



NEW YORKERS FOR RESPONSIBLE LENDING

c/o New Economy Project / 176 Grand Street / New York, NY 10013
Tel: (212) 680-5100 / Fax: (212) 680-5104 / nyrl@nedap.org

February 28, 2014

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

Submitted electronically to <http://www.regulations.gov>

Re: Advance Notice of Proposed Rulemaking Debt Collection (Regulation F): 12 CFR Part 1006, Docket No. CFPB-2-13-0033, RIN 3170-AA41

Dear Consumer Financial Protection Bureau:

The undersigned members of New Yorkers for Responsible Lending (NYRL) appreciate the opportunity to comment on debt collection practices affecting our communities. We urge the CFPB to enact strong rules that will help curb the unfair, deceptive, and abusive debt collection practices that have harmed and continue to harm lower-income New Yorkers. We request that the CFPB consider this comment letter to constitute 44 separate letters for the purpose of counting the total comments received in response to the ANPR.

NYRL is a state-wide coalition that promotes access to fair and affordable financial services and the preservation of assets for all New Yorkers and their communities. NYRL's 161 members include community development financial institutions, community-based organizations, affordable housing groups, advocates for seniors, legal services organizations, housing counselors, and community reinvestment, fair lending, labor and consumer advocacy groups.

NYRL has long advocated for tough rules to combat unfair practices, such as robo-signing, in the areas of debt collection and mortgage foreclosures. For example, NYRL has urged the New York State Department of Financial Services to issue strong rules that would govern

debt collectors in the pre-litigation stages of debt collection.¹ NYRL also strongly supported the actions that the New York State Office of Court Administration took to combat robo-signing in foreclosure cases and to ensure that only valid foreclosure actions are brought, and has urged that agency to adopt similar reforms with respect to debt collection lawsuits.²

For far too long, NYRL members have seen the profound harm that abusive debt collection practices cause people, with the impact most acutely felt by those living in lower-income communities and communities of color. Debt collectors use unfair tactics to pursue people for debts that they do not owe; that have been grossly inflated by unauthorized interest, fees or other charges; that are past the statute of limitations; or that they simply do not recognize because the debt collectors fail to provide sufficient information about the debts. One of their worst tactics involves obtaining default, or virtually automatic, judgments against people on the basis of fraudulent affidavits, and then using those judgments to garnish people's wages and restrain their bank accounts. These judgments also appear on people's credit reports and prevent them from obtaining housing, employment, insurance, mortgage loan modifications, and fairly-priced credit. These judgments also have a discriminatory impact: Two studies by NYRL members found that in New York State, debt collection judgments were disproportionately concentrated in communities of color.³

In this letter we describe some of the unfair, deceptive and abusive practices we see debt collectors, including original creditors and debt buyers, using to collect debts, and urge the CFPB to enact strong rules to combat these practices. *These rules should apply to original creditors' in-house collectors, debt collection agencies, debt collection attorneys, and third-party debt buyers alike.* Specifically, NYRL recommends that the CFPB do the following:

- 1. Require debt collectors to have in hand, review and verify basic information before they contact someone about a debt.**

We have heard too many stories about debt collectors harassing the wrong person about a debt, attempting to collect the wrong amount, or enforcing a default judgment against someone who never owed or already paid the underlying debt. For example, Ms. H, a senior living in New York City public housing, suffered a heart attack after a debt buyer seized \$3,000 of her life's savings from her bank account to pay for a credit card debt run up by an identity thief. Ms. D, a

¹ Letter from NYRL members to the New York State Department of Financial Services (Oct. 11, 2013), *available at* <http://www.nedap.org/resources/documents/NYRLcommentonDFSdebtcollectionrules.pdf>

² Letter from NYRL members to the New York State Office of Court Administration (Dec. 4, 2013), *available at* <http://www.nedap.org/resources/documents/NYRLFINALcommentonOCARule.pdf>

³ New Economy Project, *The Debt Collection Racket in New York: How the Industry Violates Due Process and Perpetuates Economic Inequality* (2013) [hereafter *Debt Collection Racket*], *available at* <http://www.nedap.org/documents/DebtCollectionRacketUpdated.pdf>; The Legal Aid Society, MFY Legal Services, Neighborhood Economic Development Advocacy Project, & Urban Justice Center, *Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers* (2010), *available at* http://www.nedap.org/resources/documents/DEPT_POLICY_PAPER_FINAL_WEB_REV.pdf.

single mother of two living in Buffalo, had her wages garnished by a debt buyer for a credit card debt that she had paid off years earlier.⁴

