NEIGHBORHOOD TRUST FINANCIAL PARTNERS

September 9, 2019

Director Kathleen L. Kraninger
Attention: Comment Intake
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Debt Collection Practices (Regulation F) [Docket No. CFPB-2019-0022, RIN 3170-AA41]

Debt Collection Is Already the Leading Source of Consumer Complaints - Weakening Debt Collector Regulation Will Exacerbate Existing Problems and Create Entirely New Ones

Neighborhood Trust Financial Partners is a nonprofit social enterprise that empowers low-income workers to achieve their financial goals and to become productive participants in the U.S. financial system. We provide financial counseling and access to carefully curated products focused on the challenges confronting most working households today: cash-flow shortfalls, budgeting, emergency savings, and debt management. To maximize our impact, we deliver our counseling in settings that are convenient to workers, including the workplace, financial institutions, and community nonprofits, and we link our clients to safe, affordable financial products. The end result is workers who are more confident and less stressed about their finances, who build healthy balance sheets and work towards wealth creation goals like starting a new business or helping their child go to college. Annually we reach more than 9,000 low- and moderate-income workers across the country.

Our counseling services have a remarkable impact on our clients' lives, yet we know that they, like millions of other everyday workers, face structural barriers endemic to the modern American economy. All across the United States, workers are increasingly vulnerable to unexpected financial shocks. Employers seeking to cut costs and increase profits place downward pressure on wages while also forcing workers to assume a larger share of the financial burden associated with healthcare access, retirement savings, and other non-healthcare related insurance. As the cost of living (and in effect, working) increases, workers operating on razor thin margins commonly rely on consumer debt and predatory lending to make ends meet. This borrowing does not always end well and many consumers become completely engulfed by their debt burdens.

In over two decades of direct practitioner experience, regardless of how or why someone has fallen behind on their debt payments, it is extremely rare to see a client feeling cavalier about their outstanding collection accounts. Much more commonly, clients arrive to their appointments stressed, overwhelmed and looking for help navigating debt issues that they take very seriously. These clients deserve consumer protections that respect both their dignity and safety as they weigh complex debt management options. The Consumer Financial Protection Bureau's proposed rule changes are a major step in the wrong direction as they would undermine crucial consumer protections, expose debtors to increased abuse, harassment and privacy violations by debt collectors, and, in some cases of domestic violence, even jeopardize the physical safety of consumers.

Debt Collectors Already Abuse Their Power – Less Regulation Will Only Exacerbate Existing Power Imbalances Between Consumers and Collection Firms:

Roughly 77 million Americans have outstanding debt that has been turned over to a private collection agency.[i] Each year, over 6,000 debt collection firms operating in the United States collect billions of dollars from consumers.[ii] The debt collection industry is lucrative[iii], and their propensity for brazen disregard of consumer protections is well documented.[iv] Nevertheless, collection industry advocates maintain that they are too heavily regulated. Following every single rule is not only complicated and expensive, they argue, but regulation itself fosters an environment where collectors *have* to be extreme in their methods just to be taken seriously by consumers. From the perspective of collection industry advocates, the debt collection landscape is so unabashedly pro-consumer that it incentivizes debtors to avoid taking responsibility for paying their debts. This, in turn, puts pressure on collection agents who respond to consumer apathy by resorting to increasingly desperate (sometimes illegal) methods to procure payments.

Not only does Neighborhood Trust find any such rationalization of abusive collection practices extremely problematic, but we wholeheartedly disagree with the fundamental assumption that the scales of power are tipped in consumers' favor. We agree that an imbalance exists, but our experience as practitioners has shown us that it is consumers who are at a major disadvantage, not debt collectors. We have seen that collection companies make liberal use the many tools afforded to them under the law. This fact is not lost on consumers. Our clients appropriately regard past-due debt obligations as significant threats to their financial security and seek to resolve them with high degrees of urgency. Nevertheless, due to the perspective of too many within the collection industry, collectors unnecessarily belittle, disrespect and threaten our clients in their communications.

"My client is truly in no position to pay this debt right now, but she feels intimidated. When we spoke to the debt collector about the fact that she's currently living in a homeless shelter, the agent didn't skip a beat - simply reiterating that my client had to pay or they would take her to court. It's extremely frustrating that they prey on vulnerability. They've crafted their message in such a way that, no matter what your circumstances are, you feel shamed into paying. But paying this debt would mean sacrificing her short term financial security - saving for her own place to live, and covering basic living expenses."

