



February 28, 2014

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: Debt Collection, Docket No. CFPB-2013-0033

Dear Ms. Jackson:

The American Financial Services Association (“AFSA”) welcomes the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) Advance Notice of Proposed Rulemaking (“ANPR”) on the debt collection system, consumer experiences with the debt collection system, and how rules for debt collectors might protect consumers without imposing unnecessary burdens on industry.

AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its more than 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers. AFSA’s active members are creditors, that is, they have ongoing relationships with customers under performing obligations. Some members originate the obligations, some service contracts obtained prior to default, and some are assignees of current obligations. Accordingly, their principal purpose is not the collection of debts.

We begin this letter by clearly defining “creditor” and “debt collector.” We then explain why the CFPB should limit the rulemaking to debt collectors: (1) Congress did not intend for creditors to be regulated like debt collectors, (2) creditors operate differently than debt collectors, (3) there is not sufficient data to justify a rule, and (4) the CFPB should give the current system more time before issuing a rule. The letter also discusses the CFPB’s rulemaking authority in this area. The CFPB has limited authority to issue rules to creditors regarding debt collection. The remaining portion of the letter is dedicated to answering many of the questions posed in the ANPR.

I. Definitions

The ANPR uses the terms “creditor,” “debt collector,” “third-party debt collector,” “first-party debt collector,” and “debt buyer,” but does not define any of these terms. The lack of clear, definitive terminology creates a confusing landscape for consumers, and it will impede their ability to properly assess and address any issues that may arise with their financial transactions. It is important to recognize and keep distinct the differences between a creditor and a debt collector, as Congress intended. The Bureau should not paint all entities that collect amounts due with a broad brush under a premise that all of these entities should have to adhere to the same

practices when attempting to collect debts. Imposing burdensome and unnecessary regulatory constraints on creditors that are clearly designed to address the well-documented issues with debt collectors will lead to higher business costs and costs of credit, as well as overall reduced access to consumer credit. In Part I.D. of the ANPR, the Bureau indicates the “significant consumer protection problems related to debt collection have persisted” and that “[c]onsumer complaints relate to a wide variety of debt collection acts and practices, and that “a significant number of consumers alleged that debt collectors are violating the FDCPA.” The amorphous use of the terms debt collector and debt collection without regard to the participant would make it appear that creditors stand in the same shoes as debt collectors, which is simply not the case in practice or under federal law and many state laws.

In our letter, we will follow the FDCPA and use the terms “creditor” and “debt collector.” As defined by the FDCPA, the term “creditor” refers to, “any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.”¹ The definition of “creditor” will also include those excluded from the definition of “debt collector” under the FDCPA.²

As defined by the FDCPA, the term “debt collector” refers to, “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.”³ The term “debt collector” does not include:

- (A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
 - (B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;
 - (C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;
 - (D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;
 - (E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors;
- and

¹ 15 U.S.C. §1692a(4)

² As the CFPB notes on page 7 of the ANPR, “. . . first-party collections are largely exempt from the FDCPA.”

³ 15 U.S.C. §1692a(6)

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.”

As the Bureau notes, only debt collectors as defined by the FDCPA are covered by the FDCPA.

II. Limit Rulemaking to Debt Collectors

Any debt collection rules that the CFPB promulgates should be limited to debt collectors. Regulation in this space on creditors is unnecessary and would create difficult compliance and credit risk issues for creditors. These compliance and credit risk issues could lead to serious disruptions in the extension of consumer credit and increase costs to consumers. Congress did not intend for creditors to be regulated like debt collectors, and the CFPB should follow Congress’ intent as it seeks to regulate collection practices under the FDCPA. Congress realized when it passed the FDCPA that creditors operate differently than debt collectors, and therefore rules applicable to debt collectors may be appropriate, but those rules would not be applicable to creditors. In addition, there is also insufficient evidence today to justify imposing additional regulations related to debt collection practices on creditors.

Congress did not intend for creditors to be regulated like debt collectors.

Congress specifically excluded creditors from the FDCPA and the CFPB should follow Congress’ intent and directive. The Senate Report on the FDCPA states, “Unlike creditors, who generally are restrained by the desire to protect their goodwill when collecting past due accounts, independent collectors are likely to have no future contact with the consumer and often are unconcerned with the consumer’s opinion of them.”⁴

The Government Accountability Office (“GAO”) affirmed Congress’ distinction, stating, “Because first-party collectors use the issuers’ name and are collecting from current customers, there is an emphasis on preserving the relationship with the consumer and mitigating the negative perception that consumers can have about their accounts being forwarded to collection.”⁵

If the debt collection system includes any and all efforts to collect debts, then creditors are part of that system although collection of debts is not their principal function. As the Bureau notes, if the customer fails to pay, the first effort to collect on that debt is made by the creditor, typically

⁴ S. REP. 95-382, S. Rep. No. 382, 95TH Cong., 1ST Sess. 1977, 1977 U.S.C.C.A.N. 1695, 1977 WL 16047 (Leg.Hist.)

⁵ U.S. Gov’t Accountability Office, GAO-09-748, *Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace and Use of Technology* (2009), available at <http://www.gao.gov/assets/300/295588.pdf>

by using its own employees or those of an affiliate or servicer that collects in the name of the creditor. As Congress realized when it enacted the FDCPA, creditors stand in a different place along the continuum of collecting what is due. If creditors are to be subject to the FDCPA, such action must come from Congress and not through rulemaking.

One of the co-sponsors of the FDCPA wrote in a statement, “Another positive feature in the bill is that the Federal Trade Commission has no rule making authority. It has only enforcement authority. We have given much away in the past in the sense that administrative agencies have the final say on what the law means. In many instances this has led to a shelf of interpretive regulations. Congress should retain the final authority to avoid any misunderstanding as to intent. If a question of Congressional intent arises, the FTC must come back to Congress for guidance. Time and again, regulations have been adopted pursuant to a law that Congress enacted only to have it translated into detail which expanded its meaning and added to enforcement problems.”⁶

Creditors operate differently than debt collectors.

As Congress realized when it passed the FDCPA in 1977, creditors do not operate like debt collectors. While much has changed since 1977 in the credit industry, as in 1977, creditors are still restrained by their inherent motivation to protect their goodwill when collecting past due accounts.⁷ Unlike consumers who cannot choose their debt collector, often consumers make a conscious decision of which creditor to use. Nothing has changed that would warrant a different conclusion today or warrant unnecessary regulation.

Mr. Hugh Wilson, who worked for a debt collector and testified during the hearings for the FDCPA said:

Some of the work that I have done since then has shown that many of the major credit card companies ... regularly write to the State Bureau of Consumer Affairs in Sacramento listing the people they use as collectors to find out if people are complaining about the collectors. Shell, I believe, rather than sending the account to a collection agency, writes a polite note to the card-holder saying, we are cutting you off until you can bring your account up to a certain amount. We don't want to lose you as a customer. More and more issuers of plastic cards are realizing that a consumer may be a debtor today, but 2 weeks from today he may be a customer again. Nothing can turn people off more than having been turned over to a collection agency.”⁸

Most AFSA members originate their own accounts or acquire accounts shortly after origination, and usually well before default. They service these accounts, accept agreed upon payments, and provide assistance throughout the life of the obligation. Accounts that go into default or do not

⁶ U.S. House. Subcommittee on Consumer Affairs of the Committee on Banking, Finance and Urban Affairs. Statement re: *H.R. 29, A Bill to Amend the Consumer Credit Protection Act To Prohibit Abusive Practices by Debt Collectors*. March 9, 1977.

⁷ *Ibid.*

⁸ U.S. House. Subcommittee on Consumer Affairs of the Committee on Banking, Finance and Urban Affairs. *H.R. 29, A Bill to Amend the Consumer Credit Protection Act To Prohibit Abusive Practices by Debt Collectors*. March 8, 1977.

pay timely ultimately affect a company's costs and risks. There is an incentive to maintain a customer in a "paying" relationship as the creditor assumes the risk of extending credit in the first place. As a report from the Tower Group states, "The cost to replace one bank card customer ranges from \$160 to over \$200, and issuers that work with their customers through this difficult period will retain customer for life."⁹ In other words, creditors use debt collection as a customer retention strategy and are incentivized by avoiding costs to acquire new customers.

In contrast to debt collectors who usually collect only mature, static balances from consumers with whom they have no prior or ongoing relationship, creditors collect delinquent installments from their customers with whom they have a long-term and continuous relationship and who may carry other balances with the creditor which are not delinquent. Unlike debt collectors, attempting to collect on defaulted loans or accounts is not the primary business of a creditor. In other words, because some creditors want to establish and maintain on-going relationships with their customers they originate loans (or buy or service performing loans) in order to obtain new customers in order to make more loans later. Other creditors, such as indirect auto lenders, want to sell more cars for their parent company. Debt collectors, on the other hand, do not have any incentive or desire to establish relationships with consumers for repeat business.

In the ANPR, the CFPB states that "...an original creditor or debt owner may determine that a customer in default is no longer one with whom it is likely to maintain a long-term business relationship and thus may choose to devote its customer service efforts toward paying or prospective customers."¹⁰ However, the CFPB offers no justification for this claim and we strenuously deny it. Creditors are concerned about protecting their relationships with their customers and protecting their brands, and thus should not, on the basis of an unsupported and erroneous conclusory assertion, have new regulations imposed that inhibit the creditors' ability to protect and preserve customer relationships.

Some of AFSA's members are small, branch-based companies who operate in a decentralized environment. These branch offices, usually located in smaller communities, know their customers, and the customers know the branch personnel. Often, the same branch employee who originates the account with the customer is the same one the customer comes to with a question about the account or for help to cure a delinquency. Frequently, these customers make their payments at the branch office in person. And often, when a customer will be making a payment late (or when a customer did not make a payment on time), either the customer will call the branch to explain or the branch will call the customer to remind the customer of the payment in order to avoid a late fee or to see if there is something in the customer's situation that has changed which may justify consideration of an adjustment on the borrower's repayment schedule, etc. Since the employees often know their customers personally, doing anything other than what is in the best interest of those customers would jeopardize their reputation in the community and put their branch out of business.

