



May 30, 2014

Via email to rulecomments@nycourts.gov and overnight delivery to:

John W. McConnell, Esq.
Counsel
Office of Court Administration
25 Beaver Street, 11th Fl.
New York, N.Y. 10004

**Re: Comments by DBA International to Proposed Reforms
Relating to Consumer Credit Collection Cases**

Dear Mr. McConnell:

DBA International (DBA), the national nonprofit trade association that represents the interests of over 500 companies that purchase performing and nonperforming receivables on the secondary market, hereby, respectfully submits the following comments on the New York State Unified Court System's "proposed reforms relating to consumer credit collection cases" published on April 30, 2014.

DBA is the national leader in promoting strong and ethical business practices within the debt buying industry. As part of our efforts, DBA requires all of our member companies who purchase receivables on the secondary market to become certified through the DBA Debt Buyer Certification Program (Certification Program) [see **APPENDIX A**] as a requisite for membership.

DBA supports the Unified Court System, through the leadership of Chief Judge Lippman, in seeking reforms to address how consumer credit collection cases are handled in New York State courts. We view these reforms, with several adjustments which will be discussed below, as essential to ensure that consumers are treated in a fair and respectful manner which is highly consistent with the goals and requirements of the DBA Certification Program.

The Certification Program is the single most comprehensive source of uniform standards that have been adopted in the nation relating to debt buying and debt collection. In addition to requiring that certified companies comply with the Fair Debt Collection Practices Act (FDCPA), the Fair Credit Reporting Act (FCRA), the Telephone Consumer Protection Act (TCPA), the Servicemembers Civil Relief Act (SCRA), the United States Bankruptcy Code, the Federal Trade Commission (FTC) Act, and the Dodd-Frank Act, the Certification Program

goes above and beyond the requirements of state and federal laws and regulations by requiring its member companies to comply with over 50 additional requirements that are contained within the 20 program standards.

More importantly, all certified companies are subject to vigorous and recurring independent third party audits to demonstrate to DBA their compliance with the certification program. Minor and inadvertent deviations from the program are subject to mandatory remediation agreements whereas egregious and intentional violations are subject to DBA membership and program expulsion.

As representatives from DBA discussed at a meeting with First Deputy Chief Administrative Judge Lawrence Marks on May 21, 2014, DBA has long been an advocate in seeking and supporting balanced laws and regulations that promote the legitimate interests of both the consumer community who wish to have additional information to either verify or dispute a claim and the business community who seek to collect on a legitimately owed contractual obligation. Our desire for stronger consumer protections is what led DBA to seek input from the Consumer Financial Protection Bureau (CFPB), the Federal Trade Commission (FTC), the state attorneys general, and the various other local, state, and federal regulatory entities in the development and annual review of the DBA Certification Program (see **APPENDIX B**).

In New York State, DBA has been working for a number of years to get meaningful and balanced consumer protections adopted in the state legislature, including the submission of proposed redlines on the “Consumer Credit Fairness Act” (see **APPENDIX C**) and suggesting alternative approaches such as California’s Fair Debt Buying Practices Act (see **APPENDIX D**). DBA has also filed comments with the New York State Department of Financial Services (see **APPENDIX E**) concerning the department’s proposed rule on pre-litigation consumer reforms within the collection industry. In 2009, DBA was asked by Governor Patterson’s office for assistance as they were drafting a Program Bill which would have enacted New York’s own version of the federal Fair Debt Collection Practices Act. DBA was appreciative of the request and provided the assistance requested but unfortunately the proposal failed to move forward due to the expiration of the Governor’s term of office.

However, DBA must caution that just as the absence of laws and regulations governing collection activities can be harmful to consumers, the adoption of reforms that exceed that which are required to achieve stated goals or which conflict with existing state or federal laws can cause significant and unnecessary harm to the business community and as discussed below can ultimately be harmful to the consumers themselves.

While DBA International supports the efforts of the Unified Court System to adopt court reforms, we have significant concerns regarding the wording used in several of the provisions of the proposed rules and accompanying affidavits. DBA must therefore respectfully request that the Unified Court System consider several changes to the proposed rule and supporting affidavits so as to achieve the aforementioned balance between enhanced consumer protections and allowing businesses to collect on legitimately owed consumer transactions.

DBA proffers the following modest adjustments to the proposed rules and affidavits (with supporting rationale for the changes). These changes will address the concerns that the business community has with the proposed rules and if adopted will likely become the standard that other states will seek to achieve:

I. ACCOUNT-LEVEL AFFIDAVITS

DBA has significant concerns with the requirement of account-level affidavits to be signed by the creditor in debt buyer cases, in the proposed rules. While DBA is very supportive of the use of portfolio-level affidavits for proof of the transfer of ownership, DBA believes account-level affidavits signed by the creditor and not the assignee debt buyer would set a new and unprecedented standard which (i) is not supported by the Business Records Exception contained in New York Civil Practice Law and Rules (CPLR) 4518(a), (ii) is not supported by prior precedent established by the Unified Court System, (iii) is not the least restrictive option available to the Unified Court System to achieve the intended outcome, (iv) would impose an unreasonable and unnecessary expense on business operations that is unsupported by the relative low rate of litigation on consumer accounts, (v) is counter to public policy to prevent robo-signing, and (vi) as drafted would apply retroactively to existing purchased accounts rendering the vast majority of these accounts ineligible for litigation due to the impossibility of compliance.

Business Records Exemption – CPLR 4518(a)

The proposed rules and affidavits should conform to New York's Business Records Exception contained in the Civil Practice Law and Rules (CPLR) R 4518(a) which states:

"All other circumstances of the making of the memorandum or record, including lack of personal knowledge by the maker, may be proved to affect its weight, but they shall not affect its admissibility" (emphasis added).

Clearly Rule 4518(a) stands for the proposition that any evidence may be admissible, correctly leaving to the court to determine how much weight to assign the business record in light of the totality of the facts and evidence submitted to the court. The mere fact that a business cannot produce an affidavit by the original creditor on personal knowledge should not mean that a consumer's legal obligations to pay a legitimate debt should be excused.

There are three foundation requirements for a document to be deemed a potentially admissible business record pursuant to CPLR § R 4518(a):

1. That the record be made in the regular course of business. The record must reflect a routine, regularly conducted business activity, and that it be needed and relied on in the performance of functions of the business;
2. That the practice be to keep the record in the in the regular course of such business. This means that the record be made pursuant to established procedures for the routine, habitual, systematic making of such a record; and
3. That the record be made at or about the time of the event being recorded. This means that the recollection of events recorded on the document be fairly accurate and the habit or routine of making the entries.

Courts have routinely allowed assignees, which have included debt buying companies, to use the business records exception. The proposed rules and affidavits, as currently drafted, would not afford the assignee provisions to debt buying companies and therefore limit the use of the statutory provision contained in CPLR 4518(a). As stated in *Med. Expertise PC v Trumbull Ins. Co*, 196 Misc 2d. 389 (N.Y. Civ. Ct. 2003):

"Clearly, records made in the regular course of business are hearsay when offered for the truth of their contents. N.Y. C.P.L.R. art. 4518(a) creates in New York a business records exception to the hearsay rule to alleviate a harsh result in many valid claims. This exception to the hearsay rules continues to evolve, both by legislative initiative and by judicial construction, to marry the requirements of modern day businesses to the foundational requirements of this exception. For example, this rule was amended by the state legislature in 2002 to include tangible evidence of an electronic record stored in the ordinary course of business as a true and accurate representation of the electronic record."

This principle has been adopted in assignee/debt buyer cases as well. See *Robinson v. H&R Block Bank*, 2013 U.S. Dist. LEXIS 75608, aff'm 2014 U.S. App. LEXIS 6656 (EDNY, Decided May 29, 2013) and *Portfolio Recovery Assoc. v. Lall*, 2013 NY Slip Op. (Supreme Court, Appellate Term, and First Department). A business record is admissible even though the person who prepared it is unavailable to testify to the acts or transactions. The rule obviates the need for the maker of the document to be a witness at trial so long as the document meets the foundational requirements. There is the additionally reality that in the context of credit card records they are often totally electronic from start to finish, i.e on-line purchases.

Prior Precedent by the Unified Court System

At the meeting with Judge Marks on May 21, 2014, the foreclosure industry reforms were mentioned as a point of parallel reference and "model" for the changes sought in the proposed rules and affidavits. However, the foreclosure reforms adopted by the Unified Court System allow the assignee plaintiff, not the original creditor, to execute the affidavits required by the Office of Court Administration.¹ Consequently, the "model" for the proposed rules and affidavits has apparently been adjusted to create a significantly higher burden for companies who are attempting to collect on consumer credit balances that pale in comparison to the hundreds of thousands to millions of dollars associated with foreclosure proceedings. When balancing benefit and harm, DBA would respectfully suggest it seems illogical to place a greater standard on credit card transactions than that of home mortgages.

Least Restrictive Option

DBA would respectfully note that the proposed rules and affidavits are not the least restrictive option available to achieve the Unified Court's objectives. In fact, an effective solution that is significantly less burdensome and punitive to businesses has been in place in New York City for the past five years. In 2009, the New York City Civil Courts adopted a series of affidavits required for default judgments on purchased debt (see **APPENDIX F**) to achieve the very same goal sought by the Unified Court System. The New York City affidavits have been

¹ See OCA Press Release October 20, 2010- http://www.nycourts.gov/press/pr2010_12.shtml

successfully adopted by the banking and debt buying industries but more importantly the affidavits have achieved the desired results.

The New York City affidavits are quite different than the Unified Court System affidavits in that they are (i) used to establish chain of title (not to establish the facts of the case), (ii) obtained at the portfolio-level because accounts are sold in portfolios (not individually), and (iii) signed by the custodians of the business records who are attesting to the manner in which business records are maintained (not on the facts of each account based on personal knowledge). DBA would respectfully request that the Unified Court System adopt New York City affidavits since they are proven to work and the business community is already familiar with the standard over pursuing an unproven and more punitive approach to achieve the same goal.

Unnecessary Expense on Business Operations

The proposed account-level affidavits will add a significant expense to business operations. The affidavit requirements on a hypothetical 1,000 consumer accounts which were bundled and sold as a portfolio would require one affidavit from the original creditor based on the New York City standard whereas under the Unified Court System it would require the bank to issue 1,000 affidavits. The time and cost associated with churning out such a high volume of affidavits serves no purpose when you consider that most debt buyers actually litigate a very small fraction of those accounts.

Counter to Public Policy to Prevent Robo-Signing

One of the stated goals of the Unified Court System in advocating for the proposed rules is the belief that they will reduce the likelihood of robo-signing. DBA would like to respectfully note that the practice of robo-signing was addressed several years ago in actions by state attorneys general and no longer appears to be a present day concern. However, if robo-signing should reappear in the future, it would seem logical to conclude that it would be significantly more likely to occur under the proposed Unified Court System's account-level affidavits than it would with the New York City portfolio chain of title affidavits.

Retroactive Application of the Rule

While DBA agrees with the Unified Court System's desire for additional rules governing default judgments, including the use of portfolio-level affidavits, DBA has grave concerns if such requirements are to be applied retroactively as a penalty to accounts sold and purchased prior to the implementation date of any proposed rules and affidavits – regardless of the affidavits ultimate form.

Simply put, how was a company who purchased or sold account receivables at any point in the past six years (i.e. within the statute of limitations period) to know that they had to comply with a series of specific affidavits that was neither created nor required until 2014? The answer is they could not as nobody can predict future legislative or regulatory requirements.

The reforms as proposed would effectuate a retroactive impact and would be a violation of contract rights. *Rudin Management Co. Inc. v. Commissioner, Dept. Of Consumer Affairs*, 213 A.D.2d 185, 623 N.Y.S.2d 569 (1st Dep't 1995) (In New York, statutes are applied prospectively, unless there is a clear legislative indication to the

contrary). An exception to the foregoing is that remedial statutes, which are to be liberally construed, are to be given retroactive construction to the extent that they do not impair vested rights or create new rights. *Mendler v. Federal Insurance Co.*, 159 Misc. 2d 1099, 607 N.Y.S.2d 1000, 1003 (N.Y. County 1993). Therefore, remedial statutes constitute an exception to the general rule that statutes are not to be given a retroactive operation, but only to the extent that they do not impair vested rights. As a general rule, statutes are to be construed as prospective only in the absence of an unequivocal expression of legislative intent to the contrary, and where a statute directs that it is to take effect immediately, it does not have any retroactive operation or effect.² While the proposed rules and affidavits as drafted do not indicate an intent to operate retroactively, they could be easily interpreted by courts to have such an effect in the absence of language stating the opposite. Therefore, silence on the matter would likely result in contract vitiation caused by requirements which could not have been anticipated prior to their adoption and thereby resulting in a retroactive penalty. See also *Lusardi v. Lusardi*, 167 A.D.2d 3, 570 N.Y.S.2d 376, 377 (3d Dep't 1991).

Furthermore, any suggestion that a company could simply go back through the prior chain of title and obtain all of the proposed affidavits once the rule has been adopted would encounter the following challenges: (i) the affiant employee(s) associated with the account(s) when held by the affiant company may no longer work for the company or may be deceased, (ii) the affiant company may no longer be in business, (iii) the supporting documentation required by the affidavits may no longer exist (see section II below), or (iv) the costs associated with the affidavits were not part of the original negotiated exchange between seller and purchaser as the need for them was not known at the time of the transaction.

If the proposed rule and affidavits are adopted without providing a grandfathering clause to exempt prior purchased accounts, the effect could be the extinguishment of billions of dollars of corporate assets due to the impossibility of meeting the requirements of the affidavits.

There is also the issue of the New York City affidavit requirements that apply to default judgments on purchased debt that was adopted by the Civil Court of the City of New York in 2009. DBA member companies have fully embraced and complied with these city-mandated requirements which apply to approximately 42 percent of the population of New York State. These city affidavits would be in immediate violation of the proposed Unified Court System affidavits if applied retroactively which would seem counter to public policy.

Finally, a retroactive application of the affidavit requirements would have the likely effect of placing thousands of companies and their attorneys that have cases pending before New York courts in immediate violation of the strict liability provisions of the FDCPA for failure to comply with the collection requirements prescribed by the states.

Violations of state laws or court rules become immediate fodder for bootstrapped lawsuits against debt buyers and their counsel (attorneys are considered "debt collectors" under the Federal Fair Debt Collection Practices Act) see *Leblanc v. Unifund*, 601 F.3d 1185, (11th Cir 2010) (violation of state licensing law allowed for Federal Fair Debt Collection Practices Act class action). See also *Myers v. Midland Credit Mgmt.*, 2014 U.S. Dist. LEXIS

² Contract Clause United States Constitution, Article I, section 10, clause 1, states "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

32349 (M.D. Pa. Mar. 13, 2014) and *Sibley v. Firstcollect Inc.* 913 F. sup 469 (M.D. La. 1995). As evidence of this point is a lawsuit filed in the United States District Court for the Eastern District of New York, entitled *Italiano et al v Midland Funding, LLC et al*, 2:14-cv-00018-LDW-ARL which was amended on May 16, 2014 to add new parties and included the following language: "Two weeks ago, Chief Judge Jonathan Lippman of the New York State Court of Appeals reiterated that "the law requires a [debt buyer] seeking a default judgment to provide some firsthand confirmation of the key facts in the case."² (emphasis added). Yet, the Defendants never possess "firsthand confirmation of the key facts," of the debt that Midland purchases."FN(2) April 30, 2014 Press Release, at 1, annexed hereto as Exhibit A (paragraph 2 of Amended Complaint).

These types of claims are usually brought on mere technical violations of the act due to the strict liability provisions contained therein. Furthermore, the FDCPA's attorney fee provisions oftentimes nets a plaintiff attorney significant fees in comparison to the modest recovery received by their consumer plaintiff that would result from a technical violation.³

DBA International would respectfully request that the Unified Court System's final rule adopt the same language used by Deputy Chief Administrative Judge Fern A. Fisher when adopting affidavit requirements on default judgments for the Civil Court of the City of New York in 2009 (but with an effective date four months from the rule's adoption):

"This directive will address the entry of judgments by the clerk based upon the defendant's failure to answer on consumer credit actions where the debt was purchased by the plaintiff after September 1, 2009."

II. ORIGINAL CREDITOR & CREDIT AGREEMENT

Several of the proposed affidavits require the attachment of copies of (1) the "credit agreement" entered into between the original creditor and the defendant and (2) all documents modifying the interest rate or fees applicable to the account. The providing of this type of information is consistent with a provision in the DBA Certification Program which requires certified companies to use commercially reasonable efforts to obtain thirteen (13) different data elements as well as access to sufficient documentation to support the identity of the consumer. It should be noted that while DBA supports the provision of additional documentation to the court that goes to demonstrate that the correct defendant is before the court and that the correct amount is being sought, reliable proof does not necessitate that the manner by which this can be shown is limited to affidavits from the original creditor (as discussed in section I above).

DBA would support this provision provided that (1) definitions for "original creditor" and "credit agreement" are added to the rule, (2) it is applied prospectively and not retroactively, and (3) affidavits similar to those adopted by New York City in 2009 be adopted which allows the plaintiff debt buyer to sign the affidavit and attach such documents with the understanding that it is the totality of supporting evidence weighed by the court that will substantiate the defendant's identity and amount owed.

³ See <http://www.insidearm.com/daily/debt-buying-topics/debt-buying/collector-settles-class-action-for-50000-plaintiffs-attorneys-take-40000>.

Definition of “Original Creditor”

The use of the term “original creditor” in the proposed rule and affidavits appears to presume that the creditor at the point of (i) account creation and (ii) account default are one and the same. However, this is frequently not the case. Take for instance a credit card account that was opened in 1992 with Marine Midland Bank, which was subsequently rebranded as HSBC Bank in 1998, then subsequently sold to First Niagara Bank in 2012 before the account defaulted in 2014. In this instance, who would be the original creditor?

DBA would respectfully suggest that the original creditor be the “charge-off” creditor, which is the banking institution which held the account when it went into default and which has all the relevant data and documents – in this case First Niagara Bank. In this scenario, it would be impossible to obtain an affidavit from Marine Midland Bank, an institution that has not existed for 16 years.

Definition of “Credit Agreement”

The use of the term “credit agreement” in the proposed affidavits appears to suggest the court is looking for either (i) the original consumer application for credit or (ii) the individual transaction that occurs when the credit is used (i.e. point of sale transaction). The challenge that arises when certain documents or agreements are requested or required is that they may no longer exist and the explanation for why they may no longer exist resides in federal law.

The availability of the documents required in the affidavits will in almost all cases be dependent on the age of the account because under federal Truth in Lending laws banks are only required to retain records for 24 months. While there are many who would suggest that this retention period is too short, the fact remains that it is the legal requirement that banks have used in the development and implementation of their corporate document retention and destruction policies. Consequently, the specific documents that the Unified Court System is seeking may not exist if they are older than 24 months. While reliable “documentation” identifying the consumer as well as the last balance and interest rate associated with the account when the account was active does exist (i.e. the stated purpose of the document(s) being “to ensure that there is legally sufficient proof of the validity and ownership of the debt at issue”⁴), it just may not exist in the form required by the proposed affidavits.

Additionally, it should be noted that the vast majority of credit cards and other types of open credit established in the past 10 years by consumers have been applied for electronically or telephonically which explains why these types of accounts generally do not result in a traditional signed application or contract. Further, creditors governed by the Truth in Lending Act are only required to maintain records for two (2) years. – See. Truth in Lending Act, 15 U.S.C. § 1601 et seq.(TILA).

The majority of courts have held that when a consumer uses a credit card, it assents to the terms of the written contract with the credit card issuer so that the written contract is ratified or accepted through the customer’s conduct. *Kurz v. Chase Manhattan Bank, N.A.*, 319 F. Supp.2d 457 (S.D. N.Y. 2004) (failure to opt out and continued use of card constituted acceptance of arbitration clause added to contract under Delaware

⁴ See page 1 of the Unified Court System memorandum dated April 30, 2014 announcing the proposed rules.

law); *Bank of Am. v. Jarczk*, 268 B.R. 17, 22 (W.D.N.Y. 2001) (“It is the use of a credit card and not the issuance, that creates an enforceable contract, each time a cardholder uses his credit card, he accepts the offer by tendering his promise to perform (i.e. to repay the debt on the terms set forth in the credit card agreement”) *Novack v. Cities Service Oil Co.*, N.J.Super., 149 N.J. Super. 542, 374 A.2d 89, 93 (1977); *aff’d* N.J.Super.A.D., 159 N.J. Super. 400, 388 A.2d 264 (1978), (“It has long been recognized in New Jersey that in the context of traditional credit cards, the cardholder's decision to use the card provides the requisite assent to the terms of the offer extended by the card's issuance, such that a contract is formed.”), *MBNA Am. Bank, N.A. v. Bibb*, 2009 N.J. Super. Unpub. LEXIS 1650 (App.Div. 2009) (citing to *Novack*); *AT&T Universal Card Services v. Mercer*, 246 F.3d 391 (5th Cir. 2001) (“card use signified acceptance of the agreement”); *SouthTrust Bank v. Williams*, 775 So.2d 184 (Ala. 2000) (use of card signals acceptance of card member agreement); *MBNA America Bank, N.A. v. Bailey*, 2005 Conn. Super. LEXIS 1611 (Conn. Super. 2005) (“by using the credit card the defendant assented to the terms under which credit was extended to him”); *Citibank (South Dakota) N.A. v. Wilson*, 160 S.W.3d 810 (Mo. App. 2005) (“Wilson accepted the revised agreement by her conduct with regard to her credit card”); *Jones v. Citibank, N.A.*, 235 S.W.3d 333 (Tex. App.—Fort Worth, 2007) (“thus, even if appellant never signed the card agreement, under Texas law, she entered into a contract with appellee by accepting the benefits of their arrangement”); *Discover Bank v. Ray*, 162 P.3d 1131 (Wash. App. 2007) (use of card constituted acceptance of card member agreement); *Cities Stores Co. v. Henderson*, Ga.Ap., 116 Ga. App. 114, 156 S.E.2d 818, 823 (Georgia Court of Appeals 1967) (“The issuance of a credit card is but an offer to extend an open line of open account credit. . . Acceptance or use of the card by the offeree makes a contract between the parties according to its terms.”); *Garber v. Harris Trust & Sav. Bank*, Ill.App.Ct., 104 Ill. App. 3d 675, 432 N.E.2d 1309, 1315, 60 Ill. Dec. 410 (Illinois 1982) (“The issuance of a credit card is only an offer to extend credit.”).

New York Courts have recognized the same principle of use to effectuate agreement while recognizing that the relationship between the issuer of a credit card and the holder and user of the credit card is contractual. *Citibank (South Dakota) N.A. v. Sablic*, 55 AD3d 651 (2nd Dept 2008) (the issuance of a credit card constitutes an offer of credit) and *Feder v. Fortunoff, Inc.*, 114 A.D.2d 399 (2nd Dept.1985) (the use of the card constitutes acceptance of the offer).

DBA would respectfully request that the Unified Court System’s final rule adopt language that has been consistently promoted by both consumer groups and DBA International as a reasonable solution when the original document(s) no longer exists, which is to allow the “most recent monthly statement recording a purchase transaction, last payment, or balance transfer” to satisfy the document requirement. The credibility of the monthly statement is based on the fact that it would (i) evidence contemporaneous consumer action(s) or transaction(s) that was dated, documented, and transmitted to the consumer and (ii) contains key identifying data elements, including consumer name and address, account number, interest rate, and the account balance immediately prior to consumer default. This approach is what was most recently adopted by the State of California with the adoption of the seminal “Fair Debt Buying Practices Act” in 2013.

III. ACCOUNT BALANCE BREAKDOWN

DBA would caution against the adoption of any rule or affidavit that would require the breakdown of pre-charge-off account balances by principle, interest, and fees. The concern here is that a pre-charge off

breakdown would run counter to federal laws and regulations governing credit cards (i.e. open lines of credit) that prescribe the methodology by which banks calculate interest, including how the prior month's interest is rolled-up and reclassified as principle. The reason for rolling up the interest into the principle is due to the complex nature of compounding interest caused by the confluence of (i) new purchases being added to existing account balances, (ii) the consumer's option to make partial payments on the account balance rather than payment in full, and (iii) the carrying over of the remaining balance after payment has been received to the following month's statement. The federal banking laws recognize this inherent difficulty which explains why banks are not required to provide this information to consumers on credit card statements. If it were possible, the comprehensive reforms adopted by Congress in the Credit Card Accountability Responsibility and Disclosure Act of 2009 (see **APPENDIX G**) would have addressed the issue given the act's stated purpose to "amend the Truth in Lending Act to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan" (emphasis added).⁵

Courts have held that this principal applies to assignees. In *Wahl v. Midland Credit Management, Inc.*, No. 08-1517, 556 F.3d 643, 2009 U.S. App. LEXIS 3530 (7th Cir. Feb. 23, 2009), the Court stated that there would be no falsity even if the "amount due" had been described as "principle due". Judge Posner observes that when interest is compounded, today's interest becomes tomorrow's principle, so all past-due amounts accurately may be described as "principle due". See *Hahn v. Triumph P'Ships LLC*, 557 F.3d 755, 756-57 (7th Cir. 2009).

Consequently, any attempt to require the pre-charge-off itemization of principle, interest, and fees would fail on its face due to the impossibility of performance. If unchanged or not otherwise clarified, the impossibility of performing the required pre-charge-off itemization would appear to have the unintended effect of preventing banks from issuing conforming affidavits and thereby be unable pursue litigation, if necessary, on contractual obligations.

DBA is a strong proponent of laws and regulations requiring post-charge-off balances be subject to a breakdown of principle (here being the charge-off balance), interest, and fees. In fact, the DBA International Certification Program requires all debt buying companies to maintain "the total amount of any interest and the total amount of any fees accrued on the account since the charge off date." The reason why a breakdown of the balance by principle, interest, and fees is possible on a post-charge-off account (but not a pre-charge-off account) is because the act of "defaulting" changes the nature of the account from an open line of credit to a fixed contractual obligation.

DBA would respectfully request that any rule or affidavit adopted by the Unified Court System that requires the breakdown of the account balance by principal, interest, and fees apply only to post-charge-off balances. It is worth noting that many DBA International debt buying companies make the business decision not to charge post charge-off interest and fees which would result in zeroes being reported in those fields on the affidavits.

IV. MISCELLANEOUS DEFINITIONS

A fairly minor point in the scope of the overall comments but one that nonetheless has profound implications on the proposed rules and affidavits is the noticeable absence of a definitional section for terms contained

⁵ United States Public Law 111-24.

therein. While DBA has addressed the need to define the term “original creditor” and “credit agreement” in section II above, equally important are definitions for the terms: (i) charge-off, (ii) consumer credit, (iii) debt buyer, and (iv) debtor.

Definition of “Charge-Off”

When adopting statutory and/or regulatory requirements that mandate the transmission of account data and or documents associated with consumer credit transactions, especially credit cards, it becomes absolutely essential that a uniform point in time be identified to base such criteria upon. The reason for this is because a number of data elements are subject to change over the life of an account, including but not limited to:

- name of creditor (i.e. banks merge and change names),
- name of consumer (i.e. last names are subject to change based on marriage and divorce),
- address (i.e. both consumers and businesses move physical addresses),
- telephone number (i.e. telephone numbers change),
- account number (i.e. account numbers change when a credit card is reported lost as well with some bank mergers), and
- balance (i.e. when requiring an itemized balance, the only point in time that works on revolving lines of credit such as credit cards is the “charge-off” date).

The term “charge-off” represents this uniform and standard point in time that is recognized and governed by all accounting professionals and banking institutions regardless of the jurisdictions in which they operate. DBA would respectfully suggest the following definition:

“Charge-off” means the act by which an original creditor treats a receivable as a loss on the balance sheet. The act of charging-off a debt is exclusively for accounting purposes and does not affect the underlying obligation.”

For credit card debts, the “charge-off” date is governed by federal banking laws and occurs when payment is 180 days past due.

Definition of “Consumer Credit”

During the meeting with Judge Marks on May 21, 2014 it was indicated that the proposed rules and affidavits were only intended to apply to credit cards. DBA pointed out that nothing within the proposed rules would suggest that “consumer credit” would hold such a narrow interpretation. It was our belief that the term “consumer credit” was broad enough to cover all forms of consumer credit. DBA would respectfully recommend that the term “consumer credit” be defined so as not to cause undue confusion in the future.

Definition of “Debt Buyer”

The term “debt buyer” is not defined in New York State statute. The lack of a definition may cause confusion in the future given the term’s use in the affidavits. DBA would respectfully recommend that the definition used in the California “Fair Debt Buying Practices Act” be used here for purposes of consistency. That definition reads:

“Debt buyer” means a person or entity that is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney-at-law for collection litigation. “Debt buyer” does not mean a person or entity that acquires a charged-off consumer debt incidental to the purchase of a portfolio predominantly consisting of consumer debt that has not been charged off.”

Definition of “Debtor”

The proposed affidavits use the term “debtor” which is a term that is not defined in the FDCPA. The term is generally used to denote an individual who has received a judgment against them for the payment of a debt. If the term “debtor” continues to be used it should be defined to mean “alleged debtor.” DBA is concerned that the use of the term in the affidavits prior to judgment could be used to substantiate an FDCPA violation. However, DBA would respectfully recommend that the affidavits use the terms “plaintiff” and “defendant” similar to their use in the proposed rule.

UNINTENDED IMPACT ON CONSUMERS

An area which DBA wishes to highlight to the Unified Court System is the potential unintended impact on New York consumers should the proposed rules and affidavits be adopted without changes. Obviously, any potential impact is largely conjecture until the rule’s implementation serves as the ultimate judge based on the ensuing consequences. However, DBA feels somewhat confident in drawing certain conclusions, based partly on empirical evidence cited by the Philadelphia Federal Reserve Bank in a working paper entitled “Debt Collection Agencies and the Supply of Consumer Credit” (see **APPENDIX H**) published in May 2013. The following excerpt is provided due to the significance of its conclusions:

“Stronger creditor protection should lead to more consumer credit, which is the primary hypothesis that I test in this paper. In order to identify the effect of debt collectors on credit supply I use variation in state laws. Stricter debt collection regulations, which make it more difficult for debt collectors to operate, should result in less effective contract enforcement and should therefore lower credit supply. Consistent with this hypothesis, I find that stricter regulations of third-party debt collectors are associated with a lower number of third-party debt collectors per capita and with fewer openings of revolving lines of credit. One additional restriction on debt collection activity reduces the number of debt collectors per capita by 15.9% of the sample mean and lowers the number of new revolving lines of credit by 2.2% of the sample mean. . . . Further, I find that stricter regulations of debt collectors decrease recovery rates on charged-off unsecured credit cards (by about 1.1 percentage points, or 9% of the sample mean, for each additional restriction on debt collection activity), which appears to be the transmission mechanism by which debt collectors affect credit supply. To summarize, stricter debt collection regulations reduce the number of debt collectors, who can therefore exert less pressure on debtors. This reduces recovery rates and makes lenders less willing to provide credit in the first place” (emphasis added).⁶

⁶ Philadelphia Federal Reserve Bank, “Debt Collection Agencies and the Supply of Consumer Credit,” May 2013, p. 2-3.

The population of New York State based on 2013 U.S. Census Bureau estimates is 19,651,127 individuals which represents approximately 6 percent of the population of the United States.⁷ The total number of outstanding credit cards in the nation in Q3 2013 was 391 million.⁸ Assuming that the 6 percent of the population can be extrapolated to credit card accounts, New York residents would have approximately 23.5 million accounts. As a conservative projection, assuming that the Unified Court System's proposed rules and affidavits counted as only one single restriction, based upon the evidence cited by the Philadelphia Federal Reserve Bank that should extrapolate to New York residents losing approximately 516,120 credit card accounts as a result of this provision.

The question which perhaps cannot be derived given that it is driven by human response is how will the New York residents who lost the estimated 516,120 lines of credit replace their lost purchasing power? While arguably some will simply reduce their spending, many in the lower socio economic status rely on credit cards to fill in the gaps between paychecks to buy food, clothing, bus fare, gas, etc. These needs are not the type of purchases that can be deferred by a reduction in spending. Consequently, we must assume that a certain percentage of the unbanked population will resort to pawn shops, internet, as well as illegal practices such as pay day lending and loan sharks.

The reality is that we may never truly be able to substantiate the real economic impact of this decision. However, what is clear is that harm can be mitigated by ensuring that the reforms that are adopted only go so far as is necessary to address the problem. Given that an effective solution has already been adopted by New York City in 2009 to address the same concerns expressed by the Unified Court System and has been by all accounts immensely effective in addressing those issues, would it not simply be a more practical approach to adopt the proven and tested affidavits which the business community has already incorporated into their business practices?

It is worth stating that DBA believes in robust consumer protections as they are not only good for the consumers but they are also good for companies, but "robust" should never be misinterpreted or equated to the "most restrictive" option but only that option which is required to achieve the solution.

ALTERNATIVE APPROACH

In addition to the identified concerns and solutions discussed above, DBA would like to respectfully suggest the following alternative approach if the Unified Court System is willing to entertain alternative solutions:

STEP 1: DBA would propose and support the immediate adoption of the New York City affidavits statewide with the caveat that a similar grandfathering clause to that which was afforded to accounts held by New York City residents in 2009 be applied with the statewide implementation. By all accounts, these affidavits have been immensely effective in addressing the issues that the Unified Court System indicates prompted the current proposed rules and affidavits.

⁷ <http://quickfacts.census.gov/qfd/states/36000.html>

⁸ New York Federal Reserve, Quarterly Report on Household Debt and Credit, November, 2013

STEP 2: Create a “working group” comprised of interested parties which would be inclusive of both representatives of consumer and business interests to sit down and develop thoughtful and comprehensive reforms to the rules of the court which strives to seek balance in the consumer/business relationship as it concerns the matters at hand. Require this working group to provide a consensus draft proposal to Chief Judge Lippman no later than October 1, 2014 for his consideration and edits.

