

consumer action

Education and advocacy since 1971

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Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW.
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Feb. 28, 2014

RE: *Advance Notice of Proposed Rulemaking Debt Collection (Regulation F):
Docket No. CFPB-2013-0033 or Regulatory Identification Number (RIN) 3170-AA41*

To the Consumer Financial Protection Bureau:

As a voice for underrepresented consumers nationwide, Consumer Action appreciates the time and attention the Consumer Financial Protection Bureau (CFPB) is devoting to addressing rules to prevent unfair, deceptive and abusive practices by the debt collection industry.

Consumer Action hears frequently from individual consumers, via our complaint hotline, about threatening and harassing debt collection calls, demands for debts they don't owe, attempts to collect the wrong amounts, violations of the right to cease communications, unfair default judgments, and more. These abuses can harm consumers' reputations in the workplace as well as in their communities with family members, friends and acquaintances. Collections easily can ruin an individual's ability to borrow in the future, as collections accounts can be added to consumer credit reports at the three major credit-reporting agencies (CRAs) without so much as a Social Security number.

The onus to prove that a debt does not belong to a consumer, that the amount is greatly exaggerated or beyond the statute of limitations, invariably rests squarely on the consumer, despite the fact that the burden of proof legally lies with the collector. Please remove this unfair burden from the consumer and ensure that the companies that profit from such activities fulfill their obligations under the law.

Consumer Action believes that many collection abuses can be curbed by compelling everyone in the debt collection chain – creditors (first party), collectors (third party), debt buyers and collection attorneys – to be held to the same standards by imposing certain duties in order to collect on a debt. We urge the CFPB, under its authority to prevent unfair, deceptive or abusive acts and practices, to bring all collectors under the same tent. As it stands now, original creditors often fail to pass along key information about the debt to third parties and often sell accounts to debt buyers with little more documentation than a spreadsheet listing names and unverifiable amounts “owed”.

Documentation chain

We urge the CFPB to clearly express that the burden of proof to demonstrate that a consumer owes a debt is on the party collecting a debt (creditor or collector). It is crucial that collection actions are initiated only against people who actually owe the debts and, if so, for the correct amount.

All creditors and collectors must be required to keep and pass along key documentation on all debts they intend to collect. Debt collection (and sales) should be prohibited without full and thorough itemization and documentation of the original debt. Documentation should include:

- Name of original creditor
- Proof that a debt is owed
- Original contract or application or legible copy
- Identifiers (name, signature, address, Social Security number, date of birth)
- Amount of debt broken down by principal, interest and fees
- Account statements prior to charge-off with detailed itemization of purchases and transactions
- Date of last payment, default or charge-off
- Dispute and/or identity fraud claims, if any
- Consumer dispute statements, if any
- Cease communication notification, if any
- Settlements, if any
- Proof that collector or buyer has authority to collect

If a debt is sold or transferred, all documentation must travel with the debt.

Communications with consumers

Generally, Consumer Action believes that “snail mail” is the appropriate avenue of contact between collection agents and consumers. While the original debt may have contained permission to telephone, we do not believe that this permission, especially if pertaining to mobile phones, extends to collectors and subsequent debt owners. However, if collectors do contact consumers via telephone it is vital that they reach that consumer directly so that all obligations to state that the call is an attempt to

collect a debt, as well as avoid third-party disclosures, are fully met. Any dilemma identified by industry about voicemails is overblown in our estimation. Sending a letter provides space to list FCRA and FDCPA protections and provides the consumer with time to digest the notice and respond appropriately. The mail is private and reliable.

We believe that consumers are responsible and want to repay their debts. They also want to get to the bottom of alleged debts that do not belong to them. The small majority of people who are attempting to “skip” on debts should not set the tone for debt collections in general.

On all collections communications, consumer rights under the Fair Debt Collection Practices Act (FDCPA) to dispute a debt and to cease communication with a collector should be spelled out in plain English in large print, with a simple notice stating:

You can dispute this debt, if you write to us **within 30 days** of receiving this letter. You have the right to:

- Dispute all or part of a debt, or raise a question about the debt and/or
- Request the name and address of the original creditor

We will stop collecting until we can verify that you owe this debt.

If you tell us that you want us to stop collecting we are required by law to stop calling or writing you.

[Include debt collector’s contact information for consumer disputes]

If the original contract with a consumer was conducted in a language other than English, any debt collection communication should also be provided in that original language. No special terminology should be required for the consumer to invoke her rights. Collectors and creditors should be required to provide oral and written notice informing consumers of their dispute and cease communication rights each time the collector communicates with a consumer.