⁹ Moroney, Dennis, "*Revitalize the Credit Card Pre-Charge-off Collection Process and Improve the Bottom Line.*" TowerGroup. April 2009. Quoted in "*Leveraging Collections as a Customer Retention Tool,*" by Julie Austin and Vytas Kisielius of Collections & Recovery, TSYS, Jan. 2010. Available at: http://www.ftc.gov/sites/default/files/documents/public_comments/ftc-workshop-debt-collection-2.0-protecting-consumers-technology-changes-project-no.p114802-00007%C2%A000007-58348.pdf

¹⁰ ANPR, p. 8

Creditors who may be more global may not have the same day-to-day or face-to-face contact, but given the breadth of social media and the ability of customers to link a name with a service, nationally known creditors have every incentive to keep their reputation spotless. Not only does it make good business sense, but it gives such entities a competitive edge.

Unlike creditors, debt collectors' sole mission is to collect defaulted debt without regard to any future relationship. Creditors are also interested in collecting what may be due. However, creditors are very interested in maintaining a continuing relationship with their customers. Creditors do not buy debt for pennies on the dollar, or debt which is charged-off, determined to be uncollectible, or discharged in bankruptcy, precisely because that type of debt will not give creditors access to new customers to whom credit may be extended in the future. When debt collectors purchase portfolios of non-performing debt, their acquisition cost is miniscule in relation to the amount of debt they purchase. Therefore the amount they must collect to recover their initial investment is quite small and their profit potential is very significant if they can collect more than what they paid for the accounts. What this means is that debt collectors do not have substantial "skin in the game" – they have little to lose which may account for some of the practices the FDCPA was designed to guard against. Creditors are at the opposite end of that spectrum. They have all of the "skin in the game" – both their money and their valuable customers, customers they very much want to keep. Congress recognized that creditors have "skin in the game," which is why creditors are not subject to the same debt collection restrictions as debt collectors.

Additionally, creditors' activities, both in originating loans and in collecting those loans, are regulated at the state level. Many states have their own debt collection laws that creditors must follow. Although some states may not have separately labeled statutes to regulate the collection practices of creditors, all states impose fair and practical requirements and prohibitions on lenders through the state's licensing regimes. Many creditors that practice nationwide adopt a general policy based on the most restrictive state laws and mirror them without regard to the residence of the customer.

There is not sufficient data to justify a rule.

The CFPB justifies the potential need for debt collection rulemaking by citing the number of complaints that the CFPB receives. AFSA does not believe, however, that the data in the complaint database provides sufficient justification for regulating creditors.

For example, it is not always possible to determine if the complaints that the CFPB receives are about the collection activities of a creditor or of a debt collector. Even if a consumer names a creditor in the complaint, the complaint could still be in reference to a debt collector. Without clear data showing a pattern of complaints specifically against creditors, no rulemaking is warranted. Many of the complaints in the CFPB's database are about medical debt or fall into an "other" category, which includes complaints about debt collection on behalf of phone companies or health clubs.

Furthermore, any submission to the CFPB database is counted as a “complaint,” even though it may be an inquiry, or even, in one case that we know of, a compliment. Because of the lack of information in a complaint, it is often difficult to tell if a complaint is meritorious or not. In our members’ experience, many “debt collection” complaints are related to the customer’s inability to pay the debt, not the collection of it. The CFPB does not offer consumers a category for “inability to pay debt” when they are filling out the complaint on the consumer complaint web portal. Moreover, although the CFPB tries to remove duplicates, it is not always successful and duplicate complaints remain in the system. As a result, the number of consumer “complaints” released by the CFPB specific to debt collection may not be reliable.

In addition, it seems as though all “complaints,” even illegitimate or frivolous complaints, are included in the database. Thus, an assumption that “any complaint” is a negative reflection of a financial service provider is flawed. The complaint data should be properly segregated and evaluated before being used to support a rule. Otherwise, the CFPB runs a risk of adversely affecting the availability of consumer credit without providing a benefit to consumers.

In the ANPR, the CFPB also cites the number of complaints that the Federal Trade Commission (“FTC”) has received regarding debt collection over the years as rationale for potential rulemaking.¹¹ The FTC data is less reliable as an indicator of complaints than the complaint data collected by the CFPB. The FTC does not verify any relationship between the complainant and the company, nor does it remove duplicates. As with the CFPB, frivolous complaints are not removed. Thus, we do not believe the CFPB should rely on the data the FTC collected when deciding whether to issue a rule. While we think the FTC data may indicate inflated collection complaint numbers, an analysis of FTC complaint data conducted by DBA International found that only 7.7% of the collection complaints were about creditors.¹² Even if you take the FTC complaint data at face value, this indicates that only a small percentage of collection complaints were against creditors.

In addition to complaints about debt collectors, the CFPB cites three papers written by consumer advocacy groups to justify the need for a proposed rule.¹³ The advocacy papers are focused on debt collectors, not creditors. Therefore, while they may or may not support additional restrictions on debt collectors, they do *not* support burdensome rules on creditors seeking to collect debts from their own customers.

Finally on this topic, we ask the CFPB to adhere to its oft-stated mantra that it will not make rules based on anecdotal evidence, but only upon actual verified data. The data presented with the ANPR is unreliable and does not support promulgating burdensome rules that will be expensive to implement.

¹¹ ANPR, p. 20

¹² Rudd, David. "Rethinking Complaints Against the ARM Industry: What the Data Does and Does Not Show." insideARM.com. Nov. 14, 2012. <http://www.insidearm.com/dialerfan/rethinking-complaints-against-the-arm-industry-what-the-data-does-and-does-not-show/>

¹³ ANPR, p. 14 (Footnote 21)

Give the current system time.

Only approximately a year ago did the CFPB begin supervision of debt collectors. In October 2012, the CFPB issued its Larger Participant rule, “establishing supervisory authority over approximately 175 debt collectors accounting for over 60 percent of the industry’s annual receipts.”¹⁴ This is the first time that debt collectors have been actively supervised by a regulatory agency at the federal level. As recently as July 2013, the CFPB issued two supervisory bulletins addressing the debt collection process.¹⁵ Before issuing new or incremental rules, we ask that the CFPB give the current system time to work. With time, the CFPB may realize that expanding the scope of its rules is not necessary.

As for creditors who use vendors to collect debts in creditors’ names, the vendors are subject to increased supervision from the creditors as a result of the CFPB’s vendor management bulletin.¹⁶ For example, creditors are already conducting thorough due diligence to verify that the service provider understands and has a framework in place to comply with applicable federal consumer finance law. Creditors are also reviewing the training and oversight procedures of those vendors who have employees or agents that have contact with consumers or compliance responsibilities. Creditors already have or are implementing procedures to take prompt action to address any issues identified with the monitoring process, including terminating the relationship where appropriate.

III. CFPB Rulemaking Authority

The CFPB has limited authority to issue rules to creditors regarding debt collection. The CFPB states in the ANPR¹⁷ that the Dodd-Frank Act gave the Bureau the authority to issue rules with respect to the collection of debts under several different provisions in the Dodd-Frank Act. We will address the CFPB’s authority under each provision separately.

Section 814(d) of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. 16921(d), as amended by section 1089 of the Dodd-Frank Act. This section authorizes the CFPB to “prescribe rules with respect to the collection of debts by debt collectors, as defined in [the FDCPA].

As the statement above (taken from the ANPR) notes, the CFPB’s authority is limited to debt collectors as defined in the FDCPA. Therefore, this section does not give the CFPB the authority to issue rules regarding creditors and those otherwise excluded from the FDCPA.

Creditors were specifically not included in the FDCPA. Rep. Chalmers Wylie (R-OH), one of the co-sponsors of the legislation stated:

¹⁴ ANPR pp. 14-15

¹⁵ CFPB Bulletin 2013-07 (issued July 10, 2013) and CFPB Bulletin 2013-08 (issued July 10, 2013)

¹⁶ CFPB Bulletin 2012-03 (issued April 13, 2012)

¹⁷ ANPR pp. 16-18

¹⁷ ANPR pp. 16-18

Well the point I want to make, Mr. Chairman, is that at one stage of the hearings last year, I had suggested the possibility of an amendment, too, which would include all debt collectors ... And it was suggested to me that most of the abuses have come through the independent debt collector, not so much because of the individuals involved in the independent debt collection business, but because of the nature of the debts they collect. The in-house debt collector makes every effort to collect the bill, and he uses the Marquis of Queensbury's rules, because he's working for a big employer like a department store. And those department stores are really trying to sell products, so they don't want their in-house debt collector to make anybody mad, really, they just want to remind the fellow of his debt. And, when it gets to the place he can't handle it anymore, a lot of department stores – from my own personal knowledge, as a lawyer who participated, to some extent – then turn it over to the independent debt collector, and the independent debt collector makes a fee on the amount of the bills he collects, and so forth. And in some cases it's based on a commission. Now do you recognize that is a difference in the type of operations that the independent debt collector performs, and the in-house debt collector performs?"¹⁸

Section 1032(a)-(c) of the Dodd-Frank Act, 12 U.S.C. 5532(a)-(d). This section gives the CFPB the authority to prescribe disclosure rules.

None of the proposed questions seem to address disclosures that must be provided to a consumer, so this section of the Dodd-Frank Act would not apply.

Section 1022(b) of the Dodd-Frank Act, 12 U.S.C. 5512(b). This section states, "The Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law." The section goes on to state, "The Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof."

The CFPB may only use its authority under section 1022(b) to write rules for debt collectors. This section gives the CFPB authority to write rules under federal consumer financial law, which includes the FDCPA. However, as the FDCPA explicitly excludes creditors and others, the CFPB cannot apply the FDCPA to creditors under its authority in this section.

Section 1031(b) of the Dodd-Frank Act, 12 U.S.C. 5531(b). This section empowers the CFPB to issue regulations "identifying as unlawful unfair, deceptive, or abusive acts or practices ["UDAAP"] in connection with any transaction with a consumer for a consumer financial product or services, or the offering of a consumer financial product or service." Such rules "may include requirements for the purpose of preventing such acts or practices."

¹⁸ U.S. House. Subcommittee on Consumer Affairs of the Committee on Banking, Finance and Urban Affairs. *H.R. 29, A Bill to Amend the Consumer Credit Protection Act To Prohibit Abusive Practices by Debt Collectors*. March 9, 1977.

