

September 18, 2019

The Honorable Kathleen L. Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Center for Survivor Agency and Justice, Texas RioGrande Legal Aid, Inc., and undersigned comments on proposed rulemaking on debt collection practices (Regulation F)

Dear Director Kraninger:

The Center for Survivor Agency and Justice, Texas RioGrande Legal Aid, Inc., along with a national coalition of partners and supporters, file this comment in response to the Consumer Financial Protection Bureau's ("CFPB") proposed rule on debt collection practices. Survivors of domestic violence, sexual assault, and human trafficking will be harmed by key provisions of this proposal.

The Center for Survivor Agency and Justice ("CSAJ") is a national organization that addresses the critical link between domestic and sexual violence and economic security.¹ CSAJ's Consumer Rights for Domestic and Sexual Violence Survivors Initiative enhances economic justice for survivors by building the capacity of and building partnerships between the anti-violence and consumer rights fields. Our Racial and Economic Equity for Survivors Project addresses the systemic economic barriers facing survivors of color, including Latinx, immigrants, and survivors who are marginalized by their intersecting identities. The Access to Justice for Survivors Project fills gaps in low-income survivors' ability to access systems by working with non-lawyer legal advocates to address the costs of domestic violence and sexual assault and remove the systemic economic barriers and inequities that impede survivors' access to economic justice and physical safety.

Texas RioGrande Legal Aid ("TRLA") is the nation's third largest legal aid provider and the largest in Texas. TRLA provides free civil legal services to residents in 68 Southwest Texas counties and serves about 23,000 clients each year. However, more than 2.6 million residents of Southwest Texas are considered eligible for TRLA services, a ratio of almost 21,000 potential

¹ For more details on our mission and work, go to: www.csaj.org

clients per legal aid lawyer. TRLA’s Survivor Centered Economic Advocacy Team helps victims of sexual assault, family violence, and human trafficking deal with the economic difficulties that arise because of abuse and crime. Attorneys on the team help victims facing problems related to predatory lending, debt collection, credit reporting, denial of housing or employment because of background checks, federal tax liability, foreclosure, and a general lack of access to credit.

We submit these comments on behalf of national and state domestic and sexual violence and anti-poverty organizations and experts who have critical insight into the unique and detrimental effects of debt collection on survivors of domestic and sexual violence.

The Connection Between Domestic/Sexual Violence and Debt

Domestic violence² and sexual assault³ financially devastate survivors, resulting in an “economic ripple effect”⁴ across their lifespan. Batterers create economic instability for their partners through economic sabotage and control. And poverty, in turn, creates increased vulnerability to violence and additional barriers to safety.⁵ Indirect and lasting economic consequences ripple throughout survivors’ lives, long after the abuse has stopped, compounding the effects and creating increased vulnerability to future abuse.

Ninety-nine percent of survivors of domestic violence report having experienced economic abuse by their partner, with 38% of abusive partners stealing money and assets, 71% building debt, and 78% sabotaging survivors’ employment. This is even more concerning for low-income women, who are two times more likely to experience intimate partner violence. Survivors of color also experience disproportionately high rates of both poverty and domestic violence.⁶ Abusive

² “Domestic violence” and “intimate partner violence” are often interchangeable, but for these comments we use domestic violence often for its cultural familiarity. Domestic violence is defined as “a pattern of violent acts and their political framework, the pattern of social, institutional, and interpersonal controls, that usurp a survivor’s capacity to determine her destiny” (Stark, 2009).

³ There is a clear connection between sexual assault and economic instability. In fact, the National Alliance to End Sexual Assault reported, “Fifty percent of sexual violence victims report that they had to quit or were forced to leave their jobs in the year following their assaults due to the severity of their reactions ([source](#)).” Thus, our research refers primarily to survivors of domestic violence, but we acknowledge the potential unique economic impacts of debts facing survivors of sexual violence (outside of intimate partner relationships).