STEP 3: The Unified Court System would post for comment the final rule by March 1, 2015, inclusive of the working group’s conclusions, the Unified Court System’s analysis of the published rule weighing the potential benefits and detriments of the rules adoption, and the economic impact of the proposed rule on the state, its residents, and its businesses.

DBA feels this alternative approach is warranted given the perceived speed at which the Unified Court System has advanced and is prepared to implement the proposed rules and affidavits. DBA first became aware of the proposal on May 1, 2014 after the comments by Chief Judge Lippman on “Law Day” were picked up by several industry trade lines. DBA notes that such a significant and detrimental change affecting the business community was provided only a 30-day comment period to be followed by a June 15, 2014 implementation date. Additionally, DBA is concerned that as the national trade association which represents the debt buying industry, we were never approached for input or assistance during the fact gathering and drafting stage of the proposed rule.

DBA is appreciative of the meeting which was granted to us with Judge Marks on May 21, 2014 as it was very informative and provided additional clarity surrounding the impetus and goals of the proposed rules and affidavits.

CONCLUSION

DBA recognizes that the debt buying industry and the laws and regulations concerning the collection of debts are complex and can be confusing to some. DBA has developed a White Paper as an attempt to help educate individuals about the industry (see **APPENDIX I**). Additionally, DBA is attaching suggested redline edits of the Unified Court System’s proposed affidavits which are consistent with the comments contained in this letter (see **APPENDIX J**).

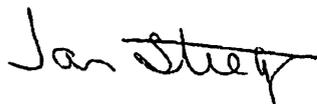
DBA stands by the principle that collection laws and regulations need to be written in such a manner so as to protect consumers from bad conduct while not harming companies who are abiding by state and federal laws and regulations in the legitimate collection of contractual obligations.

DBA has been supportive of recent comprehensive court rule reform efforts taken by the court systems in states such as Connecticut, Delaware, and Maryland and we want to be supportive of New York’s efforts as well. DBA has supported these states because they have (i) balanced the legitimate interests of both the consumer and business communities, (ii) enhanced consumer protections, and (iii) ensured the requirements were realistic and obtainable by the business community. DBA would respectfully ask the Unified Court System, regardless of the ultimate wording of the court rules, to attempt to achieve the same outcome.

DBA appreciates the opportunity the Unified Court System has provided to communicate our concerns on the proposed rule and affidavits. DBA believes that the proposed suggestions that we have provided in this letter will allow for the implementation of balanced regulations that considers the legitimate interests of both the consumer and business communities while at the same time achieving the Unified Court System's intended goals.

Please do not hesitate to contact either myself or David Reid (DBA International's Director of Government Affairs) at (916) 482-2462 should you have any questions regarding this matter or should you require additional information on the debt buying industry.

Sincerely,



Jan Stieger
Executive Director
DBA International

APPENDICES

- APPENDIX A: DBA International Debt Buyer Certification Program Governance Document
- APPENDIX B: DBA Magazine, Spring 2014, "Debt Buyer Certification Program Version 2.0"
- APPENDIX C: DBA International Redlines to Assembly Bill 9053
- APPENDIX D: California "Fair Debt Buying Practices Act"
- APPENDIX E: DBA International Comment to New York State Department of Financial Services
Proposed Rulemaking: Addition of Part 1 to Title 23 NYCRR DEBT COLLECTION – I.D. No. DFS-34-13-00002-P
- APPENDIX F: Civil Court of the City of New York, DRP-182, May 13, 2009.
- APPENDIX G: Credit Card Accountability Responsibility and Disclosure Act of 2009 (United States Public Law 111-24).
- APPENDIX H: Philadelphia Federal Reserve Bank, "Debt Collection Agencies and the Supply of Consumer Credit," May 2013
- APPENDIX I: DBA International White Paper on the Debt Buying Industry
- APPENDIX J: Suggested Redline Edits of the Proposed Affidavits

cc: Chief Judge Jonathan Lippman, New York State Court of Appeals
Hon. Lawrence K. Marks, First Deputy Chief Administrative Judge of the Unified Court System
Antonio E. Galvao, Deputy Counsel, Office of Court Administration

DBA International Debt Buyer Certification Program

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I. Mission Statement

- 1.1 **Mission.** The DBA International Debt Buyer Certification Program (Certification Program) adopts a national standard for the debt buying industry to help ensure that those who are certified are aware of and are complying with state and federal statutory requirements, responding to consumer complaints and inquiries, and are following debt buying industry best practices.

II. Definitions

- 2.1 **Definitions.** The following terms, when capitalized, shall have the following meanings:

“Applicant” shall mean the person or legal entity who submits an Application to DBA to be certified or to renew their certification.

“Application” shall mean the procedure by which a person or legal entity submits information and documentation required by DBA to be considered for certification or to renew their certification.

“Audit” or “Compliance Audit” shall mean an assessment of a Certified Party’s conformity to the Certification Standards that is performed by an Auditor.

“Audit Period” shall mean the time between the Certified Company’s last full Compliance Audit and the date contained on the written notice provided by the Audit Committee pursuant to section 8.4 (B), provided that if no prior full Compliance Audit had been performed it shall be measured from the date of the initial Application for certification. The Audit Period shall always include a review of the accuracy of the information provided in the Certified Company’s most recent Application.

“Auditor” shall mean an individual, company, or firm that is an independent third party approved or retained by the Council to perform Compliance Audits. The Council shall provide multiple options to Certified Companies for independent third parties, including individuals, companies, or firms that are not certified public accountants.

“Board” shall mean the DBA International Board of Directors.

“Certification Program” shall mean the DBA International Debt Buyer Certification Program.

“Certification Standards” or “Standards” shall mean the minimum requirements necessary to become and to maintain the status of a Certified Party.

“Certified Company” shall mean a Debt Buyer who meets or exceeds the Certification Program requirements to be certified, has been granted certification, and remains in good standing.

“Certified Party” shall mean a Certified Individual and/or a Certified Company.

“Certified Individual” shall mean an individual who is employed by a Certified Company or as otherwise provided in section 5.6 (B) who meets or exceeds the Certification Program requirements to be certified, has been granted certification, and remains in good standing.

“CFPB” shall mean the federal Consumer Financial Protection Bureau.

“Consumer Data” shall mean personally identifiable information associated with a consumer account that needs to be protected due to the confidential nature of the information.

“Council” shall mean the DBA International Debt Buyer Certification Council.

“DBA” shall mean DBA International, a 501(c)(6) non-profit association.

“Debt Buyer” shall mean a legal entity that is engaged in the business of purchasing consumer and/or commercial debt (i.e. distressed assets), whether it collects the debt itself, hires a third party for collection, or hires an attorney-at-law for litigation.

“Deficiency” shall mean a failing of a Certified Party to conform to one or more of the Certification Standards as identified through a Compliance Audit.

“Executive Director” shall mean the Executive Director of DBA International or his or her designee.

“FDCPA” shall mean the federal Fair Debt Collection Practices Act.

“FTC” shall mean the Federal Trade Commission.

“Governance Document” shall refer to all of the content contained on this and any prior or subsequent pages that comprise the Certification Program, including the appendices.

“Remediation” shall mean the process of conforming to the Certification Standards once a Deficiency has been identified through a Compliance Audit.

III. Debt Buyer Certification Council

- 3.1 **Governing Body.** The DBA International Debt Buyer Certification Council (Council) is the governing body that administers the Certification Program on behalf of the DBA Board of Directors.
- 3.2 **Appointment.** The Council shall be appointed by the DBA International Board of Directors (Board). All vacancies that occur on the Council prior to the expiration of a term shall be filled by the Board for the remaining portion of the term.
- 3.3 **Composition.** The Council shall consist of eleven (11) individual members. The composition of the Council shall represent each of the following demographics:
 - A. An experienced consumer representative from: (i) academia, (ii) a consumer focused non-profit agency, (iii) the Better Business Bureau, (iv) a non-profit consumer credit counseling service, (v) a former attorney general or assistant attorney general, former employee of the CFPB or FTC, former member of a legislative branch consumer protection committee, or former member of the judiciary, or (vi) other consumer advocate familiar with the debt buying industry. The consumer representative shall have no financial interest in a Debt Buyer and is not required to be a Certified Individual;

- B. Representatives of six (6) Certified Companies, provided that the Board ensures that small, medium, and large Certified Companies are equally represented;
- C. A Certified Individual;
- D. A representative of a third party collection agency. The representative is not required to be a Certified Individual;
- E. A representative of a consumer collection law firm. The representative is not required to be a Certified Individual; and
- F. A representative of an originating creditor. The representative is not required to be a Certified Individual.

3.4 **Term.** Council Members shall serve a two (2) year term that commences on the first day of March and ends on the last day of February except that the first members of the Council shall have their terms staggered to create two classes. No individual may be appointed by the Board to more than two (2) consecutive terms on the Council.

3.5 **Qualifications.** Each Council Member shall be selected based on the following qualifications:

- A. No more than one representative from a company (including parent and subsidiaries) may serve on the Council;
- B. No Board Member may serve on the Council;
- C. The Council should reflect the diversity of the debt buying industry, to the maximum extent possible;
- D. Council Members shall be recognized professionals who: (1) are in compliance with their respective Codes of Ethics within their industry, if applicable, (2) have not been convicted of a felony, and (3) have never been dismissed from the Council pursuant to section 3.6 of this Governance Document; and
- E. Council Members who represent Certified Companies pursuant to section 3.3 (B) who do not hold a Certified Individual designation should become a Certified Individual within one (1) year of their appointment to the Council.
- F. Preference should be shown to individuals who are employed with companies that are members of the Better Business Bureau.

3.6 **Dismissal from the Council.** Any member of the Council may be removed from office by a two-thirds (2/3) vote of all Council Members, with prior notice to the Board of such potential action, for engaging in any conduct or behavior contrary to the best interests of

the Certification Program. Council Members having three (3) or more unexcused absences from scheduled Council meetings per year may be dismissed.

3.7 Relationship with DBA.

- A. **Council Authority.** The Council and the Certification Program shall be contained within the DBA International (DBA) corporate entity. The Council shall have the authority to:
1. Elect a Council Chair from the appointed Council Members to a one (1) year term that commences on the first day of March and ends on the last day of February;
 2. Develop policies and procedures of the Council, including the creation of additional officers and committees not provided in this Governance Document;
 3. Develop Certification designations¹, Certification Standards, educational requirements, examination requirements, Audit requirements, the granting and revocation of certifications, the Remediation of Deficiencies, and the general administration of the Certification Program, provided it is consistent with this Governance Document;
 4. Suggest qualified individuals to the Board for appointment to the Council when a vacancy exists; and
 5. Provide semi-annual reports to the Board regarding the Certification Program and monthly updates on the roster of Certified Entities.
- B. **Board Authority.** Nothing in this Governance Document shall diminish the powers of the Board. The Board shall at a minimum:
1. Appoint the Council Members;
 2. Approve and/or reject individually or as a slate: (i) the Council's selection of the Council Chair, (ii) the Council Chair's selection of Committee/Task Force Chairs, and (iii) the Committee/Task Force Chairs' selection of committee or task force members;
 3. Hear appeals from Certified Parties on disciplinary actions taken by the Council;
 4. Have oversight authority of the Council and the Certification Program to ensure that the Certification Program as developed and operated by the Council is conducted in a fair and equitable manner;
 5. Provide staff for the operation of the Certification Program. The Executive Director of DBA International (Executive Director), or his or her designee, shall serve as the chief staff position supporting the Certification Program;
 6. Provide financial support for the Certification Program. The Council shall provide the Board with an annual budget for the operation of the Certification Program. The Board will exercise final authority in approving such budgets and the accompanying fee schedules for the Certification Program; and

¹ The Council has currently adopted the Certification designations of "Certified Professional Receivables Company" (CPRC) for Certified Companies and "Certified Receivables Compliance Professional" (CRCP) for Certified Individuals.

7. Retain independent third parties to audit the Certification Program and the administration of the Certification Program to ensure conformity with this Governance Document and generally accepted business practices.

C. **Board Review Procedures.** The Executive Director shall transmit to the Board all final decisions of the Council within two (2) business days of the decision, including the rationale for the decision. Except for the process provided in the Remediation Procedures Manual (**Appendix E**), the Board shall have the right to reverse any decision of the Council, in their complete discretion, provided that such action takes place within five (5) business days from the Executive Director's transmittal. If no action is taken by the Board, the Council's decision shall be implemented at the end of the seventh (7th) business day. In the case of reversing a disciplinary action taken by the Council, the Board's power to reverse will be dependent on an appeal of such action by the Certified Party.

IV. Committees

- 4.1 **Standing Committees.** The Council Chair shall appoint all chairs of standing committees from the Certified Parties who are members of the Council. Committee Chairs, except for the Chair of the Remediation Committee, shall appoint the members of their committees. The members of the Remediation Committee shall include the Chair of the Remediation Committee, the consumer representative on the Council, the Executive Director, DBA General Counsel, and such other individuals selected and approved by the Council. Each committee shall have a minimum of three (3) members and a maximum of seven (7) members, provided that a majority of the members on each committee shall be Professional Certified Members or Professional Members of DBA (as defined in the DBA Bylaws) and meet the qualifications provided in section 3.5(C) and (D). The standing committees shall include the following:
 - A. **Administration & Budget Committee.** The Administration & Budget Committee shall be responsible for issues concerning the administration and oversight of the Certification Program, Application procedures, Application approvals, and the development of a proposed annual budget and fee schedule. The committee is also responsible for assuring affordable access to the Certification Program.
 - B. **Audit Committee.** The Audit Committee shall be responsible for issues concerning the administration and oversight of the Certification Program's Compliance Audits.
 - C. **Educational Requirements Committee.** The Educational Requirements Committee shall be responsible for issues concerning the administration and oversight of the Certification Program's Educational Requirements. The development of all DBA education programming shall be managed by the Board's Education Committee.

- D. **Remediation Committee.** The Remediation Committee shall be responsible for issues concerning the administration and oversight of Deficiencies and Remediation within the Certification Program.
- E. **Public Relations & Marketing Committee.** The Public Relations & Marketing Committee shall be responsible for educating and promoting the Certification Program with DBA membership, the debt buying industry, press, public officials, and the general public. This shall include the development of all physical and electronic publications and resources, provided that they are developed jointly with the appropriate subject matter committees. All written material shall be approved or developed in collaboration with the Board's Editorial Committee to ensure a consistent message from the DBA.
- F. **Standards Committee.** The Standards Committee shall be responsible for issues concerning the administration and oversight of the Certification Program's Certification Standards.
- 4.2 **Additional Committees and Task Forces.** The Council may establish additional committees or task forces in their discretion with the appointment of Chairs made by the Council Chair.

V. Certification Standards

- 5.1 **Base Line.** The Council may change the Certification Standards contained in this Governance Document, provided that any alteration does not decrease the base line level established by the Governance Document.
- 5.2 **Annual Review.** The Standards Committee shall annually review the Certification Standards and make recommendations to the Council for changes based on the effectiveness of the Certification Program, changes in laws and regulations, and the evolution of best practices.
- 5.3 **Uniformity.** The goal of the Certification Program is to create a national standard for compliance based on uniform principles that are formed by statutes, regulations, ethical standards, interactions with regulatory agencies, and best practices.
- 5.4 **Conformity.** A Certified Party, as a condition of certification, shall demonstrate conformity with the Certification Standards and acknowledge that violations may result in sanctions being imposed on the Certified Party under this Governance Document and policies adopted by the Council, including expulsion from the Certification Program.
- 5.5 **Debt Buyer Certification Standards.** In order for a Debt Buyer to become and remain certified, the Debt Buyer shall demonstrate the following, unless a stricter requirement is imposed by state or federal law or regulation:

- A. **Chief Compliance Officer.** The Debt Buyer shall create and/or maintain the position of “Chief Compliance Officer” with a direct or indirect reporting line to the President, CEO, Board of Directors, or General Counsel (unless the Chief Compliance Officer is the President, CEO, or General Counsel). The Chief Compliance Officer shall be a Certified Individual, provided that when a vacancy occurs in the position after the company has been certified, the Certified Company will be granted a one (1) year waiver of this requirement. The position shall not be vacant for longer than three (3) months unless the Certified Company has someone serving in an “acting” capacity during the employment search. The Chief Compliance Officer shall be an employee, owner, or a corporate officer of the Certified Company or of a corporate affiliate of the Certified Company. The responsibilities of the position of Chief Compliance Officer shall be described in the Certification Standards Manual (see **Appendix A**).
- B. **Conformity with the Certification Standards Manual.** The Debt Buyer shall conform to the Certification Standards Manual (see **Appendix A**) as may be amended from time-to-time by the Council.
- C. **Publication.** The Debt Buyer shall authorize DBA to publish its name, certification number, year certified, website address, mailing address, and telephone number along with its Chief Compliance Officer’s name, title, certification number, year certified, employer issued telephone number, and employer issued email address on a publicly accessible website maintained by DBA. The Debt Buyer shall also publish on their company website certain information for the benefit of consumers which shall be described in the Certification Standards Manual (see **Appendix A**).

5.6 **Individual Certification Standards.** In order for an individual to become and remain certified, the individual shall demonstrate the following, unless a stricter requirement is imposed by state or federal law or regulation:

- A. **Educational Requirements.** The individual shall comply with the Educational Requirements as established by Article VI of this Governance Document in order to be certified. The subject matter that will qualify for continuing education credit shall be listed in the Certification Standards Manual (see **Appendix A**), unless otherwise qualified pursuant to section 6.8(C).
- B. **Employment.** Upon being certified, the individual shall maintain employment with a Certified Company, provided that the Council shall provide exceptions for individuals who are (i) unemployed; (ii) operating as a third-party vendor providing compliance services to a Certified Company; (iii) working for a government entity, a creditor, or a debt buying or collection industry trade association; or (iv) retired.
- C. **Publication.** The individual shall authorize DBA to publish his or her name, title, certification number, year certified, employer issued telephone number, and employer issued email address along with his or her employer’s name, certification number, year certified, website address, mailing address, and telephone number on a publicly

accessible website maintained by DBA. The individual shall also be required to provide the same information to a consumer upon request.

- D. **Good Character.** The individual shall demonstrate good character, the requirements of which shall be provided in the Certification Standards Manual (see **Appendix A**).

5.7 **Amending Certification Standards.** The process for review and approval of any new or updated Certification Standards shall be as follows:

- A. **Annual Review.** The Standards Committee shall annually review the Certification Standards and make suggestions for updates on or before the fifteenth day of October based upon evolving debt buying industry best practices, input from key stakeholders and communities of interest, areas of Board or Council concern, and recent regulatory and statutory changes. The changes will be documented in such a manner as to be easily recognizable as changes to the Certification Standards for the reader. The Standards Committee shall submit any proposed changes to the Council via the Executive Director to begin the approval process.
- B. **Comments.** The Council shall provide a copy of the proposed changes on a website maintained by DBA for thirty (30) days with the process for submitting comments prior to taking any official action.
- C. **Approval.** The Council shall approve, alter, or reject the proposed changes to the Certification Standards. Any changes to the Certification Standards may be reversed by the Board within seven (7) business days of the Council's approval pursuant to section 3.7(C) of this Governance Document.
- D. **Effective.** Provided that no action is taken by the Board after the Council's approval of the revised Certification Standards, a copy of the revised Certification Standards shall be made available to the primary contact for each DBA member, Certified Parties, and individuals and Debt Buyers who have submitted an Application for initial certification, as well as made publicly accessible on a website maintained by DBA. Certified Parties shall have six (6) months (unless a longer time is specified) from the date of this notice or publication on the DBA web site to conform and attest to conformity with the new Certification Standards in their next biennial Application. Applicants submitting an Application after the Council approves new Certification Standards shall conform with the new Certification Standards before becoming certified.

VI. Educational Requirements for Individual Certification

- 6.1 **Base Line.** The Council may change the Educational Requirements for Individual Certification contained in this Governance Document, provided that any alteration does not decrease the base line level established by the Governance Document.

- 6.2 **Annual Review.** The Educational Requirements Committee shall annually review the Educational Requirements for Individual Certification and make recommendations to the Council for changes based on the effectiveness of the Certification Program, changes in laws and regulations, and the evolution of best practices.
- 6.3 **Uniformity.** The goal of the Certification Program is to create a national standard for the level of knowledge that is expected of Certified Individuals based on subject matter contained in case law, statutes, regulations, ethical standards, and best practices.
- 6.4 **Administration.** The Educational Requirements Committee shall manage the administration of the Educational Requirements for Individual Certification and the approval of any authorized providers with the assistance of staff. The development of all DBA education programming shall be managed by the Board's Education Committee.
- 6.5 **Educational Requirements – Initial Certification.** An Applicant for Individual Certification shall have completed twenty-four (24) continuing education credits from an authorized provider prior to submitting an Application for initial certification. Included within the 24 continuing education credits shall be four (4) credits from DBA's "Introductory Survey Course on Debt Buying" and two (2) credits from ethics course(s). The credits shall comply with the requirements of this Article and the Educational Requirements Manual (**see Appendix B**).
- 6.6 **Educational Requirements – Biennial Renewal.** A Certified Individual shall have completed twenty-four (24) continuing education credits from an authorized provider prior to submitting an Application for biennial renewal of their certification. Included within the 24 continuing education credits shall be four (4) credits from DBA's "Current Issues in Debt Buying" courses and two (2) credits from ethics course(s). The credits shall comply with the requirements of this Article and the Educational Requirements Manual (**see Appendix B**).
- 6.7 **Educational Requirements – DBA Courses.** DBA or its designated presenter shall provide at the DBA Annual Meeting the following courses based on guidance provided in the Educational Requirements Manual (**see Appendix B**):
- A. **Introductory Survey Course on Debt Buying.** The "Introductory Survey Course on Debt Buying" shall be a four (4) credit course that focuses on the "core" laws and regulations that all Debt Buyers should know.
 - B. **Current Issues in Debt Buying.** "Current Issues in Debt Buying" shall be a two (2) credit course that focuses on the latest statutory, regulatory, and judicial developments of relevance to Debt Buyers and their vendors.
 - C. **Ethics.** An ethics course of at least one (1) credit.
- 6.8 **Educational Requirements – Continuing Education.** Certified Individuals shall take continuing education classes from an authorized provider based on the following criteria:

- A. **Time Limit.** Continuing education credits shall only be accepted from courses taken within the two (2) year period immediately preceding the submission of an Application.
- B. **Credit Calculation.** One (1) continuing education credit shall be equal to receiving fifty (50) minutes of class instruction. Instructors are eligible to receive double continuing education credit for providing class instruction, provided that an instructor cannot receive multiple credits for repeated lectures on the same material.
- C. **Subject Matter.** Continuing education credits shall be provided for classes from a DBA authorized provider in a subject matter listed in the Certification Standards Manual (**see Appendix A**), except that an authorized provider may seek approval for continuing education credit for a class whose subject matter is not listed in the Certification Standards Manual if it is preapproved pursuant to criteria contained in the Educational Requirements Manual (**see Appendix B**).
- D. **On-Line Classes.** Authorized providers may offer on-line classes subject to the following restrictions:
 - 1. No more than twelve (12) continuing education credits in a biennial cycle shall be from on-line classes and
 - 2. Online classes shall have either a question/answer component or electronic prompts to continue the lecture to ensure active listening.
- E. **Examination.** There shall not be an examination component for the entry level certification designation. If the Council creates additional certification designations beyond the entry level certification designation, the Council shall require an examination administered by DBA and/or a contracted third party.

6.9 **Authorized Providers.** Authorized providers shall be determined based on the following:

- A. **Recognized Professional Organizations.** In addition to DBA International, the following organizations are recognized to be professional organizations within the debt buying and collection industry that have historically provided exceptional educational programming in the subject matter required for the Certification Program and therefore are automatically deemed to be authorized providers should the respective organizations wish to participate by signing an authorized provider agreement:
 - 1. ACA International;
 - 2. Commercial Law League of America (CLLA); and
 - 3. National Association of Retail Collection Attorneys (NARCA).
- B. **Recognized Excellence in the Delivery of Education.** The Educational Requirements Committee may approve other organizations or individuals who are recognized for excellence in providing educational classes in the subject matter required for the Certification Program and who meet the criteria contained in the Educational Requirements Manual (**see Appendix B**);

C. **Remedial Action.** The Council may, at its sole discretion, take remedial action to restrict, suspend, or revoke the status of an authorized provider or recommend such actions to the Board in the case of paragraph (A) of this section for failure to comply with the provisions of this Article or Appendix B.

- 6.10 **Non-Authorized Providers.** DBA, in its complete discretion, may consider qualifying a class for continuing education credit from a non-authorized provider pursuant to criteria contained in the Educational Requirements Manual (**see Appendix B**), provided that the instructional material and a certificate of attendance are submitted to DBA after completion of the course.
- 6.11 **Specialty Certifications.** The Educational Requirements Committee may recommend to the Council the creation of specialty certification designations beyond the entry level certification designation. The Educational Requirements Committee shall work with the Standards Committee in determining the required subject matter for any specialty certifications.
- 6.12 **Educational Requirements Manual.** The Educational Requirements Committee shall maintain an Educational Requirements Manual (**see Appendix B**) that provides guidance and clarification on: (i) continuing education requirements for the Certification Program, (ii) subject matter eligible for continuing education credit, (iii) requirements for becoming an authorized provider of continuing education classes, and (iv) examination requirements, if applicable.
- 6.13 **Amending Educational Requirements.** The Educational Requirements Committee shall follow the same process established in section 5.7 of this Governance Document for the review and approval of any new or updated Educational Requirements.

VII. Application

- 7.1 **Annual Review.** The Administration & Budget Committee shall annually review the Application for the Certification Program (**see Appendix C**) and make recommendations to the Council for changes as the Committee deems appropriate. Minor clerical amendments to the Application may be made by staff as needed.
- 7.2 **Application.** An Application (**see Appendix C**) and an application fee shall be required of all parties seeking certification through the Certification Program. As part of the Application, the Applicant shall perform a self-audit based on the Certification Standards. Applicants should not submit their Applications until they believe they are in full conformity with all of the Certification Standards and can document conformity in an acceptable fashion. The Administration & Budget Committee shall be responsible for reviewing the content of all Applications and making a determination on certification based upon the information submitted by the Applicant.

- 7.3 **Certification Period.** The certification period for a Certified Party shall be two (2) years from the point the initial Application is approved. A renewal of certification shall be based on the anniversary date regardless of whether the Application is processed and approved before or after such date. A grace period of ninety (90) days shall be provided for renewals before the Certified Party automatically loses their Certification.
- 7.4 **Eligibility.** Only eligible Applicants shall be considered for certification. Eligibility shall include but may not be limited to the following:
- A. **Certification Standards.** Agreeing to, achieving, and ongoing conformity with the Certification Standards.
 - B. **Audit Procedures.** Agreeing to and complying with the Audit Procedures.
 - C. **Remediation Procedures.** Agreeing to and complying with the Remediation Procedures.
 - D. **Unresolved Deficiency Allegations.** The Applicant shall not have any unresolved allegations pursuant to the requirements in Article IX of this Governance Document.
 - E. **DBA Membership.** DBA membership is required for certification.
 - F. **Prior Sanctions.** The Applicant may have had sanctions imposed upon them in the past pursuant to the Certification Program; however, a former Certified Party who has been expelled from the Certification Program shall never be eligible for re-certification.
- 7.5 **Mergers/Acquisition/Change in Ownership of Certified Parties.** In the event of a change of structure or control of a Certified Party, the certification may or may not remain valid. Certified parties involved in mergers, acquisitions, or changes in majority ownership must notify DBA in writing of the new status within thirty (30) days of the close of the transaction. This notice shall be provided to the Administration & Budget Committee for review and shall include the following:
- A. **Business Structure.** A description of the business structure of the new or changed entity shall be provided and shall include at a minimum a listing of the management team, the Employer Identification Number, and a declaration whether the new business structure is in conformity with the Certification Program.
 - B. **Transitional Plan.** In the event that it is determined that the new or changed entity is not in conformity with the Certification Program, the entity shall provide a transitional plan with a timeline that details how it intends to maintain or conform to the Certification Standards. The Administration & Budget Committee shall review the new or changed business structure and how the relationship of the original Certified Company is contained within the new business entity in order to determine whether the certification remains valid or will require re-Audit and/or re-Application. Non-Certified Companies involved with a merger or acquisition with a Certified Company

are not allowed to claim to be certified or use the Certification Program logo until approved in writing as being in conformity by the Administration & Budget Committee.

- 7.6 **Certificate and Logo.** Certified Parties shall be provided with a certificate, a sample press release for media distribution, and graphics/art work with the Certification Program logo including an explanation of limitations and proper use of this mark. Subsidiaries or affiliates of a Certified Company may be authorized, in the sole discretion of the Administration & Budget Committee, to display the Certification Program logo upon written request and the payment of a fee, provided that their shared status is indicated in the publication requirements of section 5.5(C). Displaying or utilizing the certificate or logo of the Certification Program shall immediately cease if after certification the Certified Party: (i) withdraws its certification; (ii) fails to renew its certification; (iii) has its certification suspended during such period; or (iv) has been expelled from the Certification Program.
- 7.7 **Voluntary Withdraw of Certification by a Certified Party in Good Standing.** Certified Parties may withdraw from certification at any time. A written letter signed by (i) the President/CEO/Owner/Officer of the Certified Company or (ii) the Certified Individual, as applicable, shall be sent to the Council documenting such a request. No certification fees are refunded in conjunction with voluntary withdrawals of certification. A Certified Party in good standing who voluntarily withdraws from certification may reapply for certification at any time. This shall include any Certified Party that voluntarily withdraws from certification during the Audit process but prior to the completion of the Compliance Audit.
- 7.8 **Voluntary Withdraw of Certification by a Certified Party Prior to Remediating a Deficiency.** If a Certified Party is the subject of a Deficiency finding in a Compliance Audit and voluntarily withdraws from the Certification Program during the Remediation process but prior to entering into a Remediation Agreement with DBA, the Deficiency shall be dismissed without prejudice and without any further action by the Remediation Committee or the Council. The Certified Party may not reapply for certification for a period of two (2) years from the effective date of its withdrawal, except in the case of a Debt Buyer where the allegation was against a Certified Individual serving as an employee and that employee is no longer employed by the Debt Buyer.

VIII. Audit Procedures

- 8.1 **Base Line.** The Council may change the Audit Procedures contained in this Governance Document, provided that any alteration does not decrease the base line level of review established by the Governance Document.
- 8.2 **Annual Review.** The Audit Committee shall annually review the Audit Procedures to be followed and make recommendations to the Council for changes based on the effectiveness of the Certification Program, changes to the Certification Standards, and the evolution of generally accepted business practices.

- 8.3 **Scope.** The purpose of the Audit Procedures is to ensure that Certified Parties are conforming to the Certification Standards.
- 8.4 **Full Compliance Audit of Certified Companies.** The following Audit Procedures shall apply to Full Compliance Audits of Certified Companies:
- A. **Timing.** A Full Compliance Audit performed by an Auditor shall be required of each Certified Company once every three (3) to four (4) years, except that the first Audit after becoming certified shall take place prior to renewal. A Limited Compliance Audit may be performed at any time, at the direction of the Remediation Committee, based on the requirements of this Governance Document.
 - B. **Written Notice.** The Audit Committee shall notify the Certified Company when an audit is required. When a Certified Company receives a written notice from the Audit Committee requesting a Full Compliance Audit be performed, the Certified Company shall have four (4) months to have the Audit completed, inclusive of the Audit Committee's receipt of the Audit findings. Failure to comply shall result in the immediate suspension of certified status. A written extension of no more than two (2) months may be granted by the Audit Committee, in its discretion.
 - C. **Auditors.** DBA shall maintain a list of authorized Audit providers from which Certified Companies may contract for the performance of Full Compliance Audits. Each Certified Company shall be responsible for negotiating and payment of all costs associated with its Audit.
 - D. **Scope of the Full Compliance Audit.** The Auditor shall validate conformity with the Certification Standards for the Audit Period that is the subject of the Full Compliance Audit. This review shall be based on the Certification Standards and criteria for observation and documentation contained in the Audit Review Manual (**see Appendix D**). An onsite inspection shall be one of the components of the review to ensure the Certified Company's processes are not just on paper but that they are integrated into the everyday workflow of the Certified Company. A Certified Company with multiple locations must verify conformity in all locations as the Certification Program does not provide for partial or process-based certification.
 - E. **Alternate Audit Method.** The Audit Committee may in its sole discretion permit a Certified Company who is performing another required audit of a similar nature to add the Certification Program Full Compliance Audit to the list of audited deliverables for cost efficiency. The Certified Company shall be required to get the written preapproval of the Audit Committee for this exception to qualify. Only that portion of the audit that addresses the Certification Program Full Compliance Audit needs to be provided to the Audit Committee. This audit can be performed prior to a scheduled Full Compliance Audit and shall serve to reset the clock on the next required Audit.

- F. **Deficiencies.** If a Compliance Audit shows material deficiencies in a Certified Company's conformity with the Certification Standards, the Audit Committee shall forward the Compliance Audit to the Remediation Committee for remedial action.
- G. **Limited Compliance Audits.** A Limited Compliance Audit can be required by the Remediation Committee to verify compliance with a Remediation Agreement or to investigate a third party allegation of nonconformity with the Certification Standards as provided in Article IX of this Governance Document. The scope of a Limited Compliance Audit shall be restricted to the terms of the Remediation Agreement or the allegation. If the Audit is based on a third party allegation, the Auditor may contact such other individuals who may have knowledge of the facts and circumstances surrounding the allegation. Limited Compliance Audits shall be performed by an Auditor contracted by DBA and whose costs, except travel and lodging, will be paid by DBA. Any travel and lodging expenses associated with a Limited Compliance Audit shall be paid by the Certified Company being audited. It is the Certified Company's responsibility to bring together into one location all applicable representatives, documents, and information that are needed to verify conformance with company policies, procedures, processes, etc. that the Auditor will need in order to complete the Limited Compliance Audit.
- 8.5 **Audit of Certified Individuals.** The audit of Certified Individuals shall be conducted by DBA staff or as otherwise determined by the Council.
- 8.6 **Audit Review Manual.** The Auditor, the Council, and applicable Committees of the Council shall use the Audit Review Manual (see **Appendix D**) as may be amended from time-to-time by the Council as a guide for determining certification approvals, denials, or remedial action based on conformity with the Certification Standards.
- 8.7 **Amending Audit Procedures.** The Audit Committee shall follow the same process established in section 5.7 of this Governance Document for the review and approval of any new or updated Audit Procedures.

