

**COMMENTS
to the
Consumer Financial Protection Bureau
on its**

**Debt Collection Practices in Connection With the Global COVID-19 Pandemic
(Regulation F)**

**RIN Number: 3170-AA41
Docket No. CFPB-2021-0008
86 Fed. Reg. 21163**

**By the
National Consumer Law Center
On behalf of its low-income clients**

and

**Center for Responsible Lending
National Low Income Housing Coalition**

May 7, 2021

The Consumer Financial Protection (CFPB)'s Interim Final Rule¹ increases information for tenants about COVID-related protection from eviction, and clarifies that tenants have federal remedies against debt collectors involved in the eviction that fail to provide or misrepresent that information. By issuing these rules, the CFPB has taken another important step to protect the rights of tenants during the COVID-19 pandemic, and we applaud the CFPB for taking action to clarify the obligations of debt collectors.

These brief comments address § 1006.9(c)(1) of the Interim Final Rule and its official interpretations, identifying several areas where the rules can be strengthened to better protect vulnerable tenants.

Acknowledging that there have been legal challenges to the CDC Order, the situation is in flux without any definitive resolution. Until there is a resolution, we believe that CFPB should keep this rule in place.

Eviction Notice Provided by a Party that Is Not a Debt Collector

In many states, it is common for landlords or property managers that do not qualify as debt collectors under the FDCPA (and therefore are not covered under the Interim Final Rule) to provide eviction notices to tenants. Attorneys that qualify as debt collectors may only become involved if an eviction action needs to be filed in court.

While non-debt collectors providing eviction notices should be providing notice about the CDC Order,² in many cases they are not doing so.³

In a webinar, Michael Silver, Senior Counsel in the Office of Regulations at the Consumer Financial Protection Bureau, addressed the scenario where a non-debt collector provides the eviction notice:

What happens if one of those parties [an entity that is not a debt collector] provides a notice about the order? Does the debt collector then have to provide another notice? And our answer is yes. If the rule applies the debt collector must separately disclose the existence of the CDC Order even if a landlord previously disclosed it.⁴

¹ 86 Fed. Reg. 21,163 (April 22, 2021).

² Joint Statement by FTC Acting Chairwoman Rebecca Kelly Slaughter and CFPB Acting Director Dave Uejio (Mar. 29, 2021), available at <https://www.ftc.gov/news-events/press-releases/2021/03/joint-statement-ftc-acting-chairwoman-rebecca-kelly-slaughter> (stating that “evicting or threatening to evict [tenants] without apprising them of their legal rights under such moratoria, may violate prohibitions against deceptive and unfair practices, including under the Fair Debt Collection Practices Act and the Federal Trade Commission Act”).

³ See 86 Fed. Reg. 21163, 21167 n.60.

⁴ National Center for State Courts, Pandemic Rapid Response Team Implementation Lab, RRT Eviction Diversion Policy Briefing with the Consumer Financial Protection Bureau (Apr. 28, 2021), available at <https://vimeo.com/543140274>.

We agree that a debt collector should be required to provide a § 1006.9(c)(1) disclosure in this circumstance. Even more importantly, the debt collector should be required to provide the § 1006.9(c)(1) disclosure in the scenario where the non-debt collector providing the eviction notice has failed to provide notice of the CDC Order. Unfortunately, we think that the current language of § 1006.9(c)(1) and its official interpretations does not clearly state the obligation of the debt collector identified in Michael Silver's comment.

As currently drafted, we are concerned that many will argue that the debt collector has no obligation to provide a § 1006.9(c)(1) disclosure where a non-debt collector has provided the eviction notice. They will argue that because the debt collector did not provide the consumer with the eviction notice, the debt collector was not obligated to provide the § 1006.9(c)(1) disclosure at the time that the eviction notice was provided. Furthermore, they will argue that the requirement to provide the § 1006.9(c)(1) disclosure on the date that the eviction action is filed only applies "if no eviction notice is required by applicable law." Thus, when an eviction notice is required by applicable law and has been provided by a non-debt collector, some will argue that debt collectors need not provide a § 1006.9(c)(1) disclosure at all.

Recommendation: Clarify that debt collectors must provide the § 1006.9(c)(1) disclosure on the date that the eviction action is filed if an eviction notice is required by applicable law and the debt collector receives the account after the eviction notice has already been provided by a non-debt collector.

Different Delivery Time-Frames

State laws and court rules typically govern how eviction notices must be provided and how tenants must be served when eviction actions are filed. In contrast, § 1006.9(c)(1) currently could be read to allow debt collectors to comply with its requirements by sending a letter via first class mail on the same date as the eviction notice or the filing of any eviction action.