Congress specifically exempted creditors and others from the FDCPA. The legislative history of the FDCPA shows that Congress understood that, “Unlike creditors, who generally are restrained by the desire to protect their good will when collecting past due accounts, independent collectors are likely to have no future contact with the consumer and often are unconcerned with the consumer’s opinion of them.”¹⁹ There is no justification today for changing that analysis.

The CFPB should not attempt to use its “unfair, deceptive, or abusive acts or practices” (“UDAAP”) authority to circumvent Congress and apply the provisions of the FDCPA to creditors collecting their own debt. CFPB Director Richard Cordray said during a Congressional hearing, “So, the law that we inherit from other agencies, and frankly law that we have because Congress has imposed it, is – is the law that we need to follow and follow closely. If there’s a body of law interpreting rules, for example, Reg Z or something we’ve inherited from the Federal Reserve, that body of law is – is relevant for us too and constrains us, and we shouldn’t be going off on some wild, new, unexpected direction.”²⁰ Applying the provisions of the FDCPA to creditors, when Congress specifically exempted the creditor, would be “going off on some wild, new, unexpected direction.”

During that same hearing, Director Cordray also said, “And so look, it is not our point to try to revolutionize any kind of existing law. Our job is to follow it and apply it. And it is also not our intention to start going off and acting like we’re some sort of mini Congress just doing anything we think is good and right and writing it into the books. I think we need to follow our procedures carefully, follow the law carefully. And if we do that we’ll build credibility in our work.” Unilaterally applying the FDCPA to creditors would be acting as a “mini Congress,” exactly what Director Cordray said the CFPB should avoid doing.

IV. Transfer and Accessibility of Information Upon Sale and Placement of Debts

The majority of the questions in this section apply to debt collectors. However, there are some questions in this section for which we will provide comment.

Q1: What data are available regarding the information that is transferred during the sale of debt or the placement of debt with a third-party collector and does the information transferred vary by type of debt (e.g., credit card, mortgage, student loan, auto loan)? What data are available regarding the information that third-party debt collectors acquire during their collection activities and provide to debt owners?

While not all creditors or AFSA members sell debts, some do. The members that do sell debt provide the debt buyers the information the debt buyers require to validate the debt. The information does vary based on the type of debt that is sold.

¹⁹ S. REP. 95-382, S. Rep. No. 382, 95TH Cong., 1ST Sess. 1977, 1977 U.S.C.C.A.N. 1695, 1977 WL 16047 (Leg.Hist.)

²⁰ U.S. House Oversight and Government Reform Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs. *Outlook of the Consumer Financial Protection Bureau*, Hearing, Jan. 24, 2012.

Available at:

<http://www.aba.com/Compliance/Documents/756c43baa8d84b3a8133b9588404dfdftranscriptHearing2012Jan.pdf>

When creditors place accounts for collection with debt collectors, creditors typically provide sufficient information to enable debt collectors to validate the debt. Creditors have the incentive to provide the validation information to debt collectors to serve their customers. First, providing such information is good business practice. Second, the CFPB's vendor management bulletin directs creditors to oversee their vendors.²¹ Generally, creditors provide a statement of account which includes information such as the name and address of the customer, the account number, the name of the original creditor, the name of the account if it differs from the name of the original creditor, the total balance owed, and some or all of the account's history, such as payment history, the customer's charges, interest, and other amounts charged to the customer. The financial and payment information provided varies depending on the type of debt. Some creditors can provide the entire history, while others, such as creditors on revolving credit cards, may only provide the history for a certain period of time.

Although, as we discuss thoroughly in other parts of the letter, we do not believe the CFPB has the authority to issue a debt collection rule for creditors, if the CFPB decides to do so anyway, we ask that the CFPB take different business models into account when requiring creditors to provide certain information to debt collectors. Information a credit card company has on a customer will be different than the type of information a vehicle finance company may have and keep. While it might be acceptable for some creditors to provide the last periodic billing statement to a debt collector, we ask that the CFPB keep in mind that some creditors do not provide periodic billing statements or keep copies of them. It may, however, be appropriate for some creditors to provide a copy of the credit contract instead. The account history on some accounts might be very long and not necessarily useful. If the account history is needed, it should be limited. The limitation should take into account the different types of credit extension.

Credit applications should not need to be transferred in connection with a debt sale or placement for revolving accounts (e.g., credit card accounts), either. Such applications do not contain information regarding purchases, payments or balances. In fact, advances in technology have made paper applications increasingly obsolete. Account statements provide adequate information regarding purchases, payments and balance information.

Q3: The OCC recently released a statement of best practices in debt sales which recommends that national banks monitor debt buyers after sales are completed "to help control and limit legal and reputation risk." What monitoring or oversight of debt buyers do creditors currently undertake or should they undertake after debt sales are completed or after debts are placed with third parties for collection?

There seems to be some confusion over the distinction between placing a debt with a debt collector for collection (in which case the creditor retains an interest in the debt) and selling debts (in which case the creditor no longer has any interest in the debt). The purpose for selling the obligation is to remove it from the creditor's books or oversight. If creditors are required to monitor or oversee debt buyers, the continued involvement with the oversight of the sold asset could jeopardize the "true sale" nature of the asset because the seller retains too much control or risk with respect to the asset. If commercial parties cannot have confidence or certainty that a

²¹ CFPB Bulletin 2012-03 (issued April 13, 2012)

debt sale transaction will qualify as a “true sale,” creditors would effectively be prohibited from selling or transferring their assets. Debt sales are complex commercial transactions that should be negotiated and controlled by the commercial parties, not independent regulation. Additionally, such a rule is unnecessary and would be both impractical and unworkable.

Debt buyers are already required to follow the FDCPA and other applicable collection regulations. Furthermore, because creditors have an on-going relationship with their customers and the customers continue to associate the debt with the creditor, even after a debt is charged-off or sold, creditors have a strong incentive to select reputable purchasers that will comply with all laws.

With respect to debts that are placed with third-parties for collection, creditors currently follow CFPB Bulletin 2012-03, which states that the CFPB expects banks and nonbanks to oversee their business relationships with service providers in a manner that ensures compliance with federal consumer financial law.²²

Q9: Part III.A below solicits comment on whether the last periodic statement or billing statement provided by the original creditor or mortgage servicer should be provided to consumers in connection with the validation notice. If these documents are not required in connection with the validation notice, what would be the costs and benefits of debt buyers and third-party collectors obtaining or obtaining access to this documentation when the debt is sold or placed for collection?

Although this is a question posed to consumers, AFSA members do not believe that the last periodic statement or billing statement provided by the original creditor or mortgage servicer should be a document the seller of the obligation has to provide to the purchaser or debt collector. For one thing, not all creditors send periodic or billing statements; for example, many now provide such information through an on-line or web-based portal. For another, those that do often may cease sending periodic or billing statements after the account is charged-off. The last periodic statement or billing statement will not reflect any post-repossession or foreclosure financial activity. The last periodic statement or billing statement often does not provide the current status or balance on the account. The CFPB asks about the cost of obtaining this document. Because this document does not provide current information on an account in default, it is not maintained by most creditors and would be expensive to maintain on all accounts, where a creditor would not know which customers will cease paying all together. Maintaining each customer’s invoice would be cost prohibitive and of little value in explaining the balance to a debtor.

Q12: Would sharing documentation and information about debts through a centralized repository be useful and cost effective for industry participants? If repositories are used, what would be the costs and benefits of allowing consumers access to the documentation and information about their debts in the repository and of creating unique identifiers for each debt to assist in the process of tracking information related to a debt? What privacy and data security concerns would be raised by the use of data repositories and by permitting consumer

²² U.S. Bureau of Consumer Fin. Prot., *CFPB Bulletin 2012-03, Service Providers* (April 13, 2012), available at http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf.

and debt collector access? Would such concerns be mitigated by requiring that repositories meet certain privacy and security standards or register with the CFPB? What measures, if any, should the Bureau consider taking in proposed rules or otherwise to facilitate the debt collection industry's use of repositories? What rights, if any, should consumers have to see, dispute, and obtain correction of information in such a repository?

While a centralized repository may sound useful and cost effective, it is fraught with issues primarily related to privacy. Consumers and civil liberties groups would almost certainly object to the government gathering and storing data on their debts. The repository would have to be strictly monitored to limit access to the information on customers from outside sources or even from persons with access to the repository, but without a need to know the specifics of an account in the repository. Further, issues related to control and access would have to be addressed. With respect to debt sellers, once the debt is sold, the seller has little reason to want or need for access to the repository. However, unless it is clearly mandated that a seller has no further duty with respect to the downloaded data, once all information is downloaded to the repository, a seller may have to keep the account active or somehow open so as to update or augment the repository. Such a repository would be costly to build as it would have to interface with thousands of different computer data systems used by sellers and buyers.

The repository would basically function like a consumer reporting agency (“CRA”). Thus, the repository would need to be regulated like a CRA. Also, creditors furnishing the information to the repository would be regulated under the Fair Credit Reporting Act (“FCRA”).

Q14: What would be the costs and benefits of requiring notification to a consumer when a debt has been sold or placed with a third party for collection? If such a notice were required, what additional information should be provided to the consumer and what would be the costs and benefits of providing such additional information?

Often, debt is sold because the creditor has tried very hard to contact the customer, but could not do so. In a situation like this, it is unclear how the creditor could comply with the notice requirement if the creditor does not have, or know if it has, a valid address for a customer who has been unresponsive. The costs of requiring notification to a consumer when a debt has been sold or placed with a third-party for collection would be substantial. The costs would include the creation of the letter, retention of the letters, and sending the letter. The benefit to the customer of notifying the customer that the creditor has decided to send or place their account with a debt collection agency is unclear. If that would make it more likely that customers would make payment arrangements with the creditor, then such a notice may have a benefit that outweighs the cost. However, some creditors place the same account with different collection agencies meaning duplicate letters that may have little or no beneficial effect.

V. FDCPA Rulemaking

Because the FDCPA was written for debt collectors and expressly excludes creditors, the questions below are appropriate only for debt collectors. However, since the ANPR seeks comments and information from all relevant parties, we are responding to some of the questions to clarify our opposition to rules that may seek to apply the FDCPA to creditors.

For example, sending a debt validation notice is unnecessary, burdensome, and increases the creditor's costs. The purpose of such a notice from a debt collector is clear, as it informs the customer that a new entity or person is attempting to collect the debt and what the customer's rights are with respect to the communication. When an account is still being handled by the creditor, there is no need to provide a customer with a validation notice. The customer has had the information regarding the debt since inception. The customer's rights and obligations have not changed.