IX. Remediation Procedures

- 9.1 **Base Line.** The Board may change the Remediation Procedures contained in this Governance Document, provided that any alteration does not decrease the base line level of review established by the Governance Document.
- 9.2 **Annual Review.** The Remediation Committee shall annually review the Remediation Procedures and make recommendations to the Board (which may be submitted through the Council) for changes based on the effectiveness of the Certification Program and prior experiences with the Remediation process.

- 9.3 **Scope.** The purpose of the Remediation Procedures is to provide an objective process for investigating third party allegations and remediating Audit Committee findings concerning a Certified Party's conformity with the Certification Standards.
- 9.4 **Third Party Allegations.** Any third party allegation of nonconformity with the Certification Standards made against a Certified Party shall be in writing and made to the Executive Director and Chair of the Remediation Committee. No anonymous allegations shall be considered by the Remediation Committee. Except as provided in section 9.8 of this Article, when the Chair receives a written allegation, he or she shall call a meeting of the Remediation Committee to review the allegation. If the Committee determines that the allegation contains sufficient information to warrant an investigation, the Committee shall refer the allegation to the Audit Committee for a Limited Compliance Audit. In determining the sufficiency of the allegation, the Committee may seek additional information from the relevant parties.
- 9.5 **Recommendation of Remedial Action.** The Remediation Committee shall recommend to the Council such remedial action that it deems necessary to correct the deficiencies found in a Full or Limited Compliance Audit. Remediation shall be the goal of the Committee but in circumstances of egregious conduct where it is determined that remediation is not possible or warranted, the Remediation Committee may recommend disciplinary action against a Certified Party, including expulsion from the Certification Program.
- 9.6 **Remedial Powers of the Council.** The Board shall adopt a Remediation Procedures Manual (see **Appendix E**) that the Council shall follow when entering into Remediation Agreements with a Certified Party or when taking disciplinary action against a Certified Party, including expulsion from the Certification Program. The Board shall hear all appeals on disciplinary actions and its decision shall be final.
- 9.7 **Retaliatory Action Prohibited.** Direct or indirect retaliation of any kind by DBA, the Council, or their directors, officers, staff, or agents against any individual that makes, initiates, or is involved in the making of an allegation is strictly prohibited. This prohibition on retaliation shall be enforced strictly by the Board and the Council. Similarly, allegations made with knowledge of their falsity, in whole or in part, are strictly prohibited. This prohibition on the making of knowingly-false allegations shall be enforced by the Council to the fullest extent possible, up to and including expulsion.
- 9.8 **Additional Procedures for Third Party Consumer Allegations.** DBA encourages open communications between consumers and Certified Companies and does not serve as a liaison between the parties. The following procedures for handling third party consumer allegations are intended to encourage open communication and shall take place before DBA investigates any third party consumer allegations against a Certified Company:
- A. The consumer shall send a written communication to the Chief Compliance Officer of the Certified Company at the Chief Compliance Officer's mailing or email address listed on the DBA website detailing the allegation or dispute;

- B. If the consumer does not receive a written response within thirty (30) days, the consumer may file the allegation with the Executive Director (which shall contain a copy of the written communication required by paragraph A of this section) and the Chair of the Remediation Committee. The Executive Director shall attempt contact with the Chief Compliance Officer to encourage communication with the consumer; and
- C. If the consumer does not receive a written response within thirty (30) days after the submission of the allegation to DBA, the Chair of the Remediation Committee shall follow the process outlined in section 9.4 of this Article.

9.9 **Amending Remediation Procedures Manual.** The Remediation Committee shall follow the same process established in section 5.7 of this Governance Document for the review and approval of any new or updated Remediation Procedures, except that the recommendations shall be made to the Board.

X. Fee Schedule

10.1 **Affordability.** The Council shall attempt to ensure that all fees and charges associated with the Certification Program are affordable and will result in neither a barrier for entry into the debt buying industry nor a reason that current Debt Buyers fail to become certified.

10.2 **Application Fees.** The Council shall recommend to the Board in the Certification Program's annual budget an application fee schedule for the following:

- A. **Individuals.** Individuals shall be assessed the following fees at the time of submitting an Application:
 - 1. **Administrative Fee.** A one-time nonrefundable administrative fee shall be charged for all first time Applicants.
 - 2. **Biennial Certification Fee.** A biennial certification fee, which shall cover the costs associated with administering the Certification Program.
- B. **Companies.** Companies shall be assessed the following fees at the time of submitting an Application:
 - 1. **Administrative Fee.** A one-time nonrefundable administrative fee shall be charged for all first time Applicants.
 - 2. **Biennial Certification Fee.** A biennial certification fee, which shall cover the costs associated with administering the Certification Program.

10.3 **Appeals Fee.** A fee of one thousand dollars (\$1,000) shall be included with the filing of an appeal on a decision made by the Council as provided in the Remediation Procedures Manual (see **Appendix E**). The fee will be refunded only if the appeal is successful.

10.4 **Other Fees.** The Administration and Budget Committee may recommend to the Council the creation of other fees that are either associated with the Application or are charged at

the point of an administrative action or request such as obtaining a Certificate of Good Standing.

- 10.5 **Refunds.** Refunds, less an administrative processing fee of \$50, shall be provided to any Applicant on application fees if the Application is withdrawn prior to the issuance of the certification or the rejection of the Application, whichever occurs first. No refunds shall be provided after the issuance of certification or the rejection of the Application.
- 10.6 **Currency.** All fees shall be based on the currency of the United States.
- 10.7 **Amending Fee Schedule.** The Administrative and Budget Committee shall follow the same process established in section 5.7 of this Governance Document for the review and approval of any new or updated fee schedules.

XI. Confidentiality, Records & Conflict of Interest

- 11.1 **Confidentiality of Information.** Information submitted as part of the Certification Program shall be kept confidential and used for the limited purpose of determining eligibility for certification, compliance with certification, or as provided in section 11.6 of this Article.
- 11.2 **Confidentiality of Investigations.** Investigations and deliberations of the Council or any Committee concerning a party's certification or potential certification shall be conducted in strict confidence, to the extent possible. Investigations by their very nature may require the disclosure of certain information to parties essential to the review and/or investigation of the alleged misconduct but should be limited, to the extent possible.
- 11.3 **Redaction of Proprietary Information.** The Applicant has the right to redact any proprietary information it deems necessary from all documentation and in compliance with required laws and regulations. However, the redaction of information should not be of such a magnitude to impair the Council's ability to utilize the documentation in determining eligibility for certification and/or compliance with certification. Documents which are overly redacted and deemed unusable by the Auditor and/or the Council may be rejected and may result in an adverse certification decision.
- 11.4 **Property of DBA.** All information submitted during the certification process shall become the property of DBA.
- 11.5 **Records Retention.** The Council shall maintain original or electronic copies of the following Certification Program records in accordance with DBA's Records and Retention Schedule:
- A. Applications;
 - B. Self-evaluation Materials;

- C. Reports of Auditors;
- D. Records of Certification including disciplinary actions;
- E. Records of Appeals;
- F. The Certification Standards with Effective Dates;
- G. Minutes of Council Meetings;
- H. Copies of Policies and Procedures; and
- I. Council Reports to the Board.

- 11.6 **Release of Information.** The Council shall not provide any additional information, including privileged information, to a third party except for the publication of information authorized by sections 5.5 and 5.6 of this Governance Document and for purposes of investigation and remediation as authorized by Article IX of this Governance Document. The Council shall not confirm or deny that a specific party is involved in any phase of the certification process prior to achieving certification, except as may be required for a reference check. The Council shall release information if it receives a written request from the Applicant or Certified Party indicating who the information may be released to or if the Council is required to release information by a court order. In the event that the Council receives a subpoena or other form of compulsory process other than a court order, the Council will review before deciding whether to comply with the compulsory process to release the information. To the extent permitted by law, the Council will make commercially reasonable efforts to provide prior notice to the Applicant or Certified Party concerning the court order or subpoena so that they may have an opportunity to intervene in an effort to block the disclosures. The Council may communicate the fact, date, and nature of a disciplinary action against a Certified Party. Additionally, the Council may communicate the fact, date, and nature of a Certified Party's voluntary withdrawal from Certification that occurred during an independent third party audit or during the remediation process to government agencies engaged in the administration of law or debt buying industry oversight.
- 11.7 **Confidentiality Agreement.** Council Members, Committee Members, staff, and vendors shall sign a Confidentiality Agreement where they agree to keep all information submitted as part of the Certification Program confidential. A violation of the Confidentiality Agreement may lead to dismissal from the Council, Committee, employment, or termination of a contractual relationship.
- 11.8 **Conflict of Interest.** Council Members, Committee Members, staff, and vendors shall recuse themselves from any discussion or actions associated with a party and/or issue where there is a personal or professional affiliation or interest that might have an impact on

the deliberations. A violation of this paragraph may lead to dismissal from the Council, Committee, or employment.

XII. Meetings

- 12.1 **Roberts Rules of Order.** Unless provided otherwise in this Governance Document, the Council and the Committees of the Council shall follow the most recent version of Roberts Rules of Order for voting procedures.
- 12.2 **Quorum.** A quorum for voting purposes shall be considered fifty percent (50%) plus one (1) of the positions filled.
- 12.3 **Public Meetings.** The meetings of the Council and the Committees of the Council are not open to the public unless stated otherwise in advance of the meeting.

XIII. Indemnification

- 13.1 **Indemnification.** All Audit Committee Members, Remediation Committee Members, Council Members, DBA employees, DBA Counsel, independent contractors, and other individuals engaged in investigations or decisions on behalf of the Certification Program and DBA with respect to any allegation under the Certification Standards or an independent third party audit thereof shall be indemnified and held harmless and defended by DBA against any liability arising from such activities to the extent permitted by law, provided such individuals acted in good faith and with reasonable care, without gross negligence or willful misconduct, and did not breach any fiduciary duty owed to DBA or the Council.

Appendices

APPENDIX A CERTIFICATION STANDARDS MANUAL

- A.1 **Minimum Standards.** The Certification Standards Manual provides the minimum standards that Certified Parties shall maintain in order to become certified or to remain certified.
- A.2 **Failure to Conform to Standards.** Failure to conform to the Certification Standards can lead to the loss of certification or such other actions deemed appropriate by the Council.
- A.3 **Individual Certification.** Individual Certification is a requirement for individuals who serve as Chief Compliance Officer of a Certified Company and a voluntary designation for other individuals who meet the requirements of section 5.6 of the Governance Document. The following are the Certification Standards required for individual certification:
- (1) **Educational Requirements.** The individual shall have completed twenty-four (24) continuing education credits from an authorized provider prior to submitting an Application for initial certification and for each biennial renewal thereafter based on the following criteria:
 - (a) Four (4) continuing education credits from DBA’s “Introductory Survey Course on Debt Buying” presented by DBA shall be required of each individual for initial certification;
 - (b) Two (2) continuing education credits annually from DBA’s “Current Issues Course on Debt Buying” presented by DBA on the latest statutory, regulatory, and judicial developments of relevance to Debt Buyers and their vendors shall be required of each individual for biennial renewal;
 - (c) Two (2) continuing education credits from an Ethics Course(s) shall be required of each individual for both initial certification and biennial renewal;
and
 - (d) No more than twelve (12) continuing education credits in a biennial cycle shall be from on-line classes.
 - (2) **Education Subject Matter.** An individual who seeks to be certified and remain certified shall take continuing education classes from an authorized provider in any of the following qualified subjects, unless additional subjects are otherwise authorized pursuant to the process contained in the Educational Requirements Manual (see **Appendix B**):

1099c	Data Access & Control
Account Documentation (at point of sale)	Data Accuracy and Integrity
Account Documentation (access to after sale)	Data Backup
Account level data requirements (min. standards)	Data Destruction
Accounts – Closing	Data Reconciliation (conformity, integrity, system of record)
Accounts – Recalling	Data Security
Affidavits (Account)	Data Vendors
Affidavits (Portfolio)	Deceased Debtors
Affidavits (State requirements)	Disaster Recovery
Attorney General Interaction	Disclaimers and "Negative" Representation and Warranties
Attorney Representation Issues	Do-Not-Call Policies
Audited Financial Statements	Due Diligence (e.g. seller surveys, selection of vendors)
Audits	E-mail Communications
Automated and Predictive Dialers	Employee Compensation & Commission Issues
Background Checks	Employee Manual
Bankruptcy Code	Employee Supervision & Oversight
Bankruptcy	Employment Policies
Better Business Bureau	Encryption
Bills of Sale	Escrow Account Issues
Business Management Practices	Ethical Codes of Conduct (Employees)
Business Records Exception Rule	Ethical Codes of Conduct (Industry – DBA, ACA, NARCA, and CLLA)
Call Monitoring	Fair Credit Reporting Act (FCRA)
Call Recording and Retention Policies	Fair Debt Collection Practices Act (FDCPA)
Cease and Desist Issues	FDCPA Complaints – How to handle them
Cell-phone Communications	Federal Communications Commission (FCC)
CFPB Portal	Federal Trade Commission (FTC)
Chain of Title Issues & Requirements	Fraud
Charge-Off Account Statements	Gramm–Leach–Bliley (GLB) Act
Chief Compliance Officer – Role of	Hardship Policies and Programs
Cloud Based Systems	Hiring Practices
Collection Letters	Identity Theft
Compliance Policies	Indemnification
Confidential Tip Lines	Ineligible Account Definitions (e.g. compliance, legally uncollectible, or unenforceable)
Confidentiality and Non-Disclosure Agreements	Insurance
Consent to Sale Provisions	Insurance – Errors & Omissions (E&O)
Consumer Bill of Rights	Insurance – Directors & Officers (D&O)
Consumer Communications	Insurance – Workers Compensation
Consumer Complaint and Dispute Resolution Process	Interest Application
Consumer Disputes – Verbal & Written	Investigations – External
Consumer Education on Financial Responsibility	Investigations – Internal
Consumer Financial Protection Bureau (CFPB)	Itemization of Interest and Fees
Consumer Notices	Laptop Security
Consumer Support Services	Litigation
Court Rulings Impacting Debt Buyers	Location Requirements
Credit Bureaus – In General	Malware
Credit Bureaus – E-Oscar and FACT Act Disputes	
Credit Bureaus – Reporting	
Credit Bureau Updates	

Media Systems and Operations
 Mini Miranda
 Off-site Hosted Platforms
 Original Data Overrides – Issues
 Pass through Rights
 Passwords
 Payday Loans
 Payment Application
 Payment History
 Policy Violations – How to Find & Handle
 Privacy Laws – State & Federal
 Publication of Contact Information
 Purchase & Sale Agreements
 Quality Assurance/Control Processes
 Recalling Accounts
 Records Management
 Records Retention
 Red Flag Rules
 Representations and Warranties (standard language)
 Resale Issues – In General
 Resale Policies and Practices
 Right Party Contact
 Security Breaches
 Service of Process
 Servicing Agreements
 Settlement Agreements
 Skip Tracing
 Social Media

Standards and Controls (e.g. SSAE 16, PCI, ISO 27001)
 State Licensing Requirements
 State Notice Requirements
 Statute of Limitations – In General
 Statute of Limitations – Out of Stat
 Statute of Limitations – Rehabilitation
 Supervisory Issues
 Telephone Consumer Protection Act (TCPA)
 Terms and Conditions
 Theft
 Third Party Issues
 Third Party Penalties for Non-Compliance
 Time-of-sale documentation standards (e.g. Bills of Sale, Portfolio Affidavits)
 Training Programs
 Transmitting Files
 Trust Fund
 Truth in Lending Act
 Unfair, Deceptive or Abusive Acts and Practices (UDAAP)
 Usurious Loans
 Validation Notice Requirements
 Vendor Management – In General
 Vendor Management – Audits
 Vendor Management – Oversight
 Verification of Consumer Debt
 Voicemail Messages
 Wrong Numbers

- (3) **Employment.** An individual who is certified shall be an employee, owner, or an officer or member of the Certified Company or of an affiliate of the Certified Company. An exception to this requirement shall be provided for an individual who:
- (a) Is working for a government entity, a creditor, or a debt buying or collection industry trade association and for one (1) year beyond his or her employment with such entity;
 - (b) Is unemployed, provided that he or she becomes employed by a Certified Company or is otherwise exempt within two (2) years;
 - (c) Is operating as a third-party vendor providing compliance services to a Certified Company; or
 - (d) Is retired.
- (4) **Publication.** The individual shall authorize DBA to publish their name, title, certification number, year certified, employer issued telephone number, and

employer issued email address along with their employer's name, certification number, year certified, website address, mailing address, and telephone number in a directory of Certified Individuals that is provided on a publicly accessible website maintained by DBA. The information provided must be correct and any updates shall be provided to DBA within thirty (30) days of its occurrence. The individual shall also be required to provide the same information to a consumer upon request.

- (5) **Good Character.** DBA may revoke, terminate, suspend, or deny the Individual Certification of any Certified Party and/or Applicant if the Council determines that the party has demonstrated a lack of good character that may place consumers in jeopardy or adversely reflect on the industry, by any of the following:
- (a) Engaged in any illegal conduct involving moral turpitude;
 - (b) Engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or any misappropriation of confidential data or information; or
 - (c) Engaged in any other conduct that adversely reflects on his or her fitness to engage in the business of debt buying.

A.4 **Company Certification.** The following are the Certification Standards required for company certification:

“SERIES A” STANDARDS

The following “Series A” Standards shall apply to a Certified Company and are subject to Certification Standard 17 on Vendor Management:

- (1) **Laws & Regulations.** A Certified Company shall comply with the Fair Debt Collection Practices Act and, as applicable, the Fair Credit Reporting Act, the Telephone Consumer Protection Act, the Servicemembers Civil Relief Act, the United States Bankruptcy Code, section 5 of the Federal Trade Commission Act, sections 1031 and 1036 of the Dodd-Frank Act, and all other local, state, and federal laws and regulations concerning: (a) collection activity on consumer accounts, (b) the rights of consumers, (c) debt buying, and (d) financial services as they may apply to Debt Buyers.
- (2) **Errors & Omissions Insurance.** Each Certified Company shall maintain a minimum of two million U.S. dollars (\$2,000,000) in Errors & Omissions (E&O) insurance coverage.
- (3) **Criminal Background Check.** Unless prohibited by state or federal law, perform a legally permissible criminal background check prior to employment on every prospective full or part time employee who will have access to Consumer

Data and every owner of the business with a five (5) percent or greater share of ownership in the Certified Company, to determine the following:

- (a) Whether the prospective employee or owner has been convicted of any criminal felony involving dishonesty, fraud, deceit, misrepresentation, or any misappropriation of confidential data or information; and
- (b) Whether the prospective employee or owner has been charged with any crime involving dishonesty, fraud, deceit, misrepresentation, or any misappropriation of confidential data or information such that the facts alleged support a reasonable conclusion that the acts were committed and that the nature, timing, and circumstances of the acts may place consumers in jeopardy.

A Certified Company shall maintain guidelines in a policy, procedure, or manual on how it will handle criminal background checks and the potential consequences on employment that may result from such background checks. The criminal background check is not a retroactive requirement for employees hired prior to certification but shall apply to all owners with a five (5) percent or greater share of ownership in the Certified Company.

- (4) **Employee Training Programs.** Establish and maintain annual employee training program(s). These programs should educate the employees on the various corporate policies and procedures as well as laws and regulations that they must comply with in the performance of their duties. These programs should also inform employees of the possible consequences for failing to comply with them.
- (5) **Consumer Complaint and Dispute Resolution Policies.** Establish and maintain written consumer complaint and dispute resolution policies and procedures that instruct employees how to handle and process consumer complaints and disputes in compliance with the Certification Program and applicable laws and regulations, including but not limited to the Fair Debt Collection Practices Act and the Fair Credit Reporting Act.
- (6) **Consumer Notices.** Establish and maintain a list of applicable local, state, and federal consumer notices in the areas in which the Certified Company conducts business and maintain procedures to ensure that the appropriate notices are added to consumer correspondence.
- (7) **Data Security Policy.** A Certified Company shall establish and maintain a reasonable and appropriate data security policy based on the type of Consumer Data being secured that meets or exceeds the requirements of applicable state and federal laws and regulations. The Certified Company shall ensure that an annual risk assessment is performed on the Certified Company's protection of Consumer Data from reasonably foreseeable internal and external risks. Based on the results

of the annual risk assessment, the Certified Company shall make adjustments to their data security policy if warranted.

- (8) **CFPB Consumer Complaint System.** Establish a portal for the receipt of consumer complaints and inquiries on CFPB’s consumer complaint system and respond to all complaints or inquiries received according to CFPB’s prescribed guidelines.
- (9) **Payment Processing.** Establish and maintain a Payment Processing Policy that requires taking payments consistent with consumer instructions that were made at the time the payment was accepted, prompt posting of all consumer payments, and processing of any refunds within a reasonable amount of time.
- (10) **State Licensing Requirements.** Comply with state and municipal licensing laws to the extent that they are applicable.
- (11) **Credit Bureau Reporting.** If a Certified Company reports consumer account information to a credit bureau, the Certified Company shall:
 - (a) Notify the credit bureau of any inaccurately reported information that it identifies within thirty (30) days of its discovery;
 - (b) Notify the credit bureau when a consumer disputes the accuracy of an account within thirty (30) days of the dispute being made, unless the dispute is resolved prior to notification; and
 - (c) Notify the credit bureau within thirty (30) days if the Certified Company sells the account.
- (12) **Statute of Limitations.** A Certified Company shall not knowingly bring a lawsuit on a debt that is beyond the applicable statute of limitations; however, a Certified Company may continue to attempt collection beyond the expiration of the statute provided there are no laws and regulations to the contrary.

“SERIES B” STANDARDS

The following “Series B” Standards shall apply exclusively to a Certified Company and are not subject to Certification Standard 17 on Vendor Management:

- (13) **Portfolio Acquisition.** A Certified Company shall establish and maintain a Portfolio Acquisition Policy that provides the rules, processes, and procedures it follows in the acquisition of debt portfolios and the accounts contained therein to ensure accuracy and completeness of information. Additionally, on all new debt portfolios purchased after becoming certified, the Certified Company shall require in the purchase agreement (i.e. the contract):

- (a) The transmission of data elements required to sufficiently identify the consumers on the associated accounts and to confirm the accuracy and completeness of information pertaining to the accounts. The Certified Company shall use commercially reasonable efforts to negotiate the inclusion of the following data elements in purchase agreements, provided that they are applicable to the type of debt being purchased: (i) first name and last name of consumer, (ii) the complete last known address of consumer, (iii) last known telephone number of consumer, (iv) name of originating creditor at the time of charge off, (v) account number or account identifier used by the originating creditor at the time of charge off, (vi) social security number or other government issued identification number of consumer as long as the original creditor received the number at the time the account was opened, (vii) account opening date, (viii) last payment date, provided a payment was made, (ix) the charge off balance, (x) the charge off date, (xi) the nature of the debt – i.e. auto, credit cards, medical, telecom, etc., (xii) the current balance at the point of sale, and (xiii) the total amount of any interest and the total amount of any fees accrued on the account since the charge off date, if applicable;
 - (b) Access to or transmission of documents required to sufficiently identify the consumers on the associated accounts and to confirm the accuracy of dates, balances, and other information pertaining to the accounts. The Certified Company shall use commercially reasonable efforts to negotiate access to or inclusion of sufficient documents in purchase agreements, provided that they are applicable to the type of debt being purchased. Examples of documents may include, but are not limited to: (i) original application or contract, if available; (ii) last statement showing a purchase transaction, service billed, payment, or balance transfer; (iii) charge off statement; (iv) terms and conditions or cardholder agreements, and (v) affidavits, as applicable; and
 - (c) Adequate time to evaluate and review sufficient portfolio information for accuracy, completeness, and reasonableness and to discuss and resolve with the seller any questions or findings resulting from the review process prior to purchasing the portfolio.
- (14) **Chain of Title Requirements.** Identify and maintain the name, address, and dates of ownership of the originating creditor and all subsequent owners up to and including the Certified Company for each account within a portfolio that is purchased. The intent is to have each subsequent Certified Company maintain an accurate listing for chain of title on debts purchased after certification. This Certification Standard shall only apply to accounts purchased by the company after it obtains certification. This is not a retroactive requirement on accounts purchased prior to certification.
- (15) **Chief Compliance Officer.** Create and maintain the position of “Chief Compliance Officer” with a direct or indirect reporting line to the President, CEO,

Board of Directors, or General Counsel (unless the Chief Compliance Officer is the President, CEO, or General Counsel). The Chief Compliance Officer's documented job description shall include, at a minimum, the following responsibilities:

- (a) Maintaining the Certified Company's official copy of the Certification Standards Manual;
- (b) Identifying policies, procedures, or activities of the Certified Company that are out of conformity with the Certification Standards;
- (c) Either directly or indirectly: (i) receiving consumer complaints, (ii) investigating the legitimacy of consumer complaints, and/or (iii) overseeing the complaint process, including complaint activity, root cause analysis, and timely response;
- (d) Developing recommendations for corrective actions when the Certified Company is not conforming with the Certification Standards and providing them to his or her direct and indirect report(s); and
- (e) Interacting as the point of contact for the federal Consumer Financial Protection Bureau (CFPB), the Federal Trade Commission (FTC), state consumer regulatory agencies, and state and federal attorneys general regarding the oversight and accountability of the Certified Company's Consumer Complaint and Dispute Resolution Policy and the CFPB's Consumer Complaint System.

(16) **Website & Publication.** A Certified Company shall:

- (a) Maintain a publicly accessible website that can be found by a simple web search using the corporate name provided in communications with consumers;
- (b) Publish on their website their name, certification number, year certified, website address, mailing address, and telephone number;
- (c) Publish on their website the mailing address, email address, and telephone number where consumers can register a complaint with the Certified Company that is received by an employee who has the authority to research, evaluate, take corrective action if warranted, and respond to the complaint;
- (d) Publish on their website their Chief Compliance Officer's name, title, certification number, year certified, and mailing address;
- (e) Provide a hyperlink on their website to the "Consumer Education" page on the DBA website; and

- (f) Authorize DBA to publish the information contained in paragraphs (b), (c), and (d) of this Certification Standard on a publicly accessible website maintained by DBA.
- (17) **Vendor Management Policy.** Establish and maintain a Vendor Management Policy that at a minimum requires future contracts and future contract renewals with third-party vendors who have access to the Certified Company's Consumer Data or are communicating with consumers on behalf of the Certified Company to:
- (a) Provide documentation to the Certified Company that demonstrates conformity with the "Series A" Certification Standards;
 - (b) Forward to the Certified Company any written complaint that the third-party vendor received or that was filed with the CFPB/FTC on one of the Certified Company's accounts, if applicable;
 - (c) Cease collection on any or all of the Certified Company's accounts, if applicable, upon written notice by the Certified Company as clearly defined pursuant to the agreement;
 - (d) Respond to the Certified Company's inquires within seven (7) business days unless a shorter period is provided for pursuant to an agreement between the parties;
 - (e) Return any or all Consumer Data and/or accounts at the Certified Company's request within fourteen (14) business days or within such period of time as clearly defined pursuant to the agreement; and
 - (f) Be subject to a potential audit by an independent third-party auditor. This requirement shall be waived if the third-party vendor is a Certified Company.
- (18) **Representations & Warranties.** A Certified Company shall use commercially reasonable efforts to negotiate the inclusion of the following representations and warranties in purchase agreements:
- (a) Seller is lawful holder of the accounts;
 - (b) Accounts are valid, binding, and enforceable obligations;
 - (c) Accounts were originated and serviced in accordance with law; and
 - (d) Account data is materially accurate and complete.
- (19) **Resale.** A Certified Company shall not sell any accounts:

- (a) Where outstanding written and non-duplicative consumer requests for verification of the debt pursuant to the FDCPA (15 USC 1692g) have not been responded to in writing;
 - (b) That have been identified as being created as a result of identity theft or fraud; and
 - (c) To a non-Certified Company unless the terms and conditions of the sale agreement requires the purchaser of the consumer accounts to meet or exceed the standards of a Certified Company with the exception that the purchaser need not be a Certified Party.
- (20) **Affidavits**. A Certified Company shall establish and maintain an Affidavit Policy that requires and ensures that:
- (a) An affiant shall only sign an affidavit that is true and accurate, and that no affiant shall sign an affidavit containing an untrue statement;
 - (b) An affiant either have personal knowledge or upon information and belief of the facts set forth in the affidavit or shall familiarize himself or herself with the business records applicable to the subject matter of the affidavit prior to signing an affidavit; and
 - (c) Each affidavit shall be signed by an affiant under oath and in the presence of a notary appointed by the state in which the affiant is signing the affidavit, in accordance with and to the extent required by applicable state law.

APPENDIX B

EDUCATIONAL REQUIREMENTS MANUAL

B.1 **Purpose.** The Educational Requirements Manual (hereinafter referred to in this Appendix as “Manual”) provides additional information to supplement the content provided in the Governance Document. The Manual is designed to be updated on an annual basis provided that the changes do not decrease the base line requirements established in the Governance Document. The Manual will provide guidance and clarification on:

- (1) Continuing education of Certified Individuals;
- (2) Authorized providers of continuing education;
- (3) Continuing education credit from non-authorized providers of continuing education; and
- (4) Future specialty certifications or testing authorized by the Council.

B.2 **Failure to Meet Requirements.** Failure to meet the requirements contained in the Governance Document or this Manual can lead to the loss of certification or authorized provider status.

B.3 **Introductory Survey Course.** The Board’s Education Committee shall work with staff and any contracted vendor(s) on the development and presentation of an “Introductory Survey Course on Debt Buying” based on the following guidance:

- (1) The “Introductory Survey Course on Debt Buying” should be a high level presentation of the life cycle of a charged-off consumer account;
- (2) The content should provide an overview of (i) applicable state and federal laws and regulations, (ii) DBA Certification Standards, and (iii) best practices (which may go beyond that required by law, regulation, or Certification Standard) that commonly apply to Debt Buyers and charged-off consumer accounts;
- (3) Given the nature of the course and the limited time available, an in-depth review of such subjects should be left for separate specialized continuing education courses;
- (4) An audience member should leave the course not as an expert on the subject matter but with sufficient understanding to recognize an issue if and when he or she encounters it;

- (5) The course shall be at least four (4) hours in length but may be increased by the Educational Requirements Committee if it is determined it is necessary to fulfill the goals of the course;
- (6) The course shall be offered at each DBA Annual Meeting and at any other time at the discretion of the Board's Education Committee;
- (7) An online version of the course may be made available online for a fee; and
- (8) The following outline is provided as a suggestion of potential content for the "Introductory Survey Course on Debt Buying":

Overview: History of Debt Buying & Regulations

- Historical Overview of Debt Buying
- Overview of Laws and Regulations that Impact Debt Buying Industry -
 - FDCPA, FCRA, TCPA, GLB, 1099C, State Laws, Red Flag Rules, State Licensing Compliance, etc.
- Common Terms - Standard usage
- Debt Sale Scams - Highlight of common scams to watch out for
- Common Mistakes of a Debt Buyer
- Overview of the DBA Certification Program & Standards

Life Cycle of a Debt

- Typical Consumer Account from Creation to Charge-Off Status
- Evaluating a Portfolio
 - Masked files
- Due Diligence - Pre-selection questionnaires - questions for Sellers
- Contract Terms and Conditions
 - As-is / Reps and Warranties
 - Chain of Title / Documentation / Statements / Accuracy of Data
- Collection Issues & Responsibilities (internal, outsource, or sell)
 - Compliance (more details on key portions of regulations as relates to collection topics - most common issues)
 - Licensing
 - Consumer communications
 - Letters
 - Phone Calls
 - Cell Phones
 - Phone Call Scripting
 - Answering Machine Messaging
 - Restrictions on Frequency
 - Consumer ID Verification
 - Collector Identification
 - Call Recording Disclosure

- Mini Miranda
- Cease and desist
- Complaints
- Quality Control/Call Monitoring
- Credit Bureau - use and reporting
- Bankruptcy
- Deceased
- Out-of-statute accounts
- Litigation-related issues, including burden of proof
- Vendor Management / Resale Policies and Practices
- Data Security/Physical Security
- Disputes
- Payment Application
 - Convenience Fees
 - Overpayment Handling
- Skip tracing
- Insurance Requirements
- Post-Sale Issues
- Paid in Full / Closed Accounts

Resources and Sources for More Information

B.4 **Current Issues in Debt Buying Course.** The Board’s Education Committee shall work with staff and any contracted vendor(s) on the development and presentation of a “Current Issues in Debt Buying” course based on the following:

- (1) The course should provide a detailed presentation on a subject matter concerning new state and/or federal statutory, regulatory, and/or judicial developments of relevance to Debt Buyers and their vendors;
- (2) The course shall be two (2) hours in length;
- (3) The course shall be offered at each DBA Annual Meeting and at any other time at the discretion of the Board’s Education Committee; and
- (4) An online version of the course may be made available online for a fee.

B.5 **Ethics Courses.** Ethics courses given by an authorized provider shall count towards continuing education credit if the subject matter is on the following list:

- (1) DBA International Ethical Code of Conduct;

- (2) ACA International, Commercial Law League of America (CLLA), or National Association of Retail Collection Attorneys (NARCA) Ethical Codes of Conduct;
- (3) Presentations by consumer groups and/or the Better Business Bureau;
- (4) Financial accounting as it relates to trust accounts and commingling of assets;
- (5) Real life accounts by consumers who were victims of fraud or identity theft and the resulting consequences to their life;
- (6) Consequences of making a false or misleading statement;
- (7) Inspirational lectures by prominent community, corporate, or governmental leaders designed to encourage behavior that promotes the betterment of the debt buying industry or society as a whole; and
- (8) Other subjects approved by the Educational Requirements Committee.

