection Practices, 84 Fed. Reg. at 23346.
[116] Appendix B, 85 Fed. Reg. 12672, 12697.

should be removed, and the time-barred debt disclosure should be further highlighted, as this information is critical and may be overlooked.

D. The Bureau must consider and seek to avoid the confusion that will be created by overlapping state disclosures.

If the Bureau chooses not to ban the collection of time-barred debt, it must not overlook the confusion that will be created by the proposed rule resulting in overlapping state disclosures. We join with the National Consumer Law Center in its more extensive comments that highlight the conflict that these disclosures will create with the nine states and two cities that already include their own time-barred debt disclosure requirements.[117] The proposed rule maintains that state disclosures can be delivered on the back of the validation notice.[118] However, at least two jurisdictions require disclosures on the front of the validation notice.[119]

In addition, the content or other aspects of the disclosure may differ, causing further confusion for consumers. In order to avoid such confusion, we urge the Bureau to abandon these disclosures and instead ban the collection of time-barred debt, in and out of court, which is necessary to adequately protect consumers from the abuses caused by its continued collection. At the very least, the Bureau should conduct more testing to understand how any proposed disclosures on time-barred debt and revival would interact with state disclosures to ensure consumers are not confused about their rights.

VI. The Quantitative Study Supporting the Proposed Disclosures Did Not Represent Consumers Who Experience Debt Collection, Throwing into Question the Relevance of the Findings and the Proposed Time-Barred Debt and Revival Disclosures.

In 2017, the CFPB contracted with ICF International, Inc. (ICF) to conduct a web survey to "obtain additional information about consumer comprehension and decision-making in response to sample debt collection disclosures relating to time-barred debt[.]"[120] The details of this quantitative study, its design, and how the results have been used to shape the time-barred debt disclosures are discussed in the Bureau's proposed rule.[121] The CFPB states that the ICF web survey testing results "generally indicate that, in connection with the collection of time-barred debt, and at least in a testing environment, a validation notice without a time-barred debt disclosure can leave consumers with the misleading impression that debt collectors would legally

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[117] Cal. Civ. Code 1788.14(d); Conn. Gen. Stat. § 36a-805(a)(14); Mass. Code Regs., tit. 940, 7.07(24); N.M. Admin. Code 12.2.12.9; N.Y. Comp. Codes R. & Regs., tit. 23, 1.3; N.C. Gen. Stat. 58-70-115(1); Tex. Fin. Code Ann. 392-307(e); 6 Vt. Code R. 104.05(a); W. Va. Code 46a-2-128(f). See also NRS § 649.332(2)(a)(2) (requiring a revival disclosure when collecting debts on behalf of a hospital; regardless of whether the debt is currently time barred).
[118] Debt Collection Practices, 85 Fed. Reg. at 12702.
[119] Mass. Code Regs., tit. 940, 7.07(24)(b); N.M. Admin. Code 12.2.12.9(E).
[120] Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt. Consumer Financial Protection Bureau. Retrieved from https://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf.
[121] Debt Collection Practices, 85 Fed. Reg. at 12677.

be allowed to sue to collect the debt."[122] And, that time-barred debt disclosures either by themselves or along with a disclosure on revival of time-barred debt, "generally appear to correct this misimpression."[123] The Bureau states that the ICF survey results additionally indicate that a time-barred debt disclosure by itself with no revival disclosure "could lead consumers in revival [s]tates to believe that debt collectors are legally allowed to sue in fewer circumstances that they in fact are." Thus, it maintains, "[r]evival disclosures generally appear to clarify the circumstances in which the debt collector's right to sue can be revived."[124]

It appears that the CFPB has chiefly relied on its 2017 quantitative testing results to craft this proposed rule and the time-barred debt and revival disclosures herein; the Bureau mentions the results of its 2014 Fors Marsh Group qualitative consumer testing on disclosures including disclosures on time-barred debt and revival, but this qualitative testing does not seem to be a major source of support for the actual content of this proposed rule.[125] Based on our analysis of the ICF debt survey design, we are concerned that the CFPB has proposed a disclosure rule based on data that lacks relevance.