A. Validation Notices, Disputes, and Verification (Section 809 of the FDCPA)

Q16: Where the current owner of the debt is not the original creditor, should additional information about the current owner, such as the current owner's address, telephone number or other contact information, be disclosed in the validation notice or upon request? Would this information be helpful to consumers so that they may contact the current owner directly about the debt, or about the conduct of its third-party collector?

AFSA notes that the language of the question is unclear and does not take the indirect vehicle financing model (or other indirect credit models – such as furniture dealers), assignees, or securitizations into account. In indirect vehicle finance, the original creditor is the dealer, not the finance company. However, the customer knows the assignee finance company's address, telephone number and contact information, as that is the entity to whom the customer has been paying the obligation since its inception. In the case where this question is designed to elicit an answer when a creditor has placed an account with a debt collector, such debt collector is obligated by law to inform the consumer of “the name of the creditor to whom the debt is owed” within five days after the initial communication with the consumer.”²³ We do not believe that indirect finance companies, assignees, securitizers, or other assignees of current debt should be required to provide validation notices when collecting a debt.

Q17 – 30: Validation Notice

There is absolutely no justification for the CFPB to apply validation notice requirements to creditors. Doing so would unnecessarily create considerable expense for notice and document production. Validation notices do not make rational sense in ongoing credit relationships, particularly those involving both current and past due balances.

If, for example, a customer obtains a motor vehicle installment loan from a bank (or enters into a motor vehicle retail installment sales contract with a dealer who immediately assigns the contract to a sales finance company or bank) and makes payments for a period of time to the same creditor, it would not appear to serve any useful customer purpose for a creditor to: (1) incur the additional cost to send a notice informing the customer of a right to validate the debt before proceeding to collect an individual delinquent installment; nor (2) suspend repossession efforts and risk the loss of collateral pending a customer's request to validate the debt; nor (3) suspend collection efforts until documents that were previously provided to the customer as required by law in the ordinary course of the relationship are re-provided upon request.

²³ 15 U.S.C. §1692g(a)(2)

Moreover, unlike the situation for a debt collector, who has a set time when it must send such a notice, it is not clear when a creditor would have to send a notice. For example, would it be at five days because the creditor makes reminder calls or sends reminder letters, at 30 days because that is when it may furnish information to a consumer reporting agency of the delinquency, or at some later date when it charges off the account? Given that the relationship between the customer and the creditor is ongoing and continuous, a validation of debt notice would not provide useful or meaningful information. In the context of a creditor collecting an account it originated or obtained immediately after origination, validation serves no rational purpose justifying the additional cost and risk. The attendant delays in collection will increase risks and costs to creditors, which will necessarily be passed on the customers. Moreover, creditors are subject to other laws such as the Fair Credit Billing Act (“FCBA”), the Uniform Commercial Code and the Truth in Lending Act, which give customers specific rights and create specific obligations with respect to account documentation. Customer’s requests are more than adequately handled by those laws.

When California imposed a 15 USCA §1692g validation of debt 30 day notice and Mini-Miranda requirement on those excluded from the FDPCA “debt collector” definition in 2000, the notices had the opposite effect and caused significant customer dissatisfaction and confusion. The law was changed a year later. Imposing these, as well as other FDCPA requirements, on creditors will very likely lead to significant customer dissatisfaction and confusion and undermine the customer relationship. Validation notices sent by creditors can come across as very aggressive and inappropriate for an existing customer/creditor relationship.

If the CFPB does intend to create validation notice requirements for creditors, which we stress is unnecessary and would only increase customer confusion, we have a few suggestions. First, the CFPB should test proposed notices with consumers. Second, although periodic statements and credit contracts provide adequate information for a customer to understand the debt, if more information is deemed necessary on a validation notice, the CFPB’s proposed *Alternative 2*²⁴ would be less burdensome than the other alternatives. Third, if the CFPB establishes a requirement to standardize debt validation in a language other than English, the requirement should be based on the language of the credit agreement between the consumer and the creditor.

Q31 – 44: Disputes

Under section 809(b) of the FDCPA, after receiving a customer’s written dispute, a debt collector may either cease collection efforts without investigation or may investigate the dispute with the intent of providing verification to the customer. We do not think it is necessary for the CFPB to expand this section of the FDCPA to cover creditors. When creditors are collecting a debt from their customers in their own name, the customers do not have the problems that consumers face with debt collectors.²⁵ First of all, the creditor’s customers are not confused over

²⁴ ANPR, p. 35. “Alternative 2: (1) the amount of debt at the date of charge-off or default; (2) total of interest added after the date of charge-off or default; (3) total of all fees or other charges added or credits posted after the date of charge-off or default; and (4) any payments or credits received after the date of charge-off or default.”

²⁵ “Creditors collecting debts in their own name” also includes other transferees collecting debt in their name, i.e., securitization. A creditor who continues to collect in its name after transferring a receivable for purposes of

who is collecting the debt or why it is owned. Additionally, creditors have information regarding the obligation and its payment to correct or address issues the customers may complain about.

Moreover, we believe that expanding section 809(b) of the FDCPA could lead to non-meritorious disputes. (Such dispute would be one that does not allege the debt was not entered into by the person or one that does not provide any basis for a claim that it is not owed or how much is owed.) Although creditors are generally exempt from the FDCPA, they do have to follow the FCRA and some may have to adhere to the FCBA, both of which have processes for responding to disputes. AFSA members receive a plethora of so-called disputes. Many of these “disputes” are without merit and/or unfounded complaints. They are form letters questioning the debt that is reporting on the person’s credit report, with no explanation of the issue that is being disputed. Some are submitted by unscrupulous credit repair organizations and debt settlement companies. Creditors routinely receive form letters that use the words “dispute the debt” and request all supporting documentation, but provide no basis as to the nature of the dispute or why the debt is disputed. Often disputes are either unfounded with the customer saying the debt should not be on the customer’s credit report without providing any explanation of a dispute. Many of the letters customers submit are found on-line or from credit repair organizations. In some cases, customers simply request information. (See Appendix for sample letters.) We draw your attention to the fact that the federal financial agencies estimated in the Accuracy and Integrity Rule that the percentage of frivolous or irrelevant disputes could range from 25 percent to 94 percent of all disputes.²⁶ AFSA members work hard to respond to customers’ grievances because customer satisfaction is an important part of the overall business strategy. However, AFSA members have also seen an increase in the time, staff, and money required to answer dispute letters, many of which do not provide any clear basis as to why the customer does not owe the debt or does not owe what is claimed.

It also appears that the number of disputes without merit has been exacerbated by the action letters that the CFPB published for consumers to use when corresponding with debt collectors. Although the directions given for use of these letters are intended to inform consumers when and how to use them, AFSA members are receiving a steady stream of these letters, and the letters are not always used in the appropriate circumstances. The CFPB’s website and instructions should do more to encourage and require customers to include copies of documents that support their position and clearly identify each item that is disputed by stating the facts and explaining why the debt or amount owed is disputed.

As stated above, the CFPB does not need to issue additional rules for creditors regarding disputes over debt, as they would be burdensome and overbearing. If the CFPB imposes such rules, the CFPB should likewise impose reasonable and appropriate obligations on the customer submitting the dispute to the creditor, including specific requirements for the dispute and locations to which such disputes should be made. Standards should also excuse creditors from responding where the submitted information clearly does not comply with the reasonable dispute requirements. The FCRA requires that consumers seeking to dispute the accuracy of information provide a dispute notice that: (1) identifies the specific information that is being disputed, (2) explains the basis for

facilitating an asset-backed securitization transaction and who has retained servicing should not be defined as a “debt collector,” but should still be defined as a “creditor.”

²⁶ 74 FR 31484

the dispute, and (3) includes all supporting documentation required by the furnisher to substantiate the bases of the dispute.²⁷ If the consumer does not provide this information, the dispute is frivolous. The dispute is also frivolous if it is a duplicate.²⁸ Also, under the FCRA, credit disputes do not have to be responded to if they are from certain credit repair organizations.²⁹ We believe that this would cut down on frivolous disputes that still take time to evaluate, leaving more time for creditors to quickly respond to valid disputes.

Q45 – 53: Verification of Disputed Debts

Verification of debt requirements are not appropriate for creditors or persons who acquire accounts prior to default because such persons, unlike debt collectors and debt buyers, have an on-going relationship with the customer and operate with more information regarding the debtors and the accounts. Thus, the problems intended to be addressed by the validation requirements (*i.e.*, attempting to collect debts from the wrong customer for the wrong amount of money) are generally only issues that arise with respect to debt collectors.

B. Debt Collection Communications (Sections 804 and 805 of the FDCPA)

As with the previous section, these questions are inapplicable to creditors, although appropriate for debt collectors. In fact, attempting to respond to some of these questions demonstrates why it would be unwise to expand the FDCPA-type regulations to creditors.

Also, we emphasize that it is very important for creditors to be able to contact their customers. If too many restrictions are placed on creditors, and creditors cannot contact their customers, the number of debt collection lawsuits will increase. We do not believe that the CFPB would view this outcome favorably. Creditors try to contact their customers to collect debt without having to resort to a lawsuit.

Q54: In addition to telephone and mail, what technologies, if any, do debt collectors currently use on a regular basis to communicate or transact business with consumers? For which technologies would it be useful for the Bureau to clarify the application of the FDCPA or laws regarding unfair, deceptive, or abusive acts or practices? What are the potential efficiencies or cost savings to collectors of using certain technologies, such as email or text messaging? What potential privacy, security, or other risks of harm to consumers may arise from those technologies and how significant are those harms? Could regulations prevent or mitigate those harms? Should consumers also be able to communicate with and respond to collectors through such technologies, including to exercise their rights under the FDCPA and particularly when a collector uses the same technology for outgoing communications to the consumer? What would be the potential costs and benefits of such regulations?

