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Field Hearing on Debt Collection

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Thank you all for coming today. I am glad to be here in California, which has actively sought to protect its consumers from bad debt collection practices. In fact, the Rosenthal Fair Debt Collection Practices Act was enacted in 1977, at the same time as its federal counterpart. Yet it goes further by applying most of its provisions to first-party creditors as well as third-party contract collectors, a premise we will be considering carefully ourselves as we proceed.

These laws were enacted to put an end to abusive practices by debt collectors. They have made a large difference in the lives of consumers. Yet even today, we continue to hear about serious problems with debt collection – debiting accounts without authorization, calling at all hours of the day or night, threats of arrest or criminal prosecution, or threats of physical harm to consumers and even their pets. Together, the Consumer Financial Protection Bureau and the Federal Trade Commission have worked to curb some of these worst abuses with vigorous enforcement of existing federal laws. To date, we have ordered creditors and debt collectors to refund hundreds of millions of dollars in enforcement actions based on unlawful debt collection practices.

But still there is much work to be done to assure that consumers are treated with the dignity and respect they deserve throughout the debt collection process. And that is what we are here to talk about today.

We recognize that debt collection serves an important role in the proper functioning of consumer credit markets. If people owe money that they borrowed on their credit card, or because they took out a student loan or received service from their telephone company, they are obligated to pay the money back and they should do so. But for many understandable reasons, huge numbers of Americans fall behind on their debts at one time or another. We estimate that about one in three consumers – more than 70

million people in all – were contacted by a creditor or collector seeking to collect a debt within the past year.

In the debt collection market, notably, consumers do not have the crucial power of choice over those who do business with them when creditors turn their debts over to third-party collectors. They cannot vote with their feet. They have no say over who collects their debts, and they likely know next to nothing about the collector until they receive a call or a letter. This can quickly lead to a barrage of communications, which in some cases are designed to be harassing or intimidating. Often debt collectors are motivated to go to almost any lengths to try to extract as much as they possibly can from the debtor. This is because they are typically paid based on the amount they collect, the relationship may be fleeting, and the more distant risk of being called to account later may not outweigh the immediate urgency of getting paid today.

It is not surprising, then, that for many years, the debt collection industry has drawn more complaints than any other, not only complaints to the Consumer Bureau but also to other agencies and officials in federal, state, and local government. To date, we have handled about 250,000 debt collection complaints, which is about one-quarter of all the complaints we have received. Last year alone, we fielded 85,000 debt collection complaints. The largest segment had to do with continued attempts to collect a debt that the consumer said was improper, because it was not their debt in the first place or because it had already been repaid or discharged in bankruptcy. Without clear rules of the road that can be effectively enforced in an even-handed manner, the companies that try to collect debts in the right way will have trouble competing against others that are willing to bend the rules or push the limits of the law to get an advantage.

A collections item can start as an overdue car payment, medical bill, or utility bill, or any kind of unpaid invoice. The story of how a financially struggling consumer gets to the point of owing money can reflect all the many limitations of human nature and the human condition. Some people just put their head in the sand and avoid payment. Other problems result from poor or unfortunate choices. Often the overdue bill is due to bad luck or some unexpected larger tragedy like job loss, illness or injury, or the dislocations caused by divorce. Those living under the shadow of indebtedness already tend to bear an emotional toll, which is intensified as they experience the new trials of the debt collection process.

When a consumer fails to pay the original creditor, that creditor usually makes some effort to collect on its own, but eventually may hire a third-party collector or sell the debt to a debt buyer. When the creditor sells off the debt, that typically means it has given up trying to recover the funds owed and has settled for recouping what it can by selling the delinquent debts, perhaps for as little as pennies on the dollar. The new debt owner then has the legal right to seek to collect the full amount of the original debt. In addition to trying to contact the consumer to seek payment, the debt owner may report the debt to the credit reporting companies, which creates pressure to pay it off, or may file a lawsuit against the consumer.

The main federal law that protects consumers and governs the industry is the Fair Debt Collection Practices Act, enacted almost forty years ago. Since then, courts have come to different interpretations of the statute, creating uncertainty for debt collectors and consumers alike. Moreover, as new forms of technology have emerged, many questions have arisen as to how to apply the law. For example, the law explicitly

addresses the use of postcards, collect calls, and telegrams – but is silent about the use of voicemail, email, and text messages.