B.6 **General Courses.** The Certification Program requires the completion of twenty-four (24) continuing education credits by Certified Individuals on a biennial basis by taking classes from authorized providers. Classes offered by Authorized Providers from the approved list of topics identified in the Certifications Standards Manual (**See Appendix A**) will count toward certification without further approval by the DBA. The Educational Requirements Committee may grant continuing education credit for classes taken from a non-authorized provider based upon a written request by a Certified Individual (**see B.9 below**).

B.7 **Authorized Providers.** Authorized providers shall be determined by the following methodology:

- (1) **Recognized Professional Organizations.** DBA International, ACA International, Commercial Law League of America (CLLA), and National Association of Retail Collection Attorneys (NARCA) are designated by the Governance Document to be professional organizations within the debt buying and collection industry that have historically provided exceptional educational programming in the subject matter required for the Certification Program and are therefore automatically deemed to be authorized providers. Recognized professional organizations are not required to fill out an application or pay a fee to participate but must comply with provisions contained in paragraph B.8 below. Affiliates or state chapters of

recognized professional organizations do not qualify under this category but are encouraged to apply to become an authorized provider.

- (2) By Application. The Educational Requirements Committee may approve other organizations or individuals based on the following:
 - (a) Demonstrated excellence in providing instruction in the subject matter that is qualified for continuing education credit;
 - (b) Compliance with the provisions contained in paragraph B.8 below; and
 - (c) Timely response to a Request for Proposals (RFP) that shall be posted from time-to-time on the DBA website seeking interested parties wishing to become an authorized provider of the Certification Program. The Educational Requirements Committee shall provide any additional requirements for participation in the RFP, including but not limited to fees, length of authorization, and renewal criteria.

B.8 Requirements of Authorized Providers. All authorized providers shall conform to the following criteria when issuing Continuing Education Certificates:

- (1) Be a member of DBA in good standing, except for the Recognized Professional Organizations;
- (2) The subject matter of the class to be offered qualifies for continuing education credit pursuant to the Certification Standards Manual (see **Appendix A**).
- (3) If the subject matter does not qualify, the authorized provider may request written pre-approval from the Educational Requirements Committee to provide continuing education credits for the class. Such requests must include a description of course, the course objectives, and demonstrate the relevance of the subject matter to the debt buying industry. The Educational Requirements Committee may, at its sole discretion, require copies of the proposed course materials, audit the course, or request other relevant information;
- (4) Provide written descriptions for all classes on a publicly accessible website prior to or contemporaneous to registration, provided that classes may be subject to change;

- (5) Indicate the number of continuing education credits that an individual will receive for the completion of the class(es) adjacent to the written description of the class(es);
- (6) Provide the individual who attended the class(es) with a Continuing Education Certificate signed by a representative of the authorized provider that contains at a minimum the following:
 - (a) The name and logo of the authorized provider;
 - (b) The name of the individual attending the class;
 - (c) A space for the DBA Certification Number (if applicable) to be inserted by the recipient of the continuing education;
 - (d) The date and location that the continuing education class was held;
 - (e) The title of the class and the number of continuing education credits associated with the class;
 - (f) The signature of a representative of the authorized provider; and
 - (g) A declaratory statement to be signed and dated by the recipient of the continuing education that he or she has in fact attended the class for which he or she seeks continuing education credit, and that he or she acknowledges that providing false information may subject her or him to potential disciplinary action or the loss of certification;
- (7) Provide DBA with a sample of the Continuing Education Certificate they will issue, along with the name, title, contact information, and sample signature of the individual(s) who will sign the certificates;
- (8) Maintain documentation of course offerings and attendees for a period of three (3) years. Verification of attendance of an individual must be provided to DBA upon request;
- (9) Ensure class content is content-rich and not deemed a "sales opportunity" for additional classes, products, or services provided by the authorized provider and/or presenter. Introductory classes designed to be the first step of a fee-based program will not generally be considered for continuing education credit;

- (10) Permit DBA to audit classes from time-to-time to ensure the content is delivered as advertised; and
- (11) Agree to assist the Educational Requirements Committee in the investigation of any complaint regarding an instructor or class content.

B.9 **Non-Authorized Providers.** A Certified Individual may make a written request to the Educational Requirements Committee to receive continuing education credit for a class taken from a non-authorized provider. The Educational Requirements Committee, in its sole discretion, may grant the request provided that:

- (1) The request shall be in writing and contain the following information:
 - (a) The name of the entity providing the class;
 - (b) The date and location of the class;
 - (c) The length of the class in minutes;
 - (d) A copy of any handouts associated with the class, if available;
 - (e) A class description from an advertisement, website, or other documented source; and
 - (f) A brief statement of the relevance of the subject matter to the debt buying industry.
- (2) DBA receives a declaratory statement that is signed and dated by the recipient of the continuing education that she or he has in fact attended the class for which he or she seeks continuing education credit, and that he or she acknowledges that providing false information may subject her or him to potential disciplinary action or the loss of certification; and
- (3) Proof of attendance is provided to DBA along with any handouts associated with the class if they were not previously submitted.

B.10 **Evaluation, Review, and Complaint Process.** Classes offered by authorized providers may be subject to evaluation and review by the Educational Requirements Committee should DBA receive a written complaint regarding the instructor or class content.

B.11 **Use of DBA "Authorized Provider" Status.** Non-authorized providers are prohibited from stating or suggesting that they are a DBA authorized provider either verbally or in writing.

7. Physical Address of Headquarters:

8. Mailing Address (if different from physical address):

9. Main Business Number:

10. Web Site Address:

Chief Compliance Officer Information

11. Name of Chief Compliance Officer (CCO):

12. If CCO goes by different title, please provide:

13. Is your CCO certified by DBA International as a "Certified Receivables Compliance Professional"?

13a. If "yes" to question 13, please provide the CCO's certification number:

14. Please indicate the date the CCO started serving in this capacity:

15. CCO's Company Issued Telephone Number:

16. CCO's Company Issued Email Address:

Acknowledgements

I, _____ (insert name of Applicant signatory), the legal representative of _____ (insert name of Applicant), hereby certify and agree to each of the following statements by affixing my initials next to said statements:

17. ____ I have the legal capacity to answer the questions on this application and thereby bind the Applicant by my responses.

18. ____ I have read and understood this application and all documents referenced by this application and by my signature below agree to bind the Applicant.

19. ____ Applicant has completed the Certification Standards Self-Audit Checklist (see below) and has determined that it is in conformity with the Certification Standards and agrees to maintain conformity with the Certification Standards, as may be amended from time-to-time.

20. ____ Applicant has read and understands the audit procedures as contained in the Governance Document and agrees to comply with such procedures, as may be amended from time-to-time.
21. ____ Applicant has read and understands the remediation procedures as contained in the Governance Document and agrees to comply with such procedures, as may be amended from time-to-time.
22. ____ **(Renewing Applicant's only)** Applicant does not have any unresolved certification deficiencies.
23. ____ **(Renewing Applicants who are under the terms of a Remediation Agreement only)** Applicant is in compliance with the terms of any current Remediation Agreement between Applicant and DBA.
24. ____ Applicant has never been expelled from the Certification Program.
25. ____ Applicant understands that it must reapply for certification every two (2) years prior to the expiration of the current certification. If Applicant fails to reapply, it will lose its certification and membership in DBA.
26. ____ Applicant will hold DBA International, its agents, directors, council members, staff, and/or auditors harmless from any claim of damage or loss as a result of Applicant's failure to achieve certification.
27. ____ Applicant understands that DBA International's Debt Buyer Certification Program is a voluntary program and failing to be certified does not preclude an individual or company from operating a debt buying business unless state or federal law provides otherwise.
28. ____ Applicant will not prosecute the Auditor for trespassing or for any crime associated with verifying the Certification Standards.
29. ____ Applicant understands that at any time during the application, audit process, or associated with a Remediation Agreement, the Council, its agents, and/or the auditors may investigate or require additional information or documentation from the Applicant in order to verify information on this application, an audit, or Remediation Agreement. Applicant agrees to cooperate and provide such information and documentation upon request.
30. ____ Applicant, including all of its employees and agents will refrain from any false or misleading claims, suggestions, or references regarding certification, including but not limited to such claims used in advertising produced in advance and/or in anticipation of accreditation at some future date.

31. _____ Applicant will notify DBA in writing within thirty (30) days of any material change that occurs that would make any information provided on this application inaccurate.

Certification Standards Self-Audit Checklist

When completing the Certification Standards Self-Audit Checklist, please review the [Certification Standards](#). Applicant should not submit an application unless it believes it is in conformity with each Certification Standard and will pass a Compliance Audit based on the criteria contained in the [Audit Review Manual](#).

Please **initial** next to each Certification Standard once the Applicant has confirmed that it conforms to the standards:

- _____ Laws & Regulations (Standard 1)
- _____ Errors & Omissions Insurance (Standard 2)
Note: Please include proof of insurance with your application.
- _____ Criminal Background Check (Standard 3)
- _____ Employee Training Programs (Standard 4)
- _____ Consumer Complaint & Dispute Resolution Policies (Standard 5)
- _____ Consumer Notices (Standard 6)
- _____ Data Security Policy (Standard 7)
- _____ CFPB Consumer Complaint System (Standard 8)
- _____ Payment Processing (Standard 9)
- _____ State Licensing Requirements (Standard 10)
- _____ Credit Bureau Reporting (Standard 11)
- _____ Statute of Limitations (Standard 12)
- _____ Portfolio Acquisition (Standard 13)
- _____ Chain of Title Requirements (Standard 14)
- _____ Chief Compliance Officer (Standard 15)
Note for first-time applicants: The Chief Compliance Officer must have received their Individual Certification prior to the submittal of this application.
- _____ Website & Publication (Standard 16)
Note: Applicant must have the following completed prior to the submittal of this application: (1) a publicly accessible website that can be found by a simple web search using their corporate name, (2) contact information must be displayed on the website, and (3) the link to the DBA International "consumer education" page must be added to the website.
- _____ Vendor Management Policy (Standard 17)
- _____ Representations & Warranties (Standard 18)
- _____ Resale (Standard 19)
- _____ Affidavits (Standard 20)

Upon confirming the Applicant conforms to the above Certification Standards, please initial adjacent to question 19 above.

Signature

I, _____ as the authorized representative of _____, hereby certify that all of the information I have provided herein is true and complete to the best of my knowledge. I understand that any misrepresentation of information included on this form or in this process is grounds for revocation of our certification. I authorize verification of this information and release all concerned from any liability in connection therewith. Applicant hereby applies to DBA International to be certified as a "Certified Professional Receivables Company" and agrees to abide by the rules and procedures established by DBA International in the administration of the Certification Program.

Full Name of Applicant Company: _____

Full Name of Authorized Representative: _____

Signature of Authorized Representative: _____

Date of Signature: _____

Mail the completed application with any required attachments and required fees to:

DBA International
Debt Buyer Certification Program
1050 Fulton Avenue, Suite 120
Sacramento, CA 95825

Billing Information:

Visa MasterCard AMEX Check Enclosed
Credit Card Number: _____
CVC Code: _____ Exp. Date: _____ Amount Due: _____
Signature of Card Holder: _____
Billing Address (if different from above): _____

Required Application Fee:

First-Time Application Fee: \$1,350.00 (includes \$100 administrative fee)
Renewal Application Fee: \$1,250.00

If you have any questions concerning the application contact the DBA International office by phone at 916-482-2462 or email cert@dbainternational.org.

9a. If “yes” to question 9, please provide their certification number:

9b. If “yes” to question 9, will you be serving as their Chief Compliance Officer?

10. Job Title:

Acknowledgements

I, _____(insert name of Applicant signatory), hereby certify and agree to each of the following statements by affixing my initials next to said statements:

11. ____ I am eighteen years of age or older and have the legal capacity to be bound by this application.

12. ____ I have read and understood this application and the DBA Debt Buyer Certification Program [Governance Document](#) and by my signature below agree to bind myself to its terms.

13. ____ I have received a minimum of 24 credit hours of continuing education in the past two (2) years that have been approved by DBA International, including 2 credit hours of ethics, 4 credit hours from DBA’s “Introductory Survey Course on Debt Buying” (first-time applicants), and 4 credit hours from DBA’s “Current Issues Course on Debt Buying” (for renewing applicants). Please attach copies of your certificates.

14. ____ I understand that my educational credits and any other responses I provide on this application may be audited by DBA International or an agent of DBA International and I agree to cooperate and provide such information and documentation necessary to confirm the accuracy of my responses.

15. ____ I understand that in order to maintain the “Certified Receivables Compliance Professional” designation with DBA International that I must be the owner of a “Certified Professional Receivables Company” or employed by a “Certified Professional Receivables Company” within two years or I am eligible to hold such certificate as otherwise permitted by the Certification Program.

16. ____ I authorize DBA to publish my name, title, certification number, year certified, employer issued telephone number, and employer issued email address along with my employer’s name, certification number, year certified, website address, mailing address, and telephone number in a directory of Certified Individuals that is provided on a publicly accessible website maintained by DBA.

17. ____ I have never been convicted of a crime involving dishonesty, fraud, deceit, or misrepresentation, or any misappropriation of confidential data or information. If you have been

convicted of a crime involving dishonesty, fraud, deceit, or misrepresentation, or any misappropriation of confidential data or information, please provide the details of such conviction in an attachment.

18. _____ I have never been expelled from the DBA Certification Program.

19. _____ I understand that I must reapply for certification every two (2) years prior to the expiration of the current certification.

20. _____ I agree to hold DBA International, its agents, directors, council members, staff, and/or auditors harmless from any claim of damage or loss as a result of my failure to achieve certification.

21. _____ I will notify DBA in writing within thirty (30) days of any material change that occurs that would make any information provided on this application inaccurate.

Signature

I, _____ hereby certify that all of the information I have provided herein is true and complete to the best of my knowledge. I understand that any misrepresentation of information included on this form or in this process is grounds for revocation of my certification. I authorize verification of this information and release all concerned from any liability in connection therewith. I hereby apply to DBA International to be certified as a "Certified Receivables Compliance Professional" and agree to abide by the rules and procedures established by DBA International in the administration of the Certification Program.

Full Name of Applicant: _____

Signature of Applicant: _____

Date of Signature: _____

Mail the completed application with any required attachments and required fees to:

DBA International
Debt Buyer Certification Program
1050 Fulton Avenue, Suite 120
Sacramento, CA 95825

Billing Information:

Visa MasterCard AMEX Check Enclosed
Credit Card Number: _____

CVC Code: _____ Exp. Date: _____ Amount Due: _____
Signature of Card Holder: _____
Billing Address (if different from above): _____

Required Application Fee:

First-Time Application Fee: \$350.00 (includes \$100 administrative fee)

Renewal Application Fee: \$250.00

If you have any questions concerning the application contact the DBA International office by phone at 916-482-2462 or email cert@dbainternational.org.

APPENDIX D

AUDIT REVIEW MANUAL

General Directions to the Auditor

The Compliance Audit that you are performing and that will be provided to DBA International is a requirement for a company to maintain its designation as a “Certified Professional Receivables Company” (Certified Company) in the DBA International Debt Buyer Certification Program.

The Compliance Audit and any work product associated with or resulting from the Audit as well as any information about the Certified Company provided to the Auditor is considered confidential and shall not be shared with any party other than: (i) the DBA International Debt Buyer Certification Council, (ii) the Certified Company, (iii) the Auditor, and (iv) any agents of such entities, unless provided otherwise in writing or as otherwise authorized in Article XI of the Governance Document.

Scope

The Auditor shall validate the Certified Company’s conformity with the Certification Standards for the Audit Period that is the subject of the Compliance Audit using a standardized audit report form provided by DBA International. Demonstrating conformity with a Certification Standard or lack thereof may be achieved through a combination of interviews, documentation review, and control review.

Conformity with Certification Standards shall, wherever possible, be based upon objective findings only, but if interpretation is necessary due to the subjective nature of the Certification Standard, such subjective interpretation shall be noted on the audit report as such and any subjective interpretation shall be applied consistently to all Certified Companies.

Where control review is needed, it shall be based on a random sample. The Auditor shall indicate the size and scope of any random sample and may expand the random sample to determine whether a violation that is found in the first random sample is material. The Auditor shall perform an onsite visit to see work in progress in order to verify conformity. A Certified Company with multiple locations must verify conformity at all locations; however, this does not mean that the Auditor must perform an onsite visit at each location.

If a Certified Company contracts exclusively with a third party as its master servicer or servicer on the accounts owned by the Certified Company, the Auditor shall audit the Certified Company for conformity on all Certification Standards but shall test Certification Standards 4, 5, 6, and 9 exclusively through the Certified Company’s conformity with Certification Standard 17.

Responsibilities of the Parties

Auditor: The Auditor’s responsibility is to determine to the best of their ability whether or not the Certified Company is in material conformity with the Certification Standards. The Auditor is responsible for documenting findings of conformity and Deficiency.

Certified Company: The Certified Company must be forthright and accommodating to any reasonable request by the Auditor for the purposes of completing the Audit. If the Certified Company fails to meet this obligation it may be the basis for the Auditor to find a material Deficiency in each Certification Standard the Auditor cannot confirm.

Disputes: Should the Auditor and Certified Company have questions and/or disagreements about the interpretation of a Certification Standard or its applicability, the Auditor and/or Certified Company shall direct the inquiry to the Chair of the Audit Committee in writing, care of DBA International, 1050 Fulton Avenue, Suite 120, Sacramento, CA 95825 or cert@dbainternational.org.

Plain Meaning

The Compliance Audit shall be based on the plain meaning of the words contained in each Certification Standard unless defined otherwise in Article II of the Governance Document.

Methodology

For each Certification Standard, the Auditor shall include in their review their observations, where appropriate, on: (a) policies, (b) processes, (c) controls, (d) training, and (e) verification.

Materiality

When the Auditor is determining a Certified Company's conformity with the Certification Standards, the Auditor shall only report material violations. All violations shall be considered material unless there was a good faith attempt to comply with the Certification Standard and the Auditor is satisfied that the evidence shows that the violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such error and appropriate corrective steps were taken prior to the Audit taking place to ensure that the violation will not recur.

Conflicts with Laws & Regulations

Where a municipal, state, or federal law or regulation is in conflict with a DBA Certification Standard so that complying with the DBA Certification Standard would place the Certified Company in violation of such law or regulation, the Certified Company shall conform to the governmental standard. For purposes of the Audit, conforming to the law or regulation is the same as adhering to the Certification Standard and should be noted as such in the report.

Findings

The findings of the Compliance Audit Report shall state either "Met Requirements" or "Deficiency Discovered" for each Certification Standard.

Met Requirements: If the Auditor finds no material deficiencies in a Certified Company’s conformity with a Certification Standard, the Auditor shall indicate “Met Requirements” and no other commentary is required except for any documentation which may be required to be submitted with the report.

Deficiency Discovered: If the Auditor finds material deficiencies in a Certified Company’s conformity with a Certification Standard, the Auditor shall indicate “Deficiency Discovered” and state and document only that which is required to be submitted with the report and to provide a recommendation for the remediation of the Deficiency. If the Deficiency was already identified and corrected by the Certified Company prior to the audit, then that should be stated in the report and no recommendation for remediation is required to be provided.

Any additional work the Auditor does for the Certified Company outside of the scope of the Compliance Audit of the Certification Standards shall not be provided to DBA International.

Management Representation Letter

A Certified Company may provide a management representation letter to DBA International to provide any explanations or state any disagreements concerning the findings in the Compliance Audit.

Questions Concerning the Interpretation of a Certification Standard

If at any time the Auditor has a question or requires clarification as to the intention or requirements of a Certification Standard, the Auditor shall direct the inquiry to the Chair of the Audit Committee in writing, care of DBA International, 1050 Fulton Avenue, Suite 120, Sacramento, CA 95825 or cert@dbainternational.org.

“SERIES A” STANDARDS

The following “Series A” Standards shall apply to a Certified Company and are subject to Certification Standard 17 on Vendor Management:

Standard #1 – Laws & Regulations

Standard: A Certified Company shall comply with the Fair Debt Collection Practices Act and, as applicable, the Fair Credit Reporting Act, the Telephone Consumer Protection Act, the Servicemembers Civil Relief Act, the United States Bankruptcy Code, section 5 of the Federal Trade Commission Act, sections 1031 and 1036 of the Dodd-Frank Act, and all other local, state, and federal laws and regulations concerning: (a) collection activity on consumer accounts, (b) the rights of consumers, (c) debt buying, and (d) financial services as they may apply to Debt Buyers.

Directions to the Auditor:

1. The Auditor shall obtain from the Certified Company a list and a copy of all judicial decisions and any local, state, and federal regulatory orders, directives, and decrees

- from the CFPB, FTC, state consumer regulatory agencies, and state and federal attorneys general that were issued within the dates of the Audit Period where the ruling determined the Certified Company violated a law or regulation within the scope of the Certification Standard. The list shall include: case name, court, case number, a description of the violation, the holding of the court, and the judicial relief granted.
2. The Auditor shall also independently conduct a search for reported local, state, and federal judicial decisions involving the Certified Company within the dates of the Audit Period; however, the Auditor shall not disregard other judicial cases should it come to their attention. The Auditor will reconcile their list with the list provided by the Certified Company and if there are discrepancies, the Auditor shall endeavor to reconcile the list with the Certified Company. The result of this reconciliation shall be attached to the report.
 3. If there were final judicial decisions and/or regulatory orders, directives, and decrees, the Auditor shall test against the court and regulatory agency's findings for those dates within the Audit Period that occurred after each judicial decision and regulatory order, directive, and decree to determine compliance with the court or such regulatory agency's decision and summarize those findings within the report.
 4. The Auditor shall not consider the following a violation of a Certification Standard for the purposes of the report: (a) judicial decisions that are under appeal, (b) regulatory orders, directives, and decrees that are under appeal, (c) settlements, or (d) news accounts of a settlement.

Standard # 2 – Errors & Omissions Insurance

Standard: Each Certified Company shall maintain a minimum of two million U.S. dollars (\$2,000,000) in Errors & Omissions (E&O) insurance coverage.

Directions to the Auditor:

The Auditor shall obtain a copy of the E & O insurance policies sufficient to demonstrate that the Certified Company had the required amount of E & O insurance in place within the dates of the Audit Period. A failure to provide a continuum of coverage shall be considered a Deficiency.

Standard # 3 – Criminal Background Check

Standard: Unless prohibited by state or federal law, perform a legally permissible criminal background check prior to employment on every prospective full or part time employee who will have access to Consumer Data and every owner of the business with a five (5) percent or greater share of ownership in the Certified Company, to determine the following:

- (a) Whether the prospective employee or owner has been convicted of any criminal felony involving dishonesty, fraud, deceit, misrepresentation, or any misappropriation of confidential data or information; and
- (b) Whether the prospective employee or owner has been charged with any crime involving dishonesty, fraud, deceit, misrepresentation, or any misappropriation of confidential data or information such that the facts alleged support a reasonable conclusion that the acts were committed and that the nature, timing, and circumstances of the acts may place consumers in jeopardy.

A Certified Company shall maintain guidelines in a policy, procedure, or manual on how it will handle criminal background checks and the potential consequences on employment that may result from such background checks. The criminal background check is not a retroactive requirement for employees hired prior to certification but shall apply to all owners with a five (5) percent or greater share of ownership in the Certified Company.

Directions to the Auditor:

1. The Auditor shall determine whether the Certified Company has a written policy, procedure, or manual which requires all new employees (including rehires) who will have access to consumer financial data to have a criminal background check performed and the potential consequences on employment that may result from such background checks.
2. The Auditor shall obtain from the Certified Company evidence that criminal background checks have been performed. Receipts or statements from a criminal background provider showing account activity shall be sufficient.
3. The Auditor shall choose a random sample of employees that were hired by the Certified Company and a random sample of individuals who acquired a five (5) percent or greater share of ownership in the Certified Company, if any, within the dates of the Audit Period to verify that the Certified Company conformed to its policy, procedure, or manual and document their findings in the report. This requirement shall be waived if the Certified Company can demonstrate the provision of this information would violate an applicable state law on employee confidentiality.

Standard # 4 – Employee Training Programs

Standard: Establish and maintain annual employee training program(s). These programs should educate the employees on the various corporate policies and procedures as well as laws and regulations that they must comply with in the performance of their duties. These programs should also inform employees of the possible consequences for failing to comply with them.

Directions to the Auditor:

1. The Auditor shall review the Certified Company's employee training programs and determine whether they conform to the Certification Standard.
2. The Auditor shall document in the report the corporate policies and procedures and laws and regulations for which the Certified Company is providing annual employee training.
3. The Auditor shall obtain from the Certified Company evidence that the training has occurred and confirmation that attendance is being tracked.

Standard # 5 – Consumer Complaint and Dispute Resolution Policies

Standard: Establish and maintain written consumer complaint and dispute resolution policies and procedures that instruct employees how to handle and process consumer complaints and disputes in compliance with the Certification Program and applicable laws and regulations, including but not limited to the Fair Debt Collection Practices Act and the Fair Credit Reporting Act.

Directions to the Auditor:

1. The Auditor shall obtain from the Certified Company copies of their consumer complaint and dispute resolution policies and procedures.
2. The Auditor shall review the policies and procedures to determine whether they provide sufficient guidance to employees on how to handle consumer complaints, disputes, and requests for information, including but not limited to:
 - (a) Consumer requests for verification of the debt pursuant to 15 USC 1692g. .
 - (b) Consumer claims of identity theft or fraud, including adequate procedures for investigating and determining the legitimacy of the claims.
3. The Auditor shall confirm whether the Certified Company has a system in place to flag accounts (i) while the Certified Company complies with a FDCPA (15 USC 1692g) verification request and (ii) where the Certified Company determined that the debt was incurred as a result of identity theft or fraud. The ability to flag these accounts is necessary to prevent the unintentional sale of an account in compliance with Certification Standard 19.
4. The Auditor shall choose a sample of consumer complaints, disputes, and requests for information that the Certified Company received within the dates of the Audit Period to verify that the employees conformed to the Certified Company's policies and

procedures in the handling of the complaint, dispute, or request for information. The Auditor shall document their findings in the report.

Standard # 6 – Consumer Notices

Standard: Establish and maintain a list of applicable local, state, and federal consumer notices in the areas in which the Certified Company conducts business and maintain procedures to ensure that the appropriate notices are added to consumer correspondence.

Directions to the Auditor:

1. The Auditor shall review and document the Certified Company's list of state and federal consumer notices.
2. The Auditor shall review and document the procedures the Certified Company has adopted to identify new or amended consumer notice requirements.
3. The Auditor shall review and document the procedures the Certified Company has adopted to ensure that appropriate notices are added to the outgoing consumer correspondence. A random sample of consumer correspondence should be tested to verify the procedures are working as intended.

Standard # 7 – Data Security Policy

Standard: A Certified Company shall establish and maintain a reasonable and appropriate data security policy based on the type of Consumer Data being secured that meets or exceeds the requirements of applicable state and federal laws and regulations. The Certified Company shall ensure that an annual risk assessment is performed on the Certified Company's protection of Consumer Data from reasonably foreseeable internal and external risks. Based on the results of the annual risk assessment, the Certified Company shall make adjustments to their data security policy if warranted.

Directions to the Auditor:

NOTE: There are a number of differing standards in the field of data security depending on the nature of the underlying consumer debt portfolio and the type of Consumer Data associated with the asset class. Additionally, the standards in data security are constantly evolving so as to require constant vigilance. Consequently, each Certified Company shall adopt standards that are appropriate for their consumer debt portfolio and the Consumer Data contained therein and review those standards annually. If the Certified Company has questions as to which data security standards to adopt they should consult the requirements contained in the original purchase agreement with the originating creditor and such other experts and sources of information on information security as they deem appropriate. Generally, Certified Companies

should consider adopting provisions that are applicable to their circumstances, which might include but are not limited to provisions found in PCI DSS, BITS, ISO 27002, and SAFE.

1. The Auditor shall obtain from the Certified Company a copy of their data security policy.
2. The Auditor shall document how the Certified Company determines what standards to adopt in their data security policy and if they perform an annual review of the policy.
3. The Auditor shall perform random tests to verify whether the Certified Company is conforming to its data security policy. If the Certified Company in the twelve (12) months prior to the Compliance Audit has passed a data security audit performed using PCI DSS, BITS, ISO 27002, SAFE, or such other standards approved in writing by the Audit Committee, the Auditor shall accept the audit as conforming with this requirement.
4. The Auditor shall confirm that the required annual risk assessments have been performed by the Certified Company within the dates of the Audit Period. The Auditor shall review the assessments and confirm that any risks that were identified have resulted in adjustments to the data security policy. Any year in which a Certified Company passes a data security audit performed using PCI DSS, BITS, ISO 27002, SAFE, or such other standards approved in writing by the Audit Committee, the Auditor shall accept the audit as conforming with the annual risk assessment requirement for that year.

Standard # 8 – CFPB Consumer Complaint System

Standard: Establish a portal for the receipt of consumer complaints and inquiries on CFPB’s consumer complaint system and respond to all complaints or inquiries received according to CFPB’s prescribed guidelines.

Directions to the Auditor:

The Auditor shall review the publicly accessible information and data that is published on the CFPB website to verify whether a Certified Company is conforming to the standard and report their findings.

Standard # 9 – Payment Processing

Standard: Establish and maintain a Payment Processing Policy that requires taking payments consistent with consumer instructions that were made at the time the payment was accepted, prompt posting of all consumer payments, and processing of any refunds within a reasonable amount of time.

Directions to the Auditor:

1. The Auditor shall obtain from the Certified Company a copy of their payment processing policy.
2. The Auditor shall choose a random sample of accounts to verify whether the Certified Company is conforming to its payment processing policy and report their findings.

Standard # 10 – State Licensing Requirements

Standard: Comply with state and municipal licensing laws to the extent that they are applicable.

Directions to the Auditor:

1. The Auditor shall obtain from the Certified Company the list of states that correspond to the consumer account addresses where there is active collection activity by the company or an agent of the company at the time of the Compliance Audit.
2. The Auditor shall obtain from the Certified Company the list of jurisdictions where the company is licensed as well as any jurisdictions where their license was suspended, revoked, or an application denied, including any jurisdictional license numbers.
3. In jurisdictions where the Certified Company is not licensed, the Auditor shall make a reasonable effort to confirm whether the company should be licensed depending on the specific facts and circumstances. If in the opinion of the Auditor, the Certified Company is not licensed in a particular jurisdiction where licensure may be required and collection activity is occurring, the company shall provide an explanation as to why they are not licensed.

Standard # 11 – Credit Bureau Reporting

Standard: If a Certified Company reports consumer account information to a credit bureau, the Certified Company shall:

- (a) Notify the credit bureau of any inaccurately reported information that it identifies within thirty (30) days of its discovery;
- (b) Notify the credit bureau when a consumer disputes the accuracy of an account within thirty (30) days of the dispute being made, unless the dispute is resolved prior to notification; and

- (c) Notify the credit bureau within thirty (30) days if the Certified Company sells the account.

Directions to the Auditor:

1. The Auditor shall first determine whether the Certified Company reports any consumer account information to a credit bureau. If the Auditor verifies that the Certified Company has adopted a corporate policy that prohibits the reporting of consumer account information to credit bureaus and the company is in compliance with the policy, this Standard shall be waived.
2. The Auditor shall select a random sample from consumer accounts that had been reported to a credit bureau within the dates of the Audit Period to determine whether the Certified Company conformed to the requirements of this standard.

Standard # 12 – Statute of Limitations

Standard: A Certified Company shall not knowingly bring a lawsuit on a debt that is beyond the applicable statute of limitations; however, a Certified Company may continue to attempt collection beyond the expiration of the statute provided there are no laws and regulations to the contrary.

Directions to the Auditor:

1. The Auditor shall document and report how the Certified Company determines which accounts they own are past an applicable statute of limitations, including but not limited to whether the Certified Company:
 - (a) Has established a policy and procedure concerning how employees and agents are to handle accounts after the statute of limitation has expired.
 - (b) Has a standard in place that defines and identifies the applicable statute of limitations as applied to each account.
 - (c) Has a process for determining when a state changes their statute of limitations.
2. The Auditor shall obtain from the Certified Company the states that correspond to the consumer account addresses where the Certified Company has sought a judgment within the dates of the Audit Period to verify through a random sample that:
 - (a) The statute of limitation was properly calculated.
 - (b) The litigation conformed to the Certification Standard.

3. The Auditor shall obtain from the Certified Company a list of accounts in those states that prohibit collection activity after the statute of limitations has expired and through a random sample shall verify whether any attempts were made to collect on those accounts or whether those accounts were sold.

“SERIES B” STANDARDS

The following “Series B” Standards shall apply exclusively to a Certified Company and are not subject to Certification Standard 17 on Vendor Management:

Standard # 13 – Portfolio Acquisition

Standard: A Certified Company shall establish and maintain a Portfolio Acquisition Policy that provides the rules, processes, and procedures it follows in the acquisition of debt portfolios and the accounts contained therein to ensure accuracy and completeness of information.

