February 28, 2014

Ms. Monica Jackson
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: Advance Notice of Proposed Rulemaking
Debt Collection (Regulation F)
Docket No. CFPB-2013-0033

Dear Ms. Jackson:

Thank you for the opportunity to comment on the Consumer Financial Protection Bureau's Advance Notice of Proposed Rulemaking for Debt Collection (Regulation F) (hereafter "the ANPR").

1. About Portfolio Recovery Associates

As you may know, Portfolio Recovery Associates, LLC (hereafter "PRA," "the Company," or "we"), headquartered in Norfolk, Virginia, engages in the purchase and management of defaulted consumer receivables like credit cards, installment loans, cell phone and utility accounts.[1] PRA acquires non-performing financial assets from original lenders and other holders of such accounts and works with the customer to satisfy the indebtedness. The company employs more than 3,500 people in offices in the United States and the United Kingdom. Since its inception in 1996, PRA has acquired more than 34 million defaulted consumer receivables, improving the balance sheets and cash flow of the selling financial institutions and offering consumers the opportunity to more easily resolve burdensome debts.

PRA's reputation is well-established in the debt buying industry. The Company has been recognized as one of *Fortune* magazine's 100 Fastest-Growing Companies for 2012 and 2013. *Forbes* magazine included PRA in its list of The 10 Hot Companies Hiring Like Crazy in 2012, one of the Top 25 Best Small Companies in America in 2012 and 2013, and one of the 100 Best Small Companies in America continuously since 2007.

On February 19, 2014, PRA announced that it has agreed to acquire Aktiv Kapital AS. Based in Oslo, Norway, Aktiv Kapital specializes in the acquisition and servicing of non-performing consumer loans throughout Europe and in Canada. The two companies combined

[1] PRA is a wholly owned subsidiary of Portfolio Recovery Associates, Inc. (Nasdaq: PRAA), a publicly traded corporation.

will become one of the largest acquirers of non-performing consumer debt in the world, with $4.6 billion of estimated remaining collections and almost 4,000 employees in 15 countries.

2. Introduction

The ANPR is a very comprehensive survey of debt collection practices and consumer protection issues. PRA will not comment on every question posed in the ANPR. In January, 2013, the Federal Trade Commission ("FTC") published its report on a multi-year study of the debt buying industry.[2] The FTC initiated the study in December, 2009, requesting voluminous data from what were then the nine largest debt buyers in the United States. The FTC "acquired and analyzed an unprecedented amount of data from the studied debt buyers…"[3] The FTC report provides answers to many of the questions included in the ANPR, at least with respect to larger debt buyers. While we do not agree with all of the commentary in the report or some of the conclusions the FTC reached, the report does provide an extensive general description of the process by which portfolios of defaulted consumer debt are bought and sold. Many of the factual inquiries in the ANPR are at least partially answered in the FTC report, so PRA will not revisit some areas that the FTC report adequately covered.

It is also true that some questions included in the ANPR are specific to third-party collection agencies. PRA does not have a domestic third-party collection agency business, so our comments will not address many issues unique to agencies. However, we will draw distinctions between agencies and debt buyers in some circumstances, particularly where doing so might clear up some misconceptions about both the agency and debt buyer business models.

The ANPR specifically requests that commenters identify which questions in the ANPR they are responding to. Because there is some overlap among the various sections in the ANPR and for the reasons mentioned in the preceding two paragraphs, this comment will address the ANPR by focusing on each broad category rather than a strictly question by question approach.

3. PRA's Comments to the ANPR

Transfer and Accessibility of Information Upon Sale and Placement of Debts

ANPR Section II

Information flow in the debt collection process has been a focus of the FTC, and now the Bureau, since at least 2007. Every reputable participant in the debt collection industry shares the goal of ensuring that debt collectors are collecting from the right customers for the right amounts of money. For the reasons discussed in this section, however, we believe it is neither necessary nor feasible to try to develop a "comprehensive and coherent system for information about debts."[4]

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[2] U.S. Fed. Trade Comm'n, *The Structure and Practices of the Debt Buying Industry* (Jan. 2013), *available at* http://www.ftc.gov/os/2013/01/debtbuyingreport.pdf (hereafter "2013 FTC Debt Buyer Report").
[3] *Id.* at ii.
[4] ANPR at 67854

The best and most sophisticated market participants have spent many years and millions of dollars developing trustworthy relationships with clients and sellers. That is certainly true of the largest debt buyers, including PRA, who primarily purchase from major money center banks and well-known credit issuers. Those large financial institutions operate in a heavily regulated environment that prescribes how balances are calculated and maintained, how interest accrues and compounds, and when delinquent accounts are charged off.