A. The ICF survey underrepresents people of color who have been shown to be overrepresented in debt collection cases, thus highlighting the survey's limitations in designing debt collection-related consumer disclosures.

As a national organization working on issues affecting low- to moderate-income consumers and consumers of color residing in many states, we are sensitive of the need to design policy solutions for the people most impacted by an issue. However, based on our analysis, the Bureau's quantitative testing does not appear to meaningfully include those consumers most impacted by debt collection. If a public health researcher endeavored to study infant mortality rates in America with the intent of designing an intervention, and recognized that Black mothers experience infant mortality rates at disproportionately higher percentages, the study would appear incomplete at best and irrelevant at worst if the study did not representatively sample Black mothers. In a similar vein, we are concerned that the Bureau's study did not include the people most needed to arrive at a grounded policy solution.

It is well-known and well documented that people of color are pursued for debts at a higher rate than white people. Debt collection suits are far more common in predominately Black communities than in predominately white ones.[126] Indeed, Black and Latino people have, on

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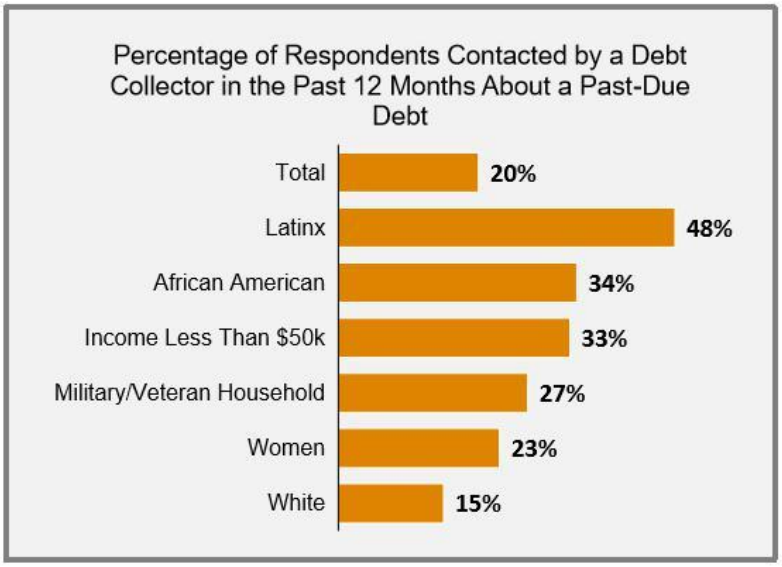
[122] Debt Collection Practices, 85 Fed. Reg. at 12677.
[123] *Id*.
[124] *Id*.
[125] *See* Debt Collection Practices, 85 Fed. Reg. at 12675 [discussing Fors Marsh Group. (2016, February). Debt Collection Validation Notice Research: Summary of Focus Groups, Cognitive Interviews, and User Experience Testing. Consumer Financial Protection Bureau. Retrieved from https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_fmg-summary-report.pdf and supporting the CFPB's assertions in this proposed rule that people would want to know a debt is time-barred, that it would affect their calculus on whether to pay, and how to prioritize it, and that it could be challenging to develop a revival disclosure as consumers find the issue confusing and counterintuitive].
[126] Kiel, P. and Waldman, A., The Color of Debt: How Debt Collection Suits Squeeze Black Neighborhoods (2015). Retrieved from https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods.

average, substantially lower incomes and wealth,[127] increased levels of indebtedness, and a higher likelihood of experiencing debt collection.[128]

A poll from Americans for Financial Reform (AFR) and the Center for Responsible Lending (CRL) (AFR/CRL poll) reveals that one in five likely voters have been contacted by a debt collector in the past twelve months, including higher numbers in communities of color (see Figure 1).[129] Nearly half of likely Latino voters have been contacted by a debt collector in the past 12 months (see Figure 1). And, more than one in three (34 percent) of African American voters have been contacted by a debt collector in the past 12 months (see Figure 1)

Figure 1: Voters of Color Disproportionately Contacted by Debt Collectors



Source: Americans for Financial Reform and the Center for Responsible Lending poll conducted by Lake Research Partners and Chesapeake Bay Consulting, 2019.