⁴ Shoener, S. J., & Sussman, E. A. (2013). Economic ripple effect of IPV: Building partnerships for systemic change. Domestic Violence Report, August/September, 83–95. Retrieved from: https://csaj.org/document-library/Shoener_and_Sussman_2013_-_Economic_Ripple_Effect_of_IPV.pdf

⁵ Shoener & Sussman, 2013.

⁶ 45% of borrowers in predominately non-white areas had debt in collections, while only 27% of borrowers in predominantly white areas were likely to have the same. Borrowers of color are disproportionately targeted by debt collectors, and are less likely to have their debts discharged in bankruptcy. Populations of color, which are already exposed to abusive debt collection practices, are more likely to be fall into this intersection between economic insecurity and domestic or sexual violence:

https://www.nclc.org/images/pdf/debt_collection/fact-sheets/fact-sheet-racial-disparities-in-debt-collection.pdf

partners use economic coercion to undermine survivors' ability to maintain economic stability and to create dependence on the abusive partner, thereby making it harder for survivors to escape from future violence. For survivors, abuse can create a financial trap, which serves as a barrier to long-term safety.

Coerced debt originates when an abusive partner generates debt in their partner's name through discrete transactions involving coercion or fraud and creates an environment in which refusing a demand or questioning their behavior is dangerous.⁷ Nearly half (43%) of survivors reported being pressured to take out credit in their own name when they did not want to, and 52% reported that an abusive partner put debt in their name through a fraudulent or coercive transaction.⁸

For survivors of human trafficking, debt can similarly be a tactic of entrapment. Debts are not only owed to traffickers personally,⁹ traffickers often have access to survivors' identity documents.¹⁰ They are then able to take out loans in a survivor's name. Or, as another form of control, traffickers can force the survivor to take out a loan. Either way, a survivor of human trafficking is then saddled with debt and faces consequences¹¹ similar to survivors of domestic and sexual violence.

Problematic Sections Within the Proposed Rule

The following are a few of the proposed regulations which negatively impact survivors. Undersigned sincerely hope that the CFPB will take these survivor experiences into consideration when finalizing their rule.

The Number of Attempts to Contact is Re-Traumatizing

Abuse typically leads to substantial debt for survivors, and the debt collection process often retraumatizes survivors of domestic violence, sexual assault, and human trafficking. Consider

⁷ Littwin, 2012; Stark, 2007

⁸ Adams, A., Littwin, A. & Javorka, M. (2019). The frequency, nature, and effects of coerced debt among a national sample of women seeking help for intimate partner violence. *Violence Against Women*, 1-19.

⁹ "Traffickers convince victims that they have no other choice but to work for the trafficker and pay back exorbitant amounts of debt. Oftentimes, victims will also get hit with unreasonable interest rates, sometimes as high as 400%" Polaris Project, "Debt vs. Debt Bondage: What's the Difference?" March 1, 2016. Available at: <https://polarisproject.org/blog/2016/03/01/debt-vs-debt-bondage-what%E2%80%99s-difference>

¹⁰ National Conference of State Legislatures, Human Trafficking Funding Services, http://www.ncsl.org/Portals/1/Documents/cj/Funding_Services.pdf ("identity theft is a large issue for survivors of human trafficking.")

¹¹ For an example of a survivor of trafficking facing a substantial amount of tax debt, see a case study within the report Civil Legal Aid Supports Federal Efforts to Help Human Trafficking Victims. <https://www.justice.gov/lair/file/829306/download>

this account from an advocate who routinely works with survivors facing debts related to their abuse:

I have had clients who have been abused over and over by financial institutions and by their partners, creating financial situations that become nearly impossible to get out of. A client of mine was an immigrant from India. Her abusive ex-husband brought her to the U.S. and kept her locked in their house for two years. She wasn't able to leave, she wasn't able to have a bank account or any financial access. She was only able to leave her husband when he abused her to the point that she had to go to the hospital because his abuse resulted in her miscarrying their child. After this, she racked up numerous medical debts and also ***found out that her husband had opened six credit card accounts in her name***. She has been contacted by collection agencies over and over. Through her incredibly hard work, she was able to pay most of the debts off (debts that shouldn't belong to her) on her own, but still it plagues her. Recently, we set up a payment arrangement with a collections company who had been harassing her, and after we got off the phone with them, she sat next to me and cried. When she was able to speak, she told me that it was like he was abusing her all over again. ***Every time she had to be reminded of this debt and every time she used her money to pay it off, she was reminded of the abuse she suffered at his hands. If these new rules were to go into effect, it would essentially amount to constant harassment by creditors - the constant reminder of the abuse.*** It will create the feeling that they will never be free from their abuse, that no matter what they do - even if they cease contact with their former partner - they will still have to be reminded of the worst point in their lives. This will be a disservice and an injustice to survivors of abuse.

Proposed rule § 1006.14(b)(2) would allow debt collectors to attempt to contact survivors once a day, ***per debt***, per week. The survivor described above who had six (6) credit cards account opened in her name by her abuser would receive ***forty-two calls*** per week. Not only is this amount of calls excessive, but the calls related to the debt are tied to the trauma around how that debt was incurred. These repeated, troubling calls lead survivors to stop responding to any credit issues or even stop answering calls from others, including their advocates or attorneys.

We request that the CFPB prohibit more than three attempted phone calls per week for all debts (not per account) held by that debt collector. This should result in no more than one live conversation initiated by the debt collector for all debts held by that collector.

Time Barred Debt

Time barred debt is debt that is past the statute of limitations and too old to collect in court. A survivor could be misled into paying it if they are receiving collection calls about such debt. Current case law bars threatening or bringing suit on a time barred debt. However, the proposed

rule does not follow case law. The proposed rule shifts the burden to a consumer to prove the debt collector knew or should have known about the statute of limitations.

On September 4, 2019, the National Association of Consumer Advocates released a survey conducted this year about consumer attorneys' work over the past two years representing consumers facing debt collection. The survey responses showed, among other things, that the vast majority of attorneys who responded to the survey "have worked on cases on behalf of consumers that demonstrate collectors' crusade to collect on, threaten, and sue consumers over old, expired debt."¹² According to the survey, "85% of consumer attorneys have recently represented consumers in cases where a debt collector attempted to collect on time-barred debt, representing at least 653 consumers in the past two years; 71% of consumer attorneys have recently represented consumers in cases where a debt collector threatened to sue the consumer to collect on time-barred debt, assisting at least 455 individual consumers in the two-year period; and 64% of attorneys have recently worked on cases representing consumers where a debt collector sued a consumer to collect on time-barred debt."¹³

Such debt is so old that lost records, mistaken identity, and inaccurate records mean that the debt cannot be collected without mistake or deception. ***We request that the CFPB prohibit debt collectors from attempting to collect time-barred debt.***

Contacting Third Parties

In attempting to contact a survivor, a debt collector can ***contact third parties*** to inquire about the survivor, per proposed rule § 1006.6(d). Additionally, under proposed rule § 1006.2(j), a debt collector can either communicate or attempt to communicate about a debt through a limited content message - which can be sent to third parties as well.

Unfortunately for survivors of coerced debt, their abusive partner or trafficker may be the one who caused or is exacerbating their debt. A communication or even a limited content message is notice to an abuser that their attempts to harm the survivor have been successful. Alternatively, if a survivor sought their own line of credit that their abuser didn't know about, this contact could lead to major safety issues. Consider the following scenario provided by an advocate about the trouble a debt collector could cause if her spouse were contacted:

My client works full time and lives with her abusive partner and their children. She has been working on getting the family finances together, including joint accounts that the partner opened but never paid. The partner also steals money from her. If he does not

¹² National Association of Consumer Advocates, NACA Survey: Debt collectors chase consumers over old, expired debt even when it's illegal to collect, <https://www.consumeradvocates.org/media/news/naca-survey-debt-collectors-chase-consumers-over-old-expired-debt-even-when-it%E2%80%99s-illegal> (September 4, 2019).