- Tiffany Ordonez, Financial Counselor at Neighborhood Trust

Below is a screenshot from an email sent to Tiffany's client. The tone of the message typifies the condescension and lack of good faith that too many of our clients face when interacting with debt collectors (while we redacted the name, phone number and email of the Collection Manager who sent the email, the rest of the content, formatting, and colors in the message is a screenshot which has not been changed or reformatted in any way):

If you do not make payments for 6 months, TFC will cancel your account and the next payment agreement that you are set up on will be with an interest rate of 7.9%. Due to your Enrollment Agreement that was signed at the time you entered Mildred Elley, you agreed that if you defaulted on any funds you owed to Mildred Elley that you would be responsible for ANY AND ALL COLLECTIONS FEES AND LEGAL FEES INCURRED BY MILDRED ELLEY.
If you do not receive the e-mail from TFC ACCOUNT MANAGEMENT in your inbox within the next 30 minutes, please be sure to check your spam or junk folders. If it is in neither of those, please contact me right away so I can resend it to you.

IF YOU CONTINUE TO REFUSE TO SIGN THE PAYMENT AGREEMENT, EACH WEEK YOUR INTEREST RATE WILL BE INCREASED BY ONE PERCENT. THIS ***WILL*** ALSO INCREASE YOUR MONTHLY PAYMENT.
PLEASE KEEP IN MIND THAT WE CAN ONLY HELP THOSE THAT ARE WILLING TO HELP THEMSELVES.
ALL ACTIONS HAVE CONSEQUENCES

This is an attempt to collect a debt and any information obtained will be used for that purpose.

[redacted]
Collections Manager
Empire Education Corporation
Mildred Elley / Austin's School of Spa Technology
1 Park Place, Floor 3
Albany, NY 12205
[redacted] office
[redacted] direct line
Fax [redacted]
[redacted] / www.mildred-elley.edu

Examples of Existing Power Imbalances - #1
Debt Collectors Already Benefit from Significant Advantages in Civil Court:

Perhaps the clearest example of debt collector power is their ability to use our civil and criminal court systems as methods of enforcement. Each year, millions of consumers are sued for outstanding debt.[v] In the vast majority of these cases, consumers do not appear in court to defend themselves, resulting in default judgments being entered against them.[vi] Many times, these consumers are unaware that they were even scheduled to appear in court because they were never served with court documents in the first place. Sometimes there are reasonable explanations for why this occurs – for example, the consumer moved and no longer receives mail at their previous address. However, the frequency of this phenomenon underscores major problems that stem from extremely low standards for what constitutes “proper service” of court documents.[vii] For decades, process servers have taken advantage of court processes that largely take them at their word. This ‘honor system’ has resulted in widespread abuse whereby process servers claim to have properly carried out their duties, but instead fall woefully short, leaving documents where recipients have no reasonable chance of seeing them or, in some cases, never even making the attempt altogether. This practice is so common that it has acquired a nickname - sewer service.[viii]

When consumers eventually do discover that they need to resolve a debt in court, they may have legitimate defenses to raise against debt collectors. However, many pro-se consumers are not aware of what those defenses are, nor how to assert them, and consequently struggle to navigate the complexities of civil court procedure.

"I can speak firsthand about how confusing and overwhelming dealing with the courts can be – and I was a trained Financial Counselor! I will always remember walking into civil court, looking to resolve a judgment that appeared on my own credit report that I didn't recognize. It was very intimidating - the first people who approached me were lawyers representing the creditor. They pulled me out of the courtroom, not quite into the hallway, but where the judge couldn't see us. They were talking to me about the debt in full voice, with no regard for my privacy. I felt like they were trying to intimidate and shame me into settling a debt that was not even mine.

As a trained Financial Counselor, I knew to request assistance from one of the pro bono lawyers available, but that option only became available after I insisted on standing in front of the judge, telling the court that it was not my debt, and asking to see supporting documentation that could prove the debt belonged to me.

Even then, I had to return to court 3 times in order to resolve it! Luckily, I had the flexibility at work to allow for this, but most of our clients can't afford to miss a single day of work or make the necessary childcare arrangements to accommodate this demand on their time. Then, assuming a client can actually show up, they feel pressure and urgency to resolve the issue that same day. In that moment, clients often agree to repayment plans that they can't actually afford, on debts they might not even owe. Clients who get sued really aren't set up for success in court." – ***Margarita Pascual, Former Financial Counselor and current Business Development Manager at Neighborhood Trust***

Studies show that legal representation in debt collection lawsuits dramatically improves outcomes for consumers, including increasing the likelihood that the case will be dismissed outright.[ix] Nevertheless, between 91 and 99% of consumers are unrepresented by an attorney when sued for a debt.[x]

