1400 16th Street, NW
Suite 420
Washington, DC 20036
Tel. 202.939.1760
Fax. 202.265.4435
www.nrmlaonline.org

September 16, 2019

Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: Docket No. CFPB-2019-0022; RIN 3170-AA41

Dear Director Kraninger:

The National Reverse Mortgage Lenders Association (NRMLA) is the national voice of the reverse mortgage industry, serving as an educational resource, policy advocate and public affairs center for lenders and related professionals. NRMLA was established in 1997 to enhance the professionalism of the reverse mortgage business. Our mission is to educate consumers about the pros and cons of reverse mortgages, to train lenders to be sensitive to clients' needs, to enforce our Code of Conduct and Best Practices[1] and to promote reverse mortgages in the news media.

Introduction

Herein, NRMLA comments on the Bureau's proposed amendments to Regulation F, 12 CFR part 1006, which implements the Fair Debt Collection Practices Act (FDCPA). NRMLA applauds the Bureau's efforts to update FDCPA to apply to communications and technologies that did not even exist at the time Congress established FDCPA in 1977. The goal of eliminating the use of abusive, deceptive, and unfair debt collection practices by debt collectors is laudable and one that NRMLA fully supports. However, some of the proposals embodied in the proposed rulemaking, without appropriate revisions, will discourage constructive communications between reverse mortgage servicers and borrowers in the context of non-collection related servicing matters and loss mitigation. The unintended consequences of limiting communications between servicers and borrowers will have a negative impact on both borrowers and servicers, and ultimately the availability of credit over the longer term. For that reason, we feel it is important to provide our comments herein and encourage the Bureau to consider clarifying the application of FDCPA to reverse mortgages generally, and alternatively to consider certain specific revisions as proposed herein.

Non-Recourse Debt

FDCPA defines "debt" as "any obligation or alleged obligation of a consumer *to pay money* arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes." (Emphasis added.)[2] As such, FDCPA was established primarily to address communications and actions by debt collectors in order *to obtain the payment of money from the consumer* on some or all of the underlying debt obligation. However, a reverse mortgage is, by definition, a non-recourse consumer credit obligation[3]. As a non-recourse obligation, the homeowner's liability is limited to the proceeds of the sale of the home (or any lesser

[1] http://www.nrmlaonline.org/nrmla/ethics/conduct.aspx.
[2] *See* 15 U.S.C. § 1692a.
[3] *See* 12 C.F.R. § 1026.33.

amount specified in the credit obligation).[4] Consumers are never personally responsible for payment of the reverse mortgage debt and the creditor cannot obtain a deficiency, or indeed, any personal judgment against the consumer.

In this respect, reverse mortgages are obligations completely dissimilar from the types of debt obligations FDCPA was designed to address. Because the consumer is never personally responsible to pay a reverse mortgage obligation, the communications made by reverse mortgage creditors or servicers, whether or not the reverse mortgage has been transferred to such party while in default (and therefore rendering the servicer or creditor a "debt collector" under FDCPA[5]), is not a communication FDCPA or Regulation F should limit. To the extent it does so, Regulation F will ultimately chill responsible and appropriate communications intended to avoid default, foreclosure and/or promote loss mitigation, without curtailing the true "debt collection" communications FDCPA was designed to limit. For this reason, we respectfully request that the Bureau clarify in its final rulemaking that reverse mortgages specifically, and non-recourse debt obligations generally, are not subject to FDCPA.

Call Frequency Limitations

The Bureau's proposal identifies excess call frequency as an unfair and abusive practice under Dodd Frank Act Section 1031, and, by doing so, leaves open the potential for enforcement of such limitations to a creditor or servicer who is not a "debt collector" under FDCPA. As proposed, the rules prohibit a debt collector from calling a consumer about a consumer financial product or service debt more than seven times within a seven-day period and after a telephone conversation occurs between the debt collector and consumer, the proposed rules prohibit the debt collector from calling the consumer again within seven days (hereinafter referred to as the, "Call Frequency Limitations").

The Call Frequency Limitations pose significant impediments for debt collectors, creditors or servicers communicating, or attempting to communicate with a borrower, or successor in interest, in order to comply with other applicable laws, or reasonable policies embodied within investor requirements, including but not limited to mortgage servicing related communications required under Regulation X, communications or activities required under HUD regulations, servicing related communications required under state law, and communications concerning loss mitigation options available to the borrower under investor policies.

As an example, when an FHA-insured Home Equity Conversion Mortgage ('HECM') is initially called due and payable, the reverse mortgage servicer will attempt to contact the borrower in order to comply with the regulations promulgated by the U.S. Department of Housing and Urban Development ("HUD") and state law. HUD regulations require that, for certain HECMs, the servicer is required to obtain an appraisal within 30 days of the HECM being called due and payable.[6] To do so, the servicer will likely engage an agent or vendor to perform an appraisal and the servicer or agent will be making calls attempting to reach the borrower to arrange access to and inspection of the collateral property for purposes of such appraisal. In addition, some state laws, such as those in California, require a creditor or servicer to complete a number of call attempts prior to initiating foreclosure.[7] In addition, the servicer will be attempting to engage the borrower, or the borrower's heirs or successors in interest, with loss mitigation or foreclosure alternatives available under applicable regulation, or pursuant to investor policies. Overlaying both these activities and communications, and operating as a further limiting factor with respect to the servicer's constructive communication with the borrower, HUD requires foreclosure to

[4] *See* Official Staff Interpretations, 12 CFR Appendix Supplement I to Part 1026 Paragraph 33(a).
[5] *See* 15 U.S.C. § 1692 (a)(6)(F).
[6] *See* 24 C.F.R. § 206.125(b).
[7] *See* California Civil Code § 2923.5.

be initiated within a specific timeframe following the HECM being called due and payable.[8] All of these communications, even though they are either required by applicable law or serve sound public policy by providing the borrower with useful information concerning alternatives to foreclosure, may nonetheless lead to breach of the Call Frequency Limitations as currently mandated under the Bureau's proposed rulemaking. The unintended consequence of the Bureau's proposal may be that servicers and creditors would limit their efforts to communicate loss mitigation or foreclosure alternatives, leading to more frequent, and potentially unnecessary, foreclosures.

In view of these circumstances, we respectfully suggest the Bureau incorporate into its final rule an express exemption from the Call Frequency Limitations for communications either (i) required by, or made to further comply with, applicable federal or state law or regulation, or (ii) communicating loss mitigation or foreclosure avoidance options. In addition, we suggest the Bureau also consider other circumstances when more frequent calls may be in the consumer's best interest, such as the period immediately before foreclosure or after a natural disaster.

Moreover, we suggest the Bureau clarify that ringless voicemails providing a debt collection message being left for the consumer do not count towards the Call Frequency Limitations. Since a consumer can review a ringless voicemail at the consumer's choosing, without an intrusive ring diverting the consumer's attention, it is more like an email or text message, which are both excluded from the Call Frequency Limitations under the proposed rules.

Finally, we suggest the Bureau's final rule clarify that consent to further communications by the consumer should be considered consent for more than just one additional call since the consumer can, at any time, demand that further communications at such number cease.[9]

Time and Place Restrictions

The Bureau's proposed rulemaking prohibits debt collectors from communicating or attempting to communicate with consumers at times or places that the collector "knows or should know" are inconvenient and prohibits from communicating or attempting to communicate at a consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communications, unless the debt collector has received directly from the consumer either prior consent to use that email address or an email from that email address (the, Time and Place Restrictions"). The Time and Place Restrictions apply to all forms of communication including, telephone calls, messages, emails and text messages.

We respectfully suggest that a "knows or should know" standard for determining inconvenient times or places for communication is too subjective and would subject servicers to potentially risky and costly litigation. As an example, if a consumer requests not be contacted "at this time of day," does that mean the debt collector cannot attempt communications at that hour until the top of the next hour, or does it instead mean the debt collector cannot contact the consumer during some other window of time, such as two or three hours from that time? Similarly, the proposed rule provides that any previously identified inconvenient time or places made know to the debt collector, or a prior debt collector, are inconvenient and therefore prohibited. This imposes a tremendous burden on servicers to develop systems that effectively transfer information between servicers, and throughout the collection process.

Additionally, the prohibition against contacting a consumer at his/her work email if the debt collector knows that the employer bars its employees from receiving such communications imposes an impossible

[8] *See* 24 C.F.R. § 206.125(d)(1).
[9] *See* Proposed 12 C.F.R. §1006.14(h).

obligation on servicers to maintain a database of employers who prohibit such communications and scrub all emails and phone numbers against that list, complicated by the possibility of inconsistent communications from consumers who specifically authorize communications to the email address or phone number of such employers. Further, a communication from one consumer suggesting that his/her employer prohibits communication at work does not necessarily apply to all employees since certain managers or supervisors may restrict such calls while the employer, as a matter of policy, may not.

Finally, emails should not be subject to the Time and Place Restrictions since consumers can control notification settings and therefore are in a position to review such communications at a time and place of the consumer's choosing.

Limited Content Messages

The Bureau's proposed rulemaking adds a new definition for a "Limited-Content Messages" to clarify how debt collectors can leave voicemails or messages for consumers without violating FDCPA's disclosure requirements[10] or the prohibition against revealing debts to third parties.[11] The proposed rulemaking seeks to reduce the need for repeated calls from collectors by setting forth specific content parameters to ensure that a debt collector does not convey information directly or indirectly to any person if he or she provides only a limited-content message. A limited-content message would not be subject to the requirements for a debt collector to identify itself as a debt collector or provide the "mini-Miranda" disclosure,[12] however limited-content messages would be subject to the Call Frequency Limitations discussed above.

As noted in our comments to the Call Frequency Limitations, communications either (i) required by, or made to further comply with, applicable federal or state law or regulation, or (ii) communicating loss mitigation or foreclosure avoidance options, should not count as "communications" or "attempts to communicate" under the proposed rule. Moreover, providing only a contact name and number without a company name or any context in a voicemail is likely to discourage consumers from calling back and, if they do, may lead the consumer to feel deceived when they realize the call is from a debt collector. Given the importance of reaching delinquent borrowers early, reverse mortgage servicers should be permitted to leave their company name in a voicemail. In addition, rather than requiring a single point of contact, we respectfully request the Bureau permit a specific team of personnel to respond to the consumer, similar to Regulation X's continuity of contact provisions.[13]

Finally, we suggest that limited-content messages be permitted to be transmitted by email. Email accounts are private, and password protected. In addition, mobile phone settings provide consumers with the ability to turn off message previews to avoid inadvertent viewing by third parties. In addition, even if such a message is inadvertently viewed by a third party, it is unlikely that a third party would conclude the communication is related to debt collection as reverse mortgage servicers, and mortgage servicers generally, communicate with consumers about many matters unrelated to debt collection.

[10] *See* 15 U.S.C. § 807(11).
[11] *See* 15 U.S.C § 805(b).
[12] "Mini-Miranda" refers to the warning language required under 15 U.S.C. § 807(11).
[13] *See* 12 C.F.R. § 1024.40.

Validation Notices

The Bureau's proposed rulemaking requires debt collectors to send a debt validation notice as the initial communication, or within five days of an initial communication with a consumer, and significantly expands the content required to be included in a debt validation notice. Under the proposed rule, a validation notice must include certain debt-specific information including the amount of debt as of a specific itemization date, the current amount of debt, and an itemization of the current debt in a tabular format reflecting interest, fees, payments, and credits since the last itemization date. The proposed rule creates a limited exception from the requirement to itemize the debt for closed-end residential mortgages that are subject to Regulation Z's periodic statement requirements.[14]

We respectfully suggest that the exception noted for closed-end residential mortgage subject to Regulation Z's periodic statement requirements not be limited to reverse mortgage structured as closed-end credit, but also be extended to reverse mortgages structured as open-end credit. In addition, determining the "current amount of the debt" for purposes of a debt validation notice presents challenges for reverse mortgage loans since the current amount of the debt as defined in the proposed rule may be different than how the current amount due is reflected in periodic statements. For this reason, and because consumers are likely to be confused by two different amounts portrayed as being due, we suggest that the "current amount of the debt" for purposes of the validation notice not be required to be provided to the consumer if the periodic statement is provided.