Debt collectors should not collect debts unless they have first undertaken an inquiry to confirm that the debt is valid and that they are collecting the right amount from the right person. To aid this inquiry, the CFPB should require that a debt collector possess, or at least have access to, basic information *before* it begins to collect the debt. This information should include, *at a minimum*,

- a. A copy of the signed contract or signed account application, or other documents that provide evidence of the person's liability.
- b. A copy of all or at least the last 12 account statements.
- c. The date and amount of the most recent payment.
- d. All account numbers ever used to identify the account.
- e. A breakdown of the amount claimed to be owed into principal, interest, and other fees and charges.⁵
- f. The name of the issuing bank; the brand (or store) name, if any; the date and amount of the last payment; the date of default; and the date of and amount owed at charge-off, if applicable.
- g. Any history of disputes for the account.
- h. Any history of prior collection efforts for the account.
- i. Information regarding whether the account requires any special handling, such as whether the account holder has advised that her income is exempt from debt collection.

It should go without saying that all debt collectors must review and verify this basic information before beginning collection attempts on a debt.⁶

2. Require debt collectors to provide a meaningful response, including copies of original documents, when someone disputes or requests verification of a debt.

Under the federal Fair Debt Collection Practices Act (FDCPA), debt collectors are required to respond with "verification" when someone disputes a debt, or any portion of a debt.⁷ Unfortunately, some courts have watered down this requirement to the point where it is no longer

⁴ Most of the case examples in this letter are from NYRL members' clients. Full names have not been used in order to protect people's privacy.

⁵ Under the federal Fair Debt Collection Practices Act, the consumer has the right to challenge the entire debt "or any portion thereof." 15 U.S.C. § 1692g(a)(4). Without knowing what "portion" of the debt is principal, and what is interest and fees, the consumer is unable to avail herself of this right.

⁶ Where an original creditor hires a third-party debt collector, the original creditor could maintain this information or transfer it to the debt collector when the account is placed for collection. Debt buyers should obtain this information at the time of sale.

⁷ 15 U.S.C. § 1692g(b).

useful to people.⁸ We have often heard of debt collectors that respond to a person's dispute simply by stating that they have confirmed that the debt is valid. The CFPB should therefore require debt collectors to provide verification that is meaningful and responsive to the person's specific dispute. For example, if a person disputes a debt as having arisen from identity theft, the debt collector should provide such documents as a signed agreement or account application, and any other documents and information relating to the identity of the accountholder. If the person disputes the amount of the debt, the debt collector should provide information showing how the amount was calculated. The verification should include copies of original documents, not just a supposed confirmation of and renewed demand for the debt.

3. Require that debt collectors have the ability to substantiate their claims before filing lawsuits.

It is critical that the CFPB use its authority to ensure that debt collectors do not file lawsuits unless they have the intent and ability to substantiate their claims with actual proof. Again and again, we see debt collectors filing lawsuits, and obtaining judgments, when they do not possess evidence about the key facts of the debt, and lack the ability to ever obtain such evidence, with devastating consequences for the people they sue.⁹ For example, Mr. P, a small business owner from Queens, New York, who lost a lot of his work equipment during Superstorm Sandy, was denied a small business loan to replace his equipment because of two judgments that were on his credit report. He learned that the same debt collector had sued him twice for the same alleged debt. When he went to court to challenge the judgments, the debt collector was unable to produce any information about the debt.

The worst perpetrators of this practice are debt buyers, companies that buy portfolios of old, defaulted debts for pennies on the dollar. In a typical debt sale, the original creditor – often a bank – provides the debt buyer with only an electronic spreadsheet containing minimal information about the debts and alleged debtors, and not any of the documents – such as credit applications, agreements, or statements – that the debt buyer would need to substantiate the debts. The original creditors specifically disclaim the accuracy of the information contained in the spreadsheets.¹⁰ Moreover, the spreadsheets are in an unprotected format, such that the information therein can be changed by anyone at any time.

⁸ See, e.g., *Clark v. Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162 (9th Cir. 2006); *Chaudhry v. Gallerizzo*, 174 F.3d 394 (4th Cir. 1999).

⁹ Standard debt purchase and sale agreements limit debt buyers to being able to request additional documentation “for a particular number of accounts in the portfolio and/or for a particular period of time” from the original creditor. See Federal Trade Commission, *Collecting Consumer Debts: The Challenges of Change* 22 (2009), available at http://www.ftc.gov/sites/default/files/documents/public_events/life-debt/dcwr.pdf. The number is typically very low, and the time period very short. Some purchase and sale agreements bar debt buyers from requesting or obtaining any documents at all.

