February 28, 2014

Ms. Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20006

Re: Debt Collection (Regulation F) Advance Notice of Proposed Rulemaking
78 Fed. Reg. 67848 (November 12, 2013)
Docket Number CFPB-2013-0033
RIN 3170-AA41

Dear Ms. Jackson:

Resurgent Capital Services, L.P. (Resurgent) appreciates the opportunity to file this comment (Comment) on the Advanced Notice of Proposed Rulemaking (ANPR) on debt collection rules and respectfully submits this Comment to assist the Consumer Financial Protection Bureau for consideration in regulating the debt collection industry.

Resurgent is the servicing entity for large debt buying institutions and a leader in compliance and industry best practices. As such, we offer the following Comments on selected sections of the ANPR.

Part II. Transfer and Accessibility of Information Upon Sale and Placement of Debts:

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?

Comment:

Data fields and upfront physical documents can vary by debt type or the terms of a debt sale. In general, all pertinent and relevant information regarding the debt is conveyed to the subsequent debt purchaser or collector. This information generally includes

- Original account number
- Consumer information (name, SSN, address, contact information)
- Critical dates (origination, last charge, default, charge off date, judgment date)
- Last payment information (date, amount)
- Original creditor information (legal name, address), and merchant
- Charge off creditor information, if different from original creditor (legal name, address)

- Legal seller name (name of entity selling the debt)
- Account type
- Critical status (attorney representation, cease and desist, etc.)
- Charge off balance
- Current balance (if different from charge off balance), broken into principal and interest
- Current servicer (if outsourced)
- Interest rate
- Various bankruptcy claim data points (for bankruptcy portfolios)
- Various legal data points (for judgments)
- Various medical data points (for medical)
- Various security data points (for auto or other secured debt)

And may also include

- Credit Counseling or Debt Settlement contact information
- Non-essential consumer information (Date of birth, other phone numbers)
- Bankruptcy and deceased information
- Note history
- Payment history
- Any other descriptions accompanying the debt, including other unique account identifiers, collateral descriptions, etc.

Q2: Does the cost of a debt that is sold vary based on the information provided with the debt by the seller? Are there certain types of debts that are not sold, such as debts a consumer has disputed, decedent debt, or other categories of debt?

Comment:

Information or additional data does not typically impact the price at which debts are sold as price is predominately based on the collectability of the portfolio over time. However, there may be costs in addition to the purchase prices related to the provision of physical documentation such as statements and affidavits in excess of a certain threshold.

It is very common for certain debt to be excluded from a sale and the specifics will depend on the agreement between the parties. Regarding debts which are not generally sold, a typical purchase agreement contains a section for non-conforming, ineligible or excluded accounts. It is common that accounts which are outside of a give geographical area, below a certain balance threshold, below a give FICO or the consumer is deceased or in bankruptcy are excluded from sale. Disputed accounts are almost universally excluded from sale.

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?

Comment:

Most, if not all of the major national banks engage in the periodic review and on-site auditing of active and potential the debt buyers. These reviews are detailed and require that stringent practices and procedures be in place, including compliance with the Fair Debt Collection Practice Act (FDCPA), Fair Credit Reporting Act (FCRA), Gramm-Leach-Bliley Act (GLBA), Equal Credit Opportunity Act (ECOA), Electronic Fund Transfer Act (EFTA), Telephone Consumer Practices Act (TCPA), Servicemembers Civil Relief Act (SCRA), state repossession standards, bankruptcy practices, Unfair, Deceptive and Abusive Acts or Practices (UDAAP), deceased collection standards, and state and city laws. Phone calls and letters may also be reviewed or monitored. Banks have tended to increase the frequency and scope of such reviews in recent years, even prior to the issuance of the OCC guidance referenced above.

Q4: If debt buyers resell debts, do purchasers typically receive or have access to the same information as the reseller? Do purchasers from resellers typically receive or have access to information or documentation from the reseller or from the original creditor? Do conditions or limitations on purchasers from resellers obtaining information from the resellers or the original creditors raise any problems or concerns?

Comment:

In general, debt buyers that resell debt provide at least the same information that was received from the original creditor in addition to any status or consumer updates that occur during the course of the interim ownership. However, it is common for a contract for the re-sale of a debt to require the purchaser to communicate or request information or documents through the seller rather than the original creditor in order to maintain an orderly flow of information.

Q5: To what extent do debt owners transfer or make available to debt buyers or third party collectors information relating to: disputes (e.g., that a debt had been disputed, the nature of the dispute, whether the debt had or had not been verified, the manner in which it was verified, and any information or documentation provided by the consumer with the dispute);unusual or inconvenient places or times for communications with the consumer (e.g., at the consumer's place of employment); cease communications requests; or attorney representation? What would be the benefits and costs of debt buyers and third-party collectors obtaining or obtaining access to this information upon sale or placement of the debt? To what extent do third-party debt collectors provide this information to debt owners? What would be the costs and benefits of third-party collectors providing this information to debt owners?

Comment:

As an initial matter, a "dispute" should be defined as a "consumer disagreement about facts relating to whether they are responsible for the entire amount of the debt the collector is seeking to collect". Dispute should be distinguished from a "complaint" which should be defined as "a consumer concern related to conduct which was engaged in by a creditor or a debt collector in connection with efforts to collect a debt" and an "inquiry" which is a more general request for information from the consumer.

Disputed debts are normally not sold.

Information regarding inconvenient times for communication may be noted in the system but may be difficult to systematically convey in debt sales.

Consumers may request the cease of communications and the consumers request will be honored. However, a cease does not necessarily extinguish the underlying obligation and such an account may be deemed salable provided that the requisite notice and information is conveyed to the purchaser. Similarly, information related to attorney representations may be conveyed in a sale, if known, within a data field. These consumer decisions can significantly reduce the collector's ability to work with the consumer in resolving the debt and typically only leave the collector the option to pursue payment through the court system.

Q8: Please describe debt collectors' access rights to documentation such as account statements, terms and conditions, account applications, payment history documents, etc. What restrictions are most commonly placed on these access rights? Do these restrictions prevent or hinder debt collectors from accessing documentation?

Comment:

In general, debt collectors have the right and ability to request any available documentation possessed by the creditor which may help support the collection or dispute resolution process.

In some circumstances, when an account is aged, creditors may not retain certain documents under applicable record retention requirements. For example, Sec. 226.26 of Regulation Z (TILA) requires that certain contract and other records only be maintained for two years from the date of disclosure. Additionally, documentation may be unavailable because the originating entity is no longer in business, the contractual right of a debt buyer to obtain the documentation has lapsed or the request to the original creditor goes unfulfilled.

Currently, an increasing number of original creditors are providing 6 to 24 months of historical statements to the debt buyer at the time of purchase.

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?

Comment:

A validation notice is intended to notify the consumer of certain rights that they have to request specific information. To require that other additional information to be provided in conjunction with the notice would seem to be counter to the purpose. Even assuming that the consumer exercises the right to request validation, statements will not always address a particular consumer's issue so it would be unnecessarily costly to require that such documents be provided in response to a request for validation without some further consideration of the issue at hand. For example, a vast majority of validation requests are generated after a consumer's debt is sold and the consumer is seeking to verify the identity and rightful account ownership of the new creditor. A statement is irrelevant to this request in that it does not address or substantiate the new creditor as having a right to collect the account.

Q11: What privacy and data security concerns should the Bureau consider when owners of debts provide or debt buyers and third-party collectors obtain or obtain access to documentation and information when a debt is sold or placed for collection?

Comment:

Creditors, debt buyers and debt collectors are "financial institutions" under the definitions of the GLBA. As such, debt collectors must follow the safety and security guidelines of the GLBA as well as send consumers the required privacy notices. In addition, most entities have significant certifications related to data protection and security.

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 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?

Comment:

We do not believe a central repository is necessary since the addition of a third party to the process would introduce unnecessary complexity to the process and more often for today's transactions, media is being provided as part of the upfront sales transaction and provided to the debt buyer or seller are implementing automated processes to provide media on an as needed basis.

Q13: Do debt owners, buyers of debt, or third-party collectors currently notify consumers upon sale or placement of a debt, other than through the statutorily-required validation notices or through required mortgage transfer notices?

Comment:

In addition to complying with any state law requirements, debt buyers advise the consumers of the debt's current owner in the initial communication letter required under 15 USC 1692g.

Q15: What would be the respective costs and benefits of requiring a debt buyer or a debt owner to provide notice that a debt has been sold? What would be the respective costs and benefits of requiring that a third-party collector or a debt owner provide notice that a debt has been placed with a third party for collection?

Comment:

Such a notice should be required by the seller or purchaser, individually, jointly or through agents but only in conjunction with the initial collection effort, not at sale. Requiring such a notice in conjunction with a sale would be unnecessarily costly since some accounts are written off at purchase and not collected. Currently, the initial validation notice under 15 USC 1692g(a) requires that the current owner of the debt be disclosed thereby providing notice of the current (new) owner.

IV. Debt Collection Communications

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?

Comment:

The laws governing the debt collection industry fail to meet modern realities. The key to debt collection is communication. This was emphasized by the panel members at the FTC/CFPB event Life of a Debt. Limiting the options of consumers and collectors only serves to encumber this goal.

With the rapid increase in email and cellular telephone usage, the current regulations should be updated to allow for more consumer and business friendly methods of communication.

Communicating by way of email in a secure manner is a convenient and modern technology that should be available to debt collectors and consumers.

As the CFPB is well aware, consumer and business purchases of retail and commercial goods are commonly made electronically, and interpersonal communications of every kind are sent via email,

text messaging, and instant messaging. Consumers enjoy the convenience, speed, efficiency, and increased choices that the internet provides, and email offers them the opportunity to receive, read, and respond to communications based upon what is convenient, rather than based on the hours of operation of the Postal Service or phone interruptions. Environmentally conscious consumers and businesses tend to prefer electronic communications as a responsible way of reducing unnecessary waste.

The Federal Government has recognized the need to address collection technology in the FDCPA context. The General Accounting Office conducted a research project into the debt collection industry in 2009 which concluded:

> *. . . because the FDCPA was enacted prior to the advent of technologies such as mobile telephones, e-mail, and voice mail, its provisions on communicating with consumers are outdated. This has resulted in considerable ambiguity and confusion on using these technologies in compliance with the law, and collection companies have been reluctant to use some modern technologies.*[1]

Email did not exist at the time of the FDCPA's enactment, and the only form of mail available to consumers and debt collectors alike was the the Postal Service. From the consumer perspective, legitimizing email communication under the FDCPA would provide the opportunity to submit disputes, requests for verification, and demands that communications cease all with the convenience of email. From the industry perspective, use of email would substantially reduce the cost of the collection process.

Q55: Are there nascent communication technologies, or communication technologies that are likely to arise in the future, whose use in connection with debt collection might materially benefit or harm debt collectors or consumers? What additional challenges do those communication technologies present in applying the FDCPA or the Dodd-Frank Act's prohibition against unfair, deceptive, and abusive acts and practices to debt collectors?

Comment:

See above response regarding email. Just as important as legitimizing email, however, is removing the ban on collectors using auto dialers to call cell phones under the TCPA.

