NILA UNDERSTANDING TRADITIONAL INSTALLMENT LENDING

September 18, 2019

Bureau of Consumer Financial Protection
Comment Intake – Debt Collection
Office of Regulations
1700 G Street, NW
Washington, DC 20552

Re: Debt Collection Practices (Regulation F) [Docket No. CFPB-2019-002 and RIN 3170-AA41]

Dear Director Kraninger:

The National Installment Lenders Association (NILA)[1], appreciates the opportunity to comment on the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") proposed rule to amend Regulation F, 12 CFR part 1006 ("Proposed Rule") which implements the Fair Debt Collection Practices Act ("FDCPA").

NILA understands and supports the regulation's strong and effective consumer protections as applied to debt collectors defined in the FDCPA. However, though the Proposed Rule is intended to apply only to these FDCPA debt collectors, traditional installment lenders, who provide a vital service in the provision of safe, small dollar credit, will be also directly affected. Our members depend on good, performing borrowers and go to great lengths to work out our customers' ability-to-repay a loan. Our model means we have lower rates of default than other forms of non-bank credit, but in cases where our customers do default on their loans, we must have tried-and-tested means to collect the money invested in our customers.

This is important because, in turn, any rulemaking that affects installment lenders' ability to collect on our loans, will, in turn, have serious unintended consequences for our customers -- the very consumers the rulemaking seeks to protect. The effective, efficient, and fair collection of consumer debts benefits all consumers. Without the ability to enforce contracts, creditors making lending decisions would be forced to constrict access to credit, making it costlier for the vast majority of our customers who pay on time and flying in the face of modern commitments to financial inclusion.

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[1] Formed in 2008, the National Installment Lenders Association (or NILA) is a membership organization dedicated to improving understanding of the nature and benefits of traditional installment loans, particularly among policymakers at the federal, state and local levels. NILA members provide safe and affordable loans, underwritten and repaid in regularly scheduled installments that give borrowers a clear roadmap to pay down their debt. Traditional installment lenders report loan performance to the major credit bureaus, enabling responsible borrowers to improve their credit scores and helping consumers build or repair credit scores while providing tools to help them achieve their financial goals. More information at www.nilaonline.org

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The specific risk of interference in the ability of traditional installment lenders to collect their own debts, through a final rule that fails to explicitly differentiate between creditors like installment lenders and third-party debt collectors, has the potential to affect businesses in ways that increase the cost of credit and limit access to non-bank loans. Traditional installment lenders are often the only safe and affordable source of credit in some communities, especially in rural areas. Their role prevents “credit deserts” in which no legal forms of credit exist, even as demand remains constant. Removing credit from these areas decreases levels of financial inclusion and capability and can lead to destitution and urban decay, both of which are linked to increased crime levels[2].

In addition to this basic concern, we are alarmed by the potential for the rule to be applied to installment lenders, by the CFPB or other regulators, at some point in the future. This is an outcome that was not intended by Congress when the FDCPA was passed. Creditors and debt collectors are two very different forms of business, with different motivations and incentives, and were recognized as such by Congress when it passed the FDCPA. As creditors, traditional installment lenders play an initial role in collecting their own debts, through interactions with customers at the early stages of default. This is a very different process than that employed by third-party debt collectors, whose timelines are typically longer and who do not have a prior relationship with the debtor. It is these differences that dictate that the CFPB should not use a one-size-fits-all approach to debt collection.

This is particularly important in the limitations to telephone calls laid out in the proposed rule. If these limitations were, at some stage in the future, deemed to apply to creditors collecting on their own debts, the disruption would be tantamount to a ban on creditor debt collections. There are valid, compelling reasons that creditors need to contact, or attempt to contact, their customers more often or more frequently than is proposed to be acceptable for debt collectors with whom the consumer has never had a business relationship.

To that end, NILA has three proposals that will go a long way toward lessening the unintended consequences of the proposed rule:

1. Rulemaking must recognize and describe the differences between third-party debt collectors and creditors collecting their own debt.
2. The CFPB should promulgate the Final Rule under its FDCPA authority, not under section 1031(b) of the Dodd-Frank Act.
3. Section 1006.14(b)(ii) – detailing the Proposed Rule’s limitations on the number of calls should not be applied to creditors.

We lay out our detailed justifications for each of these, below:

Rulemaking must recognize and describe the differences between third-party debt collectors and creditors collecting their own debt.

NILA’s primary concern is that, absent a clear statement that the Proposed Rule does not apply to creditors, and taking into account amorphous “reasonable” standards, there is a risk that courts, regulators, and others, may decide it is simpler to apply the standards the CFPB sets for debt collectors to creditors with no serious analysis.

This would disastrously disrupt the relationship that creditors have with their customers. This relationship is particularly important as the best mechanism for troubled borrowers to resolve their delinquency issues.

[2] https://en.wikipedia.org/wiki/Broken_windows_theory

Creditors issue reminders to keep accounts current, and, prior to "charge-off" or the transfer of delinquent accounts to a third-party debt collector, can offer extensions, deferments, loan modifications or revised

payment schedule. This benefits the customer by offering options to avoid further harm, such as late fees and serious credit score damage.

In contrast, debt buyers typically purchase debt for a fraction of the debt actually owed. Neither debt collectors nor debt buyers attempt to salvage the consumers' credit score, and neither have any prospect of having a future or ongoing relationship with the consumer.

Definitions and other descriptive language in the proposed rule would ameliorate the risk for creditors and protect the relationship between creditor and consumer during the critical time between default and charge-off.