On or near the date of closing a transaction for the purchase and sale of a portfolio of consumer accounts, these sellers provide to the buyer an electronic file containing certain data for the accounts contained in the portfolio.

Contrary to the narrative promoted by some critics of the debt buying industry in recent years, sale files between financial institutions and major debt buyers contain numerous important data elements. The same may not be true of the smaller debt buyers that primarily or exclusively participate in the retrade market, buying from smaller sellers or other debt buyers rather than from credit grantors. Although some smaller debt buyers do purchase directly from credit grantors, a number of more prominent financial institutions prefer to sell only to a limited group of buyers who typically have more sophisticated training, quality control, compliance and data security capabilities.

The resale market has been an increasing topic of discussion among regulators and industry groups. The best practices document that the Office of the Comptroller of the Currency ("OCC") is currently developing into formal guidance specifically identifies the potential for resale as one issue a selling bank should consider when deciding whether or not to sell portfolios to a prospective buyer. That is because accounts that have been resold are typically older and the information the current owner has about the account may have degraded as it changed hands over time. Purchasers of accounts that have been repeatedly resold also do not usually have the same ability as the original buyer to request documentation from the credit grantor, reducing the ability of the current owner to verify account information or investigate disputes.

The sale file transmitted from a credit grantor to a major debt buyer typically includes information such as:

- the account number;
- the debtor's first and last name;
- the debtor's social security number;
- the debtor's address and home telephone number;
- the loan origination date;
- interest rate;
- account balance;
- last payment date;
- last payment amount;
- charge-off date;
- charge-off amount;
- date of first delinquency.

If the account was previously the subject of collection litigation that resulted in a legal judgment, the file will normally include the judgment date, judgment amount, and judgment interest rate.

Supplementary information such as dispute histories or whether or not the consumer is deceased are generally not provided because the purchase and sale agreements between credit grantors and larger debt buyers include representations and warranties that exclude such accounts from the pool.

PRA welcomed the OCC's best practices document referred to in the ANPR and believes it presents a good framework for how debt sellers (whether regulated by the OCC or not) should evaluate their practices. We also believe that many of the considerations the OCC identified apply equally to debt buyers and third party collection agencies. The OCC's call for more exacting vendor management practices will help ensure that banks sell to those debt buyers best equipped to comply with state and federal consumer protection laws. Consumer accounts contain sensitive personally identifiable information, including personal financial information. Only those committed to devoting the resources and technology to build a robust compliance infrastructure should be able to purchase and collect consumer debt. The OCC's approach will make that result more likely.

Several major sellers of charged-off debt are already more closely monitoring their debt buyer partners in the manner the OCC suggested. PRA has hosted several sellers for very detailed, multiday evaluations of our policies and procedures. We also know that several major sellers have carefully reevaluated the debt buyers to whom they sell and have pared the number of approved buyers to a more manageable, limited group of high quality companies. We expect both trends to continue and believe this will lead to more exacting standards between major sellers and buyers and a better overall experience for consumers.

The level and amount of account documentation necessary to support collection efforts has long been debated. The OCC best practices document suggests that selling banks "provide sufficient documentation to the debt buyer that will allow the collection of debts," a view the OCC reinforced in testimony before the Senate Banking Committee's Subcommittee on Financial Institutions and Consumer Protection.[5] The OCC also noted that some banks provide account statements for each account to support account balances.

Most debt buyers would readily agree that having more documentation available might benefit the collection process. However, it is important to weigh the actual need for additional documentation against the costs of setting a hard-and-fast rule as to how much documentation should be required at particular stages in the life cycle of an account. Put simply, a rule that requires debt collectors to have certain documentation on hand when neither the debt collector nor the consumer wants or needs it would serve no consumer protection purpose. It also might result in unnecessary costs that lead to an increase in the cost of credit for those who pay their bills on time.