Additionally, on all new debt portfolios purchased after becoming certified, the Certified Company shall require in the purchase agreement (i.e. the contract):

- (a) The transmission of data elements required to sufficiently identify the consumers on the associated accounts and to confirm the accuracy and completeness of information pertaining to the accounts. The Certified Company shall use commercially reasonable efforts to negotiate the inclusion of the following data elements in purchase agreements, provided that they are applicable to the type of debt being purchased: (i) first name and last name of consumer, (ii) the complete last known address of consumer, (iii) last known telephone number of consumer, (iv) name of originating creditor at the time of charge off, (v) account number or account identifier used by the originating creditor at the time of charge off, (vi) social security number or other government issued identification number of consumer as long as the original creditor received the number at the time the account was opened, (vii) account opening date, (viii) last payment date, provided a payment was made, (ix) the charge off balance, (x) the charge off date, (xi) the nature of the debt – i.e. auto, credit cards, medical, telecom, etc., (xii) the current balance at the point of sale, and (xiii) the total amount of any interest and the total amount of any fees accrued on the account since the charge off date, if applicable;
- (b) Access to or transmission of documents required to sufficiently identify the consumers on the associated accounts and to confirm the accuracy of dates, balances, and other information pertaining to the accounts. The Certified Company shall use commercially reasonable efforts to negotiate access to or inclusion of sufficient documents in purchase agreements, provided that they are applicable to the type of debt being purchased. Examples of documents may include, but are not limited to: (i) original application or contract, if available; (ii) last statement showing a purchase transaction, service billed, payment, or balance transfer; (iii) charge off statement; (iv) terms and conditions or cardholder agreements, and (v) affidavits, as applicable; and

- (c) Adequate time to evaluate and review sufficient portfolio information for accuracy, completeness, and reasonableness and to discuss and resolve with the seller any questions or findings resulting from the review process prior to purchasing the portfolio.

Directions to the Auditor:

1. The Auditor shall review the purchase agreements that were entered into within the dates of the Audit Period to determine what data elements/documents were included. In the report, the Auditor shall document the type of consumer debt and the data elements/documents that were subject to the agreement. If the data elements/documents described in the Certification Standard are missing in the purchase agreement, the Auditor shall note which elements/documents are missing and the Certified Company's documented explanation for the lack of those elements/documents. Provided that the Certified Company used commercially reasonable efforts to include the data elements/documents in the purchase agreement and documented the reason for their absence, the failure to obtain the data elements/documents in the purchase agreement shall not be a basis for a violation of this Certification Standard.
2. The Auditor shall select a random sample of accounts associated with each purchase agreement to verify whether the required data elements were in fact transmitted. The Certified Company can provide either a sampling of accounts from their system or from a file if the accounts are not on their system. The Auditor is not testing whether the data is correct but rather the availability and delivery of the data pursuant to the agreement. The Auditor's findings shall be documented in the report. The Auditor will not perform a similar analysis on documents included in the purchase agreement as the standard provides the latitude to negotiate "access" to the documents which would prevent sampling.
3. The Auditor shall review the Certified Company's Portfolio Acquisition Policy to determine whether it provides a process or procedure for the evaluation and review of portfolio information for accuracy, completeness, and reasonableness prior to the purchase of the portfolio and indicate in the report whether the Certified Company conformed to its policy.

Standard # 14 – Chain of Title Requirements

Standard: Identify and maintain the name, address, and dates of ownership of the originating creditor and all subsequent owners up to and including the Certified Company for each account within a portfolio that is purchased. The intent is to have each subsequent Certified Company maintain an accurate listing for chain of title on debts purchased after certification. This Certification Standard shall only apply to accounts purchased by the company after it obtains certification. This is not a retroactive requirement on accounts purchased prior to certification.

Directions to the Auditor:

NOTE: For purposes of conforming to the Certification Standard, the information maintained by the Certified Company need only be accurate at the point of each sales transaction. For example, if the originating creditors name changed from Bank A to Bank B after the accounts were sold, the chain of title would be in conformity if it listed Bank A.

The Auditor shall select a random sample of accounts from various portfolios and differing asset classes, if applicable, to review the account level chain of title for the selected accounts to determine if the documentation is in conformity with the Certification Standard. The account level chain of title documentation should enable the Auditor to identify:

1. The name of the charge-off creditor and each subsequent owner of the account;
2. The address of the charge-off creditor and each subsequent owner of the account;
3. The date of each purchase in the chain of title;
4. Information or documentation supporting each sale that identifies the accounts being sold and purchased; and
5. A copy of any judgments obtained on an account by the previous owners, if applicable.

Standard # 15 – Chief Compliance Officer

Standard: Create and maintain the position of “Chief Compliance Officer” with a direct or indirect reporting line to the President, CEO, or General Counsel (unless the Chief Compliance Officer is the President, CEO, Board of Directors, or General Counsel). The Chief Compliance Officer’s documented job description shall include, at a minimum, the following responsibilities:

- (a) Maintaining the Certified Company’s official copy of the Certification Standards Manual;
- (b) Identifying policies, procedures, or activities of the Certified Company that are out of conformity with the Certification Standards;
- (c) Either directly or indirectly: (i) receiving consumer complaints, (ii) investigating the legitimacy of consumer complaints, and/or (iii) overseeing the complaint process, including complaint activity, root cause analysis, and timely response;
- (d) Developing recommendations for corrective actions when the Certified Company is not conforming with the Certification Standards and providing them to his or her direct and indirect report(s); and

- (e) Interacting as the point of contact for the federal Consumer Financial Protection Bureau (CFPB), the Federal Trade Commission (FTC), state consumer regulatory agencies, and state and federal attorneys general regarding the oversight and accountability of the Certified Company's Consumer Complaint and Dispute Resolution Policy and the CFPB's Consumer Complaint System.

Directions to the Auditor:

NOTE: The term Chief Compliance Officer is meant in terms of role and not necessarily in terms of title. The person who performs this role for the company can be an employee where the CCO is a part of their job responsibilities, an owner, or a corporate officer of the Certified Company or of a corporate affiliate of the Certified Company.

NOTE: The requirements set forth in this Certification Standard apply to all Certified Companies regardless of the volume of accounts they own, the number of individuals they employ, and how they seek to collect or recover on the debt they own. The Certified Company owns the debt and is therefore accountable for the debt. Consequently, the Certified Company should reflect how this is accomplished when work is being outsourced to third party servicers, such as collection agencies and legal collection firms.

1. The Auditor shall document the name and title of the Chief Compliance Officer and the date that the individual started in that capacity. If the individual has been acting in the capacity of Chief Compliance Officer for greater than a year, confirm whether the individual has an Individual Certification through the Certification Program.
2. The Auditor shall obtain a copy of the Chief Compliance Officer's job description from the Certified Company and confirm that it is in conformity to the Certification Standard.
3. The Auditor shall obtain a copy of the management organizational chart from the Certified Company and document the name and title of the Chief Compliance Officer's direct and indirect supervisor.
4. The Auditor shall obtain sufficient evidence from the Certified Company's Chief Compliance Officer on how he or she has complied with the requirements of his or her job description as enumerated in the Certification Standard.

Standard # 16 – Website & Publication

Standard: A Certified Company shall:

- (a) Maintain a publicly accessible website that can be found by a simple web search using the corporate name provided in communications with consumers;

- (b) Publish on their website their name, certification number, year certified, website address, mailing address, and telephone number;
- (c) Publish on their website the mailing address, email address, and telephone number where consumers can register a complaint with the Certified Company that is received by an employee who has the authority to research, evaluate, take corrective action if warranted, and respond to the complaint;
- (d) Publish on their website their Chief Compliance Officer's name, title, certification number, year certified, and mailing address;
- (e) Provide a hyperlink on their website to the "Consumer Education" page on the DBA website; and
- (f) Authorize DBA to publish the information contained in paragraphs (b), (c), and (d) of this Certification Standard on a publicly accessible website maintained by DBA.

Directions to the Auditor:

NOTE: The authorization from the Certified Company to publish their information pursuant to this Certification Standard is a condition which is accepted in the initial Application for Certification and is not a requirement that needs to be verified by the Auditor.

1. The Auditor shall perform a simple web search using the corporate name that the Certified Company provides in communications with consumers and document the results.
2. The Auditor shall confirm that the individual who serves in the role of Chief Compliance Officer is the same individual identified on the DBA and Certified Company's websites and the information required to be published is present and correct.
3. The Auditor shall confirm that the information required to be published by the Certified Company on its website is present and correct and is the same information that is published on the DBA website.
4. The Auditor shall confirm that there is a working hyperlink to DBA's Consumer Education page on the Certified Company's website.

Standard # 17 – Vendor Management Policy

Standard: Establish and maintain a Vendor Management Policy that at a minimum requires future contracts and future contract renewals with third-party vendors who have access to the Certified Company's Consumer Data or are communicating with consumers on behalf of the Certified Company to:

- (a) Provide documentation to the Certified Company that demonstrates conformity with the “Series A” Certification Standards;
- (b) Forward to the Certified Company any written complaint that the third-party vendor received or that was filed with the CFPB/FTC on one of the Certified Company’s accounts, if applicable;
- (c) Cease collection on any or all of the Certified Company’s accounts, if applicable, upon written notice by the Certified Company as clearly defined pursuant to the agreement;
- (d) Respond to the Certified Company’s inquires within seven (7) business days unless a shorter period is provided for pursuant to an agreement between the parties;
- (e) Return any or all Consumer Data and/or accounts at the Certified Company’s request within fourteen (14) business days or within such period of time as clearly defined pursuant to the agreement; and
- (f) Be subject to a potential audit by an independent third-party auditor. This requirement shall be waived if the third-party vendor is a Certified Company.

Directions to the Auditor:

1. The Auditor shall verify that the Certified Company has a Vendor Management Policy that is in conformity with the Certification Standard.
2. The Auditor shall review the third party vendor contracts that were entered into or renewed within the dates of the Audit Period to verify that the agreements contain terms that conform to the Certification Standard. The Auditor shall limit the review to those contracts where the vendor has access to the Certified Company’s Consumer Data.
3. The Auditor shall select a random sample of third party vendor contracts where the vendor has access to the Certified Company’s Consumer Data and verify whether the Certified Company has received documentation of the vendor’s conformity with the “Series A” Certification Standards, if applicable.

Standard # 18 – Representations & Warranties

Standard: A Certified Company shall use commercially reasonable efforts to negotiate the inclusion of the following representations and warranties in purchase agreements:

- (a) Seller is lawful holder of the accounts;
- (b) Accounts are valid, binding, and enforceable obligations;

- (c) Accounts were originated and serviced in accordance with law; and
- (d) Account data is materially accurate and complete.

Directions to the Auditor:

NOTE: While representations and warranties that are not qualified with either “to the best of seller’s knowledge” or “to the best of seller’s actual knowledge” are preferable, either of these knowledge qualifiers is acceptable to comply with Standard 18.

The Auditor shall review the purchase agreements that were entered into within the dates of the Audit Period to determine whether representations and warranties consistent with this Certification Standard were included. If the representations and warranties described in this Certification Standard are missing in the purchase agreement, the Auditor shall note which representations and warranties are missing and the Certified Company’s documented explanation for the lack of those representations and warranties. Provided that the Certified Company used commercially reasonable efforts to include the representations and warranties in the purchase agreement and documented the reason for their absence, the failure to obtain representations and warranties in the purchase agreement shall not be a basis for a violation of this Certification Standard.

Standard # 19 – Resale

Standard: A Certified Company shall not sell any accounts:

- (a) Where outstanding written and non-duplicative consumer requests for verification of the debt pursuant to the FDCPA (15 USC 1692g) have not been responded to in writing;
- (b) That have been identified as being created as a result of identity theft or fraud; and
- (c) To a non-Certified Company unless the terms and conditions of the sale agreement requires the purchaser of the consumer accounts to meet or exceed the standards of a Certified Company with the exception that the purchaser need not be a Certified Party.

Directions to the Auditor:

1. The Auditor shall first determine whether the Certified Company sells any consumer accounts on the secondary market. If the Auditor verifies that the Certified Company has adopted a corporate policy that prohibits the sale of consumer accounts and the company is in compliance with the policy, this Standard shall be waived.

2. The Auditor shall select a random sample of accounts that the Certified Company sold within the dates of the Audit Period to verify that the accounts were not flagged by the system for a 15 USC 1692g verification request or determined to be debt that was incurred as a result of identity theft or fraud.
3. The Auditor shall review a Certified Company's sale agreements involving the sale of consumer accounts that were entered into within the dates of the Audit Period to verify that the agreements contain terms and conditions that conform to the Certification Standards.

Standard # 20 – Affidavits

Standard: A Certified Company shall establish and maintain an Affidavit Policy that requires and ensures that:

- (a) An affiant shall only sign an affidavit that is true and accurate, and that no affiant shall sign an affidavit containing an untrue statement;
- (b) An affiant either have personal knowledge or upon information and belief of the facts set forth in the affidavit or shall familiarize himself or herself with the business records applicable to the subject matter of the affidavit prior to signing an affidavit; and
- (c) Each affidavit shall be signed by an affiant under oath and in the presence of a notary appointed by the state in which the affiant is signing the affidavit, in accordance with and to the extent required by applicable state law.

Directions to the Auditor:

1. The Auditor shall obtain from the Certified Company a copy of its Affidavit Policy and review it to confirm that it meets or exceeds the requirements of this Standard.
2. The Auditor shall choose a random sample of affidavits that were signed within the dates of the Audit Period to determine compliance with the Affidavit Policy.
3. The Auditor shall interview a random sample of the affiants who signed affidavits within the dates of the Audit Period to determine compliance with the Affidavit Policy.
4. The Auditor shall interview a random sample of notaries who witnessed the signing of affidavits within the dates of the Audit Period to determine compliance with the Affidavit Policy.

APPENDIX E

REMEDIATION PROCEDURES MANUAL

- E.1 **Purpose.** The Remediation Procedures Manual (hereinafter referred to in this Appendix as “Manual”) provides the remedial authority granted to the Council by the Board when entering into Remediation Agreements with a Certified Party or in taking disciplinary action against a Certified Party.
- E.2 **Remediation-Based Program.** The Certification Program’s primary goal is for the Certified Party to take remedial action to conform to the Certification Standards when a Deficiency is identified through a Compliance Audit. However, when remedial action cannot be achieved, the Council shall consider disciplinary action against the Certified Party.
- E.3 **Remediation Procedures.** The Remediation Committee (hereinafter referred to in this Appendix as “Committee”) and Council shall comply with the following procedures when reviewing Deficiency findings contained in a Compliance Audit:
- (1) The Committee shall perform an initial review of the Deficiency findings within fifteen (15) business days from the receipt of the Audit from the Auditor;
 - (2) The Committee has the authority to dismiss the matter as either without merit or with a cautionary letter if the Committee determines there is no current basis to support the need of a Remediation Agreement due to: (a) the nature of the nonconformity, (b) extenuating circumstances leading to the nonconformity, (c) the nonconformity has already been remediated, or (d) a determination that there was insufficient grounds for the Auditor to conclude the existence of a nonconformity to a Certification Standard;
 - (3) If the Committee determines that remediation is necessary to achieve conformity with the Certification Standards, the Committee shall prepare a draft Remediation Agreement with the assistance of staff and submit it to the Council Chair no greater than thirty (30) business days from the receipt of the Audit;
 - (4) Upon the Council Chair’s approval, staff shall send the signed Remediation Agreement to the Certified Party;
 - (5) Upon receipt of the Remediation Agreement, the Certified Party may either:
 - (a) Accept the agreement as written by indicating their acceptance of the terms of the agreement by signing the agreement and returning it to DBA; or
 - (b) Suggest edits to the agreement pursuant to the process identified in an enclosure with the agreement.

- (6) If within ninety (90) days of the initial transmittal of the Remediation Agreement a mutual agreement has not been reached and adopted, the Chair of the Remediation Committee in consultation with the Council Chair and the Executive Director shall submit to the Council at least two (2) options for their consideration, which may include:
 - (a) Requiring a new Compliance Audit;
 - (b) Adoption of the last edited version of the Remediation Agreement received from the Certified Party;
 - (c) Based upon further review, there is no current basis to support the need a Remediation Agreement due to: (i) the nature of the nonconformity, (ii) extenuating circumstances leading to the nonconformity, (iii) the nonconformity has already been remediated, or (iv) a determination that there was insufficient grounds for the Auditor to conclude the existence of a nonconformity to a Certification Standard; or
 - (d) Disciplinary action as authorized in clause E.5 of this Appendix.
- (7) If the Council chooses any option that would result in the temporary or permanent loss of certification, the Council shall notify the Certified Party in writing of such decision in a Deficiency Notice which shall take effect fifteen (15) business days from transmittal unless DBA receives a written appeal from the Certified Party following the process and procedures identified on the DBA website and enclosed with the Deficiency Notice. The Certified Party shall be deemed to have waived the right to respond to the terms and allegations contained in the Deficiency Notice and such terms and allegations shall be deemed admitted and/or accepted by the failure to appeal.

E.4 **Additional Grounds for a Finding of a Deficiency.**

- (1) In addition to failing to conform to the Certification Standards, the following acts or omissions, whether performed individually or in concert with others, may constitute grounds for the Committee or Council's request for a Compliance Audit or a finding by the Council that a Deficiency exists that is a basis for Disciplinary Action:
 - (a) Any act or omission involving dishonesty, theft, or misappropriation which violates the criminal laws of any State or of the United States or of any province, territory or jurisdiction of any other country, provided however, that conviction thereof in a criminal proceeding shall not be a prerequisite to the institution of Deficiency proceedings, and provided further, that acquittal in a criminal proceeding shall not bar a Deficiency action;

(b) Failure to respond to a request by the Council, Board, or any committee, panel, or agent thereof, without good cause shown, or obstruction of such entities in the performance of their duties; or

(c) Any false or misleading statement made to the Board or Council.

(2) The enumeration of the foregoing acts and omissions constituting grounds for a finding by the Council that a Deficiency exists that is subject to disciplinary action by the Council is not exclusive and other acts or omissions amounting to unprofessional conduct may constitute grounds for discipline.

E.5 **Disciplinary Action.** Where grounds for discipline have been established by the Council, any of the following forms of discipline may be imposed upon a Certified Party:

- (1) **Private Censure.** Private Censure shall be an unpublished written reproach;
- (2) **Public Letter of Admonition.** A Public Letter of Admonition shall be a publishable written reproach of the Certified Party's behavior. In the event of a public letter of admonition, the Council may publish the Letter of Admonition in a press release or in such other form of publicity selected by the Council;
- (3) **Suspension of Certification.** Suspension of Certification shall be for a specified period of time, not to exceed five (5) years, for those Certified Parties the Council deems can be rehabilitated. In the event of a suspension, the Council may publish the fact of the suspension together with identification of the Certified Party in a press release, or in such other form of publicity as is selected by the Council;
- (4) **Non-Renewal of Certification.** Non-Renewal of Certification shall be a decision not to renew the certification upon the expiration of the Certified Party's biennial term; and
- (5) **Expulsion from the Certification Program.** Expulsion from the Certification Program shall be a permanent loss of a Certified Parties certification which shall be for willful and egregious conduct. In the event of an expulsion, the Council may publish the fact of the expulsion together with identification of the Certified Party in a press release, or in such other form of publicity as is selected by the Council. Pursuant to section 7.4(F) of the Governance Document, Certified Parties that are expelled are not eligible for future certification.

E.6 **Reinstatement after Suspension.** Unless otherwise provided by the Council in its order of suspension, a Certified Party who has been suspended for a period of one (1) year or less shall be automatically reinstated upon the expiration of the period of suspension, provided the Certified Party provides the Council prior to the expiration of the period of suspension an affidavit stating that they have fully complied with the order of suspension

and with all applicable provisions of these Certification Standards, unless such condition is waived by the Council in its discretion.

E.7 **Council Guidelines for Disciplinary Action.** The following scalable guidelines shall be considered by the Council prior to the issuance of a Disciplinary Action against a Certified Party and are by no means intended to limit their authority. Rather, the following guidelines are intended to ensure the Council takes into consideration such factors as the (i) frequency and persistence of the violation of Certification Standards, (ii) efforts of the Certified Parties (or lack thereof) to maintain or obtain conformance with the Certification Standards, and (iii) efforts to comply with any Remediation Agreement:

- (1) **Private Censure:** Should be considered in matters where the violation of the Certification Standards is minor and has been remediated yet a message is needed to convey Council concern.
- (2) **Public Letter of Admonition:** Should be considered in cases where the violation may be minor but nonetheless pervasive or not remediated. Alternatively, if the violation is a serious legal or regulatory violation but that which has been remediated yet the Council desires to admonish the Certified Party to avoid repeat violations, a Public letter of Admonition may be issued.
- (3) **Suspension of Certification:** Should be considered when a violation of a Certification Standard is a serious legal or regulatory violation and has not been remediated or the attempt to remediate is without merit.
- (4) **Non-renewal of Certification:** Should be considered when the Certified Party has a history of violating the Certification Standards and the Council believes that no other form of disciplinary action will alter that behavior.
- (5) **Expulsion from Certification:** Should be considered when egregious conduct is a willful violation of law or regulation or an egregious violation of the Certification Standards and no remediation efforts have been made. Also, if a suspension has lasted more than one year and has expired without a request for renewal and no other good cause exists for reinstatement, expulsion may be warranted.

E.8 **Appeals.** Any appeal of a disciplinary action taken by the Council shall be received by DBA within fifteen (15) business days from the Council's transmittal of the Deficiency Notice to the Certified Party following the process and procedures identified on the DBA website and enclosed with the Deficiency Notice. All appeals will be heard and decided by the Board within sixty (60) days of DBA's receipt of the appeal and a decision will be rendered within thirty (30) days after the conclusion of the Board hearing. The Board's decision will be final.

E.9 **Costs.** In all Deficiency matters, the Council shall assess against the Certified Party the costs of the investigations.

Debt Buyer Certification *Version 2.0*

By Mark Naiman & David Reid

When President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) into law on July 21, 2010 it became clear that dramatic change would soon be coming to the United States financial regulatory system. At the time of its adoption, the world economy was in the middle of the Great Recession, the most significant economic collapse since the Great Depression in the 1930s. As with any major economic downturn, people were suffering from the loss of employment, wages, medical benefits, and retirement investments, not to mention the ability to remain current on contractual obligations such as mortgages, car loans, and credit cards.

Unlike the ripples caused by throwing a rock into a pond, the economic ripples caused by the Great Recession were clearly going to take time to smooth out from both a business and consumer perspective. As with all economic cycles, people knew the economy would eventually turn around but the hope was that Dodd-Frank would serve as an additional stabilizing force to speed up the overall recovery.

One of the central features of Dodd-Frank was the creation of the Consumer Financial Protection Bureau (CFPB), which was tasked with, among other things, oversight of the collection industry and the seminal Fair Debt Collection Practices Act (FDCPA). While it was not surprising that during the greatest economic downturn in 70 years the United States would see record levels of collection activity, it was nonetheless an uncomfortable new reality for many people who began demanding change as well as relief from their obligations. Since the CFPB emerged in the middle of this economic crisis it quickly became the right agency at the right time to respond to this demand.

The DBA International Board of Directors recognized that

many hard working people were suffering during the Great Recession as well as the resulting call for change.

The board was also in the unique position to see an increase in troubling stories of “fly-by-night” companies preying on the misfortunes of others, many having absolutely no prior connection to the collection industry. As a result of the confluence of all of these events, the DBA board knew it was time for the industry to step forward to do its part to ensure that the secondary receivables market was operating under uniform standards that promoted the best and most ethical practices within the industry. This effort resulted in the creation and adoption of the DBA International Debt Buyer Certification Program.

ANNUAL REVIEW

March 2014 marked the one year anniversary of the launch of DBA's Debt Buyer Certification Program. While this is an important milestone, what is a more significant milestone is that it coincides with the adoption of version 2.0 of the program. To an outside observer, the intersection of these two events might be seen as a coincidence rather than the successful implementation of one of the vital elements of the program – the annual review process.

Members of the Task Force that created the certification program did not want the program to be “placed on a shelf to collect dust” but rather they desired to create a program that would remain as relevant and cutting edge as the day it was adopted by the DBA International membership. To

continued on next page

accomplish this goal, the Task Force created a mandatory annual review process that takes place in the fall when the Certification Council performs a comprehensive review of the program requirements and compares them to present day industry best practices and any statutory, regulatory, and judicial developments.

Through this forward-looking provision, DBA International is able to ensure a constant state of program evolution and when combined with the additional program requirement that standards cannot be diminished, truly defines what it means to be the “gold standard.”

AN INTRODUCTION TO CERTIFICATION PROGRAM 2.0

The following is a high level summary of the changes made to the Debt Buyer Certification Program. It is important to remind all individuals and companies holding or seeking the Certified Receivables Compliance Professional (CRCP) or the Certified Professional Receivables Company (CPRC) designation that you are required to review and comply with the revised Governance Document (located on the DBA International website).

I. INDIVIDUAL CERTIFICATION (CRCP DESIGNATION)

The Certified Receivables Compliance Professional (CRCP) designation is a mandatory requirement for a Certified Company’s Chief Compliance Officer and a voluntary designation for other individuals within the industry. Certification is granted to individuals who complete 24 credit hours of continuing education on defined industry subjects every two years. Included within the 24 credit hours are several mandatory classes, including an Introductory Survey Course on Debt Buying (for initial certification), a Current Issues Course on Debt Buying (for recertification), and Ethics Courses (for initial and renewal certification). In addition to the required education, individuals must pass a criminal background screening conducted by DBA International and agree to have their contact information published on the DBA International website.

Changes to the CRCP designation were fairly modest in version 2.0, involving only two substantive modifications:

- Time Limits – A new time requirement that all continuing education credits from qualifying courses must be completed within the two-year period immediately preceding the submission of the CRCP application for initial certification or renewal of certification. [section 6.8(A)]
- Online Credits – Increased flexibility for individuals to complete up to 12 credits online for live or pre-recorded educational content associated with webinars, seminars, and distance learning classes. [section 6.8(D)]

II. COMPANY CERTIFICATION (CPRC DESIGNATION)

The Certified Professional Receivables Company (CPRC or “Certified Company”) designation is a mandatory company-based designation for all DBA International members who purchase receivables on the secondary market. Current

DBA International members must become certified no later than March 1, 2016 to remain a member of the association. The CPRC designation is granted to those companies who conform to 20 uniform standards of best practices and agree to independent third party audits to confirm compliance and enter remediation agreements if noncompliance is identified.

The changes to the company-based CPRC designation in version 2.0 were more extensive than those made to the individual-based CRCP designation. It will be very important for companies to carefully read the changes within the Certification Program’s Governance Document:

- “Series A” & “Series B” Standards – One of the more subtle but significant changes in version 2.0 is the grouping of the 20 standards into “Series A” and “Series B” categories to clarify the vendor management requirements. “Series A” Standards apply to both certified companies and their third-party servicing contracts while “Series B” Standards apply exclusively to certified companies. DBA has long held that a debt buying company cannot plead ignorance to the actions of a third party it retains to contact consumers hence the reason for its inclusion in version 1.0.
- Laws & Regulations (Standard 1) – A mainstay to consumer protection has been the FDCPA, the Telephone Consumer Protection Act (TCPA), and the Fair Credit and Reporting Act (FCRA) and is the reason DBA adopted as its first standard that certified companies had to comply with their provisions. Version 2.0 adds several additional acts, including one recommended by the Oregon Attorney General’s staff. Added to the list are the Servicemembers Civil Relief Act (SCRA), the United States Bankruptcy Code, the Federal Trade Commission Act, and sections 1031 and 1036 of Dodd-Frank.
- Criminal Background Checks (Standard 3) – Two modest but meaningful changes were incorporated in the standard on the performance of criminal background checks. The first clarifies that these checks be performed when hiring either a “full- or part-time” employee. The second requires certified companies to maintain written guidelines or policies on how they handle the process and potential consequences on employment decisions that may result from these findings.
- Data Security Policy (Standard 7) – The data security standard received a substantial overhaul based upon feedback from the CFPB and FTC. All certified companies will be judged on whether they meet or exceed the requirements of applicable state and federal laws and regulations, understanding that there is no one universal standard and that it largely depends on the type of receivables purchased. Additionally, the standard now requires a certified company to perform an Annual Risk Assessment to ensure consumer data is protected from reasonably foreseeable internal and external risks and to make adjustments based on these findings.

Certification ... continued from page 15

- CFPB Consumer Complaint System (Standard 8) – While not a new requirement, the mandate that all certified companies be registered on the CFPB's Consumer Complaint System was pulled from another standard and made its own to highlight the importance that DBA places on companies to register and promptly respond to consumer inquiries and complaints.
- Payment Processing (Standard 9) ** New Standard** – When reflecting on “what are we missing” during the annual review, the Certification Council decided it was important to develop a standard on payment processing. This standard requires every certified company to adopt a Payment Processing Policy which describes the actions employees should take when processing payments, including that they adhere to the instructions provided by the consumer at the time of payment.
- Portfolio Acquisition (Standard 13) – While all standards are important, this is perhaps the most important from a debt buying perspective as it gets to the heart of what data and documents are obtained from the seller of the receivables. Given the importance of this standard, a number of significant changes were adopted, including:
 1. A new requirement mandating that certified companies maintain a Portfolio Acquisition Policy;
 2. Increasing from nine to 13 the number of data elements that certified companies need to use commercially reasonable efforts to obtain in purchase transactions;
 3. A new requirement that certified companies must use commercially reasonable efforts to obtain: (i) the original application or contract, if available; (ii) last statement showing a purchase transaction, service billed, payment, or balance transfer; (iii) charge off statement; (iv) terms and conditions or cardholder agreements, and (v) affidavits, as applicable; and
 4. A new requirement that certified companies ensure that they maintain adequate time to evaluate and review portfolio information for accuracy, completeness, and reasonableness and to discuss and resolve with the seller any questions prior to purchasing the portfolio.
- Representations & Warranties (Standard 18) **New Standard** – In discussing the adoption of a new standard on representations and warranties, the Council acknowledged that a standard would be difficult to draft as representations and warranties tend to be fact-specific to the type of asset purchased. However, the Council achieved consensus on four core representations and warranties that should be universally applicable across asset classes. The resulting standard requires certified companies to use commercially reasonable efforts to negotiate into their purchase agreements the following

representations and warranties:

1. Seller is lawful holder of the accounts;
 2. Accounts are valid, binding, and enforceable obligations;
 3. Accounts were originated and serviced in accordance with law; and
 4. Account data is materially accurate and complete.
- Affidavits (Standard 20) **New Standard** – The council adopted a new standard that would require all certified companies to adopt a corporate “Affidavit Policy” that ensures no affidavit is signed: (i) that contains an untrue statement, (ii) where the affiant does not have personal knowledge or can familiarize themselves with the business records prior to signature, and (iii) without the affiant being placed under oath and in the presence of a notary appointed by the state in which the affiant is signing the document.

STEADY HAND OF PROGRESS

When the DBA Board of Directors created the Debt Buyer Certification Program they knew that to be successful the program would need to evolve with a changing world. Just as the best practices in any profession 20 years ago are not the best practices in that profession today, it would be foolhardy for those in the receivables industry to believe that the best practices of today will not or should not progress in the future.

In a 1959 speech, President Dwight D. Eisenhower reflected on the necessity of forward thinking when he said, “unless we progress, we regress,” and that steady progress requires “long term guides.” We certainly see the wisdom in President Eisenhower’s remarks and believe that the Certification Program will be that long term guide that leads us into the future and allows us to celebrate our progress in maintaining the “gold standard” with each and every revision. 📌

About the Authors

Mark Naiman is currently a member of DBA's Board of Directors, and has been COO of Absolute Resolutions Corp for over 13 years. He is responsible for all operations including management of personnel and creation and administration of policies, and has been involved in the purchase of over \$18 billion in receivables. He is a frequent speaker on topics ranging from Data Security, Operational Best Practices, Historical Industry Analysis, Encryption Methodology, and Relationship Building.



David Reid serves as Director of Government Affairs for DBA International. In this capacity, David manages the state legislative, regulatory, and advocacy activities of the association. David also serves as staff liaison to the DBA International Certification Council and its Audit and Standards Committees. David is a graduate of Canisius College and Albany Law School. He is admitted to the New York and New Jersey bars.





PROPOSED AMENDMENTS TO A.9053

AN ACT to amend the civil practice law and rules, in relation to consumer credit transactions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "consumer credit fairness act".

§ 2. Subdivision 2 of section 213 of the civil practice law and rules, as amended by chapter 709 of the laws of 1988, is amended to read as follows:

2. an action upon a contractual obligation or liability, express or implied, except as provided in section two hundred thirteen-a or two hundred fourteen-f of this article or article 2 of the uniform commercial code or article 36-B of the general business law;

§ 3. The civil practice law and rules is amended by adding a new section 214-f to read as follows:

§ 214-f. Certain actions arising out of consumer credit transactions to be commenced within three-five years. An-Notwithstanding any other law to the contrary, an action arising out of a consumer credit transaction where a purchaser, borrower or debtor is a defendant residing in New York state, the cause of action shall be determined to have accrued within New York state and must be commenced within three-five years, except as provided in section two hundred thirteen-a of this article or article 2 of the uniform commercial code or article 36-B of the general business law. When the period within which an action may be commenced under this section has expired, no plaintiff shall knowingly file an action on a the right to collect consumer credit debt is extinguished as well as the remedy. The right to communicate, collect, and receive payments on a consumer credit debt that is beyond the time for commencing an action is permitted provided that any payment received towards that debt shall not serve to reset the time for commencing an action and the collection is consistent with the federal Fair Debt Collection Practices Act and article 29-H of the General Business Law. Nothing in this section shall prohibit parties to a contract from entering into a new written agreement signed by both parties based on new terms and conditions and a different bargained for exchange.

Comment [DR1]: DBA International respectfully suggests that a 5 year statute of limitations is more reflective of the statute of limitations that applies to the majority of the population in the 50 states. Mean = 5.24 years Median = 5 years Mode = 6 years 20 Most Populated States (75% of Pop) = 5.1 years

Comment [DR2]: DBA International respectfully requests this edit to end the confusion created by PRA v King.

Comment [DR3]: This language is consistent with sponsor's amendment contained in section 3215 (j) of the Civil Practice Law and Rules (see above) and would also extinguish the "remedy" as the sponsor seeks.

Comment [DR4]: This language would prevent a payment from resetting the statute of limitations but would maintain the existing contractual "right" to collect consumer payments.

For purposes of this section, "the right to collect consumer credit debt" shall mean any attempts by the creditor, third party purchaser, or other authorized third party to collect such debt including, but not limited to, calls, mail or other attempts to collect.