We cannot answer what technologies debt collectors use, what the potential efficiencies or costs savings there are to using certain technologies, or what risks of harm may arise from these technologies. However, we suggest that the CFPB mitigate issues regarding disclosures in new

²⁷ 15 USCA 1681s-2(a)(8)(D)

²⁸ 5 USCA 1681s-2(a)(8)(F)

²⁹ 15 USCA 1681s-2(a)(8)(G)

technologies, such as SMS/email. Newer technologies often have space/character restrictions that limit the ability to provide disclosures. A potential solution would be to allow the use of links in the body of the message being sent that would take a consumer to a site that provides additional disclosure. This would allow the use of newer technologies that benefit the consumer while meeting the disclosure requirement. The CFPB should facilitate the use of newer technologies in communication.

Q57: FDCPA section 807(11) declares it to be a false, deceptive, or misleading representation for collectors to fail to disclose that a communication is from a debt collector. This section also requires in the collector's initial communication what is often called a "mini-Miranda" warning, in which the collectors state that they are attempting to collect a debt and any information obtained will be used for that purpose. Standard industry practice is for third-party debt collectors to provide the mini-Miranda warning during every collection call. What are the costs and benefits of such collectors including the mini-Miranda disclosure when they send communications via social media?

There are some state laws applicable to creditors that require creditors to provide "mini-Miranda" like warnings either in written and/or verbal communication. However, in the states that have these provisions, there are also not the same FDCPA requirements regarding meaningful disclosure, which as some courts have found, means identifying the person calling as a debt collector. As we know, there are issues with caller identification when leaving messages. Where state law provides such a requirement, the CFPB should look to such laws to limit the need or requirements for a creditor to give a "mini-Miranda" warning.

Unlike debt collectors, communications by creditors to their customers may not be for the purpose of debt collection. Any mini-Miranda rule for creditors would have to specify which communications require the warning and which do not. The rule would also have to address what the creditor should do if a call for other than collection purposes evolves into a discussion of a delinquency or a potential delinquency.

Q63: Does sufficiently reliable technology exist to allow collectors to screen to determine whether a given phone number is a landline versus a mobile phone? If so, should collectors conduct such screening before relying on an area code to determine a consumer's time zone? What would be the costs and benefits of requiring such screening? Should collectors be allowed to rely on information provided by consumers at the time they applied for credit, such as when a consumer provides a phone number identified as a "home" number or a "mobile" phone number on an initial credit application without screening the area code?

Technology does exist to assist creditors in determining whether a given phone number is a landline versus a mobile phone. However, the technology is not completely effective. Not all creditors have such technology and the cost of such technology is often prohibitively high. Mandating that all creditors obtain and use such technology would force many smaller (and some larger) credit suppliers out of the marketplace, further decreasing consumer's access to credit. Thus, creditors should not have to conduct screening before relying on an area code to determine a customer's time zone. Creditors should be allowed to rely on information provided

by their customers at the time the customers applied for credit. Customers are in the best position to know where they are and how they would like to be contacted.

If a customer provides a telephone number to a creditor, whether he designates it as a cell phone or not, it would seem to be reasonable for the creditor to believe that the customer consents to receive calls at that number.

Q64: Should collectors assume that the consumer's mailing address on file with the collector indicates the consumer's local time zone? If the local time zone for the consumer's mailing address and for the area code of the consumer's landline or mobile telephone number conflict, should collectors be prohibited from communicating during any inconvenient hours at any of the potential locations, or should one type of information (e.g., the home address) prevail for determining the consumer's assumed local time zone?

Creditors should be permitted to assume that the customer's mailing address on file with the creditor indicates the customer's local time zone. If the local time zone for the customer's mailing address and for the area code of the customer's landline or mobile telephone number conflict, the customer's home address should control for determining the customer's assumed local time zone. As time goes on, it is likely that a telephone number will become an unreliable indicator of the residence of the customer, as more customers use cell phones that can be ported from one area to another.

Q66: Should a limitation on usual times for communications apply to those sent via email, text message, or other new media? Should it matter whether the consumer initiates contact with the collector via that media? Is there a means of reliably determining when an electronic message is received by the consumer? Are there data on how frequently consumers receive audio alerts when either emails or text messages are delivered? Are there data showing how many consumers disable audio alerts on their devices when they wish not to be disturbed?

There should not be a limitation on usual times for communications sent via email. Email is less intrusive than a phone call and can be accessed by the customer at the customer's discretion or when convenient for the customer. Even customers receiving email messages on a smart phone can turn off any audio notification when it would be inconvenient to receive alerts. We understand that the same may not be the case for text messages. Restrictions on text messages could be appropriate.

Q68: Especially with the advent and widespread adoption of mobile phones, consumers often receive calls at places other than at home or at work. Under what circumstance do collectors know, or should know, that the consumer is at one of the types of places listed below? What would be the costs and benefits of specifying that such locations are unusual or inconvenient, assuming the debt collector knows or should know the location of the consumer at the time of the communication?

- Hospitals, emergency rooms, hospices, or other places of treatment of serious medical conditions
- Churches, synagogues, mosques, temples, or other places of worship

- *Funeral homes, cemeteries, military cemeteries, or other places of burial or grieving*
- *Courts, prisons, jails, detention centers, or other facilities used by the criminal justice system*
- *Military combat zones or qualified hazardous duty postings*
- *Daycare centers*

As a practical matter, the CFPB would have to establish how a creditor would know or should know that the customer is at any one of the locations when a call is placed. Creditors would also have to know that the call is to a cell phone. Assuming the CFPB could determine whether such knowledge exists, calls would likely not be placed, as the risk of being wrong would subject the creditor to potential litigation in the event it calls the phone and the customer indicates he/she is at such a location, even if they are not and/or they are but that information was not given to the creditor. It is true that some consumers use “apps” to make their location public information. However, information from those apps could be incorrect. Even if the information is correct, consumers would likely not want a creditor tracking them to see if they are at a hospital, a funeral, or in jail, for example.

Q71: Do employers typically distinguish, in their policies regarding employee contacts at work, between collection communications and other personal communications? Are employers' policies concerning receipt of communications usually company-wide, specific to certain job types, or specific to certain individuals?

We suspect that of the 350 or so members of AFSA who are employers, none have identical policies dealing with receipt of personal calls at work. In fact, the policy within a company might be different for different employees. A policy might be different for an employee working in a call center than for someone in management. If that is the case, then how could a creditor begin to know what the employers of all their customers may allow or not allow?

However, if a customer advises a creditor that the customer's employer has asked that the employee not receive personal calls or calls from creditors while the customer is at work, the creditor respectfully honors that request.

Q72: Collectors may have many accounts with consumers employed by the same large employer, such as a national chain store, and this may enable collectors to become familiar with the employers' policies regarding receipt of personal or collection communications in the workplace. Can collectors reliably determine consumers' employers and their policies with regard to receiving communications at work? If so, what would be the costs and benefits of requiring that collectors cease communications at work for all consumers working for a certain employer if collectors are informed by one (or more) consumer(s) that the employer does not permit personal communications for any of its employees overall, or at a particular location or job type (e.g., retail premises employers)? What would be the costs and benefits of requiring that collectors cease communication at work if they learn of the employer's policy through other means, such as the policy being posted on the employer's Web site?

Simply because one local store of a chain may have a certain policy, it does not automatically mean that the same policy applies in every store and to every employee in all states. Creditors

do not know what status their customer has with her employer and whether some employees may have benefits others do not. The costs of creating programs that would mine for employer name and then cross check when one employee says her employer does not permit contact at work, would be substantial. Further, some consumers would prefer to receive contact at the place of employment and such a program would subvert that request. Lastly, some companies require that creditors pay to receive information about company policies. Having to pay for that information from hundreds or thousands of companies could be prohibitively expensive.

Q73: The FDCPA's restriction on contacting consumers represented by attorneys does not apply if "the attorney fails to respond within a reasonable period of time." How do collectors typically calculate a "reasonable period of time" for this purpose, and does the answer vary depending on particular circumstances?

As discussed in other places in this letter, applying the FDCPA to creditors is unnecessary and the CFPB lacks the authority to issue such a rule. If the CFPB decides to promulgate a rule to apply the FDCPA to creditors, despite its lack of authority, there are provisions that we suggest the CFPB include in its rule. One such provision is what a "reasonable period of time" is. Attorneys failing to respond within a reasonable period of time is a common problem for creditors. Creditors often get letters asking them to contact the customer's attorney, only to have that attorney fail to respond to any communication. A standard of contacting the debtor after 10 days of the customer's attorney failing to respond to any request for return contact is more than sufficient. The CFPB could also address the problem that creditors face when customers ask the creditor to contact the customer's attorney, but do not tell the creditor or debt collector who the attorney is or provide any contact information for the attorney.

Although we do not believe a rule is necessary, nor that the CFPB has the authority to issue a rule, if the CFPB does issue a rule, it could state that the minimum amount of information required to constitute notification that a person is represented is the name and phone number. The rule could also state what happens if the information is incorrect and specify how the notification should be made.

Creditors are happy to work with attorneys who are actually representing the customers and trying to help the customers. As the CFPB is aware, some credit repair organizations are scamming consumers. AFSA members would like to help the CFPB help consumers and stop these scam artists from taking advantage of our customers.

Q80: Do owners of debts or collectors inform executors and administrators when collecting on debt that was disputed by the decedent prior to the decedent's death?

A creditor would not necessarily inform the executor, administrator, or person with authority to pay the decedent's debts of a dispute, but, in most cases, if the decedent had disputed the debt prior to the decedent's death, the dispute would have been researched and addressed. Notwithstanding, the third-party would not be able to substantiate the deceased customer's dispute so it is unclear what benefit there would be to telling this third-party especially, if the dispute was not specific.

Q83: What would be the costs and benefits of allowing the following approaches to leaving recorded messages?

- *When leaving recorded messages on certain media where there is a plausible risk of third-party disclosure, the collector leaves a message that identifies the consumer by name but does not reference the debt and does not state the mini-Miranda warning.*
- *The collector leaves a recorded message identifying the consumer by name and referring the consumer to a Web site that provides the mini-Miranda warning after verifying the consumer's identity.*
- *The collector leaves a recorded message identifying the consumer by name, but only on a system that identifies (e.g., via an outgoing greeting) the debtor by first and last name and does not identify any other persons.*
- *The collector leaves a recorded message that identifies the consumer by name and includes the mini-Miranda warning but implements safeguards to try to prevent third parties from listening.*
- *The collector leaves a recorded message that indicates the call is from a debt collector but does not identify the consumer by name.*
- *The collector leaves a message that does not contain the mini-Miranda warning, but only after the consumer consents to receiving voice messages without the mini-Miranda warning.*

Again, although we strenuously object to the CFPB issuing a debt collection rule for creditors, if the CFPB does decide to promulgate a rule, clarification in this area would be beneficial. If the CFPB issues guidance or a rule, we ask that the Bureau incorporate the privacy requirements imposed by the Gramm-Leach-Bliley Act. The CFPB should provide guidance on providing meaningful disclosures via a left message that also takes into account third-party disclosure safeguards.