Tenants will be less likely to receive their § 1006.9(c)(1) disclosure by first class mail than if the disclosure is provided according to specified services requirements.⁵ Additionally, providing the § 1006.9(c)(1) disclosure separately by first class mail is more likely to result in the disclosure arriving later, potentially several days later where state or local laws require eviction notices or notice of eviction filings to be delivered in hand or otherwise provided directly to the tenant at their address. As a result of this delay, tenants may decide to move out in response to an eviction notice or lawsuit, lacking timely knowledge of the CDC Order. Alternatively, tenants in states that fast track evictions might not receive the notice in time to be helpful for their eviction proceedings.

⁵ See Beth Healy, "Dignity Faces a Steamroller," Boston Globe (July 31, 2006), available at: <https://www.bostonglobe.com/metro/2006/07/31/dignity-facessteamroller/SoK0TBVHzOzjLEpNqNrVYN/story.html> (In 2006, Boston Globe reporters sent out 100 misaddressed letters to test the small claims courts' service by first class mail. They found that only 52 were returned.).

Recommendation: Require debt collectors to provide the § 1006.9(c)(1) disclosure at the same time as and in the same manner as the eviction notice or notice of the eviction action.

Overwhelmed Tenants Less Likely to Notice the Disclosure

Individuals in stressful situations, such as tenants who have just received an eviction notice or been notified that an eviction action has been filed against them during a global pandemic, may be less likely to notice the § 1006.9(c)(1) disclosure or comprehend the information about the protections of the CDC Order.⁶

Recommendation: Require debt collectors to provide the § 1006.9(c)(1) disclosure multiple times. At a minimum, require debt collectors to provide a § 1006.9(c)(1) disclosure with the eviction notice, at the time that the eviction action is filed, and in any other written communication.

Debt Collectors May Improperly Exclude Some Tenants

Currently debt collectors are required to provide the § 1006.9(c)(1) disclosure only in evictions for non-payment of rent where the CDC Order “reasonably might apply.” Comment 9(c)(1)-2 explains that:

A consumer to whom the CDC Order reasonably might apply is a consumer who reasonably might be eligible to be a covered person as defined in the CDC Order. A consumer is not reasonably eligible to be a covered person if the debt collector has knowledge that a consumer is not eligible for protection under the CDC Order.

Yet the CFPB recognizes in its discussion that debt collectors are unlikely to have such knowledge, stating:

The Bureau recognizes that, given the multiple factual assertions to which a consumer must attest in the declaration before the protections of the CDC Order attach, in many

⁶ See Jeff Sovern, One reason the CFPB's proposed time-barred debt disclosures might not help consumers despite the study showing they help consumers understand their rights and what the Bureau should do about it, Consumer Law & Policy Blog (Mar. 11, 2020), available at <https://pubcit.typepad.com/clpblog/2020/03/one-reason-the-cfpbs-proposed-time-barred-debt-disclosures-might-not-help-consumers-despite-the-stud.html> (noting that “some limited empirical evidence suggests that consumers are less likely to take in the information in disclosures when they are in stressful situations” and linking to studies); Lauren E. Willis, The Consumer Financial Protection Bureau and the Quest for Consumer Comprehension, The Russell Sage Foundation Journal of the Social Sciences, 3 (1) (January 2017), available at <https://doi.org/10.7758/RSF.2017.3.1.04> (“consumers have less cognitive-willpower bandwidth in the real world than in the lab. Stress . . . depletes cognitive resources”);

circumstances it will be difficult for a debt collector to identify the consumers to whom the CDC Order reasonably might apply.⁷

If debt collectors are unlikely to have knowledge regarding whether the CDC Order reasonably might apply, they may erroneously exclude some tenants that should have received the § 1006.9(c)(1) disclosure.

Recommendation: Require the § 1006.9(c)(1) disclosure for all tenants facing eviction for non-payment of rent. Indeed, Comment 9(c)(1)-2 already explains that such an approach is permissible.⁸ Making the approach mandatory would simplify application of the rule and avoid erroneously excluding some tenants who should have received the disclosure.

Tenants May Not Be Aware that Other Eviction Moratoria May Apply

Some state, local, territorial, and tribal governments provide protections that are equal to or greater than those in the CDC Order. Tenants living in these areas may lack awareness of eviction moratoria that apply where they live, leading to the same problems of unfairness and deception that animated the creation of the Interim Final Rule.

