

# WisDOJ: Coalition of AGs Urge CFPB to Place Consumers' Interests Over Debt Collectors

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MADISON, Wis. – Attorney General Josh Kaul today announced he joined a coalition of 28 attorneys general from around the nation in sending a [letter](#) to the Consumer Financial Protection Bureau (CFPB) urging the agency to revise its [proposed debt collection rule](#) and place the interests of consumers over those of debt collectors.

“The Consumer Financial Protection Bureau’s proposed debt collection rule is a missed opportunity to adopt strong and clear protections for consumers,” said Attorney General Kaul.

In 1977, Congress enacted the Fair Debt Collection Practices Act (FDCPA) after finding that there was “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors...[that] contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy,” and, importantly noted, that “[e]xisting laws and procedures for redressing these injuries are inadequate to protect consumers.” Despite decades of public and private enforcement of the FDCPA, widespread deception and abuse have continued in the \$11.5 billion debt collection industry.

While the coalition of attorneys general commend certain aspects of the CFPB’s proposed rule in their letter, they note the rule, proposed in May 2019, would prohibit so-called “passive debt collection” — a particularly coercive practice in which debt collectors report debts to credit reporting agencies before even attempting to collect on them. The proposed rule also expressly acknowledges that it does not preempt state laws that are more protective of consumers than the FDCPA.

The proposed rule falls short by allowing debt collectors to:

- Place up to seven calls per week for each debt a consumer has. According to the CFPB's own research, almost 75% of consumers with one debt in collection have multiple debts in collection, meaning a consumer with five debts in collection could receive up to 35 calls per week.
- Send a virtually unlimited number of electronic communications, including direct messages on social media platforms, without consumers' consent. Because electronic communications, such as texts and emails, are essentially costless for debt collectors, these companies would have no incentive to minimize these communications.
- Infringe upon a consumer's right to privacy. When contacting consumers, debt collectors could speak with any third party who happens to answer the consumer's phone (such as a roommate) and leave what the CFPB refers to as a "limited content message." While this message will purportedly not convey information regarding a debt, the CFPB ignores the likelihood that consumers will become familiar with the generic and formulaic language and recognize these messages for what they are.
- Take advantage of consumers that fundamentally do not understand their rights or obligations when it comes to time-barred or "zombie" debts, as the CFPB's own surveys attest. First, the proposed rule will allow debt collectors to collect debts even if they cannot sue due to the expiration of a statute of limitations. In fact, in some jurisdictions, by paying any portion of the debt a consumer restarts the statute of limitations, essentially giving the collector back the right to sue. Second, the proposed rule would water down consumer protections because it would only allow a debt collector to sue or threaten to sue if they "know or should know" that the applicable statute of limitations has expired, whereas the current "strict liability" standard means collectors violate the law if they sue on expired debt — whether they knew or had reason to know is irrelevant.
- More easily file baseless lawsuits on a massive scale. The proposed rule would specifically erode the FDCPA's requirement that attorneys be meaningfully involved with debt collection litigation, which would overwhelm state courts with lawsuits that are based on form complaints.

Finally, a glaring omission of the proposed rule is that it does not cover first-party creditors. The coalition of attorneys general argue in their letter that there is no reason to treat those who originated a defaulted loan differently from third-party

debt collectors. The CFPB has the statutory authority to extend the protections against unfair, deceptive, and abusive practices to all debt collectors, yet declined to do so.

Attorney General Kaul joins the attorneys general of New York, California, Colorado, Connecticut, Delaware, Idaho, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and the District of Columbia in sending this letter to the CFPB.