In 1991, Congress enacted the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, prior to the real advent of widespread cell phone use.[2] Section 227(b)(1)(A) of the TCPA prohibits the use of auto dialers when making calls to cell phones. Under the 1992 FCC rules implementing the TCPA, the FCC exempted debt collectors from the prohibition on using artificial or recorded

[1] GAO Report to Congressional Requesters. *Credit Cards: Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace and Use of Technology,* p. 51.
[2] Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat 2394 (1991) verified at 47 U.S.C. § 227 (TCPA).

messages in calls to residential lines, determining that such calls fell within the exemption for business relationships.[3]

In 1995 the FCC released a Memorandum Opinion and Order again clarifying that "prerecorded debt collection calls are exempted from Section 227(b)(1)(B) of the TCPA which prohibits recorded or artificial voice messages to residences."[4]

A 2009 study by the Center for Disease Control revealed that:

- One of every four American homes (24.5%) only had wireless phones;
- One of every seven American homes (14.9%) had a landline;
- More than two in five adults living alone with unrelated roommates (62.9%) only had a wireless phone;
- More than two in five adults renting their home (43.1%) only had a wireless phone;
- Adults living in poverty (36.3%) lived in households only with wireless phones[5].

Again, limiting the channels of communication does not help consumers resolve the debt.

VI. 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?

Comment:

If the CFPB were to require such a disclosure, it should be required as a written notice in the initial validation letter for an account that has passed the applicable statute of limitations. Including such a disclosure in verbal communications would require collectors to offer legal advice or draw legal conclusions, which, among other things, would create potential liability for collectors and risk confusing consumers. Further, there should be a uniform federal notice which would mirror or pre-empt disclosures already used in some states. Connecticut, for example, provides a disclosure which states:

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[3] 1992 TCPA Order, 7 FCC. Rcd at 8773, para 39.
[4] 1995 TCPA Reconsideration Order, 10 FCC Rdc at 12400, para 17.
[5] Blumberg, SJ, Luke, J V. Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2009 National Center of Health Statistics, May 2010.

"A) when collecting on debt that is not past the date for obsolescence provided for in Section 6059a) of the Fair Credit Reporting Act, 15, USSC 1681c: *"The law limits how long you can be sued on a debt. Because of the age of your debt, (INSERT OWNER NAME) will not sue you for it. If you do not pay the debt, (INSERT OWNER NAME) may report or continue to report it to the credit reporting agencies as unpaid"*, and (B) when collecting on debt that is past the date for obsolescence provided for in Section 605(a) of the Fair Credit Reporting Act, 15, USC 1681c. *"The law limits how long you can be sued on a debt. Because of the age of your debt, (INSERT OWNER NAME) will not sue you for it and (INSERT OWNER NAME) will not report it to any credit reporting agencies*".

Currently, there are a myriad of state and city disclosures used in California, Connecticut, Massachusetts, New Mexico, and New York City. Many of these disclosures are overly complicated and lengthy such that they are unlikely to resonate with the least sophisticated consumer.

Q134: The FTC in its *Asset Acceptance* consent order and several States by statute or regulation have mandated specific language disclosing that consumers cannot be lawfully sued if they do not pay time-barred debts. Please identify what language would be most effective in conveying to consumers that the collector cannot lawfully sue to collect the debt, and why.

Comment:

Similar to the Asset Acceptance consent order, Connecticut, for example, provides a disclosure we believe to be succinctly and adequately convey the information:

"A) when collecting on debt that is not past the date for obsolescence provided for in Section 6059a) of the Fair Credit Reporting Act, 15, USSC 1681c: *"The law limits how long you can be sued on a debt. Because of the age of your debt, (INSERT OWNER NAME) will not sue you for it. If you do not pay the debt, (INSERT OWNER NAME) may report or continue to report it to the credit reporting agencies as unpaid"*, and (B) when collecting on debt that is past the date for obsolescence provided for in Section 605(a) of the Fair Credit Reporting Act, 15, USC 1681c. *"The law limits how long you can be sued on a debt. Because of the age of your debt, (INSERT OWNER NAME) will not sue you for it and (INSERT OWNER NAME) will not report it to any credit reporting agencies*".

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Many companies have voluntarily adopted the use of a disclosure similar to the Connecticut disclosure on initial notices.

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Resurgent wishes to thank the CFPB for the opportunity to provide comments and hopes that this Comment will be given due consideration. Resurgent is available to answer any questions related to this Comment.

Thank you for your time and attention to this important matter.

Sincerely,

Dan Picciano
Division President
Resurgent Capital Services, LP