¹³ National Association of Consumer Advocates, 2019.

know where the money is or how to access it, then she has money to pay bills, the rent, groceries, and even transportation for her to get to work. All of these things have been an issue when her spouse has access to her money. Currently, she is trying to find a way to deal with a loan he took out and she co-signed. He never bothered to pay the loan, and it's impacting her finances again. She wants to pay the debt but is concerned that he will be alerted if there is any activity on the account. It would then create a situation for the client that would be bad for her relationship and her finances, setting back all the work she has carefully been able to accomplish.

As proposed rule § 1006.6(e), sets up a mechanism for consumers to opt-out of certain types of communications, *we request that the CFPB permit consumers to list all contact information of third parties that should not be contacted for any reason, including for location purposes.* This will not only ensure the physical safety of survivors, but will also prevent abusers from obtaining knowledge about a survivor's financial state. *Moreover, in the final rule, we request that the CFPB prohibit all messages (including limited content messages) to third parties.*

Opting Out of Electronic Messages

Proposed rule § 1006.6(e) requires debt collectors who communicate or attempt to communicate with a consumer electronically to include in that communication or communication attempt a clear and conspicuous statement describing one or more ways that a consumer can opt out of further electronic communications or attempts to communicate at that phone or address. *There should be no automatic consent to permitting electronic communications or attempts to communicate; instead, debt collectors should first obtain consent (opt-in) from a consumer to communicate or attempt to communicate electronically.* One primary reason this is important in the context of intimate partner violence is because of the coerced debt dynamic.

When abusers take out debt in the name of a survivor, the abuser links their phone number and email to an account that is not accessible to that of the survivor. Under the proposed rule, where opt-out provisions are delivered electronically, abusers would continue to receive contact from debt collectors without a survivor ever knowing about the contact. This lack of knowledge results in the inability of a survivor to avail themselves of other debt collection protections.

Furthermore, the opt-in requests should be sent to consumers through a written document sent via U.S. mail. Again in the context of coerced debt, though abusers link their own phone number and email to fraudulent accounts, the address linked to the account is almost always that shared with the survivor. Advocates assisting survivors of intimate partner violence have countless stories of survivors who only first discover a fraudulent account when they have separated from their abuser and receive written correspondence about the account in the mail. In

a recent survey, 63% of survivors with fraudulent accounts discovered the account through creditor or debt collector contact. Of that 63%, 67% discovered it via a letter and 24% found out through a phone call.¹⁴

Finally, receiving electronic messages by email, text, or direct message from a website where the message may only be in the form of hyperlinks is dangerous. Survivors will be and should be reluctant to click on hyperlinks with no other information. Clicking on unmarked hyperlinks leaves survivors vulnerable to hackers and phishing scams, but not clicking links increases the danger of missing out on vital information about their credit. This isn't only an issue for survivors. The Federal Trade Commission warns against clicking on suspicious links, even those that appear as if they are from someone you know or trust.¹⁵ Opening emails, clicking on a link in a text message, and responding to requests for information are all activities that are to be undertaken with caution to avoid identity theft. In fact, it is this fear of falling victim to identity theft that may stop a victim (including one who has already been a victim of identity theft) from opening an electronic communication about a debt. Such communications are more likely to be considered fraudulent when a survivor of coerced debt actually has no idea that there are lines of credit in their name.

We request that the CFPB require consumer consent to opt-in to receiving communications from debt collectors before contacting consumers through electronic means such as email, social media, or text. The opt-in requests should be sent to consumers through a written document sent via U.S. mail. We further request that any electronic communication sent by a debt collector comply with the E-Sign Act.

Validation Notice

Delivery of Validation Notice

Debt collectors must send a “validation notice” including the amount owed on the debt and the name of the collector. Currently, the validation notice must be sent via U.S. mail. However, proposed rule § 1006.34(a)(1) allows debt collectors to provide the validation notice verbally or electronically with no mandatory requirement to also provide the notice in writing by U.S. mail.