Q86: Should debt collectors be prohibited from blocking or altering the telephone number or identification information transmitted when making a telephone call, for example by blocking the name of the company or the caller's phone number or by changing the phone number to a local area code? What technological issues might complicate or ease compliance with regulation regarding caller-ID technologies?

While we make no comment on rules related to debt collectors, creditors have no incentive to try to hide their identity from their customers. Creditors want to call their customers and make it easy for their customers to call them back. However, if the CFPB did issue a rule in this area that applied to creditors, we ask that the CFPB be cautious in how the rule is written. The number of the debt collector's local facility should be allowed to be used even if a particular call was not originated from that local facility.

Q87: Should the email provider's privacy policy affect whether collectors send emails to that account? For instance, where a collector knows or should know that an employer reserves the right to access emails sent to its employees, should the collector be prohibited from or limited in its ability to email a consumer at the employer-provided email address? Should a collector be prohibited from using an employer-provided email address if a collector is unsure whether an

employer or other third party has access to email sent to a consumer? How difficult is it for collectors to discern whether an email address belongs to an employer?

While it may be that an email provider may have a privacy policy, if the consumer provides an email address, it is similar to the Federal Communication Commission's ("FCC") belief that the consumer gave at least implicit acquiescence to be contacted at that email address. A creditor has no way to know if the email belongs to an "employer" nor whether the employer has a privacy policy. Not all email addresses of an employer include the employer name.

Q89: What would be the costs and benefits of allowing consumers to limit the media through which collectors communicate with them? What would be the costs and benefits of allowing consumers to specify the times or locations that are convenient for collectors to contact them? What would be the costs and benefits of allowing consumers to provide notice orally or in writing to collectors of their preferred means or time of contact? Should there be limits or exceptions to a consumer's ability to restrict the media, time, or location of debt collection communications? Should consumers also be allowed to restrict the frequency of communications from debt collectors?

Creditors contact customers for a variety of reasons. One of those reasons may be to follow up on delinquent accounts so that creditors and customers may work together to resolve delinquencies. This is a benefit to customers in the ongoing relationship between creditors and their customers. Creditors may certainly agree by internal policy to accommodate the contact preferences of customers, but not agreeing to these requests is not unfair, abusive or deceptive. Requiring creditors to tailor the manner, location, and frequency of contact for each customer's account would be costly for creditors because those limitations would require expensive manual processes and systems modifications. The benefits to customers would be limited for two reasons. First, the restrictions will not be necessary or benefit the customers who already maintain communications with creditors. Second, for those customers who wish to avoid contact by creditors, if costly restrictions are placed on creditors, creditors may cease attempts to make meaningful contact to work through delinquency issues with those customers. This could easily result in an increase in defaulted accounts. Lack of contact with customers will cause creditors to conclude their accounts with the customers and, as the delinquencies grows, seek remedies sooner than if communications had been maintained. This already occurs where creditors abide by customers' requests of limited contact. Probable impacts of such contact restrictions are increased cost of credit to consumers and creditors limiting the debt they underwrite to only the most credit-worthy applicants.

Q91: Some jurisdictions require that collectors provide consumers with contact information. At least one jurisdiction has required that collectors provide not only contact information, but also a means of contacting the collector that will be answered by a natural person within a certain time period. How would the costs and benefits of providing contact information compare to those associated with a natural person answering calls within a certain period of time?

Creditors have on-going relationships with their customers. Thus, creditors provide their customers with contact information. Creditors want to talk to their customers and try hard to be available to talk to them. However, depending on how a rule is written, the costs of having a

natural person answer a call within a stated period of time could be substantial, as it will require dedicated employees to be available to take calls during such period of time based on an assumption that consumers would call at that period of time.

VI. UDAAP Rulemaking

Q93: Should the Bureau include in proposed rules prohibitions on first-party debt collectors engaging in the same conduct that such rules would bar as abusive conduct by third-party debt collectors? What considerations, information, or data support or do not support the conclusion that this conduct is “abusive” under the Dodd-Frank Act? Does information or data support or not support the conclusion that this conduct is “unfair” or “deceptive” conduct under the Dodd-Frank Act?

There is no basis for regulation of creditors in this area. As Congress recognized when it enacted the FDCPA, creditors are restrained by the incentive to protect their goodwill when collecting past due accounts. The law passed by Congress has not been changed and the CFPB has produced no data to show that the law should be changed. Additionally, creditors are regulated at the state level in many cases, and the customer has individual tort claim relief if the activity rises to that level.

Rep. Wylie, one of the co-sponsors of the FDCPA legislation said, “Last year we put in an amendment – I think maybe I offered the amendment – which, simply stated, said that the Federal Trade Commission would not have rulemaking power over regulatory authority beyond that which was prescribed in the regulation. And I personally think this is a move in the right direction, because I think sometimes legislative intent might be a little fuzzy or cloudy, and one of the regulatory agencies could get carried away trying to carry out congressional intent, RESPA being a perfect example of that. So we prescribed the standards by which the Federal Trade Commission would be governed and said, if you need additional information or want additional guidance as to what we meant, please come back to Congress and we will tell you.”³⁰

It must be noted that the definition of “abuse” in Section 806 of the FDCPA is not the same as the definition of “abusive” in the Dodd-Frank Act. Since the CFPB’s authority to impose rules on a creditor comes from the Dodd-Frank Act, the CFPB does not have the authority to change the definition of “abuse” in the FDCPA in an attempt to impose FDCPA-type regulations on creditors.

The two definitions address totally different forms of conduct. One can no longer simply say “abusive” because “abuse” means one thing under the FDCPA and “abusive” means something entirely different under the Dodd-Frank Act. Now, if one wants to use the word “abusive” one must specify if she is intending to say “FDCPA abuse” as opposed to “Dodd-Frank Act abusive.” As a result of this mangling of the language, is impossible to respond to most of Question 93.

³⁰ U.S. House. Subcommittee on Consumer Affairs of the Committee on Banking, Finance and Urban Affairs. H.R. 29, A Bill to Amend the Consumer Credit Protection Act To Prohibit Abusive Practices by Debt Collectors. March 9, 1977.

Section 1031(d) of the Dodd-Frank Act defines “abusive” as follows:

“1031(d) **ABUSIVE**.—The Bureau shall have no authority under this section to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice—

(1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

(2) takes unreasonable advantage of—

(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

(B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or

(C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

The Dodd-Frank Act definition of “abusive” relates to a consumer’s “understanding” of the material risks, costs, or conditions of a product or service. Subsections (d)(2)(B) and (d)(2)(C) of the Dodd-Frank Act seem to parallel the current definitions of “unfair” and “deceptive.”

Section 806 of the FDCPA states that a debt collector may not engage in any conduct the natural consequences of which is to harass, oppress or abuse any person in connection with the collection of a debt. It then provides examples of conduct that violate this general principle. Of importance is that none of the practices that if engaged in by a creditor would affect a consumer’s understanding. Instead, section 806 of the FDCPA prohibits:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 603(f) or 604(3)1 of the FDCPA.

- (4) The advertisement for sale of any debt to coerce payment of the debt.
- (5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- (6) Except as provided in section 804, the placement of telephone calls without meaningful disclosure of the caller's identity.

None of these FDCPA prohibitions “materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service” nor do they “take unreasonable advantage of— (A) a lack of understanding on the part of the consumer ... (B) the inability of the consumer to protect the interests of the consumer ... or, (C) the reasonable reliance by the consumer on a covered person” The acts banned by the FDCPA in Section 806 may be inconvenient or even harmful for the consumer, but they do not fit the definition of “abusive” under the Dodd-Frank Act. Since the authority of the CFPB over a creditor must rely on the Dodd-Frank Act definition of abuse, applying the FDCPA to a creditor would be contrary to legislative mandate.

Please note that in responding to this part, creditors are not arguing that they should be allowed to engage in these types of practices. Creditors have absolutely no motivation to engage in these practices and strong motivation to avoid practices that harm their customers or that would place the creditors in a bad light.

Q95-97: Repeat Phone Calls

As noted above, AFSA members are not advocating that creditors should be permitted to engage in the kinds of practices addressed in section 806. This provision of the FDCPA applies only if the practice is intended to annoy, abuse or harass. AFSA members do not cause a telephone to ring or engage one of their customers “in a telephone conversation repeatedly or continuously with intent to annoy, abuse or harass any person at the called number.” Creditors have a desire to retain their good names, and that is achieved by respecting their customers so as to continue their relationships with them. For this reason, AFSA members see no need for the CFPB to issue regulations regarding this practice on creditors. If the CFPB does propose rules for creditors specifying what frequency or pattern of phone calls constitute annoyance, abuse, or harassment, we ask that the CFPB provide evidence as to why those rules are necessary.

AFSA members may make several phone calls over a period of time to attempt to help, not harass, customers. Creditors want to talk to their customers to see what is going on to cause issues in payment, and to offer assistance where needed and when available. In the interest of making sure the customer knows that the creditor may be able to help, speaking to the customer is essential. Regular contact with a customer can help the customer avoid late payments or a default. Moreover, creditors may contact the customer for reasons other than collecting a debt.

They may be offering a special, reminding the customer that a lease will be up soon, issuing a fraud alert, etc. This is distinguishable from debt collectors, who only have one reason to contact the customer.

If creditors are restricted in how often they can contact their customers, they may not be able to reach a customer to advise the customer the status of the account or the potential fraud or identity theft risks. Without a conversation with the customer, a creditor will not know the customer's intentions and may be required to initiate foreclosure, repossession, a collection lawsuit, or other remedies because of the lack of contact with the customer.