Examples of Existing Power Imbalances – #2
Debt Collectors Already Benefit from Significant Advantages in Criminal Court:

It is not just civil court where consumers are at a disadvantage. Each year thousands of people are arrested and jailed for past due accounts. Although debtors' prisons were abolished by Congress in 1833, in over half the states across the U.S., consumers have been forced to forfeit their freedom for debts as small as $28.[xi] In one case profiled by the ACLU, a man named Gordon Wheeler was arrested at his Texas home in 2015 by seven U.S. Marshals – he had missed his court date for a $2,500 federal student loan that he took out in 1983 to pay for trucking school. The debt had since ballooned to $12,000 with interest and fees. Gordon was retired at the time and his only income was from Social Security and disability – he had been recovering from open-heart surgery on the day he was due to appear in court.[xii]

Each year, millions of debtors across the country are threatened by collection agencies with prosecution and jail time – these threats are often false representations of the law and are employed as a (very effective) means of coercing payments from frightened consumers.[xiii] Neighborhood Trust's clients are no exception – as service providers, we have heard an appallingly wide variety of threats made against our clients over the years. Examples range from being wrongfully threatened with arrest, to a debt collector telling a client's 8 year-old daughter (who happened to answer the phone) that there would be no Christmas presents for her that year because her mom was a "bad person" who "owes people money."

For Consumers, Baseless Threats Are No Less Scary Than Credible Ones – Loosening Regulation on Debt Collector Outreach Will Compound Financial Distress:

At Neighborhood Trust, we believe that no one should be deprived of food, shelter or safety because of a few thousand dollars they are struggling to pay in outstanding debt. Yet we encounter clients who feel so stressed about their collection accounts that they prefer to miss housing payments and forgo meals than leave their debts unpaid. When clients explain why their debt is such a high priority, they often cite wanting the calls, letters and harassment from collectors to stop. Decisions made under this kind of distress can have significant negative consequences for our clients' financial, mental and physical health.

"Clients get really emotional due to the constant calls and notices. I get this a lot, especially from my seniors because they are so used to being good customers and paying on-time." ***– Ivania Teran, Senior Financial Counselor at Neighborhood Trust***

Our experience regarding the urgency that clients feel about their debt is consistent with other research findings - a report produced by The National Council on Aging found that elders will skip meals, discontinue medications, miss medical appointments, or forgo home and auto repairs to pay their debt.[xiv]

"My client came in with a lot of delinquent debts, but she was still trying to pay them all - no one had told her that her disability benefits were exempt from collection by law. She felt a lot of guilt when she finally had to stop paying, and then the letters and calls started rolling in. This outreach made it even more difficult for me to help her stick with prioritizing her basic needs rather than paying debt with money she didn't have. The ongoing contact added significant stress to her life which would be hugely exacerbated if collectors (1) could call more often (2) were able to text/email (especially because she's older and might have trouble figuring out how to opt-out) and (3) kept calling after the debt had expired past its statute of limitations period." ***- Rosie Silber-Marker, Financial Counselor at Neighborhood Trust***

Debt collectors already contact American consumers more than a billion times a year.[xv] Several of the Bureau's proposed changes however, threaten to *completely* inundate consumers by subjecting them to receiving exponentially more phone calls and messages from debt collectors. For example, under the proposed rules, debt collectors would be permitted to make seven attempted calls to a consumer per week, ***per debt*** (not per consumer)! The proposal would also allow debt collectors to reach out to consumers using email, text message, and direct message on social media, but failed to provide specific limits on the number of messages that could be sent through these channels.

"I had a client who came in after losing his job a few months prior. Between our first and second session, he ended up in the hospital for several days due to severe anxiety and depression - facing the reality of his financial situation put him in a really bad place emotionally… We have been negotiating each debt using his remaining savings, so now he feels much more in control. He had 20+ credit cards though, many of which had gone to collections. Opening the door to getting that many calls in a week is unimaginable. Additionally, if they were given the opportunity to reach out to his wife as well, he would feel totally surrounded." – ***Rosie Silber-Marker, Financial Counselor at Neighborhood Trust***

The CFPB's Proposal Threatens to Jeopardize the Privacy and Physical Safety and Privacy of Consumers, particularly Survivors of Domestic Violence:

There are several privacy and safety concerns that emerge when examining the Bureau's proposal. For example, the proposed rule would not only allow collectors to leave phone messages with third parties who answer the phone, but also opens the door to allowing collectors to *deliberately* contact third parties on the phone such as employers, neighbors, family or friends to convey their message. As it stands the CFPB's proposal would not only threaten our clients' privacy, but, specifically in the case of domestic violence survivors, would also put them in clear physical danger.