Comment [DR5]: The legal "right" to collect voluntary payments beyond the statute of limitations is recognized by the Federal Trade Commission and by over 45 states. The elimination of the legal right would create a situation where New Yorkers would be left with no way to repair their credit history in the time period between the expiration of the statute and the 7 year reporting period on credit reports.

§ 4. The civil practice law and rules is amended by adding a new section 306-d to read as follows:

§ 306-d. Additional mailing of notice in an action arising out of a consumer credit transaction. 1. At the time of filing with the clerk of the proof of service of the summons and complaint in an action arising out of a consumer credit transaction, the plaintiff shall submit to the clerk a stamped envelope addressed to the defendant together with a written notice in clear type of no less than twelve-point in size, in both English and Spanish, and containing the following language:

NOTICE OF LAWSUIT

(DATE)

(NAME OF COURT)

(COUNTY)

(STREET ADDRESS, ROOM NUMBER)

(CITY, STATE, ZIP CODE)

(NAME OF DEFENDANT)

(ADDRESS OF DEFENDANT)

Plaintiff: _____

Defendant: _____

Name of original creditor, unless same: _____

Index number: _____

Attention: a lawsuit has been filed against you claiming that you owe money for an unpaid credit card, medical, student loan or other debt.

You should go to the court clerk's office at the above address as soon as possible to respond to the lawsuit. You may wish to contact an attorney. If you do not have an attorney, help is available at the court.

If you do not respond to the lawsuit, the court may enter a judgment against you. Once entered, a judgment is good and can be used against you for twenty years, and your money, including a portion of

your paycheck and/or bank account, may be taken. Also, a judgment will hurt your credit score and can affect your ability to rent a home, find a job, or take out a loan.

You CANNOT be arrested or sent to jail for owing a debt.

It is important that you go to the court clerk's office listed above and bring this notice with you. Additional information can be found at the court system website at: www.courts.state.ny.us

2. The face of the envelope shall be addressed to the defendant at the address at which process was served, and shall contain the defendant's name, address (including apartment number) and zip code. The face of the envelope also shall state the appropriate clerk's office as its return address.

3. The clerk promptly shall mail to the defendant the envelope containing the additional notice set forth in subdivision one of this section. No default judgment based on the defendant's failure to answer shall be entered unless there has been compliance with this section, and at least twenty days have elapsed from the date of mailing by the clerk.

§ 5. Subdivision (a) of section 3012 of the civil practice law and rules is amended to read as follows:

(a) Service of pleadings. The complaint may be served with the summons, except that in an action arising out of a consumer credit transaction, the complaint shall be served with the summons. A subsequent pleading asserting new or additional claims for relief shall be served upon a party who has not appeared in the manner provided for service of a summons. In any other case, a pleading shall be served in the manner provided for service of papers generally. Service of an answer or reply shall be made within twenty days after service of the pleading to which it responds.

§ 6. Rule 3016 of the civil practice law and rules is amended by adding a new subdivision (i) to read as follows:

(i) Consumer credit transactions. In an action arising out of a consumer credit transaction where a purchaser, borrower or debtor is a defendant, the plaintiff shall ~~contract or other written instrument on which the action is based shall be attached to the complaint and the following information shall be set forth the following~~ in the complaint:

1. The name and address of the original creditor at the time of charge-off;

2. The last four digits of the ~~original~~ account number or account identifier associated with the debt that was assigned to the consumer debtor's account at the time of charge-off;

3. The date and amount of the last payment, if applicable;

Comment [DR6]: Please see paragraph (2) below.

Comment [DR7]: DBA International respectfully requests that the term "charge-off" be used in this clause and the clauses below in order to create a universal point in time that all information shall be based on so as to avoid any confusion.

Comment [DR8]: DBA International respectfully requests that "account identifier" be added as not all accounts are based on numbers.

Comment [DR9]: DBA International respectfully requests the following edits as the "amount" of last payment is a useless data element as it does not help either the plaintiff or the defendant establish their case. The date of last payment is useful to both parties but should be conditioned with "if applicable" as it is possible that no payment was ever made on an account.

4. If the complaint contains a cause of action based on an account stated, the charge-off date that was reflected in the final charge-off statement of account was mailed to the defendant;

Comment [DR10]: DBA International respectfully requests the following edits for the most important date for both the plaintiff and defendant to have for their case is the charge-off date as a number of items are based off it.

5. The debt balance at charge off and an explanation of the amount, nature, and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt. This paragraph shall not be deemed to require a specific itemization, but the explanation shall identify separately the charge-off balance, the total of any post-charge-off interest, and the total of any post-charge-off fees. An itemization of the amount sought, by (i) principal; (ii) finance charge or charges; (iii) fees imposed by the original creditor; (iv) collection costs; (v) attorney's fees; (vi) interest; and (vii) any other fees and charges. The term "finance charge" means a finance charge as defined in Regulation Z, 12 C.F.R. § 226.4.

Comment [DR11]: DBA International respectfully requests the following language be used to clarify that the breakdown of interest, fees, etc. are "post charge-off" as it is not possible to provide pre-charge-off itemization with revolving lines of credit. With revolving lines of credit, the charge-off balance is considered the principal.

6. Whether the plaintiff is the original creditor. If the plaintiff is not the original creditor, the complaint shall state (i) the date on which the debt was assigned to the plaintiff; and (ii) the name of each previous owner of the account and the date on which the debt was assigned to that owner; and

7. Any matters required to be stated with particularity pursuant to rule 3015 of this article.

§ 7. Subdivision (e) of rule 3211 of the civil practice law and rules, as amended by chapter 616 of the laws of 2005, is amended to read as follows:

(e) Number, time and waiver of objections; motion to plead over. At any time before service of the responsive pleading is required, a party may move on one or more of the grounds set forth in subdivision (a) of this rule, and no more than one such motion shall be permitted. Any objection or defense based upon a ground set forth in paragraphs one, three, four, five and six of subdivision (a) of this rule is waived unless raised either by such motion or in the responsive pleading. A motion based upon a ground specified in paragraph two, seven or ten of subdivision (a) of this rule may be made at any subsequent time or in a later pleading, if one is permitted; in any action other than an action arising out of a consumer credit transaction where a purchaser, borrower or debtor is a defendant, an

objection that the summons and complaint, summons with notice, or notice of petition and petition was not properly served is waived if, having raised such an objection in a pleading, the objecting party does not move for judgment on that ground within sixty days after serving the pleading, unless the court extends the time upon the ground of undue hardship. The foregoing sentence shall not apply in any proceeding under subdivision one or two of section seven hundred eleven of the real property actions and proceedings law. The papers in opposition to a motion based on improper service shall contain a copy of the proof of service, whether or not previously filed. An objection based upon a ground specified in paragraph eight or nine of subdivision (a) of this rule is waived if a party moves on any of the grounds set forth in subdivision (a) of this rule without raising such objection or if, having made no objection under subdivision (a) of this rule, he or she does not raise such objection in the responsive pleading.

Comment [DR12]: DBA International respectfully requests the deletion of this new language. This proposed addition singles out this one industry by preserving jurisdictional defenses in perpetuity and would mean that a traverse hearing (with the presence of the process server) would be necessary for every single trial regarding a consumer credit transaction throughout the entire state of New York. This would require a full time presence of the process servers in the courthouse rather than serving papers, which would eliminate the possibility of ever serving papers. What's more, this would mean that a jurisdictional defense can be raised at the eleventh hour, even after the completion of all discovery in the case, which contradicts all of Article 31 of the CPLR regarding the right to disclosures.

§ 8. Subdivision (f) of section 3215 of the civil practice law and rules, as amended by chapter 453 of the laws of 2006, is amended and a new subdivision (j) is added to read as follows:

(f) Proof. On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint, or a summons and notice served pursuant to subdivision (b) of rule 305 or subdivision (a) of rule 316 of this chapter, and proof of the facts constituting the claim, the default and the amount due by affidavit made by the party, or where the state of New York is the plaintiff, by affidavit made by an attorney from the office of the attorney general who has or obtains knowledge of such facts through review of state records or otherwise. Where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or the party's attorney. In an action arising out of a consumer credit transaction, if the plaintiff is not the original creditor, in addition to the requirements of rule 3215 of this article, the filer must submit the following supplemental affidavits the applicant shall include: (i) an affidavit of sale of account by the original creditor containing the following language of the facts constituting the debt, the default in payment, the sale or assignment of the debt, and the amount due at the time of sale or assignment;

Comment [DR13]: DBA International respectfully requests the following edits as they are identical to the language and the boilerplate affidavits contained in the Directives and Procedures of the Civil Court of the City of New York (DRP-182) which have been in effect since May 13, 2009. These edits would ensure consistency of procedures between New York State and New York City so as to avoid any confusion.

AFFIDAVIT OF SALE
OF ACCOUNT
BY ORIGINAL CREDITOR

State of New York, County of _____.

being duly sworn, deposes and says:

I am over 18 and not a party to this action. I am the _____ (title) of _____ (creditor). In that position I am a custodian of the creditor's books and records, and am aware of the process of the sale and assignment of electronically stored business records.

On or about _____ (date) _____ (creditor) sold a pool of charged-off accounts (the Accounts) by a Purchase and Sale Agreement and a Bill of Sale to _____ (debt buyer). As part of the sale of the Accounts, electronic records and other records were transferred on individual Accounts to the debt buyer. These records were kept in the ordinary course of business of _____ (creditor).

I am not aware of any errors in these accounts. The above statements are true to the best of my knowledge.

Signed this _____ day of _____, _____.

(Name of Affiant)

Sworn before me this _____ day of _____, _____.

(Notary Stamp)

(ii) in addition, if an account which has been purchased is subsequently sold to another debt buyer an Affidavit of the Sale of the Account by the Debt Seller must be completed by the seller. There shall be one Affidavit of the Sale of the Account by the Debt Seller for each sale, containing the following language: for each subsequent assignment or sale of the debt to another entity, an affidavit of sale of the debt by the debt seller, completed by the seller or assignor; and

AFFIDAVIT OF SALE
OF ACCOUNT
BY DEBT SELLER

State of New York, County of _____.

_____ being duly sworn, deposes and says:

I am over 18 and not a party to this action. I am the _____ (title) of _____ (debt seller). In that position I am the custodian of the debt seller's books and records, and am aware of the procedures used for the sale and assignment of electronically stored business records.

On _____ (date) _____ (debt seller) sold a pool of charged-off accounts (the Accounts) by a Purchase and Sale Agreement and a Bill of Sale to _____ (debt buyer). _____ (debt seller) had previously bought the Accounts from _____ on _____. The original creditor was _____. All records received by _____ (debt seller) were received with affidavits attesting that the records were kept in the regular course of business. The records were incorporated into the debt sellers records and are kept in the regular course of business.

I believe that there are no errors in these accounts. The above statements are true to the best of my knowledge.

Signed this _____ day of _____, _____.

(Name of Affiant)

Sworn before me this _____ day of _____, _____.

(Notary Stamp)

(iii) an affidavit of a witness of the plaintiff, which includes a chain of title of the debt accounts, completed by the plaintiff or plaintiff's witness containing the following language:-

(CourtName)

County Of _____

Plaintiff (Debt Buyer)

_____ Index No. _____

_____ -AGAINST-

_____ AFFIDAVIT OF WITNESS
_____ OF PLAINTIFF (DEBT BUYER)

Defendant (Consumer)

State of New York, County of _____.

_____ being duly sworn, deposes and says:

I am over 18 and not a party to this action. I am the _____ (title) of _____ (plaintiff). In that position I am the custodian of the books and records of the debt buyer, and am aware of the procedures used for the import and storage of records transferred from the (creditor/debt seller) and the assignment of electronically stored business records.

Chain of Title:

Based upon the attached affidavit(s) of sale, on _____ (date) _____ (original creditor) sold a pool of charged-off accounts by a Purchase Agreement and a Bill of Sale to _____ (debt buyer). As part of that sale, electronic records of individual accounts kept in the in the ordinary course of business of _____ (creditor/seller) were transferred to _____ (debt buyer). The defendant's account subject of this lawsuit was included in the purchase, and _____ (buyer) received account records of the defendant. These records were incorporated into the debt buyer's records and kept in the regular course of business.

The account was then sold to the following debt buyers in order of occurrence:

1. _____
2. _____
3. _____

4. _____

5. _____ (plaintiff).

The defendant's account subject of this lawsuit was included in the purchase, and each debt buyer received account records of the defendant. These records were incorporated into the debt buyer's records and kept in the regular course of business.

I believe that there are no errors in these accounts. The above statements are true to the best of my knowledge.

Signed this _____ day of _____, _____.

(Name of Affiant)

Sworn before me this _____ day of _____, _____.

(Notary Stamp)

When jurisdiction is based on an attachment of property, the affidavit must state that an order of attachment granted in the action has been levied on the property of the defendant, describe the property and state its value. Proof of mailing the notice required by subdivision (g) of this section, where applicable, shall also be filed.

(i) A request for a default judgment entered by the clerk, must be accompanied by an affidavit by the debt collector (who may be the plaintiff or plaintiff's attorney) stating that after reasonable inquiry, he or she has reason to believe that the statute of limitations has not expired.

Comment [DR14]: This is consistent with New York Chief Clerk's Memorandum (186-A).

§ 9. The civil practice law and rules is amended by adding a new section 7515 to read as follows:

§ 7515. Confirmation of an award based on a consumer credit transaction. In any proceeding under section 7510 of this article to confirm an award based on a consumer credit transaction, the party seeking to confirm the award shall plead the actual terms and conditions of the agreement to arbitrate. The party shall attach to its petition (1) the agreement to arbitrate; (2) the demand for arbitration or notice of intention to arbitrate, with proof of service; and (3) the arbitration award, with proof of service. If the award does not contain a statement of the claims submitted for arbitration, of the claims ruled upon by the arbitrator, and of the calculation of figures used by the arbitrator in arriving at the award, then the petition shall contain such a statement. The court shall not grant confirmation of an

award based on a consumer credit transaction unless the party seeking to confirm the award has complied with this section.

§ 10. This act shall take effect on the first of January next succeeding the date on which it shall have become a law provided that it shall only apply to cases commenced on or after such date, except that section three of this act shall take effect on the one hundred ~~fiftieth~~ eightieth day after this act shall have become a law.

Comment [DR15]: DBA International respectfully requests this edit so as to avoid any confusion concerning its effect on cases already commenced.

Senate Bill No. 233

CHAPTER 64

An act to add Title 1.6C.5 (commencing with Section 1788.50) to Part 4 of Division 3 of the Civil Code, and to amend Sections 700.010, 706.103, 706.104, 706.108, and 706.122 of, and to add Section 581.5 to, the Code of Civil Procedure, relating to debt buyers.

[Approved by Governor July 11, 2013. Filed with
Secretary of State July 11, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 233, Leno. Debt buying.

(1) Existing state and federal law regulate the practice of debt collection. Existing state law prohibits a debt collector from engaging in specified conduct, including the use of threats or causing a telephone to ring repeatedly to annoy the person called. Existing law prohibits a debt collector from obtaining an affirmation from a debtor of a consumer debt that has been discharged in bankruptcy, without clearly and conspicuously disclosing to the debtor, in writing, the fact that the debtor is not legally obligated to make such affirmation.

This bill would enact the Fair Debt Buying Practices Act, which would regulate the activities of a person or entity that has bought charged-off consumer debt, as defined, for collection purposes and the circumstances pursuant to which the person may bring suit. The bill would apply to consumer debt sold or resold on or after January 1, 2014. The bill would prohibit a debt buyer, as defined, from making any written statement in an attempt to collect a consumer debt unless the debt buyer possesses information that the debt buyer is the sole owner or is authorized to assert the rights of all owners of the specific debt at issue, the debt balance, as specified, and the name and address of the creditor at the time the debt was charged off, among other things. The bill would require the debt buyer to make certain documents available to the debtor, without charge, upon receipt of a request, within 15 days. The bill would require that a specified notice be included with the debt buyer's first written communication with the debtor. The bill would require all settlement agreements between a debt buyer and a debtor to be documented in open court or otherwise in writing and would require a debt buyer who receives a payment on a debt to provide a receipt or statement containing certain information. The bill would prohibit a debt buyer from initiating a suit to collect a debt if the statute of limitations on the cause of action has expired. The bill would prescribe penalties for each violation of the act and would provide that its provisions may not be waived. The bill would require a debt buyer bringing an action on consumer debt to include certain information in his or her complaint. The bill would

prohibit an entry of judgment in favor of a plaintiff debt buyer unless business records authenticated through a sworn declaration and relating to the debt and ownership of it, among other things, are submitted by the debt buyer to the court, and would permit a court to dismiss a debt buyer's action to collect with prejudice if this information is not provided or if the debt buyer fails to appear or is not prepared on the date scheduled for trial.

(2) Existing law establishes a process for the enforcement of money judgments and requires a levying officer to provide certain documents and information to a judgment debtor and to a designated employer in connection with wage garnishment. Existing law permits a process server also to serve an earnings withholding order on an employer and requires that the process server also serve certain documents at this time. Existing law requires an employer who is served with an earnings withholding order to provide certain documents to an employee who is a judgment debtor.

This bill would require, in the circumstances described above, that a copy of the form that the judgment debtor may use to make a claim of exemption and a copy of the form used to provide a financial statement also be provided.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) The collection of debt purchased by debt buyers has become a significant focus of public concern due to the adequacy of documentation required to be maintained by the industry in support of its collection activities and litigation.

(b) State law does not currently prescribe the specific nature of documentation that a debt buyer must maintain and produce in a legal action on the debt.

(c) Documentation used to support the collection of a debt must be sufficient to prove that the individual who is being asked to pay the debt is in fact the individual associated with the original contract or agreement, and that the amount of indebtedness is accurate.

(d) It is important to create documentation and process standards for the collection of consumer debt that all interested parties can easily understand.

(e) This act is not intended to affect the legal enforceability, or collectability, of a charged-off consumer debt, but is intended to impose enforceable standards upon the collection and litigation of consumer debt that has been purchased by a debt buyer following the consumer debt's charge off by a creditor.

(f) Setting specific documentation and process standards will protect consumers, provide needed clarity to courts, and establish clearer criteria for debt buyers and the collection industry.

(g) This act shall be known, and may be cited, as the Fair Debt Buying Practices Act.

SEC. 2. Title 1.6C.5 (commencing with Section 1788.50) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.6C.5. FAIR DEBT BUYING PRACTICES

1788.50. (a) As used in this title:

(1) “Debt buyer” means a person or entity that is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney-at-law for collection litigation. “Debt buyer” does not mean a person or entity that acquires a charged-off consumer debt incidental to the purchase of a portfolio predominantly consisting of consumer debt that has not been charged off.

(2) “Charged-off consumer debt” means a consumer debt that has been removed from a creditor’s books as an asset and treated as a loss or expense.

(b) The acquisition by a check services company of the right to collect on a paper or electronic check instrument, including an Automated Clearing House item, that has been returned unpaid to a merchant does not constitute a purchase of delinquent consumer debt under this title.

(c) Terms defined in Title 1.6C (commencing with Section 1788) shall apply to this title.

(d) This title shall apply to debt buyers with respect to all consumer debt sold or resold on or after January 1, 2014.

1788.52. (a) A debt buyer shall not make any written statement to a debtor in an attempt to collect a consumer debt unless the debt buyer possesses the following information:

(1) That the debt buyer is the sole owner of the debt at issue or has authority to assert the rights of all owners of the debt.

(2) The debt balance at charge off and an explanation of the amount, nature, and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt. This paragraph shall not be deemed to require a specific itemization, but the explanation shall identify separately the charge-off balance, the total of any post-charge-off interest, and the total of any post-charge-off fees.

(3) The date of default or the date of the last payment.

(4) The name and an address of the charge-off creditor at the time of charge off, and the charge-off creditor’s account number associated with the debt. The charge-off creditor’s name and address shall be in sufficient form so as to reasonably identify the charge-off creditor.

(5) The name and last known address of the debtor as they appeared in the charge-off creditor’s records prior to the sale of the debt. If the debt was sold prior to January 1, 2014, the name and last known address of the debtor as they appeared in the debt owner’s records on December 31, 2013, shall be sufficient.

(6) The names and addresses of all persons or entities that purchased the debt after charge off, including the debt buyer making the written statement. The names and addresses shall be in sufficient form so as to reasonably identify each such purchaser.

(b) A debt buyer shall not make any written statement to a debtor in an attempt to collect a consumer debt unless the debt buyer has access to a

copy of a contract or other document evidencing the debtor's agreement to the debt. If the claim is based on debt for which no signed contract or agreement exists, the debt buyer shall have access to a copy of a document provided to the debtor while the account was active, demonstrating that the debt was incurred by the debtor. For a revolving credit account, the most recent monthly statement recording a purchase transaction, last payment, or balance transfer shall be deemed sufficient to satisfy this requirement.

(c) A debt buyer shall provide the information or documents identified in subdivisions (a) and (b) to the debtor without charge within 15 calendar days of receipt of a debtor's written request for information regarding the debt or proof of the debt. If the debt buyer cannot provide the information or documents within 15 calendar days, the debt buyer shall cease all collection of the debt until the debt buyer provides the debtor the information or documents described in subdivisions (a) and (b). Except as provided otherwise in this title, the request by the debtor shall be consistent with the validation requirements contained in Section 1692g of Title 15 of the United States Code. A debt buyer shall provide all debtors with whom it has contact an active postal address to which these requests can be sent. A debt buyer may also provide an active email address to which these requests can be sent and through which information and documents can be delivered, if the parties agree.

(d) (1) A debt buyer shall include with its first written communication with the debtor in no smaller than 12-point type, a separate prominent notice that provides:

“You may request records showing the following: (1) that [insert name of debt buyer] has the right to seek collection of the debt; (2) the debt balance, including an explanation of any interest charges and additional fees; (3) the date of default or the date of the last payment; (4) the name of the charge-off creditor and the account number associated with the debt; (5) the name and last known address of the debtor as it appeared in the charge-off creditor's or debt buyer's records prior to the sale of the debt, as appropriate; and (6) the names of all persons or entities that have purchased the debt. You may also request from us a copy of the contract or other document evidencing your agreement to the debt.

“A request for these records may be addressed to: [insert debt buyer's active mailing address and email address, if applicable].”

(2) When collecting on a time-barred debt where the debt is not past the date for obsolescence provided for in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c):

“The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, [insert name of debt buyer] may [continue to] report it to the credit reporting agencies as unpaid for as long as the law permits this reporting.”

(3) When collecting on a time-barred debt where the debt is past the date for obsolescence provided for in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c):

“The law limits how long you can be sued on a debt. 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.”

(e) If a language other than English is principally used by the debt buyer in the initial oral contact with the debtor, the notice required by subdivision (d) shall be provided to the debtor in that language within five working days.

(f) In the event of a conflict between the requirements of subdivision (d) and federal law, so that it is impracticable to comply with both, the requirements of federal law shall prevail.

1788.54. (a) All settlement agreements between a debt buyer and a debtor shall be documented in open court or otherwise reduced to writing. The debt buyer shall ensure that a copy of the written agreement is provided to the debtor.

(b) A debt buyer that receives payment on a debt shall provide, within 30 calendar days, a receipt or monthly statement, to the debtor. The receipt or statement shall clearly and conspicuously show the amount and date paid, the name of the entity paid, the current account number, the name of the charge-off creditor, the account number issued by the charge-off creditor, and the remaining balance owing, if any. The receipt or statement may be provided electronically if the parties agree.

(c) A debt buyer that accepts a payment as payment in full, or as a full and final compromise of the debt, shall provide, within 30 calendar days, a final statement that complies with subdivision (b). A debt buyer shall not sell an interest in a resolved debt, or any personal or financial information related to the resolved debt.

1788.56. A debt buyer shall not bring suit or initiate an arbitration or other legal proceeding to collect a consumer debt if the applicable statute of limitations on the debt buyer’s claim has expired.

1788.58. In an action brought by a debt buyer on a consumer debt:

(a) The complaint shall allege all of the following:

(1) That the plaintiff is a debt buyer.

(2) The nature of the underlying debt and the consumer transaction or transactions from which it is derived, in a short and plain statement.

(3) That the debt buyer is the sole owner of the debt at issue, or has authority to assert the rights of all owners of the debt.

(4) The debt balance at charge off and an explanation of the amount, nature, and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt. This paragraph shall not be deemed to require a specific itemization, but the explanation shall identify separately the charge-off balance, the total of any post-charge-off interest, and the total of any post-charge-off fees.

(5) The date of default or the date of the last payment.

(6) The name and an address of the charge-off creditor at the time of charge off, and the charge-off creditor's account number associated with the debt. The charge-off creditor's name and address shall be in sufficient form so as to reasonably identify the charge-off creditor.

(7) The name and last known address of the debtor as they appeared in the charge-off creditor's records prior to the sale of the debt. If the debt was sold prior to January 1, 2014, the debtor's name and last known address as they appeared in the debt owner's records on December 31, 2013, shall be sufficient.

(8) The names and addresses of all persons or entities that purchased the debt after charge off, including the plaintiff debt buyer. The names and addresses shall be in sufficient form so as to reasonably identify each such purchaser.

(9) That the debt buyer has complied with Section 1788.52.

(b) A copy of the contract or other document described in subdivision (b) of Section 1788.52, shall be attached to the complaint.

(c) The requirements of this title shall not be deemed to require the disclosure in public records of personal, financial, or medical information, the confidentiality of which is protected by any state or federal law.

1788.60. (a) In an action initiated by a debt buyer, no default or other judgment may be entered against a debtor unless business records, authenticated through a sworn declaration, are submitted by the debt buyer to the court to establish the facts required to be alleged by paragraphs (3) to (8), inclusive, of subdivision (a) of Section 1788.58.

(b) No default or other judgment may be entered against a debtor unless a copy of the contract or other document described in subdivision (b) of Section 1788.52, authenticated through a sworn declaration, has been submitted by the debt buyer to the court.

(c) In any action on a consumer debt, if a debt buyer plaintiff seeks a default judgment and has not complied with the requirements of this title, the court shall not enter a default judgment for the plaintiff and may, in its discretion, dismiss the action.

(d) Except as provided in this title, this section is not intended to modify or otherwise amend the procedures established in Section 585 of the Code of Civil Procedure.

1788.62. (a) In the case of an action brought by an individual or individuals, a debt buyer that violates any provision of this title with respect to any person shall be liable to that person in an amount equal to the sum of the following:

(1) Any actual damages sustained by that person as a result of the violation, including, but not limited to, the amount of any judgment obtained by the debt buyer as a result of a time-barred suit to collect a debt from that person.

(2) Statutory damages in an amount as the court may allow, which shall not be less than one hundred dollars (\$100) nor greater than one thousand dollars (\$1,000).

(b) In the case of a class action, a debt buyer that violates any provision of this title shall be liable for any statutory damages for each named plaintiff as provided in paragraph (2) of subdivision (a). If the court finds that the debt buyer engaged in a pattern and practice of violating any provision of this title, the court may award additional damages to the class in an amount not to exceed the lesser of five hundred thousand dollars (\$500,000) or 1 percent of the net worth of the debt buyer.

(c) (1) In the case of any successful action to enforce liability under this section, the court shall award costs of the action, together with reasonable attorney's fees as determined by the court.

(2) Reasonable attorney's fees may be awarded to a prevailing debt buyer upon a finding by the court that the plaintiff's prosecution of the action was not in good faith.

(d) In determining the amount of liability under subdivision (b), the court shall consider, among other relevant factors, the frequency and persistence of noncompliance by the debt buyer, the nature of the noncompliance, the resources of the debt buyer, and the number of persons adversely affected.

(e) A debt buyer shall have no civil liability under this section if the debt buyer shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid any error.

(f) An action to enforce any liability created by this title shall be brought within one year from the date of the last violation.

(g) Recovery in an action brought under the Rosenthal Fair Debt Collection Practices Act (Title 1.6C (commencing with Section 1788)) or the federal Fair Debt Collection Practices Act (15 U.S.C. Sec. 1692 et seq.) shall preclude recovery for the same acts in an action brought under this title.

1788.64. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 3. Section 581.5 is added to the Code of Civil Procedure, to read:

581.5. In a case involving consumer debt, as defined in Section 1788.2 of the Civil Code, and as regulated under Title 1.6C.5 (commencing with Section 1788.50) of Part 4 of Division 3 of the Civil Code, if the defendant debtor appears for trial on the scheduled trial date, and the plaintiff debt buyer either fails to appear or is not prepared to proceed to trial, and the court does not find a good cause for continuance, the court may, in its discretion, dismiss the action with or without prejudice. Notwithstanding any other law, in this instance, the court may award the defendant debtor's costs of preparing for trial, including, but not limited to, lost wages and transportation expenses.

SEC. 4. Section 700.010 of the Code of Civil Procedure is amended to read:

700.010. (a) At the time of levy pursuant to this article or promptly thereafter, the levying officer shall serve a copy of the following on the judgment debtor:

(1) The writ of execution.

(2) A notice of levy.

(3) If the judgment debtor is a natural person, a copy of the form listing exemptions prepared by the Judicial Council pursuant to subdivision (c) of Section 681.030, the list of exemption amounts published pursuant to subdivision (e) of Section 703.150, a copy of the form that the judgment debtor may use to make a claim of exemption pursuant to Section 703.520, and a copy of the form the judgment debtor may use to provide a financial statement pursuant to Section 703.530.

(4) Any affidavit of identity, as defined in Section 680.135, for names of the debtor listed on the writ of execution.

(b) Service under this section shall be made personally or by mail.

SEC. 5. Section 706.103 of the Code of Civil Procedure is amended to read:

706.103. (a) The levying officer shall serve upon the designated employer all of the following:

(1) The original and one copy of the earnings withholding order.

(2) The form for the employer's return.

(3) The notice to employee of earnings withholding order.

(4) A copy of the form that the judgment debtor may use to make a claim of exemption.

(5) A copy of the form the judgment debtor may use to provide a financial statement.

(b) At the time the levying officer makes service pursuant to subdivision (a), the levying officer shall provide the employer with a copy of the employer's instructions referred to in Section 706.127. The Judicial Council may adopt rules prescribing the circumstances when compliance with this subdivision is not required.

(c) No earnings withholding order shall be served upon the employer after the time specified in subdivision (b) of Section 699.530.

SEC. 6. Section 706.104 of the Code of Civil Procedure is amended to read:

706.104. Any employer who is served with an earnings withholding order shall:

(a) Deliver to the judgment debtor a copy of the earnings withholding order, the notice to employee of earnings withholding, a copy of the form that the judgment debtor may use to make a claim of exemption, and a copy of the form the judgment debtor may use to provide a financial statement within 10 days from the date of service. If the judgment debtor is no longer employed by the employer and the employer does not owe the employee any earnings, the employer is not required to make such delivery. The employer is not subject to any civil liability for failure to comply with this subdivision. Nothing in this subdivision limits the power of a court to hold the employer in contempt of court for failure to comply with this subdivision.

(b) Complete the employer's return on the form provided by the levying officer and mail it by first-class mail, postage prepaid, to the levying officer within 15 days from the date of service. If the earnings withholding order is ineffective, the employer shall state in the employer's return that the order

will not be complied with for this reason and shall return the order to the levying officer with the employer's return.

SEC. 7. Section 706.108 of the Code of Civil Procedure is amended to read:

706.108. (a) If a writ of execution has been issued to the county where the judgment debtor's employer is to be served and the time specified in subdivision (b) of Section 699.530 for levy on property under the writ has not expired, a judgment creditor may deliver an application for issuance of an earnings withholding order to a registered process server who may then issue an earnings withholding order.

(b) If the registered process server has issued the earnings withholding order, the registered process server, before serving the earnings withholding order, shall deposit with the levying officer a copy of the writ of execution, the application for issuance of an earnings withholding order, and a copy of the earnings withholding order, and shall pay the fee provided by Section 26750 of the Government Code.

(c) A registered process server may serve an earnings withholding order on an employer whether the earnings withholding order was issued by a levying officer or by a registered process server, but no earnings withholding order may be served after the time specified in subdivision (b) of Section 699.530. In performing this function, the registered process server shall serve upon the designated employer all of the following:

- (1) The original and one copy of the earnings withholding order.
- (2) The form for the employer's return.
- (3) The notice to the employee of the earnings withholding order.
- (4) A copy of the form that the judgment debtor may use to make a claim of exemption.
- (5) A copy of the form the judgment debtor may use to provide a financial statement.
- (6) A copy of the employer's instructions referred to in Section 706.127, except as otherwise prescribed in rules adopted by the Judicial Council.

(d) Within five court days after service under this section, all of the following shall be filed with the levying officer:

- (1) The writ of execution, if it is not already in the hands of the levying officer.
- (2) Proof of service on the employer of the papers listed in subdivision (c).
- (3) Instructions in writing, as required by the provisions of Section 687.010.

(e) If the fee provided by Section 26750 of the Government Code has been paid, the levying officer shall perform all other duties required by this chapter as if the levying officer had served the earnings withholding order. If the registered process server does not comply with subdivisions (b), where applicable, and (d), the service of the earnings withholding order is ineffective and the levying officer is not required to perform any duties under the order and may terminate the order and may release any withheld earnings to the judgment debtor.

(f) The fee for services of a registered process server under this section shall be allowed as a recoverable cost pursuant to Section 1033.5.

SEC. 8. Section 706.122 of the Code of Civil Procedure is amended to read:

706.122. The “notice to employee of earnings withholding order” shall contain a statement that informs the employee in simple terms of the nature of a wage garnishment, the right to an exemption, the procedure for claiming an exemption, and any other information the Judicial Council determines would be useful to the employee and appropriate for inclusion in the notice, including all of the following:

(a) The named employer has been ordered to withhold from the earnings of the judgment debtor the amounts required to be withheld under Section 706.050, or such other amounts as are specified in the earnings withholding order, and to pay these amounts over to the levying officer for transmittal to the person specified in the order in payment of the judgment described in the order.

(b) The manner of computing the amounts required to be withheld pursuant to Section 706.050.