¹⁰ Federal Trade Commission, *The Structure and Practices of the Debt Buying Industry* (2013), available at <http://www.ftc.gov/os/2013/01/debtbuyingreport.pdf>.

On the basis of this skeletal and unreliable information, debt buyers routinely file lawsuits and obtain judgments against people, and then use those judgments to garnish people's wages and seize money from their bank accounts. In our experience, many of the underlying debts are not valid to begin with. Also, many people do not receive notice that they have been sued and thus do not appear in court. Debt buyers then easily obtain default judgments, without having to produce proof that they own the debt or that the amount claimed is in fact owed.¹¹

No debt collector should be permitted to haul people into court, and thereby waste people's time and courts' resources, unless it has access to all the documentation it would need to prove its claims, in accordance with applicable state laws and rules.¹² A debt buyer that files a lawsuit is implicitly representing that it has the ability to make a reasonable showing of proof. To the extent that a debt buyer is bound by standard purchase and sale agreement provisions that severely restrict its ability to ever obtain enough documents to substantiate its claim – and in our experience, this is virtually always the case – the debt buyer does not have this ability, and therefore violates state and federal consumer protection laws, including the FDCPA, when it uses the courts to attempt to collect a debt. The CFPB should clarify that filing lawsuits without the ability to substantiate their claims violates the FDCPA, and use its authority to prohibit such conduct. The CFPB should make clear that any rule it prescribes to address this issue provides a floor, not a ceiling, and does not preempt any stronger requirements under state laws or rules.

4. Require banks and other original creditors to maintain complete and accurate records for each debt sold.

To help ensure that debt collectors that intend to file lawsuits have access to all the evidence that they would need to prove their claims in court, the CFPB should also use its authority to combat unfair, deceptive, or abusive acts and practices (“UDAAP authority”) to require that banks and other original creditors maintain complete and accurate records for each debt sold. Any creditor that wishes to sell off its debts simply should not be permitted to do so unless it is ready and able to provide the evidence needed to substantiate the debts in court.

¹¹ On the rare occasion that a person receives notice of the lawsuit and appears in court to defend herself, she is at an immediate disadvantage. In New York State, all debt buyers are represented by attorneys, but only 2% of people sued have legal counsel. See *Debt Collection Racket* at 3. The other, unrepresented 98% often waive significant defenses, such as the statute of limitations defense, because they do not know about them. Unrepresented defendants face tremendous pressure from an overburdened court system to enter into settlements, and often agree to make payments on debts they do not remember or recognize out of intimidation or because they cannot afford to miss any more days of work to attend court dates. In contrast, our experience has shown that virtually all defendants who are represented by counsel prevail against debt buyers, because the debt buyers are never able to produce the requisite proof.

¹² A requirement that debt collectors have basic information in hand before beginning the collection process, as recommended above, would certainly help ameliorate this problem. Where a debt collector intends to engage in litigation, however, it will likely need more documents than those listed above. For example, the debt collector may need copies of all account statements, account agreements and any addenda establishing the applicable interest rate(s) over the life of the account, and possibly a fact witness, depending on the jurisdiction, in order to be able to prove its claims in court in accordance with applicable state laws and rules.

5. Prohibit debt collectors from using false, robo-signed affidavits.

Debt collectors, and especially debt buyers, routinely submit to the courts false, robo-signed documents, fraudulently claiming that they possess personal knowledge about the facts of the debt. In one case, a federal judge found that a single affiant “sign[ed] hundreds of affidavits a week, purportedly based on personal knowledge, purporting to certify that the action has merit, without actually having reviewed any credit agreements, promissory notes, or underlying documents, and, indeed, without even reading what he was signing.”¹³ The CFPB should clarify that these fraudulent statements violate the FDCPA¹⁴ and also use its UDAAP authority to declare these robo-signing practices unfair, deceptive, and abusive.

6. Prohibit unfair, deceptive, and abusive debt collection practices by banks and other original creditors, as well as third-party debt collectors.

Banks and other original creditors should not be permitted to engage in debt collection practices that are considered unfair, deceptive, or abusive under the FDCPA when engaged in by third-party debt collectors. The CFPB should use its UDAAP authority to declare such debt collection practices unfair, deceptive, and abusive when engaged in by banks and other original creditors attempting to collect debts.

7. Prohibit debt collectors from engaging in unfair, deceptive, or abusive practices with respect to credit reporting.

We have heard from many New Yorkers who have been denied employment, housing, insurance, mortgage loan modifications, or fairly-priced credit because of debt collection accounts appearing on their credit reports. The CFPB should enact rules to protect people against unfair, deceptive, and abusive credit reporting practices by debt collectors. In particular, the CFPB should provide substantial protections for people facing medical debt collections, including requiring debt collectors to wait a minimum period of time before they may report unpaid medical bills to credit reporting agencies. The CFPB should also require that any debt collector that reports a debt to the credit bureaus also report any consumer disputes in a timely manner, and require debt collectors to take affirmative steps to remove any credit reporting on a debt that they no longer service or own.

8. Curb telephone harassment by all debt collectors, including banks and other original creditors.

¹³ Sykes v. Mel Harris & Assocs., 285 F.R.D. 279, 285 (S.D.N.Y. 2012).

¹⁴ The CFPB adopted this position in the brief that it filed, along with the Federal Trade Commission, as *amici curiae* in *Sykes v. Mel Harris & Assocs.* See Brief for the Consumer Financial Protection Bureau and Federal Trade Commission as Amici Curiae Supporting Plaintiffs-Appellees, *Sykes v. Mel Harris & Assocs.*, No. 13-2742 (2d Cir. Nov. 13, 2013).

We have heard from many lower-income New Yorkers, particularly seniors on fixed incomes, who have been harassed by round-the-clock debt collection calls, including from original creditors' in-house collectors. For example, Mr. and Mrs. G, an elderly couple in their 80s who live in Queens, were harassed by constant phone calls from a bank's collection department even though their only sources of income are Social Security and a pension, both of which are exempt from debt collection. The barrage of calls caused the couple, already in poor health, to suffer chest pains, insomnia, anxiety, and even thoughts of suicide; only when an advocate reached out to the bank on the couple's behalf did the calls finally cease. Mr. R, a disabled senior who lives in the Bronx and suffers from cancer, was so distraught by the relentless collection calls he received from his credit card company that he felt constantly pressured to use his Supplemental Security Income (SSI) for credit card payments instead of for the co-payments for his medications.

Original creditors' in-house collectors, and not just third-party debt collectors, should be required to comply with a person's request that the collector cease all contact. In addition, the CFPB should strictly limit the number of telephone calls that debt collectors, including original creditors' in-house collectors, may make to someone about a debt.

9. Improve remedies for private enforcement of the FDCPA.

The CFPB should clarify that statutory damages under the FDCPA are available *per violation*, and not just per person. Otherwise, a debt collector that commits a series of violations against a person pays the same amount of statutory damages – up to \$1,000 – that it would pay if it committed a single violation against that person. Debt collectors that deliberately and routinely violate the law therefore have no real incentive to comply with the law, and consider the low amount of statutory damages simply a cost of doing business.

Finally, the CFPB should also clarify that injunctive relief is available under the FDCPA.¹⁵ Such relief is critical to deter future misconduct by the offending debt collector, and to encourage other debt collectors not to engage in the same kind of misconduct.

Thank you for the opportunity to comment.

Sincerely,

Albany County Rural Housing Alliance, Inc.
Bedford-Stuyvesant Community Legal Services
Brooklyn Cooperative Federal Credit Union
Buffalo Urban League
BWICA Educational Fund

¹⁵ For a discussion of the applicable legal authority, we respectfully refer the CFPB to the National Consumer Law Center and the National Association of Consumer Advocates' comments on this ANPR.

CAMBA Legal Services
Central New York Citizens in Action, Inc.
Chhaya CDC
Consumer Financial Advocacy Clinic, SUNY Buffalo Law School
Consumer Justice for the Elderly: Litigation Clinic of St. John's University School of Law
CNY Fair Housing Council
Cypress Hills Local Development Corp.
DC 37 (AFSCME) Municipal Employees Legal Services
Empire Justice Center
Fifth Avenue Committee
Grow Brooklyn
Housing Help Inc.
Housing Resources of Columbia County
Human Development Services of Westchester
JASA/Legal Services for the Elderly in Queens
The Legal Aid Bureau of Buffalo
Legal Services NYC
Legal Services NYC – Bronx
Long Island Housing Services, Inc.
Manhattan Legal Services
Margert Community Corporation
MFY Legal Services, Inc.
NAACP Legal Defense & Educational Fund, Inc.
Nassau/Suffolk Law Services
Neighborhood Housing Services of New York City, Inc.
Neighbors Helping Neighbors
New Economy Project
New York Legal Assistance Group (NYLAG)
New York Public Interest Research Group (NYPIRG)
New York StateWide Senior Action Council
Pratt Area Community Council
Queens Legal Services
South Brooklyn Legal Services
Staten Island Legal Services
Syracuse University College of Law Securities Arbitration and Consumer Clinic
Teamsters Local 237
University Neighborhood Housing Program
Westchester Residential Opportunities Inc.
Western New York Law Center