POLICY & ACTION FROM CONSUMER REPORTS

February 28, 2014

Consumer Financial Protection Bureau
ATTN: Monica Jackson, Executive Secretary
1700 G St. NW
Washington, DC 20552

RE: Debt Collection (Regulation F) – Docket No. CFPB-2013-0033 [RIN 3170-AA41]

Dear Ms. Jackson:

Consumers Union, the policy and advocacy arm of *Consumer Reports®*,[1] appreciates the opportunity to comment on the Bureau's advanced notice of proposed rulemaking (ANPR) regarding debt collection practices. We applaud the Bureau's efforts to update and clarify federal standards for the debt collection system, and offer comments in response to selected questions below.

As a general matter, we urge the Bureau to write rules that achieve **two key aims:**

(1) **Sensible regulations that apply to all persons collecting on debts,** whether first-party or third-party, original owner or subsequent buyer; and

(2) **Strong federal standards for information flow and verification procedures,** to protect consumers in every state from unsubstantiated and illegal collection attempts.

The debt collection system has been long overdue for a comprehensive overhaul, to address current market realities and provide meaningful protections to consumers. By writing strong rules of the road at the federal level, the Bureau can help ensure that consumers across the country have basic important protections against improper collection practices. Furthermore, the Bureau will provide support to states seeking to strengthen their own fair debt collection laws to require more documentation and verification of debts, especially when debt collectors file lawsuits in state courts.

Information Flow Between Creditors, Third-Party Collectors and Debt Buyers
[Q5-Q7]

The Federal Trade Commission (FTC) has repeatedly found that not enough information is passed on with the sale or transfer of a debt.[2] In many cases the collectors' files are

---

[1] Consumers Union of United States, Inc., publisher of *Consumer Reports*, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications have a combined paid circulation of approximately 8.3 million. These publications regularly carry articles on Consumers Union's own product testing; on health, product safety, and marketplace economics; and on legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union's income is solely derived from the sale of Consumer Reports, its other publications and services, fees, and noncommercial contributions and grants. Consumers Union's publications and services carry no outside advertising and receive no commercial support.

[2] *See* FED. TRADE COMM'N, THE STRUCTURE AND PRACTICES OF THE DEBT BUYING INDUSTRY 29-30 (2013), *available at* http://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf [hereinafter DEBT BUYING REPORT] (noting information flow

not updated to correct errors or add new information to reflect any requests from the consumer or other activity pertinent to the collection process before the debt is sold or transferred again.[3] Consumers have told us that they often find themselves having to repeat the same information to the collectors that contact them every time a debt is transferred or sold regarding their dispute of the debt, cease communication requests, any payment already made toward satisfaction of the debt, and other important information about the history of the debt.[4]

The Bureau should write rules requiring more information flow, to prevent collectors from contacting the wrong consumers or asking for the wrong amount. All of the following information should be passed on with every sale or transfer of a debt:

- Full chain of title, with names and contact information for all past and current creditors;
- Last known name and address for consumer;
- Original account number;
- Copy of the contract or other evidence of indebtedness;
- Date of last payment and default;
- Itemized amount due when account was last active (separating balance, interest and fees or other charges);
- Itemized amount at charge-off;
- Current itemized amount of debt claimed;
- Any payments or credits received after charge-off;
- Any and all relevant communications from consumer, including :
    - disputes,
    - cease communication requests,
    - attorney representation,
    - preferred language(s) spoken,
    - inconvenient times to be contacted,
    - illness or disability,
    - servicemember status, and
    - income sources exempt from seizure;
- Whether the debt is past the statute of limitations;

---

problems with the sale of debt); FED. TRADE COMM'N, COLLECTING CONSUMER DEBTS: THE CHALLENGES OF CHANGE 21-24 (2009), *available at* http://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf [hereinafter CHALLENGES OF CHANGE] (noting problems with both third-party collectors and debt buyers).

[3] *See* David Segal, *Debt Collectors Face a Hazard: Writer's Cramp*, N.Y. TIMES, Nov. 1, 2010, at A1, *available at* http://www.nytimes.com/2010/11/01/business/01debt.html (JPMorgan Chase employee admitted that portfolios with errors were sold anyway: "We found that with about 5,000 accounts there were incorrect balances, incorrect addresses….There were even cases where a consumer had won a judgment against Chase, but it was still part of the package being sold.").

[4] *See, e.g.*, CONSUMERS UNION & EAST BAY CMTY. LAW CTR., PAST DUE: WHY DEBT COLLECTION PRACTICES AND THE DEBT BUYING INDUSTRY NEED REFORM NOW (2011), *available at* http://www.defendyourdollars.org/pdf/Past_Due_Report_2011.pdf (featuring many stories from consumers contacted by multiple parties on a single debt); *Debt-Buying and Selling Needs to be Regulated*, CONSUMER REPORTS, Oct. 2010, *available at* http://www.consumerreports.org/cro/magazine-archive/2010/october/viewpoint/overview/index.htm (telling the story of one consumer whose debt was sold to debt buyers, which led to collection attempts from 13 different companies on the same debt).

- Whether the debt was previously settled or discharged, and on what grounds (e.g., satisfaction of medical debt, administrative discharge of student debt, discharge in bankruptcy); and
- Any claimed violations of federal or state debt collection laws with respect to the debt to date.

Passing this information with the sale or transfer of a debt will help new collectors make well-informed decisions about how to proceed and ensure compliance with the law. It will also reduce the immense burdens on consumers who may be improperly contacted about a debt, or contacted by multiple collectors on a single debt that has been repeatedly transferred or sold. Any person collecting on a debt should have to review this information before initially contacting a consumer about a debt.

Collectors' Access to Key Information and Documents
[Q8-Q11]

Evidence of indebtedness is often lacking, particularly when collectors pursue consumers on an old debt. When debt buyers purchase debts, they may obtain little more than a spreadsheet with basic identifying information for the consumer, charge-off date and current amount owed.[5] However, in its recent report on the debt buying industry, the FTC found that debt owners and sellers transmit more helpful information about debts than they tend to disclose to consumers.[6]

However, some states have stepped in to require debt collectors access more information about a debt before contacting consumers. In California, for example, debt buyers are now required to possess more information about the original debt before contacting consumers, including: chain of title; debt balance at charge-off and an explanation of any post-charge-off interest and fees; date of default or last payment; name of charge-off creditor and original account number; and last known name and address of the debtor.[7] Debt buyers must also have access to a copy of the contract or other evidence of indebtedness, such as a periodic statement from when the account was active.[8] Furthermore, the debt buyer must provide all of the above information and a copy of the contract or other evidence of indebtedness within 15 days upon the consumer's request.[9]

North Carolina also passed a law in 2009 that declares it an "unfair" and illegal practice for debt buyers to collect on a debt without first having documentation showing that the debt buyer is the sole owner of the debt, as well as "reasonable verification" of the debt.[10] "Reasonable verification" means having documents showing the name and address of original creditor, name and address of consumer as it appeared on the original creditor's records, original account number, original contract or other document evidencing the debt, and an itemized accounting of the amount claimed, including all fees and charges.[11]

---

[5] *See* CHALLENGES OF CHANGE, *supra* note 2, at 22.
[6] *See* DEBT BUYING REPORT, *supra* note 2, at 36.
[7] Section 1788.52(a), S.B. 233, 2013 Leg., Reg. Sess. (Cal. 2013).
[8] Section 1788.52(b).
[9] *Id.*
[10] S.B. 974, 2009 Gen. Assem., Reg. Sess. (N.C. 2009) (codified at N.C. GEN. STAT. §58-70-115(5)).
[11] *Id.*

The Bureau should write rules requiring debt owners to pass on, and third-party collectors and buyers to access and retain supporting documents showing the nature and amount of the original debt. It is crucial for collectors to know the accurate balance and applicable interest, fees and other charges on a debt at the time it was transferred or sold. Consumers also need access to meaningful information about the original debt in order to determine whether the debt belongs to them and is calculated accurately.

While we acknowledge the privacy and data security concerns associated with the transmission of more information about consumer credit accounts, it is crucial that the Bureau take steps to restore integrity to the debt collection process by requiring collectors to have more substantive support for their claims. Strong data security standards, as well as any relevant privacy laws pertaining to specific types of debt (e.g., medical), should be considered as part of any proposed rule regarding information flow.

Notifying Consumers About the Sale or Transfer of a Debt
[Q13-Q15]

In our experience talking with consumers and consumer attorneys about their cases, consumers typically do not know that their debt has been sold or transferred to a new collector until receiving a letter or phone call from the person claiming to be the new owner or collector. Consumers are often confused when a new person they have never done business with claims to be the person legally entitled to collect the debt.

The Bureau should write rules to ensure that consumers receive notice about every sale or transfer of a debt. Consumers would benefit greatly from receiving notice from the current debt owner or collector that the debt is being sold or transferred, followed by a notice from the new owner or collector that the debt has been sold or transferred to them. By providing clearer information about the updated status and ownership of the debt, consumers will be better able to keep track of the debt and reduce confusion. Providing and retaining this information will also help debt owners, collectors and buyers keep track of the chain of title and other relevant history of the debt. The additional costs of providing notice of transfer or sale are more than offset by the benefit to consumers, as well as reputable collectors attempting to keep honest records and stay in compliance with the law.

Validation Notices
[Q16-Q18]

Validation notices should provide sufficient information for the consumer to identify the debt, including the original and current owner of the debt. The person sending the validation notice should also provide contact information for the current debt owner, so that consumers can make inquiries with the owner and dispute the debt early on should there be a mistake. Providing communication channels early on will enable debt collectors to correct mistakes promptly and ensure that they are pursuing the right person and in the right amount.

The validation notice currently required under the FDCPA is woefully inadequate to convey the kind of information consumers need to verify whether the debt belongs to

them and has been calculated correctly.[12] In addition, because debts are often sold and resold over a period of years, consumers may not remember the date of charge-off or be able to determine how old the debt is. By requiring validation notices to include the itemized amount due when the account was last active, the date and balance at charge-off, the additional interest, fees and other charges applied at charge-off, and any payments or credit received after charge-off, the consumer can make an informed decision about how to respond.

The Bureau's suggested alternatives 2 and 3, combined, would best aid consumers by showing the amount of the debt when the account was active, what happened at charge-off, and any relevant activity after charge-off to determine whether the numbers are accurate.[13] A partially-redacted account number would also help consumers identify the debt. If collectors are already following related documentary requirements, discussed above, all of this information should be easily accessible in their existing records.

The Bureau should also require key information to help consumers identify the debt where the name of the original creditor alone may not be enough. Validation notices should include information about joint debtors where applicable, and should include other information necessary to help consumers identify the debt in cases where the original creditor's name would not typically be associated with the account - for example, the retail brand on a store credit card or the health care provider or hospital for a medical debt. Where the name of the creditor or provider is insufficient to determine the type of debt, a further description of the type of debt in question may also be needed.

Statements About Rights
[Q19-Q22]

The Bureau should require key additional information about a consumer's FDCPA rights in the validation notice, to ensure that consumers are more aware of their options when responding to debt collectors. The FTC has recommended that validation notices be required to include information about two important rights they have under the FDCPA: (1) the right to dispute the debt and cease collection efforts while the collector verifies the debt; and (2) the right to request that the collector cease all communications with them.[14]

Consumers often lament the stress of repeated contacts from collectors,[15] and may fail to realize that they have the right to get some breathing room. These two items, the right to dispute and the right to cease communication, should appear on the front page of any validation notice along with a mailing address where consumers can send

---

[12] The Federal Trade Commission has long recommended including more detailed information in validation notices to consumers. *See* CHALLENGES OF CHANGE, *supra* note 2, at 25-26. Although the FTC has enforcement authority under the FDCPA, it has never had rulemaking authority to implement such changes.
[13] 78 Fed. Reg. 67848, 67858 (Nov. 12. 2013).
[14] CHALLENGES OF CHANGE, *supra* note 2, at 26.
[15] *See* CONSUMER FIN. PROTECTION BUREAU, FAIR DEBT COLLECTION PRACTICES ACT: CFPB ANNUAL REPORT 2013 16-17 (2013), *available at* http://files.consumerfinance.gov/f/201303_cfpb_March_FDCPA_Report1.pdf.

requests, or an email address if the consumer affirmatively consents to corresponding electronically with the collector.[16]

Sample language could read:

> "You have the right, within 30 days after receiving this notice, to dispute that you owe all or any part of this debt. If you make this request, we won't try to collect the debt again until we give you a response.
>
> If at any time you want us to stop contacting you in writing or over the phone about this debt, you can ask us to stop contacting you. If you do that, we cannot call you or write you again, unless it's about a lawsuit we've filed in court."

Additional information about the right to refer a collector to the consumer's attorney, to inform the collector of inconvenient times for being contacted, and to inform the collector that the consumer should not be contacted at work are also important - but may not be as immediately pertinent in all cases. It could pile on too much information at once and make the front page of the notice too complex. We would recommend placing those items in a supplementary "summary of rights" document.

E-SIGN Consent and Electronic Communications
[Q27-Q28]

If a consumer affirmatively consents to receive all future communications from the original creditor or a debt collector electronically, that consent should apply for as long as the consumer is dealing with that person. However, if the debt is transferred or sold, then the new collector should be required to obtain updated consent. This will ensure that consumers receive notice of the change in status of the debt and have meaningful opportunities to inform new collectors of the best methods for contacting them.

If a consumer affirmatively consents to communicate with a collector by electronic means, then those same means should satisfy the "in writing" requirement for asserting those three FDCPA rights. Electronic communications by email can be saved by the consumer, with date and time the communication was sent - which helps the consumer easily preserve records of the communications between the consumer and the debt collector. Text messages can also be saved, although it can take more time and effort for consumers to download and save them somewhere other than their mobile devices. In any case, the debt collector should be required to honor all such communications as "in writing," and to download and store any and all electronic communications from the consumer, so that the records associated with that account are accurate and up-to-date.

Dispute Requirements
[Q35, Q38]

Consumers should have some flexibility in the kinds of information they can provide to a collector to dispute the debt and trigger an investigation. Because the current state of the industry involves the frequent sale, resale and transfer of debts – sometimes over a

---

[16] Sending the email itself should not constitute "consent," however. The consumer should only be opted into electronic communications after making a separate affirmative statement that all future correspondence can be done electronically.

period of several years – consumers may not have complete records or access to original documents concerning the debt. However, if the consumer thinks that the collector has made a mistake, the consumer's dispute should be honored. The FDCPA is a remedial statute, and its protections should be broadly construed to protect consumers from improper collections activity.[17]

A consumer should be able to dispute a debt by including basic identifying information about the consumer and the debt in question, and a short statement describing the reason for the dispute (wrong identity, debt already paid, debt stated in the wrong amount, etc.). Where the consumer has additional information or documents supporting the dispute, the consumer can be encouraged to include them – but where such records are not available, the consumer's dispute should nonetheless be considered valid. The debt collector must have a reasonable basis to collect, and thus should be the primary party responsible for having documents and information that support the validity of the collection effort.

The Bureau should also establish a specific time period for responding to a dispute to ensure that debt collectors are responsive to consumers' requests. If collectors possess enough information about the debt to have a reasonable basis to collect on it, it should not pose a hardship to required them to respond promptly. Under California's new law, for example, a debt buyer must provide supporting information to verify the debt within 15 calendar days of receiving a written request from a consumer.[18] Under this same law, the debt buyer is already required to possess important documents and information about the debt before initially contacting the consumer.[19] Therefore, a 15-day deadline would be more than reasonable.

<u>Investigating Disputed Debts</u>
[Q39-Q41]

Debt collectors should be required to look at actual business records associated with an account when investigating disputed debts, and should be required to review their portfolios for accuracy.

When debts are sold, debt buyers typically obtain portfolios "as-is" and with no guarantee as to the accuracy or completeness of the information being sold.[20] Some former employees of financial institutions have admitted that their portfolios were rife with errors when sold to debt buyers.[21] Given the devastating impact those errors can have when they cause improper collections against consumers, it is extremely important for debt collectors to check the account-specific records for each debt to ensure that there is a reasonable basis to collect against the consumer. Unfortunately, under current practices, many consumers may receive little more than a confirmation that the

[17] *See, e.g.*, Heintz v. Jenkins, 514 U.S. 291, 294 (1995) (adopting broad interpretation of the term "debt collector" by pointing to the plain language of the FDCPA); Frey v. Gangwish, 970 F.2d 1516, 1521 (6th Cir. 1992) (describing the FDCPA as an "extraordinarily broad" statute, written in broad language by Congress to address "widespread" problems in debt collection).
[18] Section 1788.52(b), S.B. 233, 2013 Leg., Reg. Sess. (Cal. 2013).
[19] Section 1788.52(a).
[20] DEBT BUYING REPORT, *supra* note 2, at 25; *see also, e.g.*, Complaint at 4, U.S. v. Asset Acceptance, LLC, No. 12-00182 (filed Jan. 30, 2012), *available at* http://www.ftc.gov/sites/default/files/documents/cases/2012/01/120130assetcmpt.pdf.
[21] Segal, *supra* note 3.

amount claimed matches the collector's records – the same records used to generate the initial validation notice.[22]

It is insufficient to simply hold debt collectors to a "reasonable investigation" standard consistent with the Fair Credit Reporting Act (FCRA),[23] without specifying what that entails. Consumers often struggle to fix errors on their credit reports, despite the reasonable investigation requirement under FCRA. In February 2013, the FTC reported that approximately one in five consumers had an error on at least one of their three major credit reports, and 13 percent of consumers had an error that resulted in a changed credit score.[24] The FCRA standard has failed to adequately protect consumers from credit reporting errors, in part because FCRA does not specify the minimum procedures required to comply with the law.[25] We have received many complaints from consumers about their months-long, or even years-long attempts to remove errors from their credit reports.[26] For these reasons, it is crucial that the Bureau establish clear standards for dispute investigations.

When a consumer disputes a debt, the debt collector should be required at minimum to review business records that are relevant to the nature of the dispute, and which will enable the collector to make a determination as to whether the collector still has a reasonable basis to collect. The debt should also immediately be marked as disputed on the credit report. If the stated balance owed is in dispute, then the collector should review account statements from when the account was last active and the balance stated at charge-off, and should double-check calculations regarding any post-charge-off fees and interest. If the consumer disputes the debt on the grounds of mistaken identity, then the collector should review account statements with personal identification information for the debtor, and double-check any skip-tracing efforts used to locate and identify the debtor. If the consumer disputes the debt on the grounds that it is already partially or fully repaid, then the collector should contact previous collectors and owners of the debt to request past information, including business records and payment

---

[22] CHALLENGES OF CHANGE, *supra* note 2, at 31-34.

[23] *See* 15 U.S.C. § 1681e(a) (2012 & Supp. I) (requirement to have "reasonable procedures" to maintain FCRA compliance); 15 U.S.C. § 1681i(a)(1)(A) (2012 & Supp. I) (requirement to conduct "reasonable reinvestigation" in response to consumer dispute).

[24] FED. TRADE COMM'N, REPORT TO CONGRESS UNDER SECTION 319 OF THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 38, 42 (2012), *available at* http://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf.

[25] Circuit court cases have provided varying guidance as to how the "reasonableness" standard should be interpreted in substance. *See, e.g.*, Gorman v. Wolpoff & Abramson, LLP, 584 F.3d 1147, 1161 (9th Cir. 2009) (describing furnisher investigation requirement as "procedural," and investigation at issue "not unreasonable because it results in a substantive conclusion unfavorable to the consumer, even if that conclusion turns out to be inaccurate"); Johnson v. MBNA Am. Bank NA, 357 F.3d 426, 430-31 (4th Cir. 2004) ("It would make little sense to conclude that…Congress used the term 'investigation' to include superficial, *unreasonable* inquiries by creditors…[w]e therefore hold that [FCRA] requires creditors…to conduct a reasonable investigation of their records to determine whether the disputed information can be verified") (emphasis in original). Consumers Union and other consumer advocacy organizations have called on regulators in the past to clarify and strengthen minimum standards for accuracy and integrity in the credit reporting system. *See* Letter from Consumers Union et al. to Fed. Trade Comm'n. et al., Notice of Proposed Rulemaking Pursuant to Section 312 of the Fair and Accurate Credit Transactions Act (2008), *available at* http://consumersunion.org/pdf/CreditReportsComm2-08.pdf.

[26] Consumers Union will be issuing a report in March 2014 on credit reporting and scoring. The report will feature stories from consumers who had problems fixing errors on their credit reports, among other things.

receipts, regarding the debt and determine whether and to what extent the debt has been satisfied.

<ins>"Frivolous and Irrelevant" Disputes</ins>
[Q44]

Debt collectors should be required to conduct an investigation even in cases where the dispute appears vague or lacking in specific information. We have concerns about the possibility of collectors declaring that a dispute is "frivolous and irrelevant" just to evade the investigation requirements.

When acting as data furnishers for the purpose of FCRA, debt collectors' incentives for correcting errors and removing entries pertaining to debts may differ from other furnishers and from CRAs, who are not in the business of collecting debts. By acting as data furnishers, some debt collectors can use the credit report as a tool to induce payment. We have heard complaints from consumers who felt pressured into paying debts placed on their credit reports even when the debts didn't belong to them. In a few cases, consumers told us that they had debts more than seven years old that were reentered onto their credit reports by debt collectors as if they were "new" unpaid debts.[27]

For these reasons, we urge the Bureau to write rules ensuring that when a consumer disputes a debt, the debt collector is required to thoroughly investigate the nature of the dispute and remove any erroneous entries from consumers' credit reports if the dispute turns out to be valid. If a consumer's statement is ambiguous enough that the debt collector does not understand what the consumer is disputing, then the collector should contact the consumer to seek clarification. However, they should not be exempted from conducting an investigation.

<ins>Verification of Disputed Debts</ins>
[Q45-Q47, Q49]

Some debt collectors provide little more than a re-statement of the information in their validation notices to "verify" a debt.[28] As we have previously stated, California law now requires debt buyers to provide consumers with records supporting their claim to the debt within 15 days of the consumer's request. Among other things, a debt buyer in California must provide a copy of the original contract or other evidence of indebtedness, such as a periodic statement from when the account was active.

Debt collectors should be required to maintain accurate records about the debt, including any and all subsequent requests or disputes from the consumers, to ensure that all relevant information about the debt is intact and in one place. Debt collectors should be required to provide records that are responsive to consumers' disputes so that consumers can review and maintain their own information about the debt, which may be transferred or sold repeatedly.

---

[27] Our new report will also include stories of consumers whose debts were "re-aged" on their credit reports.
[28] CHALLENGES OF CHANGE, *supra* note 2, at 31-34.

Unverified Debts
[Q50, Q52]

Debts that are not verified are commonly sold, or resold. Consumers have told us of their frustration at debt collectors who pass the debt onto someone else instead of being responsive to requests for verification. Keeping these debts in the system can lead to extreme and repeated abuses.[29]

The Bureau should prohibit the sale or transfer of unverified or unverifiable debts by declaring it an unfair practice. If a collector cannot verify the debt, then the collector does not have a reasonable basis to continue collecting on that debt. Passing such a debt onto a new collector or debt buyer makes it even less likely that the debt will be verifiable in the future. Meanwhile, consumers are subjected to repeated collection attempts based on little more than a stated claim to collect, with supporting documentation or other evidence that the debt is legally owed. These are precisely the kinds of abuses that strip integrity from the system and lead to widespread consumer harm.

Debt Collection Communications
[Q54, Q89]

As a general matter, newer communication technologies generate both opportunities and concerns. In some respects, newer technologies benefit both collectors and consumers. Collectors can have the means to contact consumers other than paper mail and landline telephone numbers, which may change frequently and become obsolete or inefficient means for reaching them. Consumers can respond to collectors' communications and assert their FDCPA rights with more convenience, and can save electronic records of their communications.

However, the use of newer technologies poses risk of harm and abuse. Collectors can potentially reach consumers anywhere, at any time, in violation of FDCPA prohibitions against harassing consumers or contacting them at inconvenient times. The use of social media platforms in the debt collection context poses serious privacy concerns as well. Furthermore, some technologies collectors use, such as autodialers, can lead to repeated and annoying robo-calls that frustrate consumers. Finally, consumers in some communities still have limited access to computers and the Internet, and will need to receive paper records.

The Bureau should write rules that allow for the use of newer technologies so long as the consumer has provided affirmative consent and that consent is defined in scope. Furthermore, the Bureau should clarify that debt collectors using of autodialers and other communication technologies must have programs and procedures in place to prevent harassing or annoying calls.

Consumers would also benefit greatly from being able to specify the scope of their consent to being contacted through various communications channels. The FDCPA expressly prohibits collectors from contacting consumers at unusual or inconvenient

[29] *See, e.g.*, CONSUMERS UNION & EAST BAY CMTY. LAW CTR., *supra* note 4, at 9 (story of Noah, a consumer who paid a debt that was transferred to new collectors despite his showing proof of payment); CONSUMER REPORTS, *supra* note 4 (consumer contacted by 13 different collectors on one debt).

times or places.[30] The FDCPA creates certain presumptions about what is inconvenient insofar as it prohibits contacting a consumer between 9pm and 8am, but it does not otherwise limit a consumer's right to define what counts as "unusual or inconvenient."[31] For this provision to have meaning, consumers must have the right to specify what would constitute an "unusual or inconvenient" time or place. The FDCPA is a remedial statute; therefore, unless a related provision expressly qualifies or limits the consumer's right to define for him or herself what constitutes "unusual or inconvenient," that right should be broadly construed.

Unfair, Deceptive and Abusive Acts or Practices

As a general matter, the Bureau should hold everyone person or entity collecting on a debt to the same, strong federal standard. The Bureau should use its organic authority under Dodd-Frank to prohibit acts or practices that are unfair, deceptive or abusive[32] to ensure that first-party collectors are required to follow the same rules as third-party collectors subject to the FDCPA.

Abusive Conduct
[Q95-Q97]

Consumers consistently cite frequent contact from collectors as their top complaint about the industry.[33] Furthermore, in light of the many available channels a debt collector may use to contact consumers, the potential for harassment and abuse has only increased. It is also increasingly common for consumers to use cloud-based services for linking their various devices – computers, smartphones, and tablets – such that even one message could notify the consumer multiple times at once. Creating a bright-line rule would give consumers much better protections against abuse.