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[127] Nieves, E. and Asante-Muhammad, D. (2018). Running in Place: Why the Racial Wealth Divide Keeps Black and Latino Families From Achieving Economic Security. Prosperity Now. Retrieved from https://www.nclc.org/images/pdf/debt_collection/fact-sheets/fact-sheet-racial-disparities-in-debt-collection.pdf; Schaeffer, K. 2020. Six facts about economic inequality in the U.S. Pew Research Center Fact Tank: News in the Numbers. Retrieved from https://www.pewresearch.org/fact-tank/2020/02/07/6-facts-about-economic-inequality-in-the-u-s/.

[128] Kiel, P. and Waldman, A. (2015). The Color of Debt: How Debt Collection Suits Squeeze Black Neighborhoods. Retrieved from https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods; Stifler, L., Feltner, T., & Sajadi, S. (2018). Undue Burden: The Impact of Abusive Debt Collection Practices in Oregon. Retrieved from https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_undue_burden_april122018.pdf.

[129] Americans for Financial Reform and the Center for Responsible Lending. (2019). “New Poll Reveals Bipartisan Opposition to CFPB Debt Collection Rule.” July 15-23, 2019, [Survey report] Durham, NC: Center for Responsible Lending. Retrieved from https://www.responsiblelending.org/research-publication/poll-strong-bipartisan-opposition-among-voters-major-components-proposed-new; Lake Research Partners and Chesapeake Bay Consulting designed and administered this survey that was conducted between July 15-23, 2019 online. The survey reached a total of 1,000 likely November 2020 voters nationwide. Data were weighted slightly by gender, party identification, age, race, education level, household income, 2016 self-reported vote, and region. The margin for error is +/- 3.1% and larger for subgroups.

Although the issue of racial disparities in debt collection is frequently examined in literature and polling data, it is not addressed in any detail in the CFPB study.

In fact, the survey data *underrepresents* debt collection experiences among people of color. In the ICF study sample, the percentage of respondents who experienced debt collection is far higher for Whites than for Blacks and Hispanics. The right-hand column in Table 2 (provided here below) uses the percentages in the *Yes* and *No* columns (as provided by Table 33 of the CFPB report) to calculate the share of debt collection experience in the survey sample. The bottom row of the *Share* column indicates that across all respondents, the share of debt collection experience averaged 36 percent. Yet substantial differences appear by race and ethnicity. The survey sample's share of Blacks experiencing debt collection is only 20 percent, which is nearly *half* the rate of Non-Hispanic whites at 39 percent. Hispanics are also well below the sample average at 26 percent.

Table 2: Less Debt Collection Experience for People of Color

Race/Ethnicity	*Debt Collection Experience?*		
	Yes	*No*	*Share*
2+ Races, Non-Hispanic	0.67	1.75	28%
Black, Non-Hispanic	1.73	6.84	**20%**
Hispanic	2.5	7.21	**26%**
Other, Non-Hispanic	1.16	1.39	45%
White, Non-Hispanic	29.83	46.92	39%
Total or Average:	35.89	64.11	36%

Note: Shares calculated from 'Yes' and 'No columns (*CFPB Table33*).

Moreover, generally speaking, respondents of color in the study sample were not representative of the U.S. population. Table 1 shows that about 8.6 percent of the CFPB ICF Debt Survey sample is Black, which is substantially less than the Black population of the U.S. at 13.4 percent. Similarly, Hispanics are 9.7 percent of the survey sample, whereas nationally, Hispanics comprise 18.3 percent of the population. Finally, the study sample is 76.7 percent Non-Hispanic white, yet nationally the Non-Hispanic population, yet nationally the non-Hispanic population is far smaller at 60.4 percent (U.S. Census Bureau, 2020).