With respect to deceased debtors, the proposal requires servicers to send notices to specific individuals rather than addressing notices to the "Estate of" the debtor or in the name of the deceased borrower. This requirement appears to place an affirmative obligation on reverse mortgage servicers to track down information about potential successors in interest, unlike the mortgage servicing requirements under Regulation X.[15] Since we see no reason why this issue has unique application to debt collection under FDCPA, we respectfully request the Bureau reconsider this requirement and defer to the comprehensive mortgage servicing rules under Regulation X.

Finally, requiring a reverse mortgage servicer to acknowledge and review an infinite number of debt disputes relating to a single account is unduly burdensome and has a deleterious and significant impact on multiple processes associated with reverse mortgage servicing. We respectfully request that the Bureau consider imposing a reasonable limit on the number of disputes a debt collector must review and respond to during the life of an account.

Time-Barred Debts

The Bureau's proposed rulemaking prohibits a debt collector from suing or threatening to sue to collect a debt that the debt collector knows, or should know, the applicable statute of limitations has expired.

We respectfully suggest that the Bureau's prohibition greatly underestimates the challenges associated with determining precisely when an applicable statute of limitations has run, given some uncertainty (particularly in the context of reverse mortgages), as to when a cause of action may arise[16] and under what

[14] *See* 12 C.F.R. § 1006.34(c)(5).
[15] See 12 C.F.R. §§ 1024.30 – 1024.41.
[16] Since reverse mortgage do not require monthly payments, and in the absence of the borrower's failure to pay real property charges, these loans generally become due when the borrower passes away or the borrower no longer occupies the property. Although reverse mortgage servicers utilize several means of determining when a borrower passes away, there are circumstances where the reverse mortgage servicer may not be notified of the borrower's death for months, or even years, after the borrower has passed away. Under these circumstances, and depending upon the particular jurisdiction, courts may find that the cause of action

circumstances the running of the limitations period may be tolled. For this reason, a strict liability standard in this regard is unreasonable and the final rule should therefore accommodate a bona fide error standard based on mistake of either fact and/or law.

Record Retention

The proposed rule requires debt collectors to retain evidence of compliance with the rule for three years from the later of the date of the collector's last debt collection communication or attempted communication or the date that the debt is settled, discharged, or transferred to the debt owner or another collector.

The record retention requirements under the proposed rulemaking conflict with the record retention requirements for reverse mortgage servicers under Regulation X and Z and, would have the effect of extending those requirements for certain records.[17] . To avoid these conflicts, we respectfully suggest that the record retention requirements under Regulation F be consistent with the record retention requirements under Regulations X and Z.

Implementation Date

Due to significant changes to policies, procedures, training, and material system enhancements necessary to ensure compliance with the Bureau's proposed rulemaking, we respectfully request that implementation of the final rule occur not sooner than one year after its publication.

Conclusion

We trust that you will appreciate how important it is to the reverse mortgage industry that the Bureau recognize the fundamental differences between reverse mortgages (which are non-recourse by definition) and the recourse obligations fostering the abusive, deceptive, and unfair debt collection practices giving rise to the FDCPA. This distinction is best made by Regulation F clarifying an exemption for reverse mortgages specifically, and non-recourse debt generally, from FDCPA. Alternatively, we urge your favorable consideration of our additional specific comments with respect to the proposed rulemkaing.

Very truly yours,

Steve Irwin, EVP, NRMLA
1400 16th Street NW
Suite 420
Washington, DC 20036
202-939-1776
sirwin@dworbell.com

Cc: Peter Bell, President & CEO, NRMLA
Joel Schiffman, Weiner Brodsky Kider PC
Soroush Shahin, Weiner Brodsky Kider PC

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accrues when the lender becomes aware or is otherwise given notice of the borrower's death while other jurisdictions may deem the cause of action to accrue upon the date of the borrower's death.

[17] See 12. C.F.R. § 1026.25; 12 C.F.R. § 1024.38 (c)(1).