The Bureau should clarify the threshold for what constitutes abusive and harassing communication by limiting collectors to no more than three communication attempts in one seven-day period. If the collector is successful in speaking with or receiving a response from the consumer, then the collector should cease further communication attempts for at least seven days unless the consumer specifically requests otherwise. This will allow for regular communication while ensuring that consumers are not bombarded by repeated contacts. As the Bureau considers rules to clarify the permissible content of communications via email, text or other message,[34] it should do so with the goal of ensuring that such communications are effective in transmitting important information to consumers so as to mitigate the need to attempt repeated contacts with consumers.

---

[30] 15 U.S.C. § 1692c(a) (2012 & Supp. I).

[31] 15 U.S.C. § 1692c(a)(1) (stating that inconvenient times are presumed to be after 9pm and before 8am local time, "[i]n the absence of knowledge of circumstances to the contrary").

[32] Section 1031, Dodd-Frank Wall Street Reform and Consumer Protection Action of 2010, Pub. L. No. 111-203, 124 Stat. 1376, 2005-06 (2010) (codified at 12 U.S.C. § 5531).

[33] CONSUMER FIN. PROTECTION BUREAU, *supra* note 15, at 16-17; *see also* CONSUMER FIN. PROTECTION BUREAU, FAIR DEBT COLLECTION PRACTICES ACT: CFPB ANNUAL REPORT 2012 7-8 (2012), *available at* http://files.consumerfinance.gov/f/201203_cfpb_FDCPA_annual_report.pdf.

[34] 78 Fed. Reg. at 67867-69.

Deceptive Conduct
[Q100]

Misrepresentations regarding the amount, character and status of a debt also near the top of the list for consumer complaints.[35] Under current industry practices, debt collectors often give consumers the false impression that they have verified the status of the debt and have authority to sue if necessary to recover it – even when the debt is time-barred.

These kinds of practices were at the heart of the FTC's 2012 enforcement action against Asset Acceptance, one of the largest debt buyers in the country.[36] The FTC's suit alleged that Asset Acceptance engaged in "deceptive" practices because they repeatedly made representations to consumers that they had a legal right to collect, when in fact they had no reasonable basis to make such claims.[37] Asset Acceptance also allegedly demanded payment of debts they knew or had reason to know where past the relevant statute of limitations, while failing to disclose to consumers that such debts could not be collected through a lawsuit.[38] Furthermore, the debt buyer allegedly reported negative information onto consumers' credit reports despite knowing or having reason to know that such information was inaccurate.[39] Asset Acceptance settled the case for $2.5 million.[40] In its consent decree, the FTC ordered the debt buyer to refrain from such practices in the future – and sent a strong message to the industry regarding what the FTC considers deceptive.[41]

The Bureau should write rules to clarify that the above practices are deceptive and illegal, for all persons collecting on a debt.

Unfair Conduct
[Q112-Q115]

First-party collectors have come under increasing scrutiny for unfair debt collection practices, both in and out of court. Last year, the California Attorney General filed suit against JP Morgan Chase for allegedly fraudulent and unlawful practices related to their in-house debt collection efforts.[42] The complaint alleged that the bank's notices to consumers often demanded payment in the wrong amount,[43] and that the bank refused to produce a copy of the contract evidencing the debt when requesting judgment in court.[44] Relatedly, Chase and Wells Fargo recently halted sales of their debt portfolios due to increasing concerns about the quality of supporting documentation passed on to

---

[35] CONSUMER FIN. PROTECTION BUREAU, *supra* note 15, at 16-18 (second only to abusive and harassing calls).
[36] Complaint, U.S. v. Asset Acceptance, LLC, No. 12-00182 (filed Jan. 30, 2012), *available at* http://www.ftc.gov/sites/default/files/documents/cases/2012/01/120130assetcmpt.pdf.
[37] *Id.* at 17-18.
[38] *Id.* at 18-19.
[39] *Id.* at 6-7.
[40] Consent Decree at 4, U.S. v. Asset Acceptance, LLC, No. 12-00182 (filed Jan. 31, 2012).
[41] *Id.* at 15-17.
[42] Complaint, People v. JPMorgan Chase & Co., et al. (filed May 9, 2013), *available at* http://oag.ca.gov/system/files/attachments/press_releases/Complaint_0.pdf.
[43] *Id.* at 3
[44] *Id.* at 5.

collectors and buyers about the debts, among other things, which could lead to unfair collection attempts.[45]

It is crucial for first-party collectors and third-party collectors to be held to the same standards, to ensure integrity of the debt collection system. Original creditors are the source of all key information about the debt that can be passed on to third-party debt collectors and debt buyers. Their failure to keep accurate records can lead to improper in-house collection efforts – and their failure to pass on accurate and complete information about a debt can lead to improper collection attempts by subsequent third-party assignees and debt buyers. Incomplete and inaccurate recordkeeping practices can lead to a range of unfair, deceptive and abusive practices. For example, collectors may unfairly target the wrong consumers or ask for the wrong amount. They may attempt to collect debts based on little supporting evidence that the claim is valid, and thereby mischaracterize the legal status of the debt. They may also cause the consumer to be harassed repeatedly about a debt the consumer disputes, because existing records fail to track all relevant actions on the debt.