Table 1: Survey Sample Underrepresents People of Color

Race/Ethnicity	CFPB ICF Debt Survey	U.S. Census
2+ Races, Non-Hispanic	2.4	2.7
Black, Non-Hispanic	**8.6**	**13.4**
Hispanic	**9.7**	**18.3**
Other, Non-Hispanic	2.5	5.2
White, Non-Hispanic	**76.7**	**60.4**

Note: Debt survey values calculated from Table-33 of CFPB report and then rounded to the nearest tenth
Sources: U.S. Census Bureau, Population Estimates Program (PEP), U.S. Census Bureau, American Community Survey (ACS).

There will of course be limitations to any study conducted and we do not expect perfection. However, for the Bureau to offer policy solutions that will have wide-reaching effects on particular groups of consumers – those belonging to historically marginalized groups known to be disproportionately affected by debt collection – it is paramount that the survey instrument capture such individuals so that the derived solution is relevant.

B. The ICF survey is biased against consumers with recent debt collection experience, thus highlighting the survey's limitations in designing debt collection-related consumer disclosures.

Although the survey focuses on debt collection, 34 percent of the respondents have never been contacted by a debt collector.[130] Yet another third of the sample, 35 percent, report that their contact with a debt collector occurred *more than five years ago*.[131] In fact, according to the methodology report, *only 18 percent of respondents have experienced debt collection within the past year*.[132] Consequently, most respondents have either no experience with debt collection or debt revival at all or that experience occurred well beyond recent memory, both situations suggesting that the data are ill-suited to inform debt collection policy.

Relatedly, the survey items themselves present another data problem. Key questions are based on hypothetical scenarios in which respondents are asked to "imagine" not only the debt collection experiences of other people, but also what these imagined debtors "believe."[133] While this technique may serve as a proxy for what consumers may do, it does not assess how a person would respond outside of a controlled or imagined scenario. Instead of focusing on actual behavioral experiences of real indebted people who are pursued by debt collectors, the research design relies on complex questions that ask respondents to hypothetically act, which cannot yield the results of what they may actually do.[134] Instead, to better inform a policy testing time-barred debt and revival disclosures, the CFPB should have, at the very least, included people who have real and recent experience with debt collection in the past year.

[130] Quantitative Survey Testing of Model Disclosure Clauses and Forms for Debt Collection Methodology Report. ICF. Retrieved from https://files.consumerfinance.gov/f/documents/cfpb_icf_debt-survey_methodology-report.pdf.
[131] *Id*.
[132] *Id*.
[133] *Id*.
[134] *Id*.

C. It is unclear whether the ICF survey respondents included people with limited English proficiency, or an indication of survey respondents' reading level, which is relevant to testing consumer comprehension of written disclosures.

There is also no information available about the education or English reading levels of the survey respondents, which matters if the aim is to identify comprehension of a written disclosure.
It is worth noting that unfortunately even in FDCPA case law, courts do not—nor do they claim to be able to—measure the sufficiency of specific disclosure language against any objective measures, standards, or expertise. For example, while courts hold that the factual inquiry is whether the dunning letter "could well confuse a *substantial* number of recipients" nowhere do courts define "substantial."[135] Whether "substantial" means more than one, half, or most, is unclear. In making their determinations, courts have neither enlisted expertise, nor applied evidence-based measures and factors including whether the language reads at appropriate grade-level for the "least sophisticated" consumer, in both English, as well as in other languages for limited English proficiency consumers. Ultimately, dunning letter language is evaluated case-by-case and judge-by-judge basis, without any uniform standards.