As the CFPB notes, at least one state has codified bright-line prohibitions on repeated communications. Massachusetts allows only two communications via phone — whether phone calls, texts, or audio recordings — in any seven-day period. The prohibition is more strict for phone calls to a work phone, allowing only two in any 30-day period. We do not yet have statistical data that the more strict rules affect delinquencies differently in Massachusetts. However, preliminary feedback from AFSA members indicates that delinquencies have increased in Massachusetts since the rule went into effect. We suggest that the CFPB study the effect of the Massachusetts rules on consumers before considering whether to impose them nationwide. If the CFPB proposes a bright-line standard for creditors on contacting the customer via phone communication, which is unnecessary and would hurt the ability of a creditor to contact the customer, a reasonable means to contact the customer needs to be permitted.

Telephone communications are meant to retain and often save the customer/creditor relationship. Through these telephone conversations, missed payments may be identified, programs based on need are offered, and customer relationships are maintained. Attempting to reach the customer at a time that is appropriate or convenient to him is driven by a multiple attempt per day strategy. As the CFPB's "Debt Collector Response Template" letter points out, "Stopping them from contacting you does not cancel the debt. You still might be sued, or have debt reported to a credit bureau."³¹ If creditors are unable to contact the customer, they are left to seek other remedies that the customer may prefer to avoid, such as a lawsuit or repossession. Tighter restrictions on communications with customers may force creditors to more quickly take extreme measures, such as foreclosure, repossession, or filing lawsuits to collect debts.

Q101: Do collectors falsely state or imply that the Servicemembers Civil Relief Act does not apply to debts? What would be the costs and benefits of requiring collectors to disclose information about rights related to debts subject to the Servicemembers Civil Relief Act to a consumer, consumer's spouse, or dependents? What debt collection information related to the Servicemembers Civil Relief Act should be communicated?

Creditors recognize the sacrifice that servicemembers make to ensure the security and safety of our country. Creditors have also made strides to improve their overall efforts in ensuring that servicemembers receive the benefits the Servicemembers Civil Relief Act ("SCRA") provides. Servicemembers already receive notification of their rights from the government. The SCRA specifies that, "The Secretary concerned shall ensure that notice of the benefits accorded by this

³¹ <http://www.consumerfinance.gov/askcfpb/1695/ive-been-contacted-debt-collector-and-need-help-responding-how-do-i-reply.html>

Act ... is provided in writing to persons in military service and to persons entering military service.”³² Thus, servicemembers already get the most reliable and current information from the government.

To require creditors to provide a separate disclosure would likely only lead to confusion, as the messages may not be consistent given the multiple sources. Furthermore, giving such disclosure of rights could be construed as giving legal advice, since the SCRA does not require creditors to do so.

Q108: Which methods of payment do consumers use to pay debts? How frequently do consumers use each type of payment method? In particular, how often do consumers pay collectors through electronic payment systems?

Customers are afforded a wide range of means to make payments on a timely basis. Customers have the option, in many cases, of choosing the method that is best for them. Companies offer a wide variety of payment mechanisms. For example, customers might pay on-line, by telephone, through Western Union, or by the standard personal check. Customers use the methods that work best for them. Creditors follow the laws relating to the choices that are provided to customers. Regulating one means of payment over another may have an adverse effect on consumers in that consumers’ access to the method of payment may be restricted, thereby preventing consumers from using their preferred means of payment who may not find the regulated means to be appropriate or practical for them.

Q113: Should the Bureau include in proposed rules prohibitions on first-party debt collectors engaging in the same conduct that such rules would bar as unfair or unconscionable by third-party debt collectors? What information or data support or do not support the conclusion that this conduct is “unfair” under the Dodd-Frank Act? What information or data support or do not support the conclusion that this conduct is “abusive” or “deceptive” conduct under the Dodd-Frank Act?

The definition of conduct that is “unfair” under the Dodd-Frank Act is not the same as the definition of conduct that is “unfair” under the FDCPA. (There is no mention of practices that are “unconscionable” in the Dodd-Frank Act.) If the CFPB wanted to declare the practices in section 808 of the FDCPA “unfair” under the Dodd-Frank Act, the CFPB should carefully examine each of the eight practices listed and compare them with the definition of “unfair” in the Dodd-Frank Act. In other words, do any of the eight practices listed in section 808 of the FDCPA: (1) cause or are likely to cause substantial injury to consumers; (2) when the injury is not reasonably avoidable by consumers; and (3) when the injury is not outweighed by countervailing benefits to consumers or competition?³³ AFSA does not believe that the practices deemed unfair or unconscionable under the FDCPA meet the definition of “unfair” by the Dodd-Frank Act.

The small number of complaints against creditors compared to the number of accounts that are open at any one time highly suggests that creditors are not treating their customers unfairly or

³² 50 U.S.C. § 515

³³ 12 U.S.C. §§ 5531, 5536

unconscionably, whether under the FDCPA definition or the Dodd-Frank Act definition. This also suggests that creditors are not engaging in deceptive practices related to collection of the amounts owed by their customers.

Q117: Should proposed rules presume that consumers incur charges for calls and text messages made to their mobile phones? Should the failure to use free-to-end-user services when using technologies that would otherwise impose costs on the consumer be prohibited? What would be the costs and challenges for collectors of implementing such requirements?

The FDCPA prohibits causing charges to be made to any person for communications by concealment of the true purpose of the communication and includes collect telephone calls. It is unclear if the point of this question is to address whether charges imposed for receipt of cell phone calls or text messages is a type of charge the CFPB wants to address. There is a cost to using “free-to-end” technology which may be imposed even if the customer is not charged for the text message. Furthermore, such charges are not concealing the true purpose of the communication. In the case of collect calls, the recipient of the call would have to accept the charges before taking the call, only to find that it was from a debt collector. In the case of cell phone calls or text messages, if the purpose of the contact is to collect the debt, that cannot be concealed by virtue of the method of making the contact.

If the goal of the CFPB is to address Telephone Consumer Protection Act (“TCPA”) issues, that should be left to the FCC, which is the regulatory agency with authority to determine applicable rules regarding communications involving cell phone. Notwithstanding, creditors are sensitive to their customers’ communication preferences.

Q118: Should proposed rules require collectors to obtain consent before contacting consumers using a medium that might result in charges to the consumer, such as text messaging or mobile calls? If so, what sort of consent should be required and how should collectors be required to obtain it?

As in the answer to the previous question, TCPA issues should be left to the FCC.

Q121: Should proposed rules require that payments be applied according to specific standards in the absence of an express consumer request or require a collector to identify the manner in which a payment will be applied? Should proposed rules require that the payment be applied on or as of the date received or at some other time?

The CFPB should not dictate how a payment will be applied. The contracts creditors accept indicate how payments will be applied, and in some cases, laws (the Uniform Consumer Credit Code and Regulation Z, for example) also provide the order of application of a payment. Since this is a matter of contract, a rule could be contrary to such contractual or statutory provisions.

Q124: Should the information or documentation substantiating a claim depend upon the type of debt to which the claim relates (e.g. mortgage, credit card, auto, medical)? Is it more costly or beneficial to substantiate claims regarding certain types of debts than others?

We do not believe that there should be any substantiation requirement placed on creditors because, as stated above, creditors already have existing relationships and contracts with their customers.

Q130: Who provides substantial assistance to debt collectors? Is the assistance provided to first-party collectors the same as the assistance provided to third-party collectors? What measure should be used to assess whether such services provided are material to the collection of debts?

Creditors use a number of sources, too numerous and varied by company to list, to help service accounts. Vendors can include companies that process payments (e.g., national banks), companies that handle imposing liens and releasing such liens upon payment in full, companies that create and mail letters, etc. However, due to the recent requirements by the CFPB in vendor management, creditors have taken a much more proactive role in overseeing these vendor relationships. Any of these types of vendors may have tangential effect on collecting a debt, e.g., banks, because they accept and post payments, title vendors which determine the need to release a lien upon payment in full, and letter vendors which send collection letters as well as other forms of communications.

VII. Time-Barred Debts

Q133: Should the Bureau include in proposed rules a requirement that debt collectors disclose when a debt is time barred and that the debt collector cannot lawfully sue to collect such a debt? Should the disclosure be made in the validation notice? Should it be made at other times and in other contexts? Should such a rule be limited to situations in which the collector knows or should have known that the debt is time barred? Is there another standard that the Bureau should consider?

The CFPB should not include in proposed rules a requirement that creditors disclose when a debt is time-barred and that creditors cannot lawfully sue to collect such a debt. The problem with this entire discussion is the failure to recognize the difference between a statute of limitation which may, depending on facts unique to each claim and each debtor, constitute a defense in an action to collect a debt and a statute of repose which, simply by the passage of time, extinguishes a debt. While it may be inappropriate or, perhaps, even illegal to sue on or attempt to collect a debt after the passage of the period stated in the applicable statute of repose, it is not, and should not be, improper or illegal to attempt to collect a debt that may be subject to a statute of limitation defense.

Providing these disclosures would likely be very complicated, mainly because it can be difficult to figure out when the statute of limitations is up. Statute of limitations laws vary state by state. Additionally, the limitations may have been tolled for any number of reasons. There are also questions about which states' statute of limitations laws to follow if a borrower took out a loan in one state, but now resides in another. The average consumer might not understand disclosures that take all of these variables into account.

Q147: Some States have adopted requirements for the information that must be set forth in debt collection complaints, as well as for documents (e.g., a copy of the credit contract) that must be attached to them. Other States have set forth specific requirements for the information that collectors must file in support of motions for default judgment, including adopting standards for the information that must be included in or attached to supporting affidavits and the reliability of the information in the affidavits. Should the Bureau incorporate into proposed rules any requirements to complement or avoid interfering with States' pleading, motions, and supporting documentation requirements?

State rules of civil procedure should be left up to the states. Any additional rules implemented by the CFPB could lead to uncertainty regarding these procedures. The CFPB does not have the legal authority to revise or supplement state requirements.

Q160: The Nationwide Mortgage Licensing System and Registry ("NMLSR"), which was originally used by State regulators for the registry of mortgage loan originators, is increasingly being used as a broader licensing platform, including for the registration of debt collectors. Would it be desirable for NMLSR to expand or for some other existing platform to be used to create a nationwide system for registering debt collectors rather than having the Bureau create such a system? What could the Bureau do to facilitate the sharing of information among regulators who are part of the NMLSR or other nationwide system to safeguard confidentiality and protect privileged information?

