The New York Legal Assistance Group (NYLAG), a not-for-profit legal services organization, submits these comments to the Consumer Financial Protection Bureau's (CFPB or Bureau) proposed rule published in the Federal Register at CFPB-2019-0022, RIN 3170-AA41 seeking to amend Regulation F, 12 CFR part 1006, which implements the Fair Debt Collection Practices Act (FDCPA).

NYLAG uses the power of the law to help New Yorkers in need combat social and economic injustice. We address emerging the urgent legal needs with comprehensive, free civil legal services, impact litigation, policy advocacy, and community education. NYLAG provides free legal services to low-income New Yorkers in a number of areas of civil law, including consumer protection law. NYLAG's Consumer Protection Unit provides legal services to consumers facing a range of debt collection issues including consumers alleged to owe credit card debt, medical debt, auto loans, and other types of consumer debt. NYLAG's clients incur debt as a result of unexpected hardship; a job loss, illness, or death of a family member can result in the accumulation of unexpected debt. NYLAG has represented thousands of consumers in debt collection cases and has brought numerous affirmative cases against debt collectors who violated the Fair Debt Collection Practices Act. NYLAG receives thousands of calls annually from consumers who are struggling to manage their debt. One of the most consistent complaints we hear from our clients' is about the abusive behavior of debt collectors, the relentless numbers of calls and letters they receive, and how helpless they feel in the face of this debt collection activity.

NYLAG urges the Bureau to strengthen the proposed rules to protect consumers. While the proposed rules have some positive elements, the proposed rules would allow debt collectors to engage in abusive behavior in contravention of the purpose of the FDCPA.

I. Attorney Safe Harbor

Of particular concern is the rule's provision that gives collection attorneys a "safe harbor" from liability, as long as the attorney goes through unspecified procedures to attempt to verify that the claims in their lawsuits are correct. Here at NYLAG, we have worked with many clients and heard from many more whose lives have been significantly impacted by attorneys who haphazardly file suits against them to collect debts without making any effort to gather the appropriate paperwork. These lawsuits often result in default judgments and credit report damage, and can escalate into significant burdens for our clients. Despite the protections of the FDCPA that are already in place, NYLAG has observed debt collection attorneys regularly file documents with the court that routinely misstate the law and facts, are entirely frivolous, or simply seek to unnecessarily prolong litigation to the detriment of the consumer debt defendant.

NYLAG has seen this type of activity with alarming frequency, and in response, we have filed multiple class action lawsuits to protect our clients. In *Burkett v. Houslanger*

et al., No. 1:19-cv-02285 (E.D.N.Y. Apr. 18, 2019), we filed a putative class of hundreds of New York residents against Houslanger & Associates, a debt collection law firm, and two attorneys at that firm. Houslanger consistently represented debt collectors who purchased old judgments and flouted consumer protection laws in their attempts to enforce them. Specifically, Houslanger repeatedly asserted that service had been properly effectuated and that the court had acquired personal jurisdiction over defendants despite the fact that Houslanger did not have any documentation about the judgment, including the affidavit of service. Houslanger would then repeatedly state in court filings that jurisdiction was proper even after being presented with proof that the affidavit of service was false. Some of our class members have gotten these judgments vacated by taking their individual cases to court, but they should never have had to spend time litigating these decade-old judgments in the first place. One of our Named Plaintiffs had to go to court five times—missing work each time—before he was able to vacate the judgment, stop a wage garnishment, and get his money back.

The proposed regulation would give entities like Houslanger a blank check to continue this behavior, and the safe harbor provision might prevent parties like Houslanger from being held accountable from making these false statements that unduly harm consumers in the future.

Burkett is just one example of multiple lawsuits that NYLAG has filed in response to unscrupulous debt collection attorneys. In *Philemon v. Aries Capital et al.*, No. 1:18-cv-01927-CLP (E.D.N.Y. Mar. 29, 2018), we represented a class of over two hundred former students of the Technical Career Institutes ("TCI"), a now defunct for-profit college. Aries purchased a set of student accounts from TCI and filed 211 lawsuits against 211 former students without proper review of their claims. Aries did not meaningfully review any relevant documents, filed many suits outside the statute of limitations, sought unauthorized attorneys' fees, and disclosed the students' confidential personal information (including their social security numbers) in public court filings. They represented that the actions were timely, even though they were not. In the vast majority of these lawsuits, Aries obtained default judgments against consumers. Under New York State Regulations, in order to obtain a default judgment, counsel for Plaintiff must file an affirmation that the statute of limitations has not expired.[1] Counsel for Plaintiff filed numerous documents affirming under penalty of perjury that the action filed was not time barred, even though on the face of the documents, the action was, in fact, clearly past the statute of limitations.

Another example of a suit NYLAG has filed to curb blatant falsehoods in court papers filed by debt collection attorneys is *Mayfield v. Asta Funding, Inc. Et. Al., No.* 1:14-cv-02591-LAP (S.D.N.Y. April 11, 2014). In this suit, NYLAG brought suit against one of the largest debt buyers and their attorneys for filing lawsuits seeking to collect on debts that had never actually existed, let alone were owed by the defendants. In addition to seeking to collect phantom debts, the attorneys representing the debt buying company failed to engage in any meaningful review that would have easily demonstrated that the

[1] N.Y. Ct. R. 208.14-a(e) (McKinney)

debts did not actually exist and that no lawsuit was warranted. The attorneys then filed thousands of lawsuits affirming that these debts were owed and seeking judgments against the defendants, forcing consumers to take time out of work to defend the baseless lawsuits or, in some cases, have their hard earned wages garnished.