The CFPB should promulgate the Final Rule under the FDCPA, not under section 1031(b) of the Dodd-Frank Act.

Creditors rightly are not defined as debt collectors under the FDCPA, and the rule itself recognizes that as long as a creditor collects in its own name, it is not covered. The issue of differentiation between creditors and third-party debt collectors can therefore be addressed by the CFPB issuing the Final Rule pursuant to its authority under the FDCPA and Sections 1022(a) and (b)(1) of the Dodd-Frank Act.

As amended by the Dodd-Frank Act, FDCPA Section 814(d) provides that the Bureau "may prescribe rules with respect to the collection of debts by debt collectors," as defined in the FDCPA. Section 1022(a) of the Dodd-Frank Act provides that "[t]he Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law." Section 1022(b)(1) of the Dodd-Frank Act provides that the CFPB director may prescribe rules and issue orders and guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof. "Federal consumer financial law" includes Title X of the Dodd-Frank Act and the FDCPA. The CFPB has ample authority under the FDCPA and Section 1022 of the Dodd-Frank Act to promulgate a rule that applies to third-party debt collectors.

Including reference to the Bureau's authority to prescribe rules under Section 1031(b) in the proposed rulemaking introduces unnecessary and problematic uncertainty into the application of the Proposed Rule. If a practice is deemed unfair, deceptive, or abusive for debt collectors, we are concerned that others would mistakenly believe that it would be unfair, deceptive, or abusive for creditors to follow that same practice.

To avoid confusion, the Bureau should clarify that any application of UDAAP to creditors is expressly outside the scope of this rulemaking and make clear the Proposed Rule does not apply to creditors, consistent with the FDCPA. Similar clarification is required for the Debt Collection Market Background section of the Preamble describing the roles of various parties in the debt collection industry.

The wisdom of such changes to the Proposed Rule is supported by a number of sources, most significantly, Congress itself. When Congress passed the FDCPA in 1977, it recognized that the FDCPA should not apply to creditors because they are different from and do not operate like debt collectors. The Federal Trade

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Commission's Official Staff Commentary further amplified the FDCPA's creditor exemption,[3] and the Government Accountability Office reaffirmed Congress' important distinction between debt collectors and creditors when it stated, "Because first-party collectors use the issuers' name and are collecting from current

customers, there is an emphasis on preserving the relationship with the consumer and mitigating the negative perception that consumers can have about their accounts being forwarded to collection."[4]

Furthermore, the CFPB's own website encourages consumers to contact their creditors for help, recommending that consumers immediately contact their creditor if they cannot pay a bill because, "many creditors may be willing to work with you to change your payment if you're facing a financial emergency."[5]

Section 1006.14(b)(ii) – detailing the Proposed Rule's limitations on the number of calls should not be applied to creditors.

None of the debt collection provisions in Regulation F apply or should be applied to creditors collecting their own debts. We have particular concerns related to Section 1006.14(b)(ii) that we wish to highlight here. Creditors call their customers for a number of reasons and being able to reach their customers is the only way creditors can help them. Creditors make many different types of calls to borrowers, including routine servicing calls. These calls are related to the status of the account and include calls that the customer requested; fraud alerts, offers or follow-ups regarding extensions and modifications; calls regarding insurance or title matters; responses to complaints; calls to inform about failed payment (*i.e.,* returned due to insufficient funds) or lost payments; and calls regarding potential bankruptcy filings. Making calls to customers, is part of a creditor's daily business. Creditors should not be restricted from making every effort to assist their customers.

Creditors ability to service their loans and communicate with their customers must also be preserved if the critical relationship between lender and borrower is to be used in a timely manner in default situations. Creditors have a very short window in which to reach their customers who have missed a payment to help them avoid negative consequences. Once a creditor reports an account as past-due, which often happens at 30 days past due, the customer's credit score is already at risk of being negatively affected.

To protect this vital activity, we ask that the Bureau should clearly state that the call limit in § 1006.14(b)(2)(ii) does not apply to creditors. We ask that the CFPB remove footnotes 313 and 331 and replace them with clear statements that the call limit restrictions only apply to third-party debt collectors.

Conclusion

As we stated at the beginning of this letter, action to protect consumers from excesses in the debt collection business directly affects creditors. For this reason, regulators must tread very carefully if they are not to affect the availability of the safe and affordable small dollar credit that is so vital to individuals and families in driving financial inclusion and mobility. No less a body than the Federal Reserve Bank of New York has observed that,

[3] 53 *Federal Register* 50097-50110. The Official Commentary also states the term "debt collector" does not include, "A credit card issuer that collects its cardholder's account, even when the account is based upon purchases from participating merchants, because the issuer is collecting its own debts, not those 'owed or due another.'"
[4] U.S. Gov't Accountability Office, GAO-09-748, *Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace and Use of Technology* (2009), available at http://www.gao.gov/assets/300/295588.pdf
[5] https://www.consumerfinance.gov/ask-cfpb/what-should-i-do-if-i-cant-pay-my-credit-card-bills-en-1697/

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“*We find consistent evidence that restricting collection activities leads to a decrease in access to credit and a deterioration in indicators of financial health*.”[6]

We urge you to take the steps outlined in this letter to ensure that this proposed rule does not unintentionally affect the financial health of the millions of Americans who rely on traditional installment loans.

Thank you for your attention to this matter.

Sincerely,

Brad Noel
President
National Installment Lenders Association

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[6] https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr814.pdf?la=en