Recognizing this problem, Comment 9(c)(1)-5(ii) includes information acknowledging the possibility of other eviction moratoria in one of two sample disclosures:

Because of the global COVID-19 pandemic, you may be eligible for temporary protection from eviction under the laws of your State, territory, locality, or tribal area, or under Federal law. Learn the steps you should take now: visit www.cfpb.gov/eviction or call a housing counselor at 800-569-4287.

However, Interim Final Rule does not require debt collectors to make any kind of disclosure about these state, local, territorial, or tribal protections to consumers who live in these areas⁹ even though the CFPB has acknowledged debt collectors' potential liability for failing to disclose information about other potential moratoria.¹⁰

⁷ 86 Fed. Reg. at 21171.

⁸ Comment 9(c)(1)-2 states:

A debt collector therefore may comply with the requirement to provide the disclosure to any consumer to whom the CDC Order reasonably might apply by, for example, providing the disclosure to each consumer against whom the debt collector files an eviction action for non-payment of rent. A debt collector does not violate FDCPA sections 807 (15 U.S.C. 1692e) or 808 (15 U.S.C. 1692f) merely because the debt collector provides the disclosure to consumers as described in this comment 9(c)(1)-2 even if the consumer is not reasonably eligible to be a covered person.

⁹ 86 Fed. Reg. at 21172.

¹⁰ Id. at 118.

Recommendation: Require debt collectors to disclose the possibility of federal, state, local, territorial, and tribal eviction moratoria. Comment 9(c)(1)-5 already addresses any concerns that debt collectors have about liability as the result of using the broader language of the second sample disclosure.¹¹

Language Access

Although the CFPB has published Spanish translations of the sample disclosures,¹² the Interim Final Rule does not require debt collectors to provide these translations, notify tenants about the existence of these translations, or address language access in any way. As a result, debt collectors will be less likely to provide translated disclosures that would benefit tenants with limited English proficiency.

- **Recommendations:** Require debt collectors to provide a Spanish-language disclosure in addition to the English-language disclosure in all communications. Translate the sample disclosures into additional languages. Require that debt collectors provide a translated disclosure in other languages if the CFPB has provided a translated disclosure in that language and the debt collector knows that the tenant speaks that language.

Other Protections for Tenants

In addition to strengthening the Interim Final Rules to increase protections for tenants, the CFPB should use its authority under the Fair Credit Reporting Act (FCRA) and Section 1031 of the Dodd-Frank Act, 12 U.S.C. § 5531, to prohibit debt collectors from reporting rent arrears debt to the nationwide consumer reporting agencies (CRAs), i.e., Equifax, Experian, and TransUnion, if the debt accrued during the COVID-19 period.

While most landlords do not regularly report rent payments - and thus late payments - on a monthly basis to the nationwide CRAs, they do frequently refer unpaid rent to debt collectors who then in turn report the debts to the nationwide CRAs. Not only will that damage the renter's credit report and lower a renter's credit score, but it will seriously hinder a renter's ability to secure new housing because most landlords use tenant screening reports that include credit information.

As a lesser alternative, the CFPB could require that any rental arrears debt reported on a credit report must also disclose if the debt was a result of economic hardship due to the COVID-19

¹¹ Comment 9(c)(1)-5 states:

A debt collector does not violate FDCPA sections 807 (15 U.S.C. 1692e) or 808 (15 U.S.C. 1692f) merely because the debt collector provides the sample language in this comment 9(c)(1)-5.ii to a consumer in a jurisdiction in which only the CDC Order applies or in which the CDC Order does not apply.

¹² Available at: https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_sample_covid-19_tenant_eviction_protection_disclosure_language.pdf.

economic crisis or that the renter is protected from eviction by a moratorium. At the very minimum, the CFPB should declare that it is an unfair practice to report a rent arrears debt if a landlord has received rental assistance funds, either from the American Rescue Plan or state or local programs, or the renter attempted to obtain rental assistance funds and the landlord refused to cooperate. A collector reporting such debts would also potentially violate Section 1031 of the Dodd-Frank Act or Sections 1692f and 1692e(8) of the Fair Debt Collection Practices Act.

For additional information about this credit reporting proposal, please see our May 6th letter to Acting Director Uejio, which is attached as Appendix A.¹³

¹³ Available at:
https://www.nclc.org/images/pdf/credit_reports/CFPB_ltr_Prohibit_Rental_Arrear_Reports.pdf.