"Financial abuse is something that happens in 99% of domestic violence cases.[xvi] Many abusers use their partner's information to gain control over their finances, creating an environment of absolute control and economic dependency that oftentimes feels inescapable. Three out of four survivors said they stayed with their abusers longer for economic reasons[xvii] and many of the 85% of survivors who returned to their abusers cited an inability to address their finances as the reason[xviii]. The CFPB's proposal would put private and sensitive financial information directly into the hands of the abusers. For those who are still living with their abuser, any information about accounts they opened without their abuser's knowledge can put them in immediate danger. For those who have left their abuser, the ability to obtain information about their accounts and activities increases the likelihood that they will be found, or can allow the abuser to continue their manipulation of the survivor's finances." ***– Adria Schmidt, Former Financial Counselor and current Director of Business Development at Neighborhood Trust***

As described above, abusers are often actively trying to ascertain the whereabouts of survivors. If the Bureau's proposal comes to pass, abusers may be thrown several lifelines that aid them in their search. For example, an abuser who engages with a survivor's debt collector on the phone might be able to manipulate the conversation and obtain the survivors' current address and/or phone number. Needless to say, this scenario would present major safety issues. There are a number of additional scenarios like this which have been thoughtfully outlined by organizations like the Center for Survivor Agency & Justice.

For survivors of coerced debt, for example, their abusive partner may be the one who caused or is exacerbating their debt. A call from a collections company would give the abuser notice that their attempts to harm the survivor have been successful.[xix] Alternatively, if a survivor had sought their own line of credit, and their abuser didn't know, the contact from a debt collector could lead to its discovery and result in violence.

Similar concerns arise when considering the CFPB's proposal to allow emails, texts, or social media messages instead of letters and phone calls. Additionally, the Bureau's proposal would put survivors at an additional disadvantage since survivors are more apt to avoid clicking on hyperlinks with no other information – this could cause them to miss out on important information about the status of their debts.

"My client is a survivor of domestic violence who has since gotten out of that situation, has an order of protection, but is still definitely dealing with the financial repercussions from that marriage. She has a charged off account on her credit report that her ex-husband was supposed to be paying. Unfortunately my client cosigned the account, not fully understanding what she was getting into. Similarly, she cosigned a car loan for him without completely understanding the consequences. The car has since been repossessed but the remaining balance is on her credit report. For both of these accounts, if collectors were able to reach out to her ex and made him aware that she's equally responsible, but that she hasn't been paying, this could absolutely put her safety at risk. Additionally, since he works off the books and the collection agencies know she collects a paycheck, she is subjected to more harassment by collectors, with each and every call acting as a reminder of what she went through." – ***Rosie Silber-Marker, Financial Counselor at Neighborhood Trust***

Getting Rid of Zombies - Once Time-Barred Debt is Dead, it Should Stay Dead:

Our counselors have met with many clients who used their limited resources to pay off debts that were already past the legal time-limit to sue. As clients struggle to get a handle on their consumer debt obligations, counselors have witnessed firsthand that paying off the wrong debt at the wrong time can result in a multi-year setback for a client seeking to make good on their debts and clear up their financial picture. The Bureau should prohibit collection efforts on these accounts altogether. Written and verbal disclosures are simply not enough to help consumers understand their options, and the downside for consumers is too high.

"The collection agency contacted my client via phone to try and collect on a debt that had past its statute of limitations. She recorded the call and everything - she played it for me during our appointment. Sure enough, the debt collector informed her that the account had expired past its statute of limitations period, but it was clear that my client had no idea what that meant. The debt collector simply said, 'I have to read you this disclosure', proceeded to read it, then without missing a beat jumped right into talking about payment options. My client proceeded to pay the account using the money we had worked to set aside to tackle other, more priority, debts. Spending her money on that collection account, combined with her father's recent health issues, completely derailed our debt payment plan. We'll have to start over again." ***– Hector Hidalgo, Senior Financial Counselor at Neighborhood Trust***

The CFPB Must Reject Its Proposed Rule Changes:

It is imperative for consumer advocates to raise their collective voices and represent the needs, interests and experiences of everyday workers in this matter. As a direct practitioner, Neighborhood Trust stands behind fellow advocates on this issue and supports the recommendations submitted by Prosperity Now and National Consumer Law Center. The CFPB should reflect on the original mission of the Bureau, reject the current proposal, and construct rules that seek to protect consumers, not debt collectors. 'Debt Collection' is already one of the leading sources of consumer complaints each year - the proposed changes by the CFPB would only exacerbate existing problems.[xx]

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[i] Ratcliffe, Caroline, Signe-Mary McKernan, Brett Theodos, and Emma Kalish. "Delinquent Debt in America." *Urban Institute,* July 30, 2014. https://www.urban.org/research/publication/delinquent-debt-america

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

[iii] Halpern, Jake. "Paper Boys: Inside the Dark Labyrinthine and Extremely Lucrative World of Consumer Debt Collection." *The New York Times Magazine,* August 15, 2014. https://www.nytimes.com/interactive/2014/08/15/magazine/bad-paper-debt-collector.html

[iv] Silver-Greenberg, Jessica, and Michael Corkery. "Sued Over Old Debt, and Blocked From Suing Back." *The New York Times.* December 22, 2015. http://www.nytimes.com/2015/12/23/business/dealbook/sued-over-old-debt-and-blocked-from-suing-back.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news&_r=0

[v] Maria Aspan, "Courthouse 'Rocket Dockets' Give Debt Collectors Edge Over Debtors." *American Banker.* February 11, 2014. https://www.americanbanker.com/news/courthouse-rocket-dockets-give-debt-collectors-edge-over-debtors

[vi] Kuehnhoff, April and Cherie Ching. "Defusing Debt: A Survey of Debt-Related Civil Legal Aid Programs in the United States." *National Consumer Law Center.* June 2016. https://www.nclc.org/images/pdf/debt_collection/debt-defense-survey-2016.pdf

[vii] Gottshall, Adrian. "Solving Sewer Service: Fighting Fraud with Technology." *Arkansas Law Review Article 1, Volume 70: Number 4*. January 2018. https://pdfs.semanticscholar.org/c1cd/8048703e38009483a37d69af8a3c7ae17c82.pdf

[viii] Clark, Patrick. "How Debt Collectors Ruin Credit Reports With 'Sewer Service'. *Bloomberg.* June 11, 2013. https://www.neweconomynyc.org/2013/06/debt-collectors-ruin-credit-reports-sewer-service/

[ix] Stauffer, Brian. "Rubber Stamp Justice: US Courts, Debt Buying Corporations, and the Poor." *Human Right Watch.* January 20, 2016. https://www.hrw.org/report/2016/01/20/rubber-stamp-justice/us-courts-debt-buying-corporations-and-poor

[x] Kuehnhoff, April and Cherie Ching. "Defusing Debt: A Survey of Debt-Related Civil Legal Aid Programs in the United States." *National Consumer Law Center.* June 2016. https://www.nclc.org/images/pdf/debt_collection/debt-defense-survey-2016.pdf

[xi] "A Pound of Flesh: The Criminalization of Private Debt." *American Civil Liberties Union.* February 21, 2018. https://www.aclu.org/sites/default/files/field_document/022318-debtreport_0.pdf

[xii] Ibid.

[xiii] Ibid.

[xiv] "Older Adults and Debt: Trends, Trade-offs, and Tools to Help." *National Council on Aging.* 2018. https://www.ncoa.org/wp-content/uploads/NCOA-Older-Adult-Issue-Debt-Brief.pdf

[xv] Robert Hunt. "Understanding the Model: The Life Cycle of a Debt," presented at FTC – CFPB Roundtable "Life of a Debt: Data Integrity in Debt Collection" (June 6, 2013).

[xvi] Adams, Adrienne E. "Measuring the Effects of Domestic Violence on Women's Financial Well-being." *CFS Research Brief.* May 6 2011.

[xvii] Crews, Anne. "Truth About Abuse Survey Report." *MaryKay*. 2012. http://content2.marykayintouch.com/public/PWS_US/PDFs/company/2012Survey.pdf

[xviii] Salamone, Nancy. "Domestic Violence and Financial Dependency." *Forbes.* September 2, 2010. https://www.forbes.com/2010/09/02/women-money-domestic-violence-forbes-woman-net-worth-personal-finance.html#506b234d1047

[xix] Adams, Adrienne, Angela Littwin, Diane Johnston, Katie VonDeLinde. "Coerced Debt, Debt Defense & Safety For Surviors, Part 1." *Center For Survivor Agency & Justice.* July 9, 2018. https://csaj.org/library/view/webinar-materials-coerced-debt-debt-defense-safety-for-survivors-part-1

[xx] Consumer Sentinel Network Data Book 2017. *Federal Trade Commission.* March 2018. https://www.ftc.gov/policy/reports/policy-reports/commission-staff-reports/consumer-sentinel-network-data-book-2017/main