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

***Re: Notice of Ex Parte Presentation Debt Collection Practices (Regulation F)
[Docket No. CFPB-2019-0022]***

On June 26, 2019, the following individuals from the National Creditors Bar Association (NCBA): Yale Levy, President, Mark Groves, President Elect, Nathan Willner, Government Affairs Officer, Michele Gagnon, Treasurer, and Tomio Narita, Member, met with Consumer Financial Protection Bureau (CFPB) staff members Tom Pahl, Policy Associate Director, Research Markets & Regulations; Gandhi Eswaramoorthy, Debt Collection Program Manager, Consumer Lending, Reporting and Collections Markets ; Jennifer Stockett, Deputy Assistant Director, Office of Financial Institutions; and Nhu-Han Duong, Policy and Outreach Advisor, Office of Financial Institutions .

During the meeting, NCBA representatives expressed support for the CFPB's efforts in moving the debt collections industry into 21st Century by its proposals for emails and text. NCBA thanked the CFPB for their hard work and expressed overall support for the debt collection rulemaking process and the Notice of Proposed Rule (NPR). NCBA advised the CFPB that it will be making comprehensive comments to all aspects of the NPR.

NCBA, however expressed concern about proposed §1006.18(g) – *Safe harbor for meaningful attorney involvement in debt collection litigation submissions*. Specifically, NCBA noted that meaningful attorney involvement is not stated in the text of the Fair Debt Collections Practices Act (FDCPA) and the proposal on its face fails to achieve clarity for both consumers and attorneys. The proposal would ultimately regulate attorney process rather than content. NCBA is concerned that the current proposal would lead to more lawsuits against attorneys, who would then be required to show that the standard was met through discovery and/or at trial. Thus, the proposal is not a safe harbor, but rather an affirmative defense to a private right of action. Pursuant to the proposal, collection attorneys will have to disclose attorney client communications as well as all of their notes and evidence of work product in order to effectively assert the defense. Furthermore, the proposal would interfere with the attorney client privilege as the client would have to waive that privilege in order for the collection attorney to use those communications in their defense. Unlike the proposals outlined in the limited content message and the model validation form, which are clear safe harbors, this proposal would not achieve that outcome.

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NCBA reminded the Bureau that the FDCPA already has protections for the consumer if false, deceptive or misleading representations are made. The current proposal does not address express representations and instead provides implied process, which is not workable. NCBA expressed concern that the proposal was ultimately the regulation of the practice of law.

NCBA advised the CFPB that it currently has a task force looking into substantiation of claims pre-suit that would do more to protect the consumer than what is currently being proposed.

NCBA, however, looks forward to working with the Bureau to develop ways to protect consumers from false, deceptive and misleading representations during the litigation process.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Yale Levy", is written over the "Very Truly Yours," text.

Yale Levy, President
National Creditors Bar Association.