



Office of Commissioner
Rebecca Kelly Slaughter

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**COMMENT OF COMMISSIONER
REBECCA KELLY SLAUGHTER¹**

*Re: Proposed Rule with Request for Public Comment
Debt Collection Practices (Regulation F)
Dkt. No. CFPB-2019-0022; RIN 3170-AA41*

September 18, 2019

Dear Director Kraninger:

Thank you for the opportunity to comment on the Consumer Financial Protection Bureau's proposed Regulation F, the first major rulemaking to implement the Fair Debt Collection Practices Act. As a Commissioner of the Federal Trade Commission, which shares enforcement authority with the CFPB under the FDCPA and the proposed Regulation F, I was proud to join my colleagues in a 5–0 bipartisan vote in support of the excellent comment filed by our Bureau of Consumer Protection staff. I encourage you and your staff to review it carefully and to continue to collaborate with the FTC to benefit from our staff's extensive experience in enforcing the FDCPA.

I write separately to address several facets of the proposed rule that fall outside the ambit of the FTC staff's comment. As you know, of the millions of consumer complaints that the FTC receives annually, abusive debt-collection practices are a top category year after year.² I believe that a rulemaking under the FDCPA can help curb some of these abuses and bring clarity to consumers and industry. The proposed rule contains some benefits to consumers—and would provide even more benefits if modified in the ways suggested by the FTC's staff comment—but I fear that it will permit a proliferation of novel abuses of consumers if not materially improved in several key aspects.

First, the proposed call volume to be permitted—seven attempted calls per week *per debt*, see proposed § 1006.14(b)(2)—is simply too high. The first phone call in a given week reasonably seeks to inform the consumer of the alleged debt, which allows the consumer to pay or contest the debt or make plans to address it. It is important for creditors and debtors to be able to communicate by phone in this manner. But with each additional call, the value to the consumer

¹ The views expressed in this comment are my own and do not necessarily reflect the views of the Federal Trade Commission or any other commissioner.

² See Press Release, Fed. Trade Comm'n, *Imposter Scams Top Complaints Made to FTC in 2018* (Feb. 28, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/imposter-scams-top-complaints-made-ftc-2018> (“Debt collection complaints dropped to the number two spot after topping the FTC’s list of consumer complaints for the previous three years.”).

decreases (because it becomes less likely that the consumer answers and receives the information) and the value to the collector increases (because it causes undue stress to the alleged debtor). By the time a sixth or seventh call comes in, harassing rather than informing seems to be the marginal utility. In light of the fact that many consumers with debts in collection have more than one such debt, the proposed rule may permit some collectors to call some consumers dozens of times in a week, and collectors could place all those calls on one day in that week—a one-sided campaign of government-sanctioned harassment that would go too far. As you know, the FTC is constantly battling illegal robocallers whose abuses plague Americans. Permission for collectors to call seven times per week *per debt* will only exacerbate this problem. I encourage the CFPB to strike a better balance in the final rule.

Second, I believe that all required notices under the proposed rule should be provided in writing without the consumer's having to take further action such as clicking on a URL. The FTC has engaged in extensive consumer education with the goal of preventing common scams such as "phishing," in which a consumer's errant click results in exposure to malware, unauthorized access to financial accounts, identity theft, or worse.³ Under the proposed rule, *see* § 1006.42, hyperlinks to required disclosures could substitute for actual disclosures, but this substitution is likely to leave a substantial number of consumers without the required disclosures because they will, reasonably, hesitate to click on a hyperlink. In this respect, I strongly agree with the recent panel decision of the United States Court of Appeals for the Seventh Circuit, which found that e-mails that contained links to the required disclosures did not satisfy the requirement of making the disclosures.⁴

Finally, I encourage the CFPB to improve the rule to conform with modern best practices for consumer privacy. In an era of increasing attention to consumer privacy, it would be anomalous to permit collectors to use consumers' personal information to contact them by text message, email, and social-media direct-messaging without the consent of those consumers. As proposed, this rule does not require consumers to opt in to such use of their personal information, and thus runs contrary to at least the spirit if not the letter of enacted and proposed privacy laws across the states. Of course, third-party debt collectors will almost never receive a consumer's consent to send unlimited messages through electronic platforms; that consumers would be very unlikely to consent to the use of their personal information for such contact is a good indication that it should be prohibited.

In closing, I hope that you will read my comments in tandem with the superb and thorough comment submitted by the FTC's expert staff. Thank you for the opportunity to comment and for considering my views as you finalize Regulation F.

Sincerely,

Rebecca Kelly Slaughter
Commissioner, Federal Trade Commission

³ *See, e.g.*, Fed. Trade Comm'n, *How to Recognize and Avoid Phishing Scams*, <https://www.consumer.ftc.gov/articles/how-recognize-and-avoid-phishing-scams> (last visited Sept. 18, 2019).

⁴ *See LaVallee v. Med-1 Sol'ns, LLC*, 932 F.3d 1049, 1055–56 (7th Cir. 2019) (Sykes, J.) (rejecting "the argument that a communication 'contains' the mandated disclosures when it merely provides a means to access them").