We applaud the CFPB for proposing § 1006.26(c)(3)(iv) requiring a debt collector to make the disclosures that would be required by proposed § 1006.26(c)(1) in the same language or languages used for the rest of the communication in which the disclosures are conveyed.[136] And, for requiring in proposed § 1006.26(c)(3)(iv) that any translation of the disclosures that would be required by § 1006.26(c)(1) be complete and accurate.[137] However, this is no indication that the survey included any limited English proficiency consumer, or that a translated disclosure were tested.

This is in spite of the reality that LEP communities may be more likely to face challenges with paying for life's necessities without having to take on debt, thus increasing the likelihood they may be in contact with debt collectors. In 2013, about 25 percent of LEP individuals lived in households with an annual income below the official federal poverty line—nearly twice as high as the share of English-proficient persons.[138] And, as just one example, in the city of McAllen, Texas 85 percent of the residents are Latino, with the highest proportion of the population with a debt in collections reported in their credit file, and 32 percent of the working-age population considered to be LEP.[139] Furthermore, as the Federal Trade Commission is well aware, the LEP community is often the target of deceptive advertising of harmful financial services products marketed in their own languages.[140] Thus, it is important that LEP individuals be represented in the survey to best inform any proposed rule on consumer disclosures related to debt collection actions.

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[135] *Pantoja*, 852 F.3d at 686 (emphasis added); *Taylor v. Cavalry Inv., LLC*, 365 F.3d 572, 575 (7th Cir. 2004),
[136] Debt Collection Practices, 85 Fed. Reg. at 12685.
[137] *Id*.
[138] Zong, J. & Batalova, J. (2015, July 8). The Limited English Proficient Population in the United States. *Migration Policy Institute*. Retrieved from https://www.migrationpolicy.org/article/limited-english-proficient-population-united-states.
[139] Dews, F. (2014, September 24). Six Questions about the Limited English Proficient Workforce. *Brookings Institution*. Retrieved from https://www.brookings.edu/blog/brookings-now/2014/09/24/six-questions-about-the-limited-english-proficient-lep-workforce/.

Therefore, for the aforementioned reasons, our assessment is that the Bureau's proposed § 1006.26(c) is based on a survey of respondents who are not representative of those consumers actually experiencing debt collection actions. The survey failed include sufficient representation of communities of color; those with recent debt collection experience in the past year; and LEP communities, all of whom are more likely to experience debt collection.

Moreover, the analysis did not examine the combined effects of key demographic characteristics such as income, education, and race or ethnicity. By only considering these variables in isolation, the analysis failed to reveal the debt collection experiences of respondents who are, for example, both low-income and low-educated. Given that the analysis does not control for the demographic makeup of respondents, it does not take full advantage of the collected data, and consequently the impacts of the rule on the debt collection experiences of households of lower socio-economic status are likely to be worse than projected by the CFPB report. According to a 2017 CFPB report, consumers living in lower-income areas "are 240 percent more likely to become credit visible due to negative records," for example, by having a debt in collections.[141]

The CFPB's failure to adequately represent—and its failure to direct ICF to adequately represent—these groups in the quantitative survey greatly calls the relevance of the proposed disclosures as a policy solution to time-barred debt collection and revival into question.

VII. Even in a Controlled Test-Setting the Survey Responses Indicate that the Disclosures are Ineffective for Over a Third of Consumers.

Even in a controlled setting, roughly 35 percent of respondents did not understand the tested disclosures.[142] When, in the ICF Study, respondents were presented with a disclosure explaining a debt is time-barred, "[a]pproximately 65 percent of respondents who were randomly assigned a notice containing a time-barred debt disclosure (with or without a revival disclosure) correctly stated that they could not be sued on the debt."[143] This means that over a third of respondents in the survey incorrectly believed that they could be sued on a time-barred debt, which the CFPB purports "largely corrected [their] misunderstanding" that "a debt collector could sue to collect a debt if the debtor did nothing in response to the collection notice for a ten-year old debt."[144] One would think that a disclosure tested in a controlled environment aimed at measuring consumers' ability to comprehend their rights would yield much higher rates of understanding than 65