AFSA will not comment on whether debt collectors should be registered in a nationwide system. We emphasize, however, that creditors are already licensed by the states and additional registration would create a financial and administrative burden with no benefits to customers.

VIII. Conclusion

AFSA is greatly concerned that proposed debt collection rules could inadvertently create unforeseen and very difficult compliance and credit risk issues for creditors who hold and collect their own accounts. These compliance and credit risk issues will lead to serious disruptions in the extension of consumer credit and increase costs for consumers.

We look forward to working with the CFPB on this issue. Please contact me by phone, 202-466-8616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Himpler", with a stylized, flowing script.

Bill Himpler
Executive Vice President
American Financial Services Association

APPENDIX

All the dispute letters contained in this appendix are from one consumer to the same creditor. The appendix also includes the responses from the creditor to the consumer.

06/23/10

Dear *Creditor*

RE: ACCOUNT #

I am writing regarding a confusing item in my credit bureau files and am informed that you must validate the alleged debt. Please forward within the customary period all data regarding the establishment of this tradeline including the applicable signed origination papers, certification of your company's right to continued debt collection in my state, documentation establishing your continued right to collect as well as any supporting contracts related to any debt transferral, and a line-item debit and credit summary of the account's history. Thank you for your cooperation regarding this matter and for protecting my rights in accordance with federal and state consumer protection statutes.

Signed this day,

Customer

04-04-12

Dear *Creditor*

RE: ACCOUNT

I am writing regarding a confusing item in my credit bureau files and am informed that you must validate the alleged debt. Please forward within the customary period all data regarding the establishment of this tradeline including the applicable signed origination papers, certification of your company's right to continued debt collection in my state, documentation establishing your continued right to collect as well as any supporting contracts related to any debt transferral, and a line-item debit and credit summary of the account's history. Thank you for your cooperation regarding this matter and for protecting my rights in accordance with federal and state consumer protection statutes.

Signed this day,

Customer

April 17, 2012

Dear *Customer*

We have received your letter of April 4, 2012. Your letter does not (1) identify any specific information that you dispute; (2) explain a basis for any dispute or (3) include any supporting documentation to substantiate any dispute. In addition, your letter appears to have been submitted on a form supplied by a credit repair organization. For each of the foregoing reasons, we decline to respond to your letter, and we will not respond to future form letters received from you.

Yours very truly,

Creditor

07-04-2012

I am informed that your company is obligated to provide formal validation of an alleged debt [REDACTED] appearing in my credit reports. Please be advised that I am not requesting a verification that you have my mailing address. I am, however, requesting validation, i.e., formal documentation in accordance with my protected rights. Such documentation will include a detailed history and accounting of the account in question as well as clear substantiation of its origin, legal assignment, and current status. Failure to provide such validation may abridge such rights; however deleting the negative credit bureau reporting will be accepted in lieu of further escalation. Thank you for upholding the letter and spirit of applicable statutes.

Sincerely,

Customer

09/05/2012

Sirs:

I am asking that [REDACTED] demonstrate formal validation with regard to all materials conveyed to CRAs for me, [REDACTED] declared account number [REDACTED]. Given the possibility that errors may be present in that information, I hereby request that [REDACTED] transmit this documentation within thirty days. In addition please supplement with materials which verify that [REDACTED] complied with every aspect of the Fair Debt Collections Practices Act or other applicable laws. I do not wish to receive only an account review. Instead I have asked for an in-depth documentation. If you cannot meet such lawful requirements during the time delineated here, any information transmitted from your company to credit bureaus must not be considered legitimate and may indicate a nullification of my consumer rights. If this is the circumstance, please redact such credit bureau data at once.

I am grateful for your assisting me.

Customer

2012-10-02

Dear *Creditor*

With this letter, I request that [REDACTED] substantiate your claims concerning any account information conveyed to the three credit reporting agencies for me, [REDACTED] as regards a suspicious account number [REDACTED]. Since deleterious serious problems may be present within that information, I am compelled to demand that your company confirm this validated information within a month of receipt of this request. Moreover, please supplement with materials which verify that the account was established legally. This request is for more than just a simple statement without detail. Instead, I have requested a substantive documentation. If you cannot meet these reasonable requests within 30 days, summary data forwarded by your company to the major consumer reporting agencies must not be considered veracious and may suggest [REDACTED] intention to violate applicable federal and state collections laws. Given that contingency, annul that bureau material at once.

I offer my sincere gratitude for your help in this regard.

Customer

12-4-12

[REDACTED] must formally validate account data [REDACTED] sent to the three consumer reporting agencies for me, [REDACTED] regarding the ostensible account [REDACTED]. Since errors may be contained within in those materials, I hereby request that you mail all relevant data within one month. Also please certify that the account was not utilized as a profit-loss tax deduction. Forward more than a simple statement without detail. Instead I am calling for a full documentation.

If you cannot forward these materials during the time delineated here, any information uploaded by you to credit reporting agencies should be regarded as false and may suggest an intention to willfully violate my rights as described by FDCPA or applicable laws. Given that case, you should vacate those credit report items now.

I appreciate your attending to this circumstance.

Customer

2013-02-05

Sir,

Please formally validate materials [REDACTED] conferred to the three credit CRAs for me, [REDACTED] for an averred account [REDACTED]. Since damaging errors may be within my account files, I respectfully demand that you collect and forward such validation within one month. Moreover please supplement with materials which verify that any third-party collection agency, if engaged, is bonded to collect in my state of residence. I do not want just a simple statement without detail. In lieu of that I am calling for a detailed documentation. If you cannot meet these reasonable requests within the established time period, any detail transmitted on behalf of [REDACTED] to credit bureaus should be assumed to be in error and may suggest a statutory violation. Given that contingency, you must cancel such historical material promptly.

Thank you for your assistance.

Customer

04-06-2013

Sir/Madam:

I must ask you to substantiate your claims concerning all consumer materials [REDACTED] [REDACTED] conferred to credit bureaus for my name, [REDACTED], as regards the questionable account number [REDACTED]. Since it is probable that reporting errors may be within the communicated information, I formally request that you collect and forward these materials as soon as possible. Moreover please attest that this account was not claimed as a loss with any insuring entity. I do not want just a basic abstract. Rather I am requesting an in-depth documentary review. If you cannot forward these materials within one month, any information forwarded by your company to any credit reporting agencies should be assumed to be counterfactual and may suggest a violation of the FDCPA, FCRA, or other federal statutes. Should this be the case, please annul such historical material straightaway.

Thanks sincerely for your assisting me.

Customer

06-07-2013

I ask that you provide historical data regarding information you conferred to the three consumer reporting agencies for me, [REDACTED], for the suspicious account [REDACTED]. Since an error may be present in those materials, I hereby request that you mail these materials within 30 days. Also supplement with materials which verify that this account was not claimed as a loss with any insuring entity. I do not wish to receive only an account review. Instead this is a requisition for a careful verification. If this documentation cannot be provided by the end of the established 30 day period, account summaries disseminated by your company to CRAs must not be assumed to be trustworthy and may evince an intention to willfully violate my rights as described by FDCPA or applicable laws. Given that outcome, kindly annul such consumer information forthwith.

I remain appreciative regarding [REDACTED]'s diligent examination of this matter.

Customer

08-08-13

Dear Consumer Affairs Manager:

I am asking you to verify [REDACTED]'s claims concerning account history materials you sent to any credit bureaus for me, [REDACTED], for the alleged account [REDACTED]. Since personally harmful institutional error may be in those files, I hereby request that you confirm all relevant data within a month of receipt of this request. Forward more than a cursory account history. Instead, this is a call for a substantive verification.

Should you be unable to forward such validation during the time delineated here, account summaries sent by your company to any credit reporting agencies should be assumed to be unreliable and may bespeak an abridgement of the law. If this is the case, repeal those credit report items promptly.

I am grateful for your assisting me.

Customer

August 26, 2013

Dear Customer

We have received your letter of August 8, 2013. Pursuant to your request, enclosed is a copy of your payment history for your above-referenced account.

Your loan was opened with our [redacted] office in [redacted] on [redacted]. You agreed to repay the loan in [redacted] monthly installments of [redacted] beginning on [redacted]. As of the date of this letter, the payoff on your account is [redacted]. You made a legal commitment to repay this loan and we ask that you contact us to make payment arrangements.

If you disagree with any information contained in your credit report regarding your account with our company or if any of the account information enclosed is not correctly shown on your credit report, please submit a valid dispute to the address above fulfilling the requirements of the Fair Credit Reporting Act (FCRA). Those requirements are to (1) identify any specific information that you dispute; (2) explain a basis for any dispute and (3) include any supporting documentation to substantiate any dispute. Once we receive that information, we will open an investigation and supply you with copies of any additional documentation you request.

Sincerely,

Creditor

10-09-2013

Dear Sir/Madam:

I am requesting that [redacted] formally validate materials you sent to the three credit CRAs for my name, [redacted] regarding the ostensible account number [redacted]. Since damaging serious problems may be present in that data, I formally request that your company send this verification on your letterhead within one month. I do not wish to receive only a summary without in-depth consideration. Instead I have asked for a formal verification. If you cannot meet these reasonable requests by the end of the established 30 day period, any information sent from you to consumer reporting agencies should not be deemed correct and may evince a statutory violation. If this is the case, you must rescind that reported information soon.

Thank you for [redacted] investigating this matter.

Customer

October 22, 2013

Dear Customer

We have received your letter of October 9, 2013 (postmarked October 15, 2013). We responded to you on 8/26/2013 (copy enclosed). We will not respond to future correspondence from you unless you provide credible information to substantiate any dispute(s) you may have.

Sincerely,

Creditor

2013-12-10

I ask that you document your claims regarding all account history data [REDACTED] sent to the major credit reporting agencies for me, [REDACTED] for the purported account [REDACTED]. Since errors may be present within that dissemination, I ask that [REDACTED] send this documentation within one month. Also, please declare that this account was not claimed as a loss with any insuring entity. I do not want just an account statement. In lieu of that, I must call for a thorough substantiation.

Should you not be able to provide such lawful documentation by the end of the established 30 day period, summary data communicated on behalf of [REDACTED] to the three credit reporting agencies should not be regarded as correct and may bespeak an intention to willfully violate my rights as described by FDCPA or applicable laws. In that case, you must repeal those credit report items straightaway.

Thank you for your examining this circumstance.

Customer