Simple, plain English statements should be required to be sent to any consumer who is communicating with a collector about a debt that explains:

- Payment on a debt will not remove a debt from your credit record
- Payment on a debt may not improve your credit score
- Payment on an old debt may not appear on your credit report

We urge you to permit consumers to orally exercise their right to cease communication in addition to writing. Given that most business by creditors is conducted electronically, we also suggest that a request to cease communication sent by email or Web-form also be legally binding on collectors.

Disputes

Consumer Action urges the CFPB to encourage the responsibility of collectors to conduct a full and factual review when a consumer disputes a debt - even if the initial 30-day period has passed. In addition, the investigation should be responsive to the specific dispute raised by the consumer. We do not believe it is necessary for the CFPB to create any exemptions for “frivolous” disputes as this could create doubt around all consumer disputes and allow collectors to fiddle with their obligations to verify the debts they are attempting to collect.

When a consumer disputes a debt, collectors’ obligation to conduct a meaningful investigation must include a full and factual review of:

- All relevant documents pertaining to the dispute (i.e. application, signature or e-signature, original contract, credit card charge-back requests, etc.)
- Amount owed with breakdown of last known transactions, principal, interest and fees
- A confirmation that all identifying elements match, not just some
- Specific review and investigation into the consumer’s position (written or oral) as to why the debt is not valid
- Any other documents that could affect the dispute (i.e. police report, FTC fraud affidavits, etc.)

Given that electronic communications and media have become the norm in the business world, Consumer Action would support providing documents and other media to consumers by email or on the Web provided the consumer has given his or her express consent to receive the documentation in this manner.

Failure to prove that the consumer is responsible for the debt or that the amount of the debt represented by the collector is accurate should terminate the collections process, without any future repercussions for the consumer. The debt should be stamped as erroneous and this stamp should travel with the debt.

According to the Federal Trade Commission (FTC) the vast majority of disputed debts and collection accounts are translated into a two or three digit code, via an automated dispute system, that debt collectors, debt buyers, creditors and credit-reporting agencies swiftly transmit electronically. Currently, it is rare that actual dispute details are reviewed or considered by collectors.

Disputed debts should be marked as “disputed” in any related files held by collectors, creditors, credit-reporting agencies (CRAs), debt buyers and collections attorneys.

Credit scores

We urge the CFPB to prohibit disputed debts from being included in credit scores. Consumers do not have any input into how their credit score is calculated, however scores have a huge impact on access to credit, mortgages, rentals and insurance.

Creditors should also be prohibited from considering a disputed account when assessing creditworthiness.

We also suggest that collectors be obliged to flag disputed debts when such accounts are listed with credit-reporting agencies (CRAs). We urge the CFPB to clearly mandate that when a consumer disputes debts at the credit bureau level, these accounts must never be added as collections at some later date. This is the equivalent of double-billing, with far more serious consequences for someone's future access to credit, employment and insurance.

As part of the CFPB's regular supervisory duties, please review and assess how "reasonable investigation" dispute processes are conducted, and hold collectors accountable for their actions.

Time-barred debts

It should be illegal to pursue consumers for such debt once the statute of limitations has expired.

Statutes of limitation on debts exist precisely because old debts are difficult to validate and documentation can become unreliable. This is why any effort to resuscitate debts subject to limitation is unfair to consumers. Collectors can—and do—trick consumers into making payments and therefore reviving antiquated debts.

We urge the CFPB to prohibit the collection of time-barred debts, or at the very least prevent renewal of such debts. One payment on a time-barred debt should not allow a collector to revive an antiquated debt. Collectors should also be required to prominently disclose to the consumer that non-payment of time-barred debts is defensible in court and that making payments will cause the consumer to lose this defense and permit the collector to sue for the entire debt.

Medical debt

We urge the CFPB to carve out additional protections for medical debts, since they are not intentionally incurred, nor does the debtor have control over cost. Often a result of unanticipated illness, medical debt does not provide an accurate measure of a person's creditworthiness. We urge the CFPB to:

- Prohibit the reporting of medical debts to a credit bureau until the debt is charged off. (In California, hospitals must wait 150 days from the time of the initial bill until the account is placed in collection or reported to a credit-reporting agency (CRA).
- Supervise medical debt collectors.
- Require credit reporting agencies and collectors to flag disputed medical debts (with specific codes).
- Prohibit the use of medical debt in determining consumer credit scores.

- Impose additional privacy protection obligations on collectors who deal with consumers' medical information.

Student loan debt

Student borrowers often have multiple loans, including federal and private loans and loans at various stages in the life cycle of student loans. We urge the CFPB to require that student loan collectors specify the type of loan being pursued (private or federal loan) as well as account numbers, dates of origin, original balances, interest rates, repayment schedules, pay-off amounts and other pertinent details that can help the borrower understand the particular loan he or she is being contacted about.