[140] Weiner, Brodsky, Kider PC. (2018, January). *Weiner, Brodsky, Kider PC,* FTC Consent Order Requires Spanish Language TILA Disclosures in Spanish Language Advertisements. Retrieved from https://www.thewbkfirm.com/featured-industry-news/ftc-consent-order-requires-spanish-language-tila-disclosures-spanish-language-advertisements; Rich, J. (2015, September). FTC Celebrates Hispanic Heritage Month. *Federal Trade Commission.* Retrieved from https://www.consumer.ftc.gov/blog/2015/09/ftc-celebrates-hispanic-heritage-month (describing FTC enforcement actions that "combat deception and fraud in marketplaces targeting Hispanic communities.").

[141] Consumer Financial Protection Bureau (2017, June). CFPB data point: Becoming credit visible. Consumer Financial Protection Bureau. Retrieved from https://www.consumerfinance.gov/data-research/research-reports/cfpb-data-point-becoming-credit-visible/.

[142] Debt Collection Practices, 85 Fed. Reg. at 12687.

[143] *Id.*

[144] *Id.*

percent. In spite of the lack of certainty in the case law, arguably, over one-third of respondents constitutes a "substantial" number of respondents and may therefore implicate the judicial standard that a dunning letter violates the FDCPA when it "could well confuse a *substantial* number of recipients."[145]

This is especially alarming as the study isolates disclosures and arguably, prompts people to note what is worth reading on the disclosures to "correctly" answer on the survey.[146] While this technique may serve as a proxy to testing disclosure features, in the real world, consumers will not be prompted or incentivized for reading disclosures. Finally, the research authors themselves acknowledge that the observed effects in this study may be greater than those observed in the real world:

> In general, the Bureau believes that effects observed in a controlled setting, such as that employed in this testing, may be larger than those that might be observed in practice. For example, in the testing described here, respondents were given monetary incentives to participate, and therefore were likely to read and think carefully about the survey. Further, respondents were prompted at various times to refer to the notices and the specific disclosures so that the Bureau could most effectively test the content of the disclosures themselves. Consumers may read less (and less carefully) in the context of everyday life, and Bureau conducted cognitive testing interviews suggest this is true for at least some consumers in the debt collection context.[147]

Given that roughly 35 percent of consumers did not understand the disclosures, even in a controlled setting, the Bureau should at a minimum conduct more testing if it decides not to ban the collection of time-barred debt.

VIII. Disclosures Alone Do Not Protect Borrowers from Common Abuses in Debt Collection.

An extensive review of the literature on disclosures suggests that most mandated disclosures are ineffective or counterproductive. Economic research formalizes what research in psychology has shown for decades: human information processing has temporal constraints.[148] Indeed, a strand of the economic literature is devoted to studying how decision-makers allocate the scarce resource of attention.[149] As documented in the literature on rational inattention, finite or bounded

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[145] *Pantoja*, 852 F.3d at 686 (emphasis added); *Taylor v. Cavalry Inv., LLC*, 365 F.3d 572, 575 (7th Cir. 2004),
[146] Disclosure of Time-Barred Debt and Revival: Findings from the CFPB's Quantitative Disclosure Testing. Consumer Financial Protection Bureau. Retrieved from https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-quantitative-disclosure-testing_report.pdf.
[147] Disclosure of Time-Barred Debt and Revival: Findings from the CFPB's Quantitative Disclosure Testing. Consumer Financial Protection Bureau. Retrieved from https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-quantitative-disclosure-testing_report.pdf.
[148] Broadbent DE. 1958. The general nature of vigilance. Percept. Commun. 340:108–39
Chetty, Raj, Adam Looney, and Kory Kroft, "Salience and Taxation: Theory and Evidence," American Economic Review, 2009,99 (4), 1145–77.
[149] Sims CA. 2003. Implications of rational inattention. J. Monet. Econ. 50:665–90; Wiederholt, Mirko, "Rational Inattention," The New Palgrave Dictionary of Economics, Palgrave Macmillan 2010. U.S. Census Bureau. 2020. Quickfacts: Race and Hispanic Origin. Retrieved from

attention on the part of disclosures recipients or readers are likely to greatly diminish the intended effects of disclosures.[150] Nonetheless, the CFPB states: "Although knowledge and experience are important to decision-making in general," the Bureau focused on analyzing respondents' comprehension of the disclosures to inform its decision about whether disclosures, when read, can effectively inform consumers and, if so, what those disclosures should say. Whether consumers read the disclosure in real life is an important issue for disclosure policy, but the testing was not designed to address this question.

The CFPB acknowledges that a major issue is that consumers may not read the disclosures in real life and emphasizes that the research they conducted was not designed to address that question. This research study misses the mark of the true questions at hand for policymaking: Do people thoroughly read the disclosures they are given? Do disclosures truly work in educating consumers in this context? For a disclosure system to be effective, the information provided must be completely, clearly and accurately disclosed, and—most importantly—be read and comprehended by the consumer. According to one study, fewer than 3 percent of consumers read the lengthy and ubiquitous privacy disclosures that are on websites.[151] This may raise some important questions and serious concerns about the effectiveness of mandated disclosures, but at a minimum should provide serious concern about pursuing a public policy course of action that overly relies on disclosure, without testing whether it is effective outside a controlled environment.

Likewise, disclosures alone do not protect borrowers from abuses common in the debt collection process, as highlighted in the literature review above. Disclosures, as a stand-alone intervention and in a vacuum, are an insufficient means of communicating with consumers about their debts. While they do provide an apples-to-apples comparison of the loan terms, disclosures alone do not protect people from the harms of debt.

It is our assessment, based on this information, that disclosures, as studied in this context, do not reflect what truly occurs with consumers; the sample is not representative of all consumers, and this study should not be used as the basis for rulemaking by the CFPB. At a minimum, the Bureau should abandon the disclosures here and conduct further testing.

IX. Conclusion

For all of the reasons discussed above, the undersigned groups urge the Bureau to strengthen its proposed debt collection rule in the ways set forth in this comment, namely by banning the collection of time-barred debt. Further, as we urged in response to the Bureau's 2019 NPRM, the Bureau should implement a strict liability standard for debt collectors pursuing time-barred debt

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https://www.census.gov/quickfacts/fact/table/US/IPE120218 (accessed April 22, 2020); Dellavigna, Stefano and Joshua M. Pollet, "Investor Inattention and Friday Earnings Announcements," The Journal of Finance, 2009,64 (2), 709–49; Abaluck, Jason and Jonathan Gruber, "Choice Inconsistencies among the Elderly: Evidence from Plan Choice in the Medicare Part D Program," American Economic Review, 2011,101 (4), 1180–1210.

[150] Davidoff SM, Hill CA. 2013. Limits of disclosure. Seattle Univ. Law Rev. 36:599–637; Hubbard, William H. J., Quantum Economics, Newtonian Economics, and Law (March 2017). University of Chicago Coase-Sandor Institute for Law & Economics Research Paper No. 799.

[151] Jensen, C., Potts, C., & Jensen, C. 2005. Privacy practices of Internet users: self-reports versus observed behavior. Int. J. Hum. Comput. Stud. 63:203–27.

in court and prohibit threats of suit and the revival of debt that was formerly time-barred. If the Bureau decides not to ban the collection of time-barred debt, we strongly urge that, at a minimum, it abandons the proposed disclosures and conduct further testing on consumers, including consumers of color, who are more likely to experience debt collection.

Revising the proposed rule will move the needle towards ending unfair and abusive practices in the debt collection market and protecting consumers who are struggling financially, particularly communities of color and low-to-moderate-income consumers who are disproportionately impacted by the COVID-19 pandemic.