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[5] Hearing on "Shining a Light on the Consumer Debt Industry" Before the Subcommittee on Financial Institutions and Consumer Protection, Senate Committee on Banking, Housing, and Urban Affairs, 113th Cong. (2013).

Documentation is usually required in order to respond to disputes or requests for verification. The 2013 FTC Debt Buyer Report stated that 3.2% of the accounts it reviewed from the major debt buyers in the study were disputed by consumers.[6] That proportion is considerably higher than PRA's data indicates for its population of accounts and higher than ACA International's data suggests is common in the debt collection industry. The 2013 FTC Debt Buyer Report was based on data from 2006 to 2009, so the freshest data it examined is almost five years old. Industry practices have rapidly evolved in the past five years, so we believe the overall dispute rate in the industry is likely lower than the 2013 FTC Debt Buyer Study suggested.

When considering requirements for additional documentation, the Bureau should understand that lack of documentation is not the cause of account balance disputes. PRA believes that the two most prominent causes of confusion over account balances are the compounding of interest and debt collectors' methods of applying payments. Consumers may often not realize that when interest may continue to accrue on their balances, even an accurate balance may look unfamiliar to a consumer over time. In addition, if customer payments to a debt collector are first applied to accrued interest, fees or other costs, rather than principal, the balance may decrease more slowly than a customer expects, causing additional confusion.

PRA recently ceased charging interest on customer accounts and has never charged fees of any kind, including fees for checks returned for insufficient funds. PRA has always applied all customer payments according to the "PICO" method, first to principal, then to interest, costs, and any other items. We believe that when interest is charged on a purchased account, payments on the balance should be applied according to the PICO method.

There is no doubt that the overwhelming percentage of customers PRA communicates with are aware of their PRA account, understand where it originated, and recognize the account balance. In those circumstances we work with our customers to create affordable repayment plans that make it possible for them to resolve their debts. To require certain documents for every account when neither PRA nor the customer wants or needs them would add needless cost and serve no consumer protection purpose.

The best debt buyers have sophisticated account scoring models that aggregate many account variables and predict which customers are most likely to pay. PRA's dynamic scoring models rescore accounts every night, based on whatever activity took place during the day. Because any type of collection activity has an associated cost, it is unprofitable for a debt buyer to attempt to collect from customers who have no realistic chance of paying. That would waste time and money and subject customers to needless bother. As a result, PRA only attempts collection from a small percentage of our population in any given time period. Since most of our customers are not even the subject of current collection activity, having documentation related to their accounts would serve no purpose and needlessly raise data security concerns.

Finally, the Bureau should be aware that document availability would be improved if federal law required longer document retention periods of credit grantors. The Truth in Lending

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[6] 2013 FTC Debt Buyer Report at 38.

Act (Regulation Z)[7] and Equal Credit Opportunity Act (Regulation B)[8] contain required record retention periods of 24 and 25 months, respectively. In some cases, documents that could be helpful in the debt collection process may simply no longer be available because they were destroyed after the federally required retention periods elapsed. Although not directly within the scope of regulations governing debt collection, the Bureau should consider the benefit of increasing those retention periods.

Validation Notices, Disputes, and Verifications

ANPR Section III

All communications with debt collection customers should be clear and straightforward. PRA customers receive an initial notification letter from the Company soon after their accounts are purchased and loaded. That letter informs the customer that PRA recently purchased the account and identifies the balance owed and the selling entity. It also includes PRA's mailing address, telephone number and hours of operation, among other information. The statutorily required validation notice is also included in every initial notification letter.

It is important that any itemization requirement be limited to *post charge-off* principal, interest and fees, because the National Bank Act does not require credit grantors to maintain pre charge-off itemization. Rather, interest on the carried balance of a revolving account compounds to produce a new principal balance at charge-off. Debt collectors cannot reasonably be expected to produce a level of detail that a client bank or a bank that sells accounts is not able to produce. The charge-off date is an easily discernible event after which separate interest and fees can more readily be determined. Moreover, customers receive numerous account statements prior to charge-off and would have the opportunity to question any post charge-off charges.