Appendix A

May 6, 2021

David Uejio, Acting Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, DC 20552

Re: Request that CFPB Prohibit Credit Reporting of Rent Arrears Incurred During
COVID-19 Pandemic

Dear Acting Director Uejio:

The undersigned 143 organizations urge you to take aggressive actions to protect the credit records of renters who have struggled financially due to the COVID-19 pandemic. In particular, we urge you to prohibit debt collectors from reporting rent arrears debt to the nationwide consumer reporting agencies (CRAs), *i.e.*, Equifax, Experian, and TransUnion, if the rent debts accrued during the COVID-19 period. This is another concrete step that the CFPB can take to protect renters that is well within its authority under both the Fair Credit Reporting Act (FCRA) and Section 1031 of the Dodd-Frank Act, 12 U.S.C. § 5531.

We very much appreciate the CFPB's Interim Final Rule of April 19, 2020 that requires debt collectors to provide written notice to tenants of their rights under the CDC eviction moratorium and prohibits debt collectors from misrepresenting tenants' eligibility for protection from eviction under the moratorium. We also appreciate [your joint statement with Acting FTC Chairwoman Rebecca Slaughter](#) warning major landlords that evicting or threatening to evict tenants in violation of the CDC, state, or local moratoria, without apprising them of their legal rights under such moratoria, may violate prohibitions against deceptive and unfair practices.

These steps are tremendously helpful and laudable. However, we urge you to go one step further and also protect the credit records of tenants. Just like debt collection, credit reporting rules are well within the heart of the Bureau's jurisdiction.

As documented by the CFPB's own report [Housing insecurity and the COVID-19 pandemic](#), 8.8 million American households were behind in rent payments as of December 2020 and the CDC and state moratoria do not absolve renters from making these payments or provide for formal policies allowing renters to defer them. While most landlords do not regularly report rent payments - and thus late payments - on a monthly basis to the nationwide CRAs, the credit report of a renter unable to pay rent may not remain unscathed for long. Landlords frequently refer unpaid rent to collection agencies or collection attorneys, and many debt collectors report debts to the nationwide CRAs. A debt collection item is considered a very negative entry on a credit report that can remain for up to seven years and significantly lower a renter's credit score.

Because [most landlords use tenant screening reports](#) that include credit information, a damaged credit report will seriously hinder a renter's ability to secure new housing. This could force the renter to turn to landlords who charge above-market rates for low-quality housing or even lead to

homelessness. This would likely have a disproportionate impact on Black and Latinx renters, who already had [higher eviction rates](#) before COVID-19.

The CFPB should act to prevent these dire consequences. The CFPB could issue guidance that it is an unfair or abusive practice under Section 1031 of the Dodd-Frank Act for a debt collector to report a rent arrears debt to a nationwide CRA if the renter was eligible for the CDC, a state, or a local moratorium, because such reporting would contravene and undermine the effectiveness of these moratoria. Alternatively, the CFPB could issue an Interim Final Rule, using its authority under Section 621(e) of the FCRA, 15 U.S.C. § 1681s(e), to prohibit the furnishing of such information.

As a lesser alternative, the CFPB could require that any rental arrears debt reported on a credit report must also disclose if the debt was a result of economic hardship due to the COVID-19 economic crisis or that the renter is protected from eviction by the CDC, a state, or a local moratorium. Otherwise, such reporting could be considered inaccurate in that it omits a material and important fact, much as the failure to note that a debt has been discharged in bankruptcy and thus is unenforceable is inaccurate under the FCRA.

At the very minimum, the CFPB should declare that it is an unfair practice to report a rent arrears debt if a landlord has received rental assistance funds, either from the American Rescue Plan or state or local programs, or the renter attempted to obtain rental assistance funds and the landlord refused to cooperate. Being an unfair practice, a collector reporting such debts would potentially violate Section 1031 of the Dodd-Frank Act or Sections 1692f and 1692e(8) of the Fair Debt Collection Practices Act.

The end of the COVID-19 pandemic may be in sight due to the vaccines, but the long-term impact could be with us for years. The economic prospects of consumers on the downward slope of the K-shaped economy could continue along that trajectory even after the pandemic has ended, unless more is done to protect them. The CFPB has the tools to help in one more key respect: it can protect the credit reports of renters saddled with rental debts due to the economic catastrophe of the pandemic.

Thank you for your consideration. If you have any questions, please contact Chi Chi Wu at cwu@nclc.org or 617-226-0326.