For the collection of private student loans, we urge the CFPB to require statements on validation notices to make clear that federal consequences (wage levies, frozen income tax refunds, etc.) do *not* apply. For federal student loan debt notices, we recommend a statement listing repayment and forgiveness options available to federal student loan borrowers.

The documentation requirements suggested in these comments should apply equally to student loan debts. If consumers dispute a student loan debt, ask collectors to cease communications or request verification, this information should be appended to the loan and transferred to future collection agencies.

Debt registries or repositories

While we understand the attraction of so-called debt registries, they would appear, especially in the case of "third party registries" run by private companies, to add an unnecessary layer to the debt collection process. And we fear that they would be seen to replace (or avoid) the obligation on collector and creditors to conduct their own investigation to verify a debt. Since such companies would be simply conduits for information provided by others, we also question the ability of registries to reliably and lawfully certify their records.

Instead we would like to see the CFPB prohibit any original creditor from placing its debts with a third-party collector or reselling its debts to debt buyers without providing an easy-to-access and complete itemization of the debt.

If a repository is developed or provided to consumers in order to access to all debt related documents (including disputes), all FCRA and FDCPA protections should apply, as this kind of repository is clearly a consumer-reporting agency (CRA) and a servicer of debts under the FDCPA.

Skip tracing industry

Consumer Action urges the CFPB to study the industry known as “skip tracers.” From complaints we have received from consumers, it seems that this industry is not clearly understood by consumers. It also appears that they are the purveyors of much disinformation about consumers and that they take great leaps of credulity in connecting debts to individuals. People have been linked to debts they do not owe simply by virtue of their residence in a city where the person being traced once lived, or by the fact they share the same or similar name. When faced with these mistakes, it is remarkably difficult for consumers to clear the record, as these companies are not household names.

Consumer complaints

Consumer Action regularly receives complaints about collectors’ abusive practices through our consumer complaint hotline. A sample of our recent complaints illustrates the significant problems consumers face in dealing with debt collectors.

Richard from California discovered that a collection agency had been “docking my SSI check for \$180 per month. I have two disabilities to deal with and SSI is my only source of money. They gave me no warning and not so much as a letter.”

Arianna from North Carolina wrote that a collector's “relentless harassment at my place of employment and via electronic means has made me fear for my safety.”

Teresa of Ohio reported that she gets “harassing phone calls usually on a daily basis and early morning calls leaving automated messages.”

Michael from New York received repeated calls to his workplace, even after he said he did not wish to be contacted by phone and told the collectors that their calls could place his job in jeopardy.

Other common abusive tactics reported by consumers include repeated calls to individuals who owe no money even after being told they have the wrong number, default judgments obtained without proper service to the alleged debtor, and attempts to collect on time-barred debts.

Consumer justice

Please prohibit the use of mandatory arbitration by debt collectors, debt buyers and creditors. Forced arbitration typically is a burdensome, expensive and secretive process with great potential for bias, as arbitrators are chosen by the industry and are dependent on repeat business. Consumers have no rights of appeal and the outcomes are hidden from the public eye.

Notices from collection attorneys in connection with lawsuits or arbitration should be required to be written in plain English and provide the consumer with information about his or her rights under the state's civil procedures.

When a debt purchaser sues a debtor, the person serving the legal papers should be a county sheriff or a bonded court appointee who is required to follow strict rules for serving subpoenas. Too often, debt purchasers obtain default judgments because the person being sued has no idea that a case has even been filed due to lack of proper service with the summons and complaint.

While we realize that certain amendments to the laws governing collections require action by Congress and are outside of the CFPB's purview, CFPB support for Congressional changes to the Fair Debt Collection Practices Act (FDCPA) is crucial advocacy on behalf of consumers and would carry much weight. We urge the CFPB to support the idea that courts should consider awarding multiple damage awards (for each violation) in cases where collectors deliberately violate the FDCPA.

Among other necessary legislative changes, Consumer Action supports an increase in the statutory damage provisions of FDCPA and an automatic yearly increase based on the CPI index, updates to class relief provisions and clarification that the remedy of injunctive relief is an appropriate tool to deter future misconduct.

Consumer Action urges the CFPB to extend the right to consumers in every state to record abusive telephone calls. In some states it is not clear that consumers have the right to record phone calls without the consent of the other party. Often such recordings are crucial proof that a collector has violated the FDCPA.

Thank you for the opportunity to comment on ways to improve the debt collection process. We thank the CFPB for its supervision and enforcement of the Fair Debt Collection Practices Act (FDCPA).

Sincerely,

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