The FTC has opined on several occasions that it would be helpful for debt collection customers to receive an itemization of pre charge-off principal, interest and fees. However, that desire simply does not comport with how national banking law, regulation, and practices have worked to date. Banks and other lenders have relied on existing laws and practice. It is important that CFPB not prescribe any sort of rule that is inconsistent with that reality.

It is unlikely that the benefit of a blanket rule requiring additional information in validation notices would outweigh the costs. That is particularly true because instances in which a customer does not recognize the account or disputes the account balance are rare. The name of the original creditor, the merchant partner on a private label credit card, the account balance and similar information is already commonly included in all customer communications.

Enhanced disclosures are a double-edged sword. While it is important for consumers to understand their rights and make informed decisions about their personal financial affairs, more disclosure can also overwhelm them. Collection letters are already dense with required state and federal disclosures and even local ones in a few cases. It is important that any additional disclosure requirements address real problems, not supposed ones. Otherwise, the cost of

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[7] 12 C.F.R. § 1026.
[8] 15 C.F.R. § 1002.

sending collection letters will increase, but consumers may not receive any meaningful benefit in return.

One way to lessen the cost of debt collection activity and reduce collection lawsuits is to encourage the use of modern technology to increase the amount of communication between debt collectors and their customers. Restricting communication, increasing cease and desist requests, and the Telephone Consumer Protection Act's (hereafter "TCPA") limitations on using predictive dialers to call mobile phones all impede communication.[9] As a result, debt collectors' ability to negotiate voluntary payment solutions with consumers is hindered, increasing the volume of debt collection lawsuits. It is already common for debt collectors in the United Kingdom to communicate with customers by text message. The Bureau should encourage the use of all available modern technology in every stage of the debt collection process. Email and text messages create a permanent record, and should qualify as "written" communications.

Consumers (and their counsel) frequently dispute debts without offering any basis for the dispute. "I hereby dispute this debt" is a common refrain, and is commonly a delay tactic, not a genuine assertion that some aspect of the account is erroneous. Congress surely expected more when it enacted the Fair Debt Collection Practices Act (hereafter "FDCPA").[10] It is not necessary for the Bureau to define or set standards for what communications must be treated as disputes under the FDCPA. It need merely make clear that for any debt collector to conduct a "reasonable" investigation of a dispute, the consumer (or his or her counsel) must specify the nature of the dispute with sufficient particularity to enable such an investigation. It would be unfair to require a reasonableness standard for investigations if debt collectors are not told what they are to investigate.

It should not be difficult for consumers to identify the nature of the dispute if they believe they are mistakenly identified as the debtor, have already paid the account balance, or owe a balance different from what is stated. The debt collector can then take certain action to attempt to investigate whatever issue the consumer raised. If that is the case, then a reasonableness standard makes sense.

The 2013 FTC Debt Buyer Report found that the responding companies reported that they verified 51.3% of the debts that consumers disputed.[11] That percentage would certainly be higher today because the study was based on data from portions of the years 2006 to 2009. Documents have become much more readily available in recent years, increasing debt buyers' ability to investigate and resolve disputes.

It is true that not all disputed accounts are verified. There are circumstances when it is inefficient for a debt collector to verify an account, usually because the cost or time involved outweighs the value of the account. The important consumer protection concern is what happens next. Disputed accounts should be verified or closed, not simply passed along to another collection agency or resold to another debt buyer. If a debt collector cannot verify an account or

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[9] 47 U.S.C. § 227 et. seq.
[10] 15 U.S.C. § 1692 et. seq.
[11] 2013 FTC Debt Buyer Report at 40.

makes a business decision not to, the consumer is protected if the debt collector closes the account and ceases collection activity.

Debt Collection Communications

ANPR Section IV

Encouraging more communication between debt collectors and their customers is the single best thing the Bureau can do to improve the end result for consumers. Unfortunately, consumer groups and regulators have too often focused on exactly the opposite, setting roadblocks to customer interaction and encouraging consumers to demand that debt collectors cease and desist from contacting them or to dispute debts for the purpose of delay. Reputable debt collectors strive to reach payment solutions that reflect their customers' unique circumstances. They cannot understand their customers' needs if they are unable to communicate with them. That inevitably leads to more debt collection lawsuits.

Advances in communication technologies entail both risks and opportunities for the debt collection process. Cell phone use, email, SMS text messaging and automated processes could lead to greater resolution of burdensome debts. Cost savings from advanced communication technologies could be passed on to consumers.

Technological advances also affect issues like calling at inconvenient times or places. Number portability and call forwarding are modern conveniences for many, but make it more likely that a debt collector will not know exactly where a customer is located when a debt collection call is placed. The FDCPA adequately addresses calling at inconvenient times or places. It would not be in the interest of consumers to prohibit calling them at work on the assumption that any place of employment is an inconvenient place. Most people spend a lot of time at work. Limiting debt collection to other places would only drive up costs that will be passed along to consumers and increase the volume of debt collection lawsuits.

Some areas of concern in debt collection communication can be remedied by improved practices rather than regulation. For example, when skiptracing for correct customer telephone numbers debt collectors may sometimes obtain inaccurate telephone numbers. If those wrong numbers are removed from an account file, subsequent skiptracing efforts may reintroduce the wrong numbers and renew the risk of wrong party contact. The better practice, which PRA follows, is to store wrong numbers, but flag them as inaccurate so that later skiptracing activity will recognize them as incorrect and prevent them from being dialed.

Eliminating confusion and inconsistency in the debt collection process provides better outcomes for the credit economy and consumers alike. Debt collectors and their customers should avoid misleading or tricking each other. The practice of using aliases in collection calls or altering caller identification information violate the spirit of fair play that industry, consumer groups and regulators should share. Those practices should be eliminated.

The Bureau should also make clear that debt collectors have no obligation to respond to customers who attempt dishonest get out of debt schemes like sending the nonsensical, fake "legal" documents that are easily obtained on the Internet. Although the Bureau's mandate is to

prescribe rules and regulations that govern debt collectors, it should encourage transparency and good faith among businesses and consumers alike.

Communication between debt collectors and their customers can also suffer from conflicts between state and federal law or between laws and judicial decisions. The conundrum that resulted from the decision in _Foti v. NCO Financial Systems_ needs to be resolved.[12] _Foti_ placed debt collectors in an unreasonable position, and alleviating the conflict between _Foti_ and the FDCPA should be a noncontroversial, early priority of the Bureau.

Unfair, Deceptive, and Abusive Acts and Practices

ANPR Section V

The exercise of the Bureau's authority to prescribe rules that identify unfair, deceptive, or abusive acts or practices is one area that poses a serious risk of increasing costs and reducing the variety of options available for consumers to resolve their debts. For that reason, the debt collection industry and consumers would benefit from some clear guidance as to what might constitute unfair, deceptive or abusive acts or practices. The Bureau's exhaustive study of common practices in the debt collection industry should allow it to develop an objective framework of what is or is not unfair, deceptive, or abusive. It would not be fair for the Bureau to categorize any practice it would like to be different as therefore unfair, deceptive or abusive.

The prohibition contained in section 806(5) of the FDCPA is limited to the "intent" to annoy, abuse or harass consumers. Telephone communications come at a cost. It is hard to believe that a profit-making enterprise would waste time or resources trying to annoy, abuse or harass customers. Moreover, the FDCPA already prohibits such abuses. For that reason, it is not necessary for the Bureau to articulate any additional standards regarding what constitutes the intent to annoy, abuse or harass consumers.

Any bright line prohibition on repeated communications or restrictions on the use of predictive dialers would be counterproductive, costly, and would lead to more litigation. There is no question that restrictions on calling and sending collection letters lead to more litigation earlier in the life cycle of an account. The Bureau should encourage more communication, achieved under reasonable rules, at the least possible cost. Consumers experience the best outcomes when debt collectors have maximum flexibility, because increased communication is often productive in avoiding lawsuits.

Predictive dialers make contacting customers more efficient and less costly. They also benefit consumers by eliminating the mistakes that humans can make. Predictive dialers make it unlikely for a consumer to be called at an inappropriate hour or for a collection representative to dial a wrong number. Any inconvenience resulting from call abandonment or dead air can be remedied by striking the right balance between the "idle time" and "abandon" settings in predictive dialers. The Bureau could, for example, adopt a rule that the abandon rate set in predictive dialers not exceed some specified percentage of calls.

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[12] *Foti v. NCO Financial Systems, Inc.*, 424 F. Supp. 2d 643 (S.D.N.Y. 2006).

FDCPA section 807 gives numerous examples of false, deceptive, or misleading representations in connection with the collection of debts. It is surely deceptive for a debt collector to represent that the Servicemembers Civil Relief Act does not apply when it does, or that a servicemember's security clearance could be revoked for failing to repay a debt if that is not true.

Providing additional clarity to FDCPA section 808(1) is becoming less necessary over time. Many in the industry are moving away from charging interest or fees. PRA, for example, has never charged any type of fee, not even for checks returned for insufficient funds. We also do not charge any interest (other than post judgment interest ordered by a court) on customer accounts, regardless of whether we are entitled to do so. That may not yet be the prevailing practice in the debt buying industry, but it seems to be an emerging trend.

Major debt buyers who purchase from major money center banks receive substantial information about the consumer and the account, not simply the "number on a spreadsheet" some opponents of the industry falsely portray. Moreover, contracts from major money center banks to purchase pools of defaulted consumer debts include substantial representations and warranties by the seller. Those contracts typically warrant that each account is a valid and binding obligation of the debtor. Selling banks are heavily regulated, and account balances are subject to regulatory audits. No additional "substantiation" is needed when a debt buyer purchases accounts from a regulated financial institution pursuant to adequate contract provisions. There is already sufficient information to confidently begin collection activity.

It is important to remember that even if account documents are not provided at the time a portfolio of accounts is sold to a debt buyer, purchase and sale contracts provide that documents are available upon request. Most purchase and sale contracts from major lenders entitle the seller to receive account documents for a certain percentage of accounts (or for a defined period of time) at no charge, and additional documents for a fee. Given the small percentage of instances when account documents are actually required, that mechanism works well.

The same may not be true when one debt buyer sells accounts to another (particularly when accounts have been bought and sold repeatedly) or when the accounts being sold (and the seller) are less regulated.

Resales of accounts tend to degrade the quality of account information. When accounts are repeatedly sold from one debt buyer to another, each owner of the accounts may take some action that could alter the accuracy of the account data. That may be as simple as adding erroneous telephone numbers or addresses or adding fees or charges that affect the account balance. Downstream purchasers rarely have the same access to account documentation as those who purchase directly from financial institutions, so they may be less able to adequately investigate disputes or verify accounts.

Not all assets are as heavily regulated as credit cards, and not all asset sellers are as inherently reliable as regulated financial institutions. It should stand to reason that outstanding video rental account balances or overdue membership dues lack the oversight required of credit cards or installment loans.

A variety of third parties provide services to the debt collection industry, including debt buyers. They include law firms, process servers, collection agencies, letter vendors, telecommunications companies, hardware and software providers, credit reporting agencies and data subscription services. Many of those service providers have no interaction with consumers. Although there have been widely reported instances of misdeeds by some service providers, those have been rare occurrences. Oversight of third-party service providers, including quality control audits, is more rigorous than ever before.

Time-Barred Debts

ANPR Section VI

In all but a few states, the running of a statute of limitations does not "bar" a debt; it only bars a particular remedy: judicial enforcement of the debt. The statute of limitations is typically an affirmative defense (in any legal action, not just debt collection) that must be asserted by the Defendant and, if not asserted, is waived. As the ANPR recognizes, some states have shifted the burden of disclosure to debt collectors, both when prosecuting debt collection lawsuits and in communicating with consumers in ordinary collection activity.

Some disclosure requirements adopted by states in recent years require debt collectors to state that the statute of limitations has lapsed, a legal conclusion. That is problematic because statutes of limitation vary by state, so the manner of computing them may not be consistent from one state to another. Moreover, some recent requirements are unnecessarily long, adding extra words to collection letters without additional benefit to consumers. Any disclosure requirement adopted by the Bureau should not require the debt collector to make any legal representation and should be as brief and straightforward as possible to avoid confusing consumers.

We suggest the following:

For accounts that are still eligible for credit reporting:

"Because of the age of your debt we will not sue you for it. If you do not pay the debt, we may report it to the credit reporting agencies as unpaid."

For accounts no longer eligible for credit reporting:

"Because of the age of your debt we will not sue you for it and we will not report it to any credit reporting agency."

Revival of limitations periods based on partial payments or acknowledgement of a debt is also based on state law. However, the practice of reviving limitations periods is waning. Many debt buyers only observe the original limitation period and do not revive limitations periods, even if state law provides for revival. PRA discontinued reviving limitations periods in recent years.

If the Bureau adopts disclosure language regarding revival, it should be careful to limit the requirement in such a way as to avoid confusing consumers. For example, the customers

PRA sues constitute less than 5% of its entire population of owned accounts. Even if PRA were to revive limitation periods, it would only serve to confuse or unnecessarily concern the other 95% of its customers to warn them that making a payment or acknowledging a debt may restart the statute of limitation. Any future disclosure requirement should be limited to debt buyers or other debt collectors who actually do revive statutes of limitation, and only for those customers whose accounts are the subject of litigation or threats of litigation.

<u>Debt Collection Litigation Practices</u>

ANPR Section VII

Well meaning creditors and debt collectors would prefer not to sue. Litigation is expensive, time-consuming and uncomfortable, particularly for consumers. PRA prefers to engage its customers in productive discussions about how best to resolve their accounts. We work hard to develop payment plans that customers can meet. We are committed to financial education and literacy and take satisfaction in helping our customers resolve lingering financial issues and build better futures. We only sue customers when we are confident that they have the means to repay their debts but have refused repeated opportunities to do so.

Debt collection litigation is governed by state law. The amount in controversy usually determines the particular court in which a debt collection lawsuit is filed. We are not aware of places where the geographical size of a judicial district is a source of concern. Most states' civil procedure rules require that cases be filed in the court jurisdiction in which the debtor resides. For that reason, the distance a defendant may have to travel to appear in court is not a common complaint.

The number of actions filed in any year varies, and the business models of account owners vary widely. PRA relies heavily on call center based collection activity and only sues less than 5% of its population of accounts. Some companies rely much more heavily on collection litigation, even exclusively relying on litigation. Generally speaking, the number of collection lawsuits has probably increased over time as the TCPA and new laws and regulations have made communication with consumers more difficult. Default judgments have probably decreased as a percentage of judgments because defendants have more access than ever before to pro bono legal services and revised court forms that simplify responding to process.[13]

Any reputable debt collector that sues to recover on accounts has little doubt that it has the right to collect on debts and to commence legal action. Major debt buyers generally have access to a Bill of Sale evidencing the sale of accounts, affidavits of sale, charge-off statements, and statements with transaction or payment details. In some cases account applications, terms and conditions, and numerous statements are available.

The Bureau's consideration of debt collection litigation should carefully examine the practices of law firms and lawyers who represent consumers in debt collection litigation. The

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[13] For example, there are typically legal aid attorneys available to assist with all credit-related civil actions in District of Columbia courts. Some states, including New York and Maryland, use simple responsive pleading forms that allow defendants in debt collection cases to check boxes.

Bureau should be aware that there are many cases when consumer attorneys fail to present their clients with settlement offers, risking the possibility of the consumer suffering a judgment when compromise is possible.

The Bureau should also examine consumer attorneys' marketing activities and the fee arrangements between consumer attorneys and their clients to be certain that consumers are not misled or disadvantaged in the relationship. Given the volume of debt collection lawsuits and FDCPA litigation in the United States, the Bureau should scrutinize consumer attorneys' solicitation practices and fee arrangements, whether they represent plaintiffs or defendants, as closely as it scrutinizes debt settlement companies. The monetary incentive to misbehave is at least as prevalent in the attorney/client relationship.

Recordkeeping, Monitoring and Compliance Requirements

ANPR Section IX

Debt collectors should not operate in the shadows, regardless of their size. A nationwide registration requirement could allow industry participants, consumers, and state and federal regulators to better understand the composition of the debt collection market. It might also serve to dissuade disreputable or unqualified operators from taking the risk of dishonest or low quality debt collection activity.

However, a registration requirement should be limited to identifying who engages in debt collection for federal regulatory purposes and not be a de facto federal licensing regime. The Bureau should not, for example, have the ability to "de-register" anyone. That is the province of state law. A federal registry of debt collectors should be no more than a repository of information to help the Bureau and other federal agencies know who engages in debt collection.

A registration requirement should apply to entities that engage in debt collection. Call center environments generally experience high turnover, so it would be impractical and overly burdensome for every debt collector in the industry to be individually registered. It would also be unnecessary. As long as the Bureau is aware of the companies participating in the industry it can conceivably review personnel records to identify particular individuals if it feels the need to do so.

The growth of electronic recordkeeping in the last decade should make record retention more manageable as hard drive and server space should be easier to maintain than warehouse space. Most debt collectors have electronic account management systems, whether developed internally for their specific needs or purchased from well-known vendors. PRA's proprietary account management system allows for indefinite retention of basic account information, notes on customer communication, copies of documents and other useful information.

It is likely that many debt collectors already have sufficient document retention policies. Those policies often serve general corporate purposes in addition to compliance and quality control functions. Should it choose to adopt rules requiring record retention, the Bureau should take into account existing record retention policies and practices in the industry rather than creating burdensome new rules without regard for existing processes. In addition, the Bureau

should seek more detailed information about the costs associated with storing various types of information and carefully weigh the importance and cost of those various types of information.

4. Summary and Conclusions

Regulation is most effective when it is based on a thorough and dispassionate understanding of the industry subject to the regulation. Well conceived regulation is also not necessarily a hindrance to business. Rather, effective regulation can set rules that improve business by supporting best practices, encouraging honest competition, and curtailing the actions of bad actors. The Bureau's detailed examination of how the debt collection industry operates is a good step toward developing rules that guide the expectations and activities of debt collectors and enhance consumer protection.

As this comment explains, PRA believes the Bureau should work to distinguish between genuine weaknesses in the debt collection industry and merely perceived ones. It should also resist the temptation to necessarily view debt collection as an adversarial relationship. The best companies in the industry, like PRA, genuinely desire to understand their customers' circumstances, cooperate with them, and reach payment arrangements that are in their customers' interest. PRA suggests that the Bureau's rulemaking activity should include the following considerations:

- Open communication between debt collectors and their customers produces the best result for all. Debt collectors are most able to be patient and compromise when they have ongoing dialogue with consumers. Hindering communication directly increases the volume of debt collection lawsuits. Regulation should not diminish open and honest communication.

- The Bureau should embrace communication using modern technology to reduce cost. The Bureau should support TCPA reform to recognize the increasing trend in mobile phone use.

- Creditors, third party agencies, and debt buyers should be held to the same standards for document availability, verification requests, and dispute resolution.

- Debt collectors should be required to perform a "reasonable" investigation of a dispute only if the consumer identifies a particular subject of the dispute such as mistaken identity, previous payment, or identity theft.

- Our results suggest sources of account validity are sufficient.

- Lack of documentation is not the cause of disputes and requiring additional documentation may not be the answer.

- Disputed accounts should be verified or closed, not simply passed along to another collection agency or resold to another debt buyer.

- If the Bureau believes more documentation is necessary, it should support increasing the document retention periods in the TILA and ECOA.

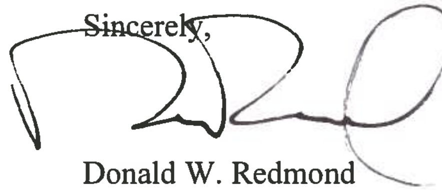
- The Bureau should recognize that additional disclosure requirements risk confusing consumers. Any new disclosure requirements should yield genuine benefits to consumers and be as brief and straightforward as possible.

- The conundrum that resulted from *Foti v. NCO Financial Systems* should be resolved to provide for leaving messages without legal jeopardy.

The Bureau can exercise its unique authority to help ensure that financial markets are fair and function well. We hope these comments will assist the Bureau in its important work.

Thank you for your consideration and please feel free to contact me if PRA can provide any additional information.

Sincerely,



Donald W. Redmond
Vice President
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