As part of the settlement of the *Mayfield* action, the attorney defendants agreed to engage in a cooperative relationship to discuss the collection attorney's practices and the effect those practices had on consumers. One tangible outcome of this cooperative relationship is that the collection attorneys ceased filing frivolous motions designed to intimidate and confuse consumers. Should the proposed regulation be enacted, attorneys would be able to pursue meritless lawsuits and file false statements with the court with impunity, such as the ones in *Mayfield.* Further, organizations like NYLAG would be foreclosed from bringing court actions to bring about changes in collection attorneys' behavior.

NYLAG encounters misconduct from debt collection attorneys not just in its affirmative action suits, but in the individual cases where consumer debts, often proceeding *pro se* in debt collection cases, encounter affirmative misrepresentations in the lawsuits they are forced to defend. NYLAG routinely assists consumers who are seeking to vacate default judgments secured against them as a result of sewer service. Debt collection attorneys routinely oppose these motions, and in doing so, affirmatively misstate the law and assert that the defendant must state a meritorious defense. Despite the fact that these attorneys are well aware that no meritorious defense is necessary to set aside a judgment where personal jurisdiction is lacking, debt collection attorneys regularly intentionally misrepresent the law. Unsophisticated consumers are unable to counter the legal argument, and often then have their motions denied, leaving them with judgments that severely impair their financial stability. One woman with whom NYLAG worked, Lauren, sought to vacate a default judgment after a debt collector garnished over $1,000 from her waged. Lauren sought to vacate the default judgment and asserted that she had not been served. In opposition to that motion, a debt collection attorney falsely asserted that Lauren's motion should not be granted because she had not asserted a meritorious defense, despite the fact that a meritorious defense is completely irrelevant to a jurisdiction issue. Based on the assertion of the debt collection attorney, Lauren's motion was denied. Lauren then had to seek assistance from NYLAG to reargue the motion and educate the judge about the correct standard. As a result of the debt collection attorneys' misrepresentation, Lauren had to take multiple days off of work to attend court and lost access to badly needed funds for a prolonged period of time.

Lawyers who commit those types of careless mistakes should be held accountable, and the new regulations would prevent organizations like NYLAG from doing so. *Burkett*, *Philemon,* and *Mayfield* are just a few of the numerous cases we have filed to stop this type of activity.

Giving attorneys "safe harbor" against liability for false, deceptive, or misleading representations in court documents would further invite behavior from debt collection

attorneys that devastate our clients every day. It is each attorney's responsibility to review the original documents for the account and to ensure that they are bringing valid lawsuits. To allow attorneys to file baseless or affirmatively false court documents with impunity gives those attorneys license to harass our clients—many of whom are low-income people who do not have the expertise or resources to fight off these attorneys—would cause irreparable harm to consumers.

II. Debt Collection Communication

NYLAG also strongly urges the CFPB to strengthen the proposed rules concerning communication by debt collectors. The proposed regulations would allow debt collectors to harass consumers by allowing communication with third parties, communication by electronic means, and communicate in confusing and deceptive manners.

The vast majority of NYLAG's clients routinely struggle with debt collection calls. Despite the existing protections of the FDCPA, NYLAG's clients routinely receive multiple calls per day, often extremely late at night or early in the morning. NYLAG routinely receives calls from clients complaining about receiving relentless calls from debt collectors. One of NYLAG's clients reported that the calls had become so unbearable that he had agreed to make payments on a debt even though his only income was Social Security Disability and his income was barely sufficient to cover his basic expenses such as rent and utilities.

NYLAG urges the CFPB to revise the regulation to impose stricter limits on telephone calls, and prohibit debt collectors from messages left with third parties, including employers. NYLAG also strongly recommends that debt collectors be required to cease communication with a consumer if the consumer makes a request orally.

NYLAG also strongly urges revision of the proposed regulations to prohibit emails, texts or other electronic messages. NYLAG's clients are routinely bombarded with debt collection calls. Allowing debt collectors yet another means of contacting consumers would be extremely harmful and exacerbate the stress that consumers already experience with traditional debt collection methods. Additionally, privacy issues with electronic communication means that the information communicated by debt collectors may not actually remain private. Lastly, for many people who pay for data or per text message on their devices, these means of communication would lead them to incur additional costs without their consent or wish.

NYLAG also strongly recommends prohibiting the transmission of vital information, such as the right to validate a debt, via electronic communication with hyperlinks to important information strongly increases the likelihood that consumers will not be able to access that information. Many of NYLAG's clients have limited English proficiency, particularly reading materials in English, lack formal education, or do not have strong technological skills. By hiding this information in a technological portal, the CFPB would allow debt collectors to avoid providing the information consumers need to make an informed choice about handling their debt.

III. Conclusion

For the above-stated reasons, NYLAG respectfully submits it opposition to the proposed rules, and requests that the proposed rules be redrafted in order to maintain the protections of the FDCPA, in accordance with the stated purpose of the rules.

Dated: September 17, 2019
New York, New York

Beth Goldman, Esq.
President and Attorney-in-Charge
New York Legal Assistance Group
7 Hanover Square
New York, NY 10004
(212) 613-5000