The Bureau should further clarify that it is an unfair practice for any person collecting on a debt to demand more than the consumer owes. As stated above, all collectors should possess information about the debt that includes original balance, interest, fees and other charges, as well as any prior payments credited toward the outstanding debt.

Payments Acts and Practices
[Q122]

Under California's new law, all debt buyers must provide a receipt or monthly statement to the consumer within 30 days of receiving a payment. The receipt or statement must show: (1) the amount and date paid; (2) the entity being paid; (3) the current account number; (4) the name of the charge-off creditor; (5) the account number used by the charge-off creditor; and (6) the remaining balance, owing, if any. [46] The receipt or statement can be electronic if both parties agree. Furthermore, if a debt buyer accepts a payment as payment in full, or as a full and final compromise of the debt, the debt buyer must provide a final statement including all of the above information.[47]

The Bureau should adopt the California model and apply it to all persons collecting on a debt. The California law was supported by Encore Capital Group, the largest debt buying company in the country; it should therefore provide a more than workable standard for original creditors and third-party collectors.[48]

---

[45] *See* Maria Aspan, *Wells Fargo Halts Card Debt Sales as Scrutiny Mounts*, AM. BANKER, July 28, 2013, *available at* http://www.americanbanker.com/issues/178_144/wells-fargo-halts-card-debt-sales-as-scrutiny-mounts-1060922-1.html.
[46] Section 1788.54(b), S.B. 233, 2013 Leg., Reg. Sess. (Cal. 2013).
[47] Section 1788.54(c).
[48] Bill Analysis, S.B. 233, 2013 Leg., Reg. Sess. (Cal. 2013) (see list of registered supporters at end of analysis for Assembly Banking & Finance Committee), *available at* http://leginfo.ca.gov/pub/13-14/bill/sen/sb_0201-0250/sb_233_cfa_20130621_120929_asm_comm.html.

Time-Barred Debts
[Q133-134]

The clearest and simplest approach the Bureau could take would be to prohibit all collection attempts on time-barred debts. At minimum, the Bureau should prohibit all persons collecting on a debt from suing or threatening to sue on time-barred debts.

If the Bureau decides to permit out-of-court collection attempts on time-barred debts, then it should require clear disclosures to ensure that consumers with older debts are aware of their rights and responsibilities associated with it, and require debt collectors to take meaningful steps to determine the age of the debt and follow relevant state laws.

California's new law requires that all debt buyers include separate, prominent statements in their initial written communications with consumers. It mirrors the language that the FTC requires in its consent decree with Asset Acceptance:[49]

> "(2) When collecting on a time-barred debt where the debt is not past the date for obsolescence provided for in Section 605(a) of the Fair Credit Reporting Act (15 U.S.C. Sec. 1681c):
>
> 'The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, [insert name of debt buyer] may [continue to] report it to the credit reporting agencies for as long as the law permits this reporting.'
>
> (3) When collecting on a time-barred debt where the debt is past the date for obsolescence provided for in Section 605(a) of the Fair Credit Reporting Act (15 U.S.C. Sec. 1681c):
>
> 'The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it, and we will not report it to any credit reporting agency.'"[50]

However, unlike the California law, the FTC only requires this disclosure where Asset Acceptance "knows or should know" that the debt is time-barred.[51] For the Bureau's purposes, adding this qualification in new rules should be unnecessary when combined with a requirement that the debt collector possess certain key information about the debt, including the consumer's address and home state, date of charge-off, and any recent payments credited toward the balance. It is crucial to require all debt collectors to have key information about the debt and the alleged debtor, to ensure that the collector *already* knows or should know the status of the debt before contacting a consumer.

The language itself is a step in the right direction, but could be stated even more simply: "We cannot sue you on this debt, even if you don't pay it, because it is too old." The Bureau may consider additional language to warn consumers that such debts may still show up on their credit reports for up to seven years after default. However, in our experience speaking with consumers and consumer attorneys about their cases,

[49] Consent Decree at 13, U.S. v. Asset Acceptance, LLC, No. 12-00182 (filed Jan. 31, 2012).
[50] Sections 1788.52(d)(2-3), S.B. 233, 2013 Leg., Reg. Sess. (Cal. 2013).
[51] Consent Decree at 11, U.S. v. Asset Acceptance, LLC.

disclosures about credit reporting can be confusing and lead consumers to believe that repaying the debt is the best way to remove it from the credit report – which could actually make the situation worse.

Partial Payments, Reviving Statute of Limitations
[Q137]

In states where a partial payment on a debt can revive the debt and restart the statute of limitations, it is very important for consumers to receive information about the consequences of making such a payment. In our experience talking with consumers and consumer attorneys about their cases, most individuals do not understand what a "statute of limitations" really is or how it operates. Most wouldn't know how to raise it as an affirmative defense in a lawsuit, nor would they understand how a statute of limitations could be restarted. If a debt collector asks for payment on a debt, a consumer is most likely to expect that making a payment toward the debt is helping rather than hurting the situation. Furthermore, some consumers may feel compelled to make a partial payment out of a sense of moral obligation – a desire to demonstrate their honest attempts to repay their debts. This, combined with the scarcity of legal assistance for most consumers with debt collection issues, can cause consumers to be misled about the consequences of making a partial payment.

The strongest approach would be to prohibit collectors from treating such payments as a revival of the debt. However, the Bureau should at minimum require clear notice of the consequences such a payment could have. One state model for how to disclose this information comes from New Mexico, which requires the following language:

> "If you do any of the following, it may "revive" the debt and make it possible for a lawsuit to be filed against you: make any payment on the debt; sign a paper in which you admit that you owe the debt or in which you make a new promise to pay; or sign a paper in which you give up ("waive") your right to stop a debt collector from suing you in court to collect the debt."[52]

This kind of plain-language disclosure would help consumers understand what kinds of things they might do that would accidentally trigger a lawsuit or otherwise worsen their situation. The Bureau should consider this language along with visual formatting (e.g., a bullet point list) that makes it easy to read.

State Debt Collection Litigation
[Q147-Q151]

The Bureau should write rules that support states' efforts to update their laws – and help improve the administration of justice in their courts. To that end, the Bureau should set a strong federal floor that prohibits all debt collectors from using unfair, deceptive or abusive means to collect a debt – both in and out of court, and across all states. While debt collection claims fall squarely within the province of state courts, and states should have the flexibility to determine how they process such lawsuits, many of the worst actors in the industry have taken advantage of state court systems – and weak state

[52] N.M. CODE R. § 12.2.12.9(B) (Weil 2014).

laws – to perpetrate fraud and coerce consumers into paying debts that may not legally owe.

Several states have recently taken important steps to address some of the most pervasive problems in the debt collection system, including the frequent use of robo-signed affidavits attached to complaints as the sole "proof" that the debt collector has the right to collect.[53] Both first-party and third-party collectors across the country have been investigated by state attorneys general for such practices.[54] The FTC has also expressed concerns that debt collection complaints often fail to provide adequate information to help consumers identify the debts.[55]

For example, California now requires all debt buyers to allege current and sole ownership of the debt as well as other key information such as the original creditor, date of charge-off and itemized amount claimed, and must attach a copy of the contract or other evidence of indebtedness to the complaint. At the default stage, the debt buyer is then required to attach additional business records supporting all of the key facts alleged in the complaint.[56] Minnesota also passed legislation last year that requires all debt collectors to provide admissible evidence of indebtedness and chain of title, among other things, before obtaining a default judgment.[57]

However, not all states have taken steps that are more protective of consumers. For example, Arizona passed legislation in 2012 that creates a rebuttable presumption that the amount claimed by the creditor is accurate.[58] Two other states, Arkansas and Tennessee, passed similar provisions last year.[59] Another state, Louisiana, passed a bill last year that limits a consumer's right to assert a defense based on the terms and conditions of the original credit agreement.[60]

For these reasons, it is crucial for the Bureau to set a federal floor for what is permissible in all attempts to collect on a debt – whether in or out of court – and support the ability of

---

[53] *See, e.g.*, Segal, *supra* note 3; Maria Aspan, *Courthouse 'Rocket Dockets' Give Debt Collectors Edge over Debtors*, AM. BANKER, Feb. 11, 2014, *available at* http://www.americanbanker.com/issues/179_29/courthouse-rocket-dockets-give-debt-collectors-edge-over-debtors-1065545-1.html.

[54] *See, e.g.*, Press Release, Attorney General Kamala Harris Announces Suit Against JPMorgan Chase for Fraudulent and Unlawful Debt-Collection Practices (May 9, 2013), *available at* http://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-suit-against-jpmorgan-chase (California); Press Release, Attorney General Brings Suit Against Fraudulent Debt Collection Companies (Dec. 10, 2013), *available at* http://www.coloradoattorneygeneral.gov/press/news/2013/12/10/attorney_general_brings_suit_against_fraudlent_debt_collection_companies (Colorado); Press Release, Attorney General Lori Swanson Sues Florida Company for Creating Manufactured Affidavits to Aid in Collection of Overdraft Debt Purchased from Large Banks (Oct. 30, 2013), *available at* http://www.ag.state.mn.us/Consumer/PressRelease/131030FloridaManufacturedAffidavits.asp (Minnesota).

[55] FED. TRADE COMM'N, REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION 17 (2010), *available at* http://www.ftc.gov/sites/default/files/documents/public_events/life-debt/debtcollectionreport_0.pdf.

[56] Section 1887.60, S.B. 233, 2013 Leg., Reg. Sess. (Cal. 2013).

[57] H.F. 80, 88th Leg., Reg. Sess. (Minn. 2013).

[58] H.B. 2664, 50th Leg., 2d Reg. Sess. (Ariz. 2012).

[59] H.B. 2028, 89th Gen. Assem., Reg. Sess. (Ark. 2013); H.B. 443, 2013 Gen. Assem., Reg. Sess. (Tenn. 2013).

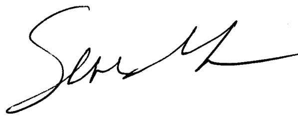
[60] S.B. 174, 2013 Leg., Reg. Sess. (La. 2013).

states to enact even stronger protections should they choose. In the end, consumers in all states should be protected from unfair, deceptive and abusive practices throughout the debt collection process to ensure the integrity and fairness of the system.

Conclusion

The time is now to create strong, sensible standards that address the current challenges facing the debt collection system. We applaud the Bureau's efforts to update the rules of the road for collecting debts, and look forward to working you in the future on proposed regulations.

Sincerely,



Suzanne Martindale
Staff Attorney