

United States Senate

WASHINGTON, DC 20510

June 4, 2013

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Director Cordray:

As more and more Americans turn to consumer credit to fill the financial void left by stagnating income and household wealth, credit-related industries have taken on an increasingly significant role in our economy. One such industry, consumer debt collection, was only lightly regulated at the federal level prior to the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act. However, debt collectors have come under increased scrutiny in recent months, including in our home state of Ohio.¹

When it passed the *Fair Debt Collection Practices Act* (FDCPA) in 1977,² the Senate Banking, Housing, and Urban Affairs Committee sought to protect consumers from “abusive, deceptive, and unfair debt collection practices.”³ As the Chair of the Senate Banking Subcommittee on Financial Institutions and Consumer Protection, with jurisdiction over consumer credit products, I am concerned about the prevalence of debt collection abuses nearly 35 years after Congress first implemented this critical protection for consumers of financial products.⁴ The Federal Trade Commission (FTC) continues to receive more complaints about third-party debt collectors than any other industry under its supervision. The Consumer Financial Protection Bureau (CFPB) recently estimated that almost 40 percent of disputes filed with national credit reporting agencies can be linked to collections.⁵

While these complaints have prompted the FTC to sue more than 30 collection companies, this represents just a small fraction of the alleged harm caused to the more than 30 million Americans with debts in collection. Debt collectors’ outsized influence on consumers’ privacy and financial health could prove exceedingly harmful if industry actors are allowed to operate with limited checks and little written guidance.

¹ See Jill Riepenhoff & Mike Wagner, *Debt Deception*, COLUMBUS DISPATCH, Oct. 7, 2012; see also Jill Riepenhoff & Mike Wagner, *Law, Courts Involved in Prolonging Agony of Debt*, COLUMBUS DISPATCH, Oct. 8, 2012.

² See Pub. L. No. 95-109 (1977).

³ 15 U.S.C. § 1692.

⁴ See S. R. Rule XXV (2000) (The Committee on Banking, Housing, and Urban Affairs shall be referred “all proposed legislation, messages, petitions, memorials, and other matters relating to ... Banks, banking, and financial institutions ... [and] money and credit[.]”). The definition of “financial institution” includes any entity that engages in an activity that is closely related to banking, see 12 U.S.C. § 1843(k), including collection agency services, see 12 C.F.R. § 225.28(b)(2)(iv).

⁵ See Consumer Fin. Prot. Bureau, *Key Dimensions and Processes in the U.S. Credit Reporting System: A Review of How the Nation’s Largest Credit Bureaus Manage Consumer Data 29* (Dec. 2012), available at http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf.

The creation of the CFPB has placed a new spotlight on the consumer debt collection industry. The CFPB has taken important steps, including designating larger participants in the debt collection market, reporting annually on FDCPA implementation, and overseeing debt collection activities at financial institutions that are otherwise subject to CFPB supervision. But significant work remains to ensure that consumers are fully protected from unverified debts and abusive collection practices. As the CFPB acknowledged in its 2013 Annual Report on the FDCPA, new debt collection business models and technological changes since the FDCPA was enacted over three decades ago present legal questions and challenges for regulators.⁶

In the months ahead, the CFPB will gain new insights into the collection industry through its oversight functions and public forums, including the upcoming joint CFPB-FTC roundtable on debt collection. Under the CFPB's statutory requirement to ensure that "consumers are protected from unfair, deceptive, or abusive acts and practices,"⁷ I urge you to consider the numerous existing studies, field hearing testimonials, and consumer lawsuits related to debt collection, and to take prompt action to correct the innumerable consumer abuses from both creditors and third-party actors in the industry.