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act authorized the Consumer Bureau to be the first agency to issue comprehensive federal rules on debt collection. Since we opened our doors, we have been studying this industry as we engaged in enforcement and supervisory activity to improve legal compliance. We have engaged extensively with stakeholders across the spectrum and conducted our own research. And we have also looked to the good work done in this area by our colleagues at the Federal Trade Commission. One of their research reports concluded that debt collectors need to have better information so they are more likely to collect from the right person in the right amount.

Today we are considering proposals that would drastically overhaul the debt collection market. Our rules would apply to third-party debt collectors and to others covered by the Fair Debt Collection Practices Act, including many debt buyers. As part of our overhaul, we also plan to address first-party debt collectors soon, but on a separate track. The basic principles of the proposals we are considering are grounded in common sense. Companies should not collect debt that is not owed. They should have more reliable information about the debt before they try to collect. They would have to limit the number of attempts to make contact and should give consumers better information and more control over the process. Collectors also would have to make it easier for consumers to pursue disputes, and they would be barred from collecting on disputed debt that lacks proper documentation. These same requirements would follow along with any debts that are sold or transferred to another collector.

Both consumers and responsible businesses stand to benefit by improved standards for debt collection. Consumers deserve to be treated with dignity and respect, and businesses should be able to operate fairly and reasonably to collect the debts they are legitimately owed.

In the United States today, debt collection is a \$13.7 billion industry that employs more than 130,000 people across approximately 6,000 collection companies. When these companies receive a portfolio of debts to begin collection, they may get only basic data – for example, name, address, creditor, and an amount claimed to be due. If the account is later sold or transferred, the information that goes with it is often incomplete, and anything a consumer had submitted may not be passed along. That breeds inaccuracy.

Our proposal under consideration would require collectors to substantiate a debt before seeking to collect on it. Collectors would have to confirm that they have sufficient information to start collection, such as the full name, last known address, last known telephone number, account number, date of default, amount owed at default, and the date and amount of any payment or credit applied after default. In addition, we are considering requiring collectors to refrain or cease from collecting if certain “warning signs” appear, such as a portfolio with large amounts of missing information or a high dispute rate.

These rules would apply to each successive debt collector. Each new collector would have to review their files to establish a reasonable basis for demanding payment. And if debt gets sold, it would have to be accompanied by specific information about the debt – information that benefits the consumer, not just the collector. For example, if a debt collector learns that a consumer is represented by an attorney, that information would have to be passed on to the next collector. For an active-duty servicemember with protections under the Servicemembers Civil Relief Act, that information would have to be passed from one collector to the next so those protections would be readily known and maintained.

Documentation of claims has long been a problem at all phases of the debt collection process. But let me focus on the process of seeking repayment through the courts, which is where bad information can hurt consumers the most. When debt collectors file a lawsuit to collect on a debt, as they often do, few consumers have the resources, the time, or the ability to appear and defend their cases in court. This will often lead to a default judgment and a victory for the debt collector, regardless of whether the suit is against the wrong person or for the wrong amount. It is even true where the time allowed for filing the lawsuit has already expired. Our research indicates that default judgments are entered in 60 to 90 percent of the lawsuits that are filed.

These situations encourage sloppy or even fraudulent practices. Nearly a year ago, we took enforcement actions against two of the largest debt buyers in the country, Encore Capital Group and Portfolio Recovery Associates, for churning out lawsuits using robo-signed court documents. In numerous cases, the companies had no intention of proving the debts in court. Instead, they relied on consumers defaulting – even where the paperwork often stated incorrect balances, interest rates, and due dates. The two companies were ordered to pay \$61 million in consumer refunds and stop collection on more than \$128 million worth of debts.

We also have been active on the debt seller side of the equation. Along with attorneys general from 47 states and the District of Columbia, we took action against JPMorgan Chase for selling invalid credit card debt and for robo-signing documents. The bank was ordered to pay \$50 million in consumer refunds and \$136 million in penalties and payments. It also agreed to halt collection activity on more than 528,000 consumer accounts, including a permanent ban on collecting the accounts, enforcing them in court, or selling them to someone else.

But enforcement actions alone cannot fully resolve these problems. Our proposal under consideration would make clear that collectors must meet a higher threshold before pursuing a lawsuit than before they make a verbal or written claim to a consumer. And the proposal under consideration would make clear that collectors are barred from filing a lawsuit to collect on a debt where the statute of limitations has expired.

It is not enough simply to assure that debt collection is premised on the right person and the right amount. Consumers need to understand what the collector is doing and why. Consumers also need protection when it comes to what, when, where, and how collectors communicate with them. Debt collectors are generally prohibited from engaging in acts that harass, oppress, or abuse consumers. But many consumers still

complain about frequent or repeated phone calls; debts that are wrongly disclosed to third parties; and contacts at inconvenient times or places, such as when they are in the hospital. Our proposal under consideration would give consumers more information and control in their dealings with collectors and limit excessive contact.

When consumers are contacted by collectors for debt they do not recognize or barely remember, they may not know what their next move should be. They may wonder if it is a scam. They may feel pressure to pay a debt they do not believe is accurate just to make the collector go away. So one thing we are considering is to enhance the information people receive from collectors. Debt collectors already must give consumers initial notices about the debt that contain limited information. But we have heard from many consumers who remain confused even after getting these notices. We are considering expanding the information in these notices so consumers get much more detail about the debt.

We also want consumers to be better informed about the debt collection process. Many people do not know what rights they have, when they can invoke their rights, or how they can dispute a debt. The initial notices consumers receive from collectors often are written in legalese that can be hard to understand. On the other side, industry has been hesitant to edit or improve these letters because of concerns about potential liability if they do not repeat what the law says word for word. So we would require collectors to provide a statement with specific information about a consumer's federal rights, written in plain language. This would include a notice of their right to stop or limit communications, a statement that the debt is too old to support a lawsuit, and information about the Consumer Bureau's website, where they can file a complaint or "Ask CFPB" to answer their debt collection questions.

The proposal we are considering would also put consumers in control of their communications with collectors. One provision would limit collectors on each account to no more than six attempts per week to contact a consumer they have not previously reached. This cap would cover all contact attempts through various phone numbers, email addresses, or postal addresses, including unanswered calls and voicemails. After the consumer has been contacted initially, a collector then would generally be limited on each account to one actual contact per week and no more than three attempted contacts per week.

Consumers would also be able to stop collectors from using specific channels to contact them. For example, they could more easily block collectors from calling on a particular phone line, such as a work phone, or calling during certain hours. If consumers say not to call on their cell phone, then the collector would have to comply. We also are considering a 30-day waiting period for collectors seeking to collect the debt of a consumer who has passed away. This would protect the dignity of surviving spouses or others who may be coping with the early stages of the grieving process.

The third category of protections we are considering has to do with disputes. Under current federal law, consumers can dispute the debt or ask for more information if they are unsure whether they owe money to a creditor or how much. But few consumers fully understand their rights to question or dispute a debt.

Under the proposal we are considering, just by asserting a disagreement about the validity of the debt or the right of the collector to collect that debt, consumers would obligate the collector to go back and check their documentation. Collection activity could not resume until the information is confirmed. We would make it easier for consumers who do not believe they owe that amount to file a dispute at the very beginning of the process by including a “tear off” sheet at the bottom of the notice sent to the consumer. Consumers could mail this form back to the collector and simply check the relevant boxes on the form, explaining why they think the collector is wrong. If they do so within 30 days after receiving the notice, the collector would be blocked from contacting them until after the dispute has been investigated and written verification has been provided.

A key point is that collectors would not be able to bury the dispute just by selling the debt to a new collector. If they have not resolved the dispute before selling the debt, any new collector would have to investigate and address the dispute before seeking payment.

Today we are sharing this outline of proposals to reform debt collection with representatives of small entities engaged in debt collection. Next month, these representatives will meet with a Small Business Review Panel we are forming along with our colleagues from the Office of Management and Budget and the Office of Advocacy of the Small Business Administration. The panel will explore the potential impact of these measures on small businesses. We also will be meeting with consumer and industry stakeholders to obtain their input.

As Thomas Fuller once said, “Debt is the worst poverty.” It can overwhelm people and imbue them with a sense of helplessness. By cleaning up the integrity of this process, we would resolve many of the problems at their foundation. Consumers should not be limited to being passive participants in a system they do not trust or understand. We are determined to put the burden of proof on the debt collector and take some of this weight off the consumer. We will remain determined to address these issues in ways that improve people’s lives. Thank you.

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The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. For more information, visit consumerfinance.gov.