As mentioned above, if notice is not provided in writing by U.S. mail, survivors may never learn of the debt. Furthermore, sending debt correspondence via U.S. mail has always been a

¹⁴ Adrienne Adams, Angela Littwin, McKenzie Javorka, 2019, *Violence Against Women*.

¹⁵ Federal Trade Commission, How to Recognize and Avoid Phishing Scams, <https://www.consumer.ftc.gov/articles/how-recognize-and-avoid-phishing-scams> (“Scammers use email or text messages to trick you into giving them your personal information. They may try to steal your passwords, account numbers, or Social Security numbers. If they get that information, they could gain access to your email, bank, or other accounts. Scammers launch thousands of phishing attacks like these every day—and they’re often successful. The FBI’s Internet Crime Complaint Center reported that people lost \$30 million to phishing schemes in one year.”)

protection for consumers against scams and illegitimate debt collectors. In fact, advocates working with survivors will often advise survivors that the only real way to know whether or not a legitimate debt collector is contacting them over the phone is to wait to see if a validation notice is sent in the mail. ***As a result, we request that the CFPB require the validation notice be sent via U.S. mail, even if it was already provided orally.***

Time Limit on Validation Period

Proposed rule § 1006.34 (b)(5) defines the validation period as starting on the date the debt collector provides the validation information and ending 30 days after the consumer receives or is assumed to receive the validation information. It is only if a consumer disputes the debt or asks for more information within the validation period that certain protections apply, including those outlined in proposed rule § 1006.38.

However, there should not be a time limit attached to the validation period. Especially in the context of domestic violence and identity theft, the consumer may not receive the validation notice within the limited time period given to dispute a debt. Consider the client experiences described above - economic abuse led to survivors not knowing about debts that their abusers took out in their names. It would be difficult, if not impossible, for these survivors, and others dealing with identity theft, to respond to a validation notice should there be a time limit attached. TRLA's SCEA team manager reports that her clients often come seeking help with coerced debt, bringing in debt collection notices which are past the 30 day window to request validation. These notices are often for accounts the survivor doesn't recognize, and where obtaining more information about the account is crucial in determining what possible recourse a victim of coerced debt has.

We request that the CFPB (1) require that debt collectors include a validation notice with every communication; (2) permit consumers to request validation at any point in time; and (3) require debt collectors to respond to a consumer's request for validation if the debt collector has not already provided this information pursuant to a previous request.

Confusion and Difficulty in Disputing a Debt

Proposed rule § 1006.34(c) lays out information that a debt collector must and may include in its validation notice. Proposed rule § 1006.34(c)(4) describes consumer response information that must be included, and proposed Model Form B-3, if used, provides a safe harbor for debt collectors under proposed rule § 1006.34(d)(2).

Model Form B-3 includes a tear-off portion titled, "How do you want to respond." This tear-off portion includes options such as: "this is not my debt"; "the amount is wrong"; or "other" (and then describe on reverse and attach additional information). This is highly problematic. ***We request that the CFPB include more categories for disputes, with categories that provide***

special protections and mechanisms for identity theft victims specifically, such as an indication that the individual receiving the form is not the right person to pay. Attorneys and advocates working with survivors find that debt collectors do not investigate identity theft when consumers indicate the debt is not theirs. The debt collectors simply verify that the name and identifying information of the survivors match that with their records.

Model Form B-3 also includes an option, “I enclosed this amount,” with information on who to make a check payable to as permitted by proposed rule § 1006.34(d)(3)(iii). Allowing a debt collector to include this optional information in a notice is problematic and confusing. It can lead to survivors thinking they have to make a payment if they are going to dispute the debt. ***We request that the CFPB not allow the option, “I enclosed this amount,” to be included in the validation notice, and thus remove the option from Model Form B-3.***

Language Access in Validation Notices

Survivors of domestic and sexual violence may also be individuals that are Limited English Proficient (“LEP”). In fact, many of the cases seen by advocates working with victims of coerced debt involve women who are immigrants and/or LEPs. The abuser uses the survivor’s inability to speak English, or limited English proficiency, coupled with their lack of knowledge of the financial system in the United States, in order to bring about the coerced debt. When subsequent communications about this debt are in English and not understood, survivors are unable to properly respond and avail themselves of consumer protections. Consider the following scenario provided by TRLA’s SCEA team about the difficulty a survivor had resolving an account resulting from coerced debt:

My client lived with an abusive spouse who controlled all of the family’s finances, though she was the only one who worked. He would not allow her to access the bank account where her paycheck was deposited nor would he allow her to make financial decisions. He would tell her to sign financial documents, which were always in English. She did not read or write English, and only somewhat spoke English; her primary language is Spanish. If she’d question him about any of the finances, he would become violent, damaging personal property and threatening her physical safety. It was her income that paid for the mortgage, so she did not feel like she should be the one to leave the house, but she could not get him to leave. While they were still living in the same home, she was sued by a debt collector on a credit card account that he had opened and exclusively used; she did not even know of its existence. She asked him what the documents were about, and he said he would take care of it. He wrote an answer acknowledging the debt and had her sign the answer. The debt collector then obtained a default judgment against her.

It was only when my client's daughter made an outcry of sexual abuse against her stepdad, that he fled the house to evade law enforcement. It was also at this point that she discovered multiple credit cards in her name in his room, all of which she had never signed for or authorized. She also began to receive statements and letters in the mail, and was served with another lawsuit. Fortunately, this time she was able to seek our legal help.

In the early draft of the rules, there were stronger protections regarding language access. Under proposed Regulation F, the only proposed rule that deals with language access is proposed rule § 1006.34(d)(3)(iii). This proposed rule only makes it optional for a debt collector to provide an option for requesting a Spanish disclosure in the validation notice. ***We request that the CFPB require Spanish on the reverse of all validation notices and publish model notices in the 10 most common languages spoken by LEPs, or at a minimum be required to translate a validation notice when the original transaction took place in another language.***

Conclusion

On behalf of survivors across the country, the Center for Survivor Agency and Justice, Texas RioGrande Legal Aid, Inc., and the undersigned partners thank you for the opportunity to comment. The Consumer Financial Protection Bureau has the opportunity to avoid making rules that will further harm survivors of domestic violence, sexual assault, and human trafficking. For clarification on these comments, please contact **Yvette Butler, Director of Capacity Building & Systems Change, CSAJ** at yvette@csaj.org or **Carla Sanchez-Adams, Managing Attorney, TRLA**, CSanchez@trla.org.

Sincerely,

Center for Survivor Agency and Justice

Texas RioGrande Legal Aid, Inc

Supporting Organizations

1. Angela's Piazza: Women's Drop-In Center
2. Amara Legal Center
3. Barrier Free Living Inc.
4. Buckeye Region Anti-Violence Organization
5. Chosen Family Law Center, Inc.
6. Equitas Health
7. FAIR Girls, Inc.
8. Futures Without Violence
9. Her Justice

10. Los Angeles Center for Law and Justice
11. National Alliance for Safe Housing
12. New York City Anti-Violence Project
13. Ohio Domestic Violence Network
14. Pinnacle Community Services
15. Safe Horizon
16. Sakhi for South Asian Women
17. Texas Appleseed
18. The Legal Aid Society
19. Urban Justice Center
20. Urban Resource Institute
21. Vera House, Inc.
22. Voices of Women
23. Women of Color Network, Inc.

Supporting Individuals

1. **Adrienne Adams, PhD.**, Associate Professor, Michigan State University
2. **Angela Littwin**, Ronald D. Krist Professor of Law, University of Texas.
3. **Ha Tran**, Community Advocate & Sustainability Coordinator
4. **Kimberly Roman**, Program Coordinator of Children and Family Services
5. **Laisa Schweigert**, Sexual Assault Advocate
6. **Lorena Zavala**, Case Manager, Transitional Services
7. **Madeleine Gyory**, Agency Attorney
8. **Nancy Erickson**, Law Office of Nancy S. Erickson
9. **Robert Darkwood**, Customer Service Representative I
10. **Sandy Yu**, Economic Empowerment Specialist