In light of what we know about common industry practices, the CFPB should consider action to:

- **Require that debt collectors, whether primary creditors or third party collectors, hold all relevant documentation before issuing their first debt collection notice to the consumer.** In its 2013 report on the debt buying industry, the FTC noted that nearly half of all disputed debts were unverified by third party collectors.⁸ Original creditors are also frequently unable to verify debts, leading some large financial institutions to halt pursuits of outstanding debts after intense regulatory scrutiny.⁹ While the FDCPA requires debt collectors to provide validation upon written request of the consumer, attempting to collect a debt without the ability to validate a debt if requested violates the spirit of the FDCPA.¹⁰
- **Require that information on prior collection attempts travel with the debt.** With the emergence of the debt buying industry, the same debts are often sold and resold to multiple collectors. Yet the FTC's study of the debt buying marketplace found that "[b]uyers rarely received any information from sellers concerning whether a consumer had disputed the debt or whether the disputed debt had been verified."¹¹
- **Prohibit the sale of unverifiable debts.** While the FTC was unable to obtain information from the majority of the surveyed debt buyers on the percent of unverified debts they resold, it is clear that primary creditors and debt buyers do sell and resell unverifiable debts, and some debt contracts explicitly state that the accuracy of the information related to debts, when available, is not guaranteed.¹²

⁶ See Consumer Fin. Prot. Bureau, Fair Debt Collection Practices Act 41 (Mar. 2013), available at http://files.consumerfinance.gov/f/201303_cfpb_March_FDCPA_Report1.pdf.

⁷ 12 U.S.C. § 5511(b).

⁸ See Fed. Trade Comm'n, The Structure and Practices of the Debt Buying Industry 40 (Jan. 2013), available at <http://www.ftc.gov/os/2013/01/debtbuyingreport.pdf>.

⁹ See Jeff Horwitz, *JPM Chase Quietly Halts Suits Over Consumer Debts*, AM. BANKER, Jan. 10, 2012.

¹⁰ See 15 U.S.C. §1692g(a).

¹¹ See Fed. Trade Comm'n, The Structure and Practices of the Debt Buying Industry at ii.

¹² See *id.*, at iii.

- **Eliminate the sale or collection of time-barred debt.** As noted in the FTC's study of the debt buying industry, attempts to collect on time-barred debt create substantial confusion for consumers, who are likely to assume that a collector can sue to collect on the debt if it is not paid. Secondly, as detailed in the FTC study, the expiration of the statute of limitations on a debt is an affirmative defense in many states. Since the same study noted that 90 percent or more of consumers sued in collection actions do not appear in court to defend themselves,¹³ the requirement for an affirmative defense inherently disadvantages the consumer. Third, some debt collectors entice consumers to pay time-barred debts with the offer of credit access, which may be difficult for consumers with items in collection to access.¹⁴
- **Issue updated guidance for consumer dispute procedures reflecting the new technological possibilities for documented consumer disputes.** The FDCPA currently requires consumers to make any request for verification of a debt or to cease communications in writing. Given technological advancement since the FDCPA was first passed, the CFPB should consider issuing a requirement that debt collectors make electronically written requests for debt verifications or cessation of communications from an available and legal communication mechanism for consumers under the FDCPA.
- **Prohibit manipulative issuances of credit products in exchange for the payment of debts.** As noted above, some debt collectors have incentivized partial payment of time-barred debt by issuing credit products to consumers with limited access to credit.

This is not an exhaustive list of the challenges that plague consumer interactions with the debt collection industry. As you continue your oversight functions, I urge you to issue rules, regulations, and guidance for both creditors and third-party debt collectors to address systemic issues in consumer debt collection. As the CFPB noted in its August 2012 amicus brief to the Supreme Court, "the potential need for enforcement [of debt collection laws] exceeds federal-agency capacity by several orders of magnitude."¹⁵ In the months ahead, I hope that we can work together to close the gap between needed enforcement and regulatory capacity through increased oversight of this growing industry.

Sincerely,



Sherrod Brown
United States Senator

¹³ See *id.*, at 45.

¹⁴ See Jessica Silver-Greenberg, *Bringing Expired Debt Back to Life*, WALL ST. J., Dec. 31, 2011-Jan. 1, 2012.

¹⁵ See *Marx v. Gen. Revenue Corp.*, 133 S.Ct. 1166 (Feb. 26, 2013) (Br. of the United States as *Amicus Curiae* at 22).