Sincerely,

National Organizations

National Consumer Law Center (on behalf of its low-income clients)

African American Health Alliance

Americans for Financial Reform Education Fund

Appleseed Foundation

Center for Digital Democracy

Center for Disability Rights

Center for LGBTQ Economic Advancement & Research (CLEAR)

(signatories continue on following page)

Coalition on Human Needs
Consumer Action
Consumer Federation of America
Consumer Reports
Credit Builders Alliance
Demos
Disability Rights Education & Defense Fund
Grounded Solutions Network
Health Justice Innovations
Housing Justice Center
Local Initiatives Support Corporation (LISC)
Minnesota Housing Partnership
Mission Asset Fund
National Association of Consumer Advocates
National CAPACD
National Center for Lesbian Rights
National Consumers League
National Fair Housing Alliance
National Housing Law Project
National Housing Resource Center
National Low Income Housing Coalition
National NeighborWorks Association
NETWORK Lobby for Catholic Social Justice
Public Citizen
Public Good Law Center
RESULTS
SPLC Action Fund
The Forum for Youth Investment
U.S. PIRG
Voices for Progress
Woodstock Institute

State and Local Organizations

AKPIRG
AIDS Alabama
Arkansas Community Institute
Arkansas Community Organizations
Arkansas Poor People's Campaign
Arkansas Renters United
Grassroots Arkansas
a new leaf (AZ)
Arizona Center for Economic Progress
Center for Economic Integrity (AZ)
Community Action Human Resources Agency (AZ)
Gila County Community Services (AZ)

(signatories continue on following page)

Gila House Inc. (AZ)
NACOG (AZ)
Wildfire: Igniting Community Action to End Poverty in Arizona
William E. Morris Institute for Justice (Arizona)
BASTA, Inc. (CA)
California Low-Income Consumer Coalition
California Reinvestment Coalition
Elder Law & Advocacy (CA)
Greater Napa Valley Fair Housing Center
Housing and Economic Rights Advocates (CA)
Mental Health Advocacy Services (CA)
Public Counsel (CA)
Public Law Center (CA)
Tenants Together (CA)
TURN–The Utility Reform Network (CA)
Western Center on Law and Poverty (CA)
Colorado Center on Law and Policy
Covid-19 Eviction Defense Project (CO)
Connecticut Fair Housing Center
Connecticut Legal Services, Inc.
New Haven Legal Assistance Association (CT)
RESULTS DC/MD (DC)
Tzedek DC
Delaware Community Reinvestment Action Council, Inc.
HerStory Ensemble LLC (DE)
Jacksonville Area Legal Aid (FL)
Legal Aid Service of Broward County (FL)
Hawaii Appleseed Center for Law & Economic Justice
Housing Action Illinois
Lawyer's Committee for Better Housing (IL)
Legal Action Chicago
Legal Aid Society of Metropolitan Family Services (IL)
Citizens Action Coalition of IN
Kansas Appleseed Center for Law and Justice
Kentucky Equal Justice Center
Acadiana Regional Coalition on Homelessness and Housing (ARCH) (LA)
Alliance for Affordable Energy (LA)
Hagar's House (LA)
Jane Place Neighborhood Sustainability Initiative (LA)
Justice & Accountability Center of Louisiana
Lafayette Habitat for Humanity (LA)
Lift Louisiana
Louisiana Appleseed Center for Law & Justice
Louisiana Coalition for Reproductive Freedom
Louisiana Fair Housing Action Center

(signatories continue on following page)

Louisiana Partnership for Children and Families
Mid City Redevelopment Alliance (LA)
New Orleans Abortion Fund
Operation Restoration (LA)
Power Coalition for Equity and Justice (LA)
DOVE (Domestic Violence Ended), Inc. (MA)
Greater Boston Legal Services
Justice Center of SE Massachusetts
Massachusetts Law Reform Institute (MLRI)
The Consumer Assistance Council, Inc. (MA)
Public Justice Center (MD)
Alliance for Metropolitan Stability (MN)
HOME Line (MN)
Jewish Community Action (MN)
Missouri Faith Voices
Mississippi Center for Justice
North Carolina Justice Center
Nebraska Appleseed
Anti-Poverty Network of NJ
Fair Share Housing Center (NJ)
Ironbound Community Corporation (NJ)
Legal Services of New Jersey
New Jersey Citizen Action
New Jersey Tenants Organization
Catholic Charities (Santa Fe)
New Mexico Center on Law & Poverty
Prosperity Works (NM)
Santa Fe Housing Action Coalition
Legal Aid Center of Southern Nevada
CNYCN
Empire Justice Center (NY)
New Economy Project (NY)
New York Legal Assistance Group
Public Utility Law Project of New York
Ohio Poverty Law Center
VOICE – OKC
Legal Clinic for the Disabled (PA)
S.C. Appleseed Legal Justice Center
RAISE Texas
Texas Appleseed
Texas Housers
United Way of Metropolitan Dallas
Legal Aid Justice Center (VA)
Virginia Citizens Consumer Council
Virginia Organizing

(signatories continue on following page)

Virginia Poverty Law Center
Columbia Legal Services (WA)
Statewide Poverty Action Network (WA)