(c) The judgment debtor may be able to keep more or all of the judgment debtor’s earnings if the judgment debtor proves that the additional earnings are necessary for the support of the judgment debtor or the judgment debtor’s family supported in whole or in part by the judgment debtor.

(d) If the judgment debtor wishes a court hearing to prove that amounts should not be withheld from the judgment debtor’s earnings because they are necessary for the support of the judgment debtor or the judgment debtor’s family supported in whole or in part by the judgment debtor, the judgment debtor shall file with the levying officer an original and one copy of the “judgment debtor’s claim of exemption” and an original and one copy of the “judgment debtor’s financial statement.”

SEC. 9. The provisions of this act are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.



Max Dubin, Esq.
Department of Financial Services
One State Street
New York, NY 10004-1511

October 1, 2013

Re: Comment to New York State Department of Financial Services
Proposed Rulemaking: Addition of Part 1 to Title 23 NYCRR
DEBT COLLECTION – I.D. No. DFS-34-13-00002-P

Dear Mr. Dubin:

DBA International, the national trade association that represents the interests of over 600 companies that purchase distressed asset portfolios on the secondary market respectfully submits our comments on proposed rule DFS-34-13-00002-P that the Department of Financial Services (DFS) published in the New York State Register on August 21, 2013.

DBA International is a national leader in promoting ethical conduct and consumer friendly practices among industry participants. As part of our efforts, DBA requires all of our members who purchase distressed assets to become certified through our national Debt Buyer Certification Program as a requisite for membership. The Certification Program requires certified companies to adhere to 19 standards of best practice that are subject to independent third party audits. DBA also works closely with the federal Consumer Financial Protection Bureau (CFPB), the Federal Trade Commission (FTC), the state attorneys general, and the various other city, state, and national regulatory entities on issues pertaining to the industry.

While DBA International supports the efforts of DFS to craft additional regulatory guidance and clarity for the debt collection industry in New York State, we have significant concerns regarding the language as currently worded in the proposed rules. DBA stands by the principle that laws and regulations need to be written in such a manner so as to protect consumers from bad conduct while not harming companies who are abiding by state and federal laws and regulations in the legitimate collection of contractual obligations.

The following are a list of DBA's most significant concerns (in no particular order) with the proposed regulation as well as possible solutions:

- (1) **Definition of the Term "Charge-off"** – When adopting statutory and/or regulatory requirements that mandate the transmission of account data, it becomes absolutely essential that a uniform point in time be identified to base such criteria upon. A number of data elements are subject to change over the life of an account, including but not limited to:

- name of creditor (i.e. banks merge and change names),
- name of consumer (i.e. last names are subject to change based on marriage and divorce),
- address (i.e. both consumers and businesses move physical addresses),
- telephone number (i.e. telephone numbers change),
- account number (i.e. account numbers change when a credit card is reported lost as well with some bank mergers), and
- balance (i.e. when requiring an itemized balance, the only point in time that works on revolving lines of credit such as credit cards is the “charge-off” date).

The term “charge-off” represents this uniform and standard point in time that is recognized by all accounting professionals and banking institutions regardless of the jurisdictions in which they operate. The same cannot be said of the “date of default” because there is different business or statutory criteria (not to mention judicial interpretation of such criteria) in all 50 states.

For the foregoing reasons, DBA International respectfully requests that the data and documentation criteria contained in sections 1.2(b) and 1.4(a) of this Part be based off of “charge-off” rather than “default”. The following is the definition that DBA International would recommend be added to section 1.1:

Charge-off means the accounting action taken by a creditor to remove a debt obligation from its financial statements by treating it as a loss or expense.

- (2) **Initial Validation Rights** – The language currently proposed in sections 1.2(a) and 1.2(b) of the rule would require debt collectors to provide consumers with unnecessary and confusing correspondence in cases where the consumer immediately paid the debt following the initial communication. For example, if the consumer received the initial notice on Day 1 and paid the obligation on Day 2, the debt collector would still have to provide a communication to the now paid-in-full consumer notifying him or her: (i) of their consumer rights, (ii) that they may be sued, and (iii) that some moneys may be exempt from judgment. This result is inconsistent with the provisions contained in 15 USC 1692g(a) of the federal Fair Debt Collection Practices Act (FDCPA).

Another potential source for confusion occurs in section 1.2(b) of the rule where debt collectors will be required to provide additional notifications to the consumer than that required by the FDCPA in 15 USC 1692g(a). In order to avoid confusion, the rule should be clarified so that debt collectors know that the notification requirements in the rule are in addition to those required in the FDCPA.

For the foregoing reasons, DBA International respectfully requests that the following edits be made to sections 1.2(a) and 1.2(b) which are consistent with the requirements of the FDCPA located in 15 USC 1692g(a):

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, provide the consumer clear and conspicuous written notification of the consumer's rights in connection with the debt, including:

...

(b) Within five days after the initial communication with a consumer in connection with the collection of any defaulted debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, provide the consumer clear and conspicuous written notification as required in 15 USC 1692(q) of the FDCPA regarding the nature of the consumer's defaulted debt and the following additional notifications[-including]:

...

- (3) **Itemization Requirement** – The language currently proposed in section 1.2(b)(2) of the rule would require debt collectors to provide consumers with a pre-charge-off itemization of their outstanding balance. Because of federal laws governing credit cards and the compounding of interest, it is simply impossible to break out pre-charge-off principal, interest, and fees on credit card accounts because: (i) of the combining of new and old purchases, (ii) balances can be carried over each month due to the consumer's option to not provide a payment in full, and (iii) carried over account balances are subject to compounding interest. The National Bank Act recognizes this inherent difficulty which explains why banks are not required to provide this information to consumers on credit card statements. To require this of debt collectors would be to require them to provide something that even the originating creditor cannot produce.

However, DBA International does support a requirement that post-charge-off balances be subject to a breakdown that provides consumers with information on how much of the balance consists of principal (here being the charge-off balance), interest, and fees. The reason why a breakdown of the balance is possible on post-charge-off accounts but not on pre-charge-off accounts is because post-charge-off accounts no longer are subject to revolving balances.

For the foregoing reasons, DBA International respectfully requests that clause (2) of section 1.2(b) be replaced with the following language:

(2) The total current amount of the debt due; and

(3) Where the debt has been charged-off, the "total current amount of the debt due" as required in clause (2) of this paragraph shall be broken down by: (i) the charge-off balance, (ii) the total amount of post-charge-off payments and credits, if any, (iii) the total amount of post-charge-off interest, if any, and (iv) the total amount of post-charge-off fees, if any.

- (4) **Verification of Debt (Consistency with FDCPA)** – The language currently proposed in section 1.4(a) of the rule regarding a consumer request for verification on a defaulted debt is inconsistent with the provisions on verification that are contained in the FDCPA at 15 USC 1692g(b). Given the time limitation imposed on debt collectors to respond to a consumer verification request, the FDCPA allows the debt collector the option to cease collection activity

to address unforeseen issues where the answer is not readily available and requires additional time to process. What the FDCPA is attempting to prevent through this provision is a scenario where a consumer is granted an actionable claim against a debt collector on a legitimate and contractually obligated debt which they in fact owe.

As an example, it is a fairly common business practice for debt collectors to warehouse original credit documents on the originating creditor's system until such time that access is needed. The purpose of this arrangement is to: (i) keep costs at a minimum and (ii) avoid the risk of inadvertent access to sensitive consumer documents containing personally identifiable information during bulk transmissions. Without the FDCPA language in the proposed rule, something as simple as a processing delay that results in the consumer receiving their verification response on day 31 would provide the consumer and the state of New York with a judicable action against the debt collector.

Additionally, the language is missing the provision in the FDCPA which would allow a debt collector to provide a copy of a judgment against the consumer as an alternative to the verification requirements. Without such language, this provision would suggest that a consumer could possibly nullify a court decision simply by requesting verification on an account that had already been litigated.

Finally, if an exception is not provided for accounts in litigation, some consumer attorneys could use section 1.4(a) of the rule to interfere with ongoing litigation. While a pre-litigation account can simply be placed on hold for a verification request, the same cannot be said of an account that is actively being litigated. The only method of fully ceasing action on a collection litigation account would be to discontinue the action. Even if done so without prejudice, the debt collector will have lost significant monies associated with the litigation and could potentially encounter statute of limitations issues by time verification is achieved. If this rule remains unchanged, it may become common practice for some consumer attorneys to simply dispute the debt a week before a hearing on a given motion. This is not an issue in the FDCPA as the period to dispute the debt is 30 days from receipt of the initial communication. This 30 day requirement does not exist in the proposed rule thus explaining the need for the exemption.

For the foregoing reasons, DBA International respectfully requests that the following edits be made to the opening paragraph of section 1.4(a) which is consistent with the requirements contained in the FDCPA at 15 USC 1692g(b):

(a) *Except for accounts in litigation, if* ~~[f]~~ a consumer disputes the validity of a defaulted debt or requests verification of a defaulted debt ~~[orally or]~~ in writing, a debt collector must provide the consumer written verification of the defaulted debt or a copy of a judgment against the consumer within 30 days of the dispute or request or otherwise cease all collection activity on the debt until such time the debt collector provides the consumer the information. In addition to the requirements of 15 USC 1692g(b) of the FDCPA, ~~[v]~~ verification of the defaulted debt shall include:¹

...

¹ The deletion of "orally" is consistent with the FDCPA and avoids "he said/she said" issues being litigated in court.

- (5) **Verification of Debt (Documents)** – The language currently proposed in section 1.4(a)(1) of the rule regarding what documents a consumer must be provided in response to a request for verification of a defaulted debt is inconsistent with the provisions on verification that are contained in the FDCPA at 15 USC 1692g(b). That being said, DBA International would support additional documentation requirements that do not contradict the FDCPA as a best practice provided that: (i) such documents in fact exist or (ii) there are alternative documents that would qualify to identify the creditor and prove the existence of the debt when current laws or regulations explain why the specified documents required by section 1.4(a)(1)(i) are not available.

The availability of the documents required in section 1.4(a)(1)(i) will in almost all cases be dependent on the age of the account because under federal Truth in Lending laws banks are only required to retain records for 24 months. While there are many who would suggest that this retention period is too short, the fact remains that it is the legal requirement that banks have used in the development and implementation of their document retention and destruction policies. Consequently, the specific documents DFS is seeking (i.e. the application, contract, or documents evidencing the transaction resulting in the indebtedness) may not exist if they are older than 24 months. While reliable “documentation identifying the original creditor” (i.e. the stated purpose of the documents) exists, it just may not exist in the form desired by these proposed rules.

A solution to this challenge that has been consistently promoted by various consumer groups throughout the nation and DBA International supports is to allow the “most recent monthly statement recording a purchase transaction, last payment, or balance transfer” to satisfy the verification document requirement should the original documents no longer exist. The credibility of these documents is based on the fact that they evidence a contemporaneous consumer action or transaction that was transmitted to the consumer.

Additionally, it should be noted that the requirement that the “signed application” or “signed contract” be available could be a challenge on credit card accounts due to the trend of applying for credit cards online. While ratification of the contract might be possible through the use of “best evidence” rules it would not produce a universal application or result. Recently, the states of Arizona and Arkansas have adopted laws stating that acceptance of the terms and conditions of a credit card can be evidenced by: (i) “electronic” signature or (ii) demonstrated use of the credit card by the named account holder.

For the foregoing reasons, DBA International respectfully requests that the following edits be made to section 1.4(a)(1):

(1) documentation identifying the original creditor and the consumer. Copies of the following documents shall satisfy this requirement [~~including copies of~~]:

(i) the signed contract or signed application that created the debt, or, in the case of a transaction that does not involve a signed contract or signed application, other documents evidencing [~~the transaction resulting in the indebtedness of the consumer~~]the debt owed to the original creditor. For a revolving credit account, the most recent monthly statement recording a purchase transaction, last payment, or balance transfer shall be deemed sufficient to satisfy this requirement; [~~and~~]or

(ii) the ~~final~~ *charge-off* account statement, or equivalent document, issued by the original creditor to the consumer;

- (6) **Consumer Disclosure (Length)** – The language currently proposed in sections 1.2(a)(2), 1.3(b), and 1.5(a)(2) of the rule contains two separate and lengthy consumer notices totaling 300 words: (i) an 89 word statement on exemptions from judgment and (ii) a 211 word statement on statute of limitations. These consumer statements are in addition to other consumer notices mandated by the FDCPA at 15 USC 1692e(11) and 1692g(a). DBA International is aware of increasing sentiment expressed by some regulators, consumer groups, and debt collectors that the growing length and prevalence of consumer notices may actually be counterproductive as consumers choose not to read them because of information overload. DBA International understands that the federal Consumer Financial Protection Bureau (CFPB) is studying this very issue and may provide future guidance.

However, DBA International does support the approach to consumer notices taken by New York Assembly Consumer Protection Committee Chairman Jeffrey Dinowitz in A.606 that would broaden access to consumer rights and resources through a more consumer friendly approach. Instead of a lengthy consumer notice that could be affected by federal statutory changes, federal regulatory decrees, or state or federal judicial decisions, A.606 takes the simple approach of providing the consumer a notice directing them to a dedicated website maintained by DFS. This would allow DFS the ability to provide directly to consumers any informational notices, resources, or materials it chooses with the added ability to amend such information without the lengthy statutory or regulatory process.

For the foregoing reasons, DBA International respectfully requests that the proposed consumer notices contained in sections 1.2(a)(2), 1.3(b), and 1.5(a)(2) be replaced with the following 65 word consumer notice:

“IMPORTANT NOTICE: As a consumer who owes or may owe a consumer debt, you are provided certain protections and rights by New York and federal laws regulating debt collection procedures. You should be aware of your rights and should not permit your rights to be violated. For more information about your rights, contact the New York State Department of Financial Services at [insert approved telephone number] or [insert approved website address].”

However, if DFS determines that a lengthier consumer notice is optimal, DBA International would respectfully request that the following language be used which is the consumer notice developed and promoted by the Federal Trade Commission (FTC) since 2012 and which was statutorily codified in 2013 by the states of Connecticut and California:

When the date of obsolescence for reporting has not yet passed provided for in Section 605(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681c, the following notice shall be provided:

“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.”

When collecting on debt where the debt is past the date for obsolescence provided for in Section 605(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681c, the following notice shall be provided:

“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 agency.”

- (7) **Consumer Notice (Threat of Litigation)** – The language currently proposed in sections 1.2(a)(2) and 1.5(a)(2) of the rule would violate the FDCPA by requiring all debt collectors to tell consumers “A creditor may sue you to collect on this debt.” Under 15 USC 1692e(5), it is a false, deceptive, and misleading representation to threaten any action that the debt collector is not intending to take. Since most debt collectors only litigate a small fraction of their accounts, it could be easily argued that by telling a consumer that you might “sue” them “to collect on this debt” the debt collector is making a false, deceptive, and misleading representation. Additionally, it is worth noting that some debt collectors do not litigate on any of their accounts and by providing this notice they would be making a statement on a subject matter where there is zero chance of litigation.²

For the foregoing reasons, if the consumer notice language contained in sections 1.2(a)(2) and 1.5(a)(2) remains unchanged (see paragraph 6 above), DBA International respectfully requests that the following sentence be inserted immediately prior to the notice language so as to protect debt collectors from frivolous claims that they violated the FDCPA:

“We are required by regulation of the New York State Department of Financial Services to provide you with the following notice (the contents of the notice should not be interpreted as threatening a legal action):

...

- (8) **Debt Payment Procedures** – The language currently proposed in section 1.5 of the rule would require debt collectors to follow a specific debt payment procedure prior to accepting payments associated with a repayment agreement that will result in greater confusion and frustration on the part of the consumer. While DBA International does not believe this section is necessary, DBA could support its inclusion if several clarifying edits are made to resolve the following areas that will be the source of this unnecessary confusion and frustration:

- (i) Consumers frequently contact debt collectors to resolve past due contractual obligations when they are applying for a job, mortgage, apartment lease, car loan, or other type of transaction that requires a clean credit report. Frequently, for these consumers time is of the essence and they want to make payment immediately. The rule as currently drafted would prohibit the debt collector from accepting a consumer payment from the consumer until AFTER

² See the following New York cases on misrepresenting the imminence of suit, intent, or authority which is an FDCPA violation: Piples v. Credit Bureau Inc 886 F2d 22 (2d Cir 1989); Riveria v. MAB Collections Inc 682 F Supp 174 (WDNY 1988); Dewees v. Legal Servicing 506 F. Supp 2d 128 (EDNY 2007); Bentley v. Great Lakes Collection Bureau 6 F3d60 (2d Cir 1993); Ellis v. Cohen & Slamowitz LLP 701 F Supp 2d 215 (NDNY 2010); Knowles v. Credit Bureau 1992 WL 131107 (WDNY May 28, 1992); and Unger v. National Revenue Group Ltd 2000 US Dist Lexis 18708 (EDNY Dec 8 2000).

the debt collector provides the consumer with the required written confirmation and notice. This issue could be resolved by simply allowing for immediate payment (at the consumer's option) but at the same time requiring the debt collector to provide the written instruments within a similar time period as contemplated in section 2 of the rule.

(ii) Generally, when debt payment schedules are agreed to between a consumer and creditor/owner it is handled by an administrative level call center employee. DBA International agrees that it is quite appropriate for a subsequent written confirmation to contain the "monetary" terms or conditions to which the consumer agreed to on the phone. However, when signing a legal document, there may be additional terms and conditions that are unrelated to the "monetary" amount agreed to in the payment schedule which is beyond the knowledge of an administrative level call center employee to discuss. This issue can be resolved simply by inserting the word "monetary" in section 1.5(a)(1) to condition what types of terms and conditions that were verbally agreed to on the phone that are confirmed in writing.

(iii) In many circumstances, the creation of the "payment schedule" or the "agreement to settle the defaulted debt" will occur AFTER suit has been filed and in those scenarios it would be confusing and certainly not helpful to tell a consumer who is entering into an agreement as a result of court action that they may be sued. This can be addressed through a simple change in section 1.5(a)(2). See also comment (7) above.

(iv) While many who enter into a payment schedule make all of their payments and pay off their contractual obligation . . . others do not. The wording of section 1.5(b) only anticipates the first scenario as it relates to quarterly consumer accounting of the debt. The wording does not address the second scenario where payment is not received and how that will impact the debt collector's obligation to provide the quarterly accounting. For example, once an agreement has been reached, the language currently proposed in the rule would require the debt collector to send a quarterly accounting indefinitely even if the consumer fails to make a single payment – otherwise the debt collector would risk being in violation of the rule.

For the foregoing reasons, DBA International respectfully requests that the following edits be made to section 1.5:

(a) [~~No debt collector shall accept any~~]Within five days after receiving the initial payment under a debt payment schedule or other agreement to settle a defaulted debt or prior to payment under a debt payment schedule or other agreement to settle a defaulted debt [~~without first furnishing~~], a debt collector shall provide the consumer with a clear and conspicuous written document containing:

(1) written confirmation of the debt payment schedule or other agreement to settle the defaulted debt. This written confirmation shall not include any monetary terms or conditions to which the consumer did not specifically agree; and

(2) the following written notice:

~~[A creditor may sue you to collect on this debt. Even if the creditor wins and obtains a judgment against you]~~ If a judgment has been obtained against you, state and federal laws

prevent certain “exempt” moneys from being taken to satisfy that judgment. Income that you receive from the following sources may be “exempt” from collection:

...

(b) If a consumer agrees to a debt payment schedule or other agreement to settle a defaulted debt, the debt collector shall provide the consumer, upon request, with an accounting of the debt on at least a quarterly basis until either the consumer fails to comply with the payment schedule or until the debt is settled or paid in full. A monthly or quarterly statement that provides the current balance due and lists any payments since the last monthly or quarterly statement shall be deemed sufficient to satisfy this requirement. The monthly or quarterly statement may be sent using electronic mail as provided under section 1.6 of this Part.

- (9) **Electronic Mail** – The language currently proposed in section 1.6 of the rule is generally acceptable provided that edits are made to correct the misconception that a debt collector has the ability to independently know whether an email account provided by the consumer is: (i) “secure” or (ii) “furnished or owned by the consumer’s employer”. The only person who knows the answer to these requirements is the consumer who is providing the email address . . . not the debt collector. For example, how would a debt collector know whether an email address is shared with a spouse or know if the email browser was left open in plain view when the consumer walked away from the computer? Additionally, while most company owned email addresses should be obvious based on the domain name, that is not the case in all instances as many small businesses use email Gmail or Yahoo domains. The fact is the debt collector is entirely dependent on what the consumer tells them.

For the foregoing reasons, DBA International respectfully requests that the following edits be made to clause (1) of section 1.6(a):

(1) voluntarily provided [~~a secure~~] an electronic mail account to the debt collector which the consumer has stated is not an electronic mail account furnished or owned by the consumer’s employer; and

- (10) **Effective Date** – The language currently proposed in section 1.7 of the rule contains an effective date that has a retroactive effect. Since companies cannot predict what any future legislative or regulatory body will require, they have made business decisions and transactions based on the legal requirements at the time of the decision or transaction. For example, if the documentation provisions contained in section 1.4 of the proposed rule are made to apply to pre-existing debt it could have the retroactive effect of wiping out billions of dollars of corporate assets because of the impossibility of producing documents and data that either never existed or no longer exist because of legally compliant corporate retention and destruction schedules.

Additionally, if the requirements contained in this rule are adopted, it will require adjustments in both standard operating procedures and corporate operations of thousands of companies throughout the nation which simply cannot be implemented without providing prior notice. Since this rule will affect companies in all 50 states, sufficient time is needed to get the word out to reduce the chance of any unintended violations.

For the foregoing reasons, DBA International respectfully requests that the following edits be made to section 1.7:

This Part shall become effective [~~upon~~] 180 days after adoption, except that sections 1.2(b) and 1.4(a) of this Part shall [~~become effective 180 days after adoption~~] only apply to debts placed for collection by the originating creditor or purchased on or after the effective date of this Part.

DBA International appreciates the opportunity DFS has afforded us to communicate our concerns on the proposed rule concerning debt collection in New York State. DBA International believes that the proposed edits that we have provided in this letter would allow for the implementation of balanced regulations that considers the legitimate interests of both the consumer community who wish to have additional information to either verify or dispute a claim and the business community who wish to collect on a legitimately owed contractual obligation.

Please do not hesitate to contact David Reid (DBA International's Director of Government Affairs) at (916) 482-2462 or dreid@dbainternational.org should you have any questions regarding this matter or should you require additional information on the industry.

Sincerely,



Jan Stieger
Executive Director
DBA International

AFFIDAVIT OF SALE
OF ACCOUNT
BY ORIGINAL CREDITOR

State of New York, County of _____.

_____ being duly sworn, deposes and says:

I am over 18 and not a party to this action. I am the _____ (title) of _____ (creditor). In that position I am a custodian of the creditor's books and records, and am aware of the process of the sale and assignment of electronically stored business records.

On or about _____ (date) _____ (creditor) sold a pool of charged-off accounts (the Accounts) by a Purchase and Sale Agreement and a Bill of Sale to _____ (debt buyer). As part of the sale of the Accounts, electronic records and other records were transferred on individual Accounts to the debt buyer. These records were kept in the ordinary course of business of _____ (creditor).

I am not aware of any errors in these accounts. The above statements are true to the best of my knowledge.

Signed this _____ day of _____, _____.

(Name of Affiant)

Sworn before me this _____ day of _____, _____.

(Notary Stamp)

AFFIDAVIT OF SALE
OF ACCOUNT
BY DEBT SELLER

State of New York, County of _____.

_____ being duly sworn, deposes and says:

I am over 18 and not a party to this action. I am the _____ (title) of _____ (debt seller). In that position I am the custodian of the debt seller's books and records, and am aware of the procedures used for the sale and assignment of electronically stored business records.

On _____ (date) _____ (debt seller) sold a pool of charged-off accounts (the Accounts) by a Purchase and Sale Agreement and a Bill of Sale to _____ (debt buyer). _____ (debt seller) had previously bought the Accounts from _____ on _____. The original creditor was _____. All records received by _____ (debt seller) were received with affidavits attesting that the records were kept in the regular course of business. The records were incorporated into the debt seller's records and are kept in the regular course of business.

I believe that there are no errors in these accounts. The above statements are true to the best of my knowledge.

Signed this _____ day of _____, _____.

(Name of Affiant)

Sworn before me this _____ day of _____, _____.

(Notary Stamp)

CIVIL COURT, CITY OF NEW YORK
COUNTY OF _____

Index number _____

Plaintiff (Debt Buyer)

AFFIDAVIT OF WITNESS
OF PLAINTIFF
(DEBT BUYER)

vs.

Defendant (Consumer)

State of New York, County of _____.

_____ being duly sworn, deposes and says:

I am over 18 and not a party to this action. I am the _____ (title) of _____ (plaintiff). In that position I am the custodian of the books and records of the debt buyer, and am aware of the procedures used for the import and storage of records transferred from the (creditor/debt seller) and the assignment of electronically stored business records.

Chain of Title:

Based upon the attached affidavit(s) of sale, on _____ (date) _____ (original creditor) sold a pool of charged-off accounts by a Purchase Agreement and a Bill of Sale to _____ (debt buyer). As part of that sale, electronic records of individual accounts kept in the in the ordinary course of business of _____ (creditor/seller) were transferred to _____ (debt buyer). The defendant's account subject of this lawsuit was included in the purchase, and _____ (buyer) received account records of the defendant. These records were incorporated into the debt buyer's records and kept in the regular course of business.

The account was then sold to the following debt buyers in order of occurrence:

1. _____
2. _____
3. _____
4. _____
5. _____ (plaintiff).

The defendant's account subject of this lawsuit was included in the purchase, and each debt buyer received account records of the defendant. These records were incorporated into the debt buyer's records and kept in the regular course of business.

I believe that there are no errors in these accounts. The above statements are true to the best of my knowledge.

Signed this _____ day of _____, _____.

(Name of Affiant)

Sworn before me this _____ day of _____, _____.

(Notary Stamp)

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PUBLIC LAW 111-24—MAY 22, 2009

CREDIT CARD ACCOUNTABILITY
RESPONSIBILITY AND DISCLOSURE ACT OF
2009

Public Law 111–24
111th Congress

An Act

May 22, 2009
[H.R. 627]

Credit Card
Accountability
Responsibility
and Disclosure
Act of 2009.
15 USC 1601
note.

To amend the Truth in Lending Act to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Credit Card Accountability Responsibility and Disclosure Act of 2009” or the “Credit CARD Act of 2009”.

(b) **TABLE OF CONTENTS.**—

The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Regulatory authority.
- Sec. 3. Effective date.

TITLE I—CONSUMER PROTECTION

- Sec. 101. Protection of credit cardholders.
- Sec. 102. Limits on fees and interest charges.
- Sec. 103. Use of terms clarified.
- Sec. 104. Application of card payments.
- Sec. 105. Standards applicable to initial issuance of subprime or “fee harvester” cards.
- Sec. 106. Rules regarding periodic statements.
- Sec. 107. Enhanced penalties.
- Sec. 108. Clerical amendments.
- Sec. 109. Consideration of Ability to repay.

TITLE II—ENHANCED CONSUMER DISCLOSURES

- Sec. 201. Payoff timing disclosures.
- Sec. 202. Requirements relating to late payment deadlines and penalties.
- Sec. 203. Renewal disclosures.
- Sec. 204. Internet posting of credit card agreements.
- Sec. 205. Prevention of deceptive marketing of credit reports.

TITLE III—PROTECTION OF YOUNG CONSUMERS

- Sec. 301. Extensions of credit to underage consumers.
- Sec. 302. Protection of young consumers from prescreened credit offers.
- Sec. 303. Issuance of credit cards to certain college students.
- Sec. 304. Privacy Protections for college students.
- Sec. 305. College Credit Card Agreements.

TITLE IV—GIFT CARDS

- Sec. 401. General-use prepaid cards, gift certificates, and store gift cards.
- Sec. 402. Relation to State laws.
- Sec. 403. Effective date.

TITLE V—MISCELLANEOUS PROVISIONS

- Sec. 501. Study and report on interchange fees.
- Sec. 502. Board review of consumer credit plans and regulations.

- Sec. 503. Stored value.
- Sec. 504. Procedure for timely settlement of estates of decedent obligors.
- Sec. 505. Report to Congress on reductions of consumer credit card limits based on certain information as to experience or transactions of the consumer.
- Sec. 506. Board review of small business credit plans and recommendations.
- Sec. 507. Small business information security task force.
- Sec. 508. Study and report on emergency pin technology.
- Sec. 509. Study and report on the marketing of products with credit offers.
- Sec. 510. Financial and economic literacy.
- Sec. 511. Federal trade commission rulemaking on mortgage lending.
- Sec. 512. Protecting Americans from violent crime.
- Sec. 513. GAO study and report on fluency in the English language and financial literacy.

SEC. 2. REGULATORY AUTHORITY.

15 USC 1602
note.

The Board of Governors of the Federal Reserve System (in this Act referred to as the “Board”) may issue such rules and publish such model forms as it considers necessary to carry out this Act and the amendments made by this Act.

SEC. 3. EFFECTIVE DATE.

15 USC 1602
note.

This Act and the amendments made by this Act shall become effective 9 months after the date of enactment of this Act, except as otherwise specifically provided in this Act.

TITLE I—CONSUMER PROTECTION

SEC. 101. PROTECTION OF CREDIT CARDHOLDERS.

(a) **ADVANCE NOTICE OF RATE INCREASE AND OTHER CHANGES REQUIRED.**—

(1) **AMENDMENT TO TILA.**—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

“(i) **ADVANCE NOTICE OF RATE INCREASE AND OTHER CHANGES REQUIRED.**—

“(1) **ADVANCE NOTICE OF INCREASE IN INTEREST RATE REQUIRED.**—In the case of any credit card account under an open end consumer credit plan, a creditor shall provide a written notice of an increase in an annual percentage rate (except in the case of an increase described in paragraph (1), (2), or (3) of section 171(b)) not later than 45 days prior to the effective date of the increase.

Deadline.

“(2) **ADVANCE NOTICE OF OTHER SIGNIFICANT CHANGES REQUIRED.**—In the case of any credit card account under an open end consumer credit plan, a creditor shall provide a written notice of any significant change, as determined by rule of the Board, in the terms (including an increase in any fee or finance charge, other than as provided in paragraph (1)) of the cardholder agreement between the creditor and the obligor, not later than 45 days prior to the effective date of the change.

Deadline.

“(3) **NOTICE OF RIGHT TO CANCEL.**—Each notice required by paragraph (1) or (2) shall be made in a clear and conspicuous manner, and shall contain a brief statement of the right of the obligor to cancel the account pursuant to rules established by the Board before the effective date of the subject rate increase or other change.

“(4) **RULE OF CONSTRUCTION.**—Closure or cancellation of an account by the obligor shall not constitute a default under

an existing cardholder agreement, and shall not trigger an obligation to immediately repay the obligation in full or through a method that is less beneficial to the obligor than one of the methods described in section 171(c)(2), or the imposition of any other penalty or fee.”.

15 USC 1637
note.

(2) EFFECTIVE DATE.—Notwithstanding section 3, section 127(i) of the Truth in Lending Act, as added by this subsection, shall become effective 90 days after the date of enactment of this Act.

(b) RETROACTIVE INCREASE AND UNIVERSAL DEFAULT PROHIBITED.—Chapter 4 of the Truth in Lending Act (15 U.S.C. 1666 et seq.) is amended—

15 USC 1666j.

(1) by redesignating section 171 as section 173; and

(2) by inserting after section 170 the following:

15 USC 1666i-1.

“SEC. 171. LIMITS ON INTEREST RATE, FEE, AND FINANCE CHARGE INCREASES APPLICABLE TO OUTSTANDING BALANCES.

“(a) IN GENERAL.—In the case of any credit card account under an open end consumer credit plan, no creditor may increase any annual percentage rate, fee, or finance charge applicable to any outstanding balance, except as permitted under subsection (b).

“(b) EXCEPTIONS.—The prohibition under subsection (a) shall not apply to—

“(1) an increase in an annual percentage rate upon the expiration of a specified period of time, provided that—

“(A) prior to commencement of that period, the creditor disclosed to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate that would apply after expiration of the period;

“(B) the increased annual percentage rate does not exceed the rate disclosed pursuant to subparagraph (A); and

“(C) the increased annual percentage rate is not applied to transactions that occurred prior to commencement of the period;

“(2) an increase in a variable annual percentage rate in accordance with a credit card agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public;

“(3) an increase due to the completion of a workout or temporary hardship arrangement by the obligor or the failure of the obligor to comply with the terms of a workout or temporary hardship arrangement, provided that—

“(A) the annual percentage rate, fee, or finance charge applicable to a category of transactions following any such increase does not exceed the rate, fee, or finance charge that applied to that category of transactions prior to commencement of the arrangement; and

“(B) the creditor has provided the obligor, prior to the commencement of such arrangement, with clear and conspicuous disclosure of the terms of the arrangement (including any increases due to such completion or failure);

or

“(4) an increase due solely to the fact that a minimum payment by the obligor has not been received by the creditor

Deadlines.

within 60 days after the due date for such payment, provided that the creditor shall—

“(A) include, together with the notice of such increase required under section 127(i), a clear and conspicuous written statement of the reason for the increase and that the increase will terminate not later than 6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time from the obligor during that period; and

“(B) terminate such increase not later than 6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time during that period.

“(c) REPAYMENT OF OUTSTANDING BALANCE.—

“(1) IN GENERAL.—The creditor shall not change the terms governing the repayment of any outstanding balance, except that the creditor may provide the obligor with one of the methods described in paragraph (2) of repaying any outstanding balance, or a method that is no less beneficial to the obligor than one of those methods.

“(2) METHODS.—The methods described in this paragraph are—

“(A) an amortization period of not less than 5 years, beginning on the effective date of the increase set forth in the notice required under section 127(i); or

“(B) a required minimum periodic payment that includes a percentage of the outstanding balance that is equal to not more than twice the percentage required before the effective date of the increase set forth in the notice required under section 127(i).

“(d) OUTSTANDING BALANCE DEFINED.—For purposes of this section, the term ‘outstanding balance’ means the amount owed on a credit card account under an open end consumer credit plan as of the end of the 14th day after the date on which the creditor provides notice of an increase in the annual percentage rate, fee, or finance charge in accordance with section 127(i).”

(c) INTEREST RATE REDUCTION ON OPEN END CONSUMER CREDIT PLANS.—Chapter 3 of the Truth in Lending Act (15 U.S.C. 1661 et seq.) is amended by adding at the end the following:

“SEC. 148. INTEREST RATE REDUCTION ON OPEN END CONSUMER CREDIT PLANS.

15 USC 1665c.

“(a) IN GENERAL.—If a creditor increases the annual percentage rate applicable to a credit card account under an open end consumer credit plan, based on factors including the credit risk of the obligor, market conditions, or other factors, the creditor shall consider changes in such factors in subsequently determining whether to reduce the annual percentage rate for such obligor.

“(b) REQUIREMENTS.—With respect to any credit card account under an open end consumer credit plan, the creditor shall—

“(1) maintain reasonable methodologies for assessing the factors described in subsection (a);

“(2) not less frequently than once every 6 months, review accounts as to which the annual percentage rate has been increased since January 1, 2009, to assess whether such factors have changed (including whether any risk has declined);

Deadlines.
Review.

“(3) reduce the annual percentage rate previously increased when a reduction is indicated by the review; and

“(4) in the event of an increase in the annual percentage rate, provide in the written notice required under section 127(i) a statement of the reasons for the increase.

“(c) **RULE OF CONSTRUCTION.**—This section shall not be construed to require a reduction in any specific amount.

Deadline.
Effective date.

“(d) **RULEMAKING.**—The Board shall issue final rules not later than 9 months after the date of enactment of this section to implement the requirements of and evaluate compliance with this section, and subsections (a), (b), and (c) shall become effective 15 months after that date of enactment.”.

(d) **INTRODUCTORY AND PROMOTIONAL RATES.**—Chapter 4 of the Truth in Lending Act (15 U.S.C. 1666 et seq.) is amended by inserting after section 171, as amended by this Act, the following:

Time periods.
15 USC 1666i-2.

“**SEC. 172. ADDITIONAL LIMITS ON INTEREST RATE INCREASES.**

“(a) **LIMITATION ON INCREASES WITHIN FIRST YEAR.**—Except in the case of an increase described in paragraph (1), (2), (3), or (4) of section 171(b), no increase in any annual percentage rate, fee, or finance charge on any credit card account under an open end consumer credit plan shall be effective before the end of the 1-year period beginning on the date on which the account is opened.

“(b) **PROMOTIONAL RATE MINIMUM TERM.**—No increase in any annual percentage rate applicable to a credit card account under an open end consumer credit plan that is a promotional rate (as that term is defined by the Board) shall be effective before the end of the 6-month period beginning on the date on which the promotional rate takes effect, subject to such reasonable exceptions as the Board may establish, by rule.”.

(e) **CLERICAL AMENDMENT.**—The table of sections for chapter 4 of the Truth in Lending Act is amended by striking the item relating to section 171 and inserting the following:

“171. Limits on interest rate, fee, and finance charge increases applicable to outstanding balances.

“172. Additional limits on interest rate increases.

“173. Applicability of State laws.”.

SEC. 102. LIMITS ON FEES AND INTEREST CHARGES.

(a) **IN GENERAL.**—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

“(j) **PROHIBITION ON PENALTIES FOR ON-TIME PAYMENTS.**—

“(1) **PROHIBITION ON DOUBLE-CYCLE BILLING AND PENALTIES FOR ON-TIME PAYMENTS.**—Except as provided in paragraph (2), a creditor may not impose any finance charge on a credit card account under an open end consumer credit plan as a result of the loss of any time period provided by the creditor within which the obligor may repay any portion of the credit extended without incurring a finance charge, with respect to—

“(A) any balances for days in billing cycles that precede the most recent billing cycle; or

“(B) any balances or portions thereof in the current billing cycle that were repaid within such time period.

“(2) **EXCEPTIONS.**—Paragraph (1) does not apply to—

“(A) any adjustment to a finance charge as a result of the resolution of a dispute; or

“(B) any adjustment to a finance charge as a result of the return of a payment for insufficient funds.

“(k) OPT-IN REQUIRED FOR OVER-THE-LIMIT TRANSACTIONS IF FEES ARE IMPOSED.—

“(1) IN GENERAL.—In the case of any credit card account under an open end consumer credit plan under which an over-the-limit fee may be imposed by the creditor for any extension of credit in excess of the amount of credit authorized to be extended under such account, no such fee shall be charged, unless the consumer has expressly elected to permit the creditor, with respect to such account, to complete transactions involving the extension of credit under such account in excess of the amount of credit authorized.

“(2) DISCLOSURE BY CREDITOR.—No election by a consumer under paragraph (1) shall take effect unless the consumer, before making such election, received a notice from the creditor of any over-the-limit fee in the form and manner, and at the time, determined by the Board. If the consumer makes the election referred to in paragraph (1), the creditor shall provide notice to the consumer of the right to revoke the election, in the form prescribed by the Board, in any periodic statement that includes notice of the imposition of an over-the-limit fee during the period covered by the statement.

Notice.

“(3) FORM OF ELECTION.—A consumer may make or revoke the election referred to in paragraph (1) orally, electronically, or in writing, pursuant to regulations prescribed by the Board. The Board shall prescribe regulations to ensure that the same options are available for both making and revoking such election.

Regulations.

“(4) TIME OF ELECTION.—A consumer may make the election referred to in paragraph (1) at any time, and such election shall be effective until the election is revoked in the manner prescribed under paragraph (3).

“(5) REGULATIONS.—The Board shall prescribe regulations—

“(A) governing disclosures under this subsection; and

“(B) that prevent unfair or deceptive acts or practices in connection with the manipulation of credit limits designed to increase over-the-limit fees or other penalty fees.

“(6) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit a creditor from completing an over-the-limit transaction, provided that a consumer who has not made a valid election under paragraph (1) is not charged an over-the-limit fee for such transaction.

“(7) RESTRICTION ON FEES CHARGED FOR AN OVER-THE-LIMIT TRANSACTION.—With respect to a credit card account under an open end consumer credit plan, an over-the-limit fee may be imposed only once during a billing cycle if the credit limit on the account is exceeded, and an over-the-limit fee, with respect to such excess credit, may be imposed only once in each of the 2 subsequent billing cycles, unless the consumer has obtained an additional extension of credit in excess of such credit limit during any such subsequent cycle or the consumer reduces the outstanding balance below the credit limit as of the end of such billing cycle.

“(1) **LIMIT ON FEES RELATED TO METHOD OF PAYMENT.**—With respect to a credit card account under an open end consumer credit plan, the creditor may not impose a separate fee to allow the obligor to repay an extension of credit or finance charge, whether such repayment is made by mail, electronic transfer, telephone authorization, or other means, unless such payment involves an expedited service by a service representative of the creditor.”.

(b) **REASONABLE PENALTY FEES.**—

(1) **IN GENERAL.**—Chapter 3 of the Truth in Lending Act (15 U.S.C. 1661 et seq.), as amended by this Act, is amended by adding at the end the following:

15 USC 1665d. **“SEC. 149. REASONABLE PENALTY FEES ON OPEN END CONSUMER CREDIT PLANS.**

“(a) **IN GENERAL.**—The amount of any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open end consumer credit plan in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee, over-the-limit fee, or any other penalty fee or charge, shall be reasonable and proportional to such omission or violation.

Deadline. “(b) **RULEMAKING REQUIRED.**—The Board, in consultation with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration Board, shall issue final rules not later than 9 months after the date of enactment of this section, to establish standards for assessing whether the amount of any penalty fee or charge described under subsection (a) is reasonable and proportional to the omission or violation to which the fee or charge relates. Subsection (a) shall become effective 15 months after the date of enactment of this section.

Effective date.

“(c) **CONSIDERATIONS.**—In issuing rules required by this section, the Board shall consider—

“(1) the cost incurred by the creditor from such omission or violation;

“(2) the deterrence of such omission or violation by the cardholder;

“(3) the conduct of the cardholder; and

“(4) such other factors as the Board may deem necessary or appropriate.

“(d) **DIFFERENTIATION PERMITTED.**—In issuing rules required by this subsection, the Board may establish different standards for different types of fees and charges, as appropriate.

“(e) **SAFE HARBOR RULE AUTHORIZED.**—The Board, in consultation with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration Board, may issue rules to provide an amount for any penalty fee or charge described under subsection (a) that is presumed to be reasonable and proportional to the omission or violation to which the fee or charge relates.”.

(2) **CLERICAL AMENDMENTS.**—Chapter 3 of the Truth in Lending Act (15 U.S.C. 1661 et seq.) is amended—

(A) in the chapter heading, by inserting “**AND LIMITS ON CREDIT CARD FEES**” after “**ADVERTISING**”; and

(B) in the table of sections for the chapter, by adding at the end the following:

“148. Interest rate reduction on open end consumer credit plans.
“149. Reasonable penalty fees on open end consumer credit plans.”.

SEC. 103. USE OF TERMS CLARIFIED.

Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

“(m) USE OF TERM ‘FIXED RATE’.—With respect to the terms of any credit card account under an open end consumer credit plan, the term ‘fixed’, when appearing in conjunction with a reference to the annual percentage rate or interest rate applicable with respect to such account, may only be used to refer to an annual percentage rate or interest rate that will not change or vary for any reason over the period specified clearly and conspicuously in the terms of the account.”.

SEC. 104. APPLICATION OF CARD PAYMENTS.

Section 164 of the Truth in Lending Act (15 U.S.C. 1666c) is amended—

(1) by striking the section heading and all that follows through “Payments” and inserting the following:

“§ 164. Prompt and fair crediting of payments

“(a) IN GENERAL.—Payments”;

(2) by inserting “, by 5:00 p.m. on the date on which such payment is due,” after “in readily identifiable form”;

(3) by striking “manner, location, and time” and inserting “manner, and location”; and

(4) by adding at the end the following:

“(b) APPLICATION OF PAYMENTS.—

“(1) IN GENERAL.—Upon receipt of a payment from a cardholder, the card issuer shall apply amounts in excess of the minimum payment amount first to the card balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest, until the payment is exhausted.

“(2) CLARIFICATION RELATING TO CERTAIN DEFERRED INTEREST ARRANGEMENTS.—A creditor shall allocate the entire amount paid by the consumer in excess of the minimum payment amount to a balance on which interest is deferred during the last 2 billing cycles immediately preceding the expiration of the period during which interest is deferred.

“(c) CHANGES BY CARD ISSUER.—If a card issuer makes a material change in the mailing address, office, or procedures for handling cardholder payments, and such change causes a material delay in the crediting of a cardholder payment made during the 60-day period following the date on which such change took effect, the card issuer may not impose any late fee or finance charge for a late payment on the credit card account to which such payment was credited.”.

SEC. 105. STANDARDS APPLICABLE TO INITIAL ISSUANCE OF SUBPRIME OR “FEE HARVESTER” CARDS.

Section 127 of the Truth in Lending Act (15 U.S.C. 1637), as amended by this Act, is amended by adding at the end the following new subsection:

“(n) STANDARDS APPLICABLE TO INITIAL ISSUANCE OF SUBPRIME OR ‘FEE HARVESTER’ CARDS.—

“(1) IN GENERAL.—If the terms of a credit card account under an open end consumer credit plan require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened, no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account.

“(2) RULE OF CONSTRUCTION.—No provision of this subsection may be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law.”.

SEC. 106. RULES REGARDING PERIODIC STATEMENTS.

(a) IN GENERAL.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

“(o) DUE DATES FOR CREDIT CARD ACCOUNTS.—

“(1) IN GENERAL.—The payment due date for a credit card account under an open end consumer credit plan shall be the same day each month.

“(2) WEEKEND OR HOLIDAY DUE DATES.—If the payment due date for a credit card account under an open end consumer credit plan is a day on which the creditor does not receive or accept payments by mail (including weekends and holidays), the creditor may not treat a payment received on the next business day as late for any purpose.”.

(b) LENGTH OF BILLING PERIOD.—

(1) IN GENERAL.—Section 163 of the Truth in Lending Act (15 U.S.C. 1666b) is amended to read as follows:

Deadlines.

“SEC. 163. TIMING OF PAYMENTS.

“(a) TIME TO MAKE PAYMENTS.—A creditor may not treat a payment on an open end consumer credit plan as late for any purpose, unless the creditor has adopted reasonable procedures designed to ensure that each periodic statement including the information required by section 127(b) is mailed or delivered to the consumer not later than 21 days before the payment due date.

“(b) GRACE PERIOD.—If an open end consumer credit plan provides a time period within which an obligor may repay any portion of the credit extended without incurring an additional finance charge, such additional finance charge may not be imposed with respect to such portion of the credit extended for the billing cycle of which such period is a part, unless a statement which includes the amount upon which the finance charge for the period is based was mailed or delivered to the consumer not later than 21 days before the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.”.

15 USC 1666b
note.

(2) EFFECTIVE DATE.—Notwithstanding section 3, section 163 of the Truth in Lending Act, as amended by this subsection, shall become effective 90 days after the date of enactment of this Act.

(c) CLERICAL AMENDMENTS.—The table of sections for chapter 4 of the Truth in Lending Act is amended—

(1) by striking the item relating to section 163 and inserting the following:

“163. Timing of payments.”; and

(2) by striking the item relating to section 171 and inserting the following:

“171. Universal defaults prohibited.

“172. Unilateral changes in credit card agreement prohibited.

“173. Applicability of State laws.”.

SEC. 107. ENHANCED PENALTIES.

Section 130(a)(2)(A) of the Truth in Lending Act (15 U.S.C. 1640(a)(2)(A)) is amended by striking “or (iii) in the” and inserting the following: “(iii) in the case of an individual action relating to an open end consumer credit plan that is not secured by real property or a dwelling, twice the amount of any finance charge in connection with the transaction, with a minimum of \$500 and a maximum of \$5,000, or such higher amount as may be appropriate in the case of an established pattern or practice of such failures; or (iv) in the”.

SEC. 108. CLERICAL AMENDMENTS.

Section 103(i) of the Truth in Lending Act (15 U.S.C. 1602(i)) is amended—

(1) by striking “term” and all that follows through “means” and inserting the following: “terms ‘open end credit plan’ and ‘open end consumer credit plan’ mean”; and

(2) in the second sentence, by inserting “or open end consumer credit plan” after “credit plan” each place that term appears.

SEC. 109. CONSIDERATION OF ABILITY TO REPAY.

(a) **IN GENERAL.**—Chapter 3 of the Truth in Lending Act (15 U.S.C. 1666 et seq.), as amended by this title, is amended by adding at the end the following:

“SEC. 150. CONSIDERATION OF ABILITY TO REPAY.

15 USC 1665e.

“A card issuer may not open any credit card account for any consumer under an open end consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required payments under the terms of such account.”.

(b) **CLERICAL AMENDMENT.**—Chapter 3 of the Truth in Lending Act (15 U.S.C. 1661 et seq.) is amended in the table of sections for the chapter, by adding at the end the following:

“150. Consideration of ability to repay.”.

TITLE II—ENHANCED CONSUMER DISCLOSURES

SEC. 201. PAYOFF TIMING DISCLOSURES.

(a) **IN GENERAL.**—Section 127(b)(11) of the Truth in Lending Act (15 U.S.C. 1637(b)(11)) is amended to read as follows:

“(11)(A) A written statement in the following form: ‘Minimum Payment Warning: Making only the minimum payment will increase the amount of interest you pay and the time

it takes to repay your balance.’, or such similar statement as is established by the Board pursuant to consumer testing.

“(B) Repayment information that would apply to the outstanding balance of the consumer under the credit plan, including—

“(i) the number of months (rounded to the nearest month) that it would take to pay the entire amount of that balance, if the consumer pays only the required minimum monthly payments and if no further advances are made;

“(ii) the total cost to the consumer, including interest and principal payments, of paying that balance in full, if the consumer pays only the required minimum monthly payments and if no further advances are made;

“(iii) the monthly payment amount that would be required for the consumer to eliminate the outstanding balance in 36 months, if no further advances are made, and the total cost to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays the balance over 36 months; and

“(iv) a toll-free telephone number at which the consumer may receive information about accessing credit counseling and debt management services.

“(C)(i) Subject to clause (ii), in making the disclosures under subparagraph (B), the creditor shall apply the interest rate or rates in effect on the date on which the disclosure is made until the date on which the balance would be paid in full.

“(ii) If the interest rate in effect on the date on which the disclosure is made is a temporary rate that will change under a contractual provision applying an index or formula for subsequent interest rate adjustment, the creditor shall apply the interest rate in effect on the date on which the disclosure is made for as long as that interest rate will apply under that contractual provision, and then apply an interest rate based on the index or formula in effect on the applicable billing date.

“(D) All of the information described in subparagraph (B) shall—

“(i) be disclosed in the form and manner which the Board shall prescribe, by regulation, and in a manner that avoids duplication; and

“(ii) be placed in a conspicuous and prominent location on the billing statement.

“(E) In the regulations prescribed under subparagraph (D), the Board shall require that the disclosure of such information shall be in the form of a table that—

“(i) contains clear and concise headings for each item of such information; and

“(ii) provides a clear and concise form stating each item of information required to be disclosed under each such heading.

“(F) In prescribing the form of the table under subparagraph (E), the Board shall require that—

“(i) all of the information in the table, and not just a reference to the table, be placed on the billing statement, as required by this paragraph; and

Regulations.

“(ii) the items required to be included in the table shall be listed in the order in which such items are set forth in subparagraph (B).

“(G) In prescribing the form of the table under subparagraph (D), the Board shall employ terminology which is different than the terminology which is employed in subparagraph (B), if such terminology is more easily understood and conveys substantially the same meaning.”

(b) CIVIL LIABILITY.—Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended, in the undesignated paragraph following paragraph (4), by striking the second sentence and inserting the following: “In connection with the disclosures referred to in subsections (a) and (b) of section 127, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 125, 127(a), or any of paragraphs (4) through (13) of section 127(b), or for failing to comply with disclosure requirements under State law for any term or item that the Board has determined to be substantially the same in meaning under section 111(a)(2) as any of the terms or items referred to in section 127(a), or any of paragraphs (4) through (13) of section 127(b).”

(c) GUIDELINES REQUIRED.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Board shall issue guidelines, by rule, in consultation with the Secretary of the Treasury, for the establishment and maintenance by creditors of a toll-free telephone number for purposes of providing information about accessing credit counseling and debt management services, as required under section 127(b)(11)(B)(iv) of the Truth in Lending Act, as added by this section.

(2) APPROVED AGENCIES.—Guidelines issued under this subsection shall ensure that referrals provided by the toll-free number referred to in paragraph (1) include only those nonprofit budget and credit counseling agencies approved by a United States bankruptcy trustee pursuant to section 111(a) of title 11, United States Code.

15 USC 1637
note.
Deadline.
Communications
and tele-
communications.

SEC. 202. REQUIREMENTS RELATING TO LATE PAYMENT DEADLINES AND PENALTIES.

Section 127(b)(12) of the Truth in Lending Act (15 U.S.C. 1637(b)(12)) is amended to read as follows:

“(12) REQUIREMENTS RELATING TO LATE PAYMENT DEADLINES AND PENALTIES.—

“(A) LATE PAYMENT DEADLINE REQUIRED TO BE DISCLOSED.—In the case of a credit card account under an open end consumer credit plan under which a late fee or charge may be imposed due to the failure of the obligor to make payment on or before the due date for such payment, the periodic statement required under subsection (b) with respect to the account shall include, in a conspicuous location on the billing statement, the date on which the payment is due or, if different, the date on which a late payment fee will be charged, together with the amount of the fee or charge to be imposed if payment is made after that date.

“(B) DISCLOSURE OF INCREASE IN INTEREST RATES FOR LATE PAYMENTS.—If 1 or more late payments under an

Notice.

open end consumer credit plan may result in an increase in the annual percentage rate applicable to the account, the statement required under subsection (b) with respect to the account shall include conspicuous notice of such fact, together with the applicable penalty annual percentage rate, in close proximity to the disclosure required under subparagraph (A) of the date on which payment is due under the terms of the account.

“(C) PAYMENTS AT LOCAL BRANCHES.—If the creditor, in the case of a credit card account referred to in subparagraph (A), is a financial institution which maintains branches or offices at which payments on any such account are accepted from the obligor in person, the date on which the obligor makes a payment on the account at such branch or office shall be considered to be the date on which the payment is made for purposes of determining whether a late fee or charge may be imposed due to the failure of the obligor to make payment on or before the due date for such payment.”.

SEC. 203. RENEWAL DISCLOSURES.

Section 127(d) of the Truth in Lending Act (15 U.S.C. 1637(d)) is amended—

- (1) by striking paragraph (2);
- (2) by redesignating paragraph (3) as paragraph (2); and
- (3) in paragraph (1), by striking “Except as provided in paragraph (2), a card issuer” and inserting the following: “A card issuer that has changed or amended any term of the account since the last renewal that has not been previously disclosed or”.

SEC. 204. INTERNET POSTING OF CREDIT CARD AGREEMENTS.

(a) IN GENERAL.—Section 122 of the Truth and Lending Act (15 U.S.C. 1632) is amended by adding at the end the following new subsection:

“(d) ADDITIONAL ELECTRONIC DISCLOSURES.—

“(1) POSTING AGREEMENTS.—Each creditor shall establish and maintain an Internet site on which the creditor shall post the written agreement between the creditor and the consumer for each credit card account under an open-end consumer credit plan.

“(2) CREDITOR TO PROVIDE CONTRACTS TO THE BOARD.—Each creditor shall provide to the Board, in electronic format, the consumer credit card agreements that it publishes on its Internet site.

“(3) RECORD REPOSITORY.—The Board shall establish and maintain on its publicly available Internet site a central repository of the consumer credit card agreements received from creditors pursuant to this subsection, and such agreements shall be easily accessible and retrievable by the public.

“(4) EXCEPTION.—This subsection shall not apply to individually negotiated changes to contractual terms, such as individually modified workouts or renegotiations of amounts owed by a consumer under an open end consumer credit plan.

“(5) REGULATIONS.—The Board, in consultation with the other Federal banking agencies (as that term is defined in

section 603) and the Federal Trade Commission, may promulgate regulations to implement this subsection, including specifying the format for posting the agreements on the Internet sites of creditors and establishing exceptions to paragraphs (1) and (2), in any case in which the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of consumer account holders.”.

SEC. 205. PREVENTION OF DECEPTIVE MARKETING OF CREDIT REPORTS.

(a) PREVENTING DECEPTIVE MARKETING.—Section 612 of the Fair Credit Reporting Act (15 U.S.C. 1681j) is amended by adding at the end the following:

“(g) PREVENTION OF DECEPTIVE MARKETING OF CREDIT REPORTS.—

“(1) IN GENERAL.—Subject to rulemaking pursuant to section 205(b) of the Credit CARD Act of 2009, any advertisement for a free credit report in any medium shall prominently disclose in such advertisement that free credit reports are available under Federal law at: ‘AnnualCreditReport.com’ (or such other source as may be authorized under Federal law).

“(2) TELEVISION AND RADIO ADVERTISEMENT.—In the case of an advertisement broadcast by television, the disclosures required under paragraph (1) shall be included in the audio and visual part of such advertisement. In the case of an advertisement broadcast by television or radio, the disclosure required under paragraph (1) shall consist only of the following: ‘This is not the free credit report provided for by Federal law’.”.

(b) RULEMAKING.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, the Federal Trade Commission shall issue a final rule to carry out this section.

(2) CONTENT.—The rule required by this subsection—

(A) shall include specific wording to be used in advertisements in accordance with this section; and

(B) for advertisements on the Internet, shall include whether the disclosure required under section 612(g)(1) of the Fair Credit Reporting Act (as added by this section) shall appear on the advertisement or the website on which the free credit report is made available.

(3) INTERIM DISCLOSURES.—If an advertisement subject to section 612(g) of the Fair Credit Reporting Act, as added by this section, is made public after the 9-month deadline specified in paragraph (1), but before the rule required by paragraph (1) is finalized, such advertisement shall include the disclosure: ‘Free credit reports are available under Federal law at: ‘AnnualCreditReport.com’.”.

15 USC 1681j
note.
Deadline.

TITLE III—PROTECTION OF YOUNG CONSUMERS

SEC. 301. EXTENSIONS OF CREDIT TO UNDERAGE CONSUMERS.

Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

“(8) APPLICATIONS FROM UNDERAGE CONSUMERS.—

“(A) PROHIBITION ON ISSUANCE.—No credit card may be issued to, or open end consumer credit plan established by or on behalf of, a consumer who has not attained the age of 21, unless the consumer has submitted a written application to the card issuer that meets the requirements of subparagraph (B).

“(B) APPLICATION REQUIREMENTS.—An application to open a credit card account by a consumer who has not attained the age of 21 as of the date of submission of the application shall require—

“(i) the signature of a cosigner, including the parent, legal guardian, spouse, or any other individual who has attained the age of 21 having a means to repay debts incurred by the consumer in connection with the account, indicating joint liability for debts incurred by the consumer in connection with the account before the consumer has attained the age of 21; or

“(ii) submission by the consumer of financial information, including through an application, indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account.

Regulations.

“(C) SAFE HARBOR.—The Board shall promulgate regulations providing standards that, if met, would satisfy the requirements of subparagraph (B)(ii).”.

SEC. 302. PROTECTION OF YOUNG CONSUMERS FROM PRESCREENED CREDIT OFFERS.

Section 604(c)(1)(B) of the Fair Credit Reporting Act (15 U.S.C. 1681b(c)(1)(B)) is amended—

(1) in clause (ii), by striking “and” at the end; and

(2) in clause (iii), by striking the period at the end and inserting the following: “; and

“(iv) the consumer report does not contain a date of birth that shows that the consumer has not attained the age of 21, or, if the date of birth on the consumer report shows that the consumer has not attained the age of 21, such consumer consents to the consumer reporting agency to such furnishing.”.

SEC. 303. ISSUANCE OF CREDIT CARDS TO CERTAIN COLLEGE STUDENTS.

Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following new subsection:

“(p) PARENTAL APPROVAL REQUIRED TO INCREASE CREDIT LINES FOR ACCOUNTS FOR WHICH PARENT IS JOINTLY LIABLE.—No increase may be made in the amount of credit authorized to be extended under a credit card account for which a parent, legal guardian, or spouse of the consumer, or any other individual has assumed joint liability for debts incurred by the consumer in connection with the account before the consumer attains the age of 21, unless that parent, guardian, or spouse approves in writing, and assumes joint liability for, such increase.”.

SEC. 304. PRIVACY PROTECTIONS FOR COLLEGE STUDENTS.

Section 140 of the Truth in Lending Act (15 U.S.C. 1650) is amended by adding at the end the following:

“(f) CREDIT CARD PROTECTIONS FOR COLLEGE STUDENTS.—

“(1) DISCLOSURE REQUIRED.—An institution of higher education shall publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.

“(2) INDUCEMENTS PROHIBITED.—No card issuer or creditor may offer to a student at an institution of higher education any tangible item to induce such student to apply for or participate in an open end consumer credit plan offered by such card issuer or creditor, if such offer is made—

“(A) on the campus of an institution of higher education;

“(B) near the campus of an institution of higher education, as determined by rule of the Board; or

“(C) at an event sponsored by or related to an institution of higher education.

“(3) SENSE OF THE CONGRESS.—It is the sense of the Congress that each institution of higher education should consider adopting the following policies relating to credit cards:

“(A) That any card issuer that markets a credit card on the campus of such institution notify the institution of the location at which such marketing will take place.

“(B) That the number of locations on the campus of such institution at which the marketing of credit cards takes place be limited.

“(C) That credit card and debt education and counseling sessions be offered as a regular part of any orientation program for new students of such institution.”.

SEC. 305. COLLEGE CREDIT CARD AGREEMENTS.

(a) IN GENERAL.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637), as otherwise amended by this Act, is amended by adding at the end the following:

“(r) COLLEGE CARD AGREEMENTS.—

“(1) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

“(A) COLLEGE AFFINITY CARD.—The term ‘college affinity card’ means a credit card issued by a credit card issuer under an open end consumer credit plan in conjunction with an agreement between the issuer and an institution of higher education, or an alumni organization or foundation affiliated with or related to such institution, under which such cards are issued to college students who have an affinity with such institution, organization and—

“(i) the creditor has agreed to donate a portion of the proceeds of the credit card to the institution, organization, or foundation (including a lump sum or 1-time payment of money for access);

“(ii) the creditor has agreed to offer discounted terms to the consumer; or

“(iii) the credit card bears the name, emblem, mascot, or logo of such institution, organization, or foundation, or other words, pictures, or symbols readily

identified with such institution, organization, or foundation.

“(B) COLLEGE STUDENT CREDIT CARD ACCOUNT.—The term ‘college student credit card account’ means a credit card account under an open end consumer credit plan established or maintained for or on behalf of any college student.

“(C) COLLEGE STUDENT.—The term ‘college student’ means an individual who is a full-time or a part-time student attending an institution of higher education.

“(D) INSTITUTION OF HIGHER EDUCATION.—The term ‘institution of higher education’ has the same meaning as in section 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002).

“(2) REPORTS BY CREDITORS.—

“(A) IN GENERAL.—Each creditor shall submit an annual report to the Board containing the terms and conditions of all business, marketing, and promotional agreements and college affinity card agreements with an institution of higher education, or an alumni organization or foundation affiliated with or related to such institution, with respect to any college student credit card issued to a college student at such institution.

“(B) DETAILS OF REPORT.—The information required to be reported under subparagraph (A) includes—

“(i) any memorandum of understanding between or among a creditor, an institution of higher education, an alumni association, or foundation that directly or indirectly relates to any aspect of any agreement referred to in such subparagraph or controls or directs any obligations or distribution of benefits between or among any such entities;

“(ii) the amount of any payments from the creditor to the institution, organization, or foundation during the period covered by the report, and the precise terms of any agreement under which such amounts are determined; and

“(iii) the number of credit card accounts covered by any such agreement that were opened during the period covered by the report, and the total number of credit card accounts covered by the agreement that were outstanding at the end of such period.

“(C) AGGREGATION BY INSTITUTION.—The information required to be reported under subparagraph (A) shall be aggregated with respect to each institution of higher education or alumni organization or foundation affiliated with or related to such institution.

Time period.

“(D) INITIAL REPORT.—The initial report required under subparagraph (A) shall be submitted to the Board before the end of the 9-month period beginning on the date of enactment of this subsection.

Public information.

“(3) REPORTS BY BOARD.—The Board shall submit to the Congress, and make available to the public, an annual report that lists the information concerning credit card agreements submitted to the Board under paragraph (2) by each institution of higher education, alumni organization, or foundation.”.

15 USC 1637 note.

(b) STUDY AND REPORT BY THE COMPTROLLER GENERAL.—

(1) **STUDY.**—The Comptroller General of the United States shall, from time to time, review the reports submitted by creditors under section 127(r) of the Truth in Lending Act, as added by this section, and the marketing practices of creditors to determine the impact that college affinity card agreements and college student card agreements have on credit card debt.

(2) **REPORT.**—Upon completion of any study under paragraph (1), the Comptroller General shall periodically submit a report to the Congress on the findings and conclusions of the study, together with such recommendations for administrative or legislative action as the Comptroller General determines to be appropriate.

TITLE IV—GIFT CARDS

SEC. 401. GENERAL-USE PREPAID CARDS, GIFT CERTIFICATES, AND STORE GIFT CARDS.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by redesignating sections 915 through 921 as sections 916 through 922, respectively; and

(2) by inserting after section 914 the following:

15 USC 1693
note, 1693m-
1693r.

“SEC. 915. GENERAL-USE PREPAID CARDS, GIFT CERTIFICATES, AND STORE GIFT CARDS.

15 USC 1693l-1.

“(a) **DEFINITIONS.**—In this section, the following definitions shall apply:

“(1) **DORMANCY FEE; INACTIVITY CHARGE OR FEE.**—The terms ‘dormancy fee’ and ‘inactivity charge or fee’ mean a fee, charge, or penalty for non-use or inactivity of a gift certificate, store gift card, or general-use prepaid card.

“(2) **GENERAL USE PREPAID CARD, GIFT CERTIFICATE, AND STORE GIFT CARD.**—

“(A) **GENERAL-USE PREPAID CARD.**—The term ‘general-use prepaid card’ means a card or other payment code or device issued by any person that is—

“(i) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines;

“(ii) issued in a requested amount, whether or not that amount may, at the option of the issuer, be increased in value or reloaded if requested by the holder;

“(iii) purchased or loaded on a prepaid basis; and

“(iv) honored, upon presentation, by merchants for goods or services, or at automated teller machines.

“(B) **GIFT CERTIFICATE.**—The term ‘gift certificate’ means an electronic promise that is—

“(i) redeemable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo;

“(ii) issued in a specified amount that may not be increased or reloaded;

“(iii) purchased on a prepaid basis in exchange for payment; and

“(iv) honored upon presentation by such single merchant or affiliated group of merchants for goods or services.

“(C) STORE GIFT CARD.—The term ‘store gift card’ means an electronic promise, plastic card, or other payment code or device that is—

“(i) redeemable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo;

“(ii) issued in a specified amount, whether or not that amount may be increased in value or reloaded at the request of the holder;

“(iii) purchased on a prepaid basis in exchange for payment; and

“(iv) honored upon presentation by such single merchant or affiliated group of merchants for goods or services.

“(D) EXCLUSIONS.—The terms ‘general-use prepaid card’, ‘gift certificate’, and ‘store gift card’ do not include an electronic promise, plastic card, or payment code or device that is—

“(i) used solely for telephone services;

“(ii) reloadable and not marketed or labeled as a gift card or gift certificate;

“(iii) a loyalty, award, or promotional gift card, as defined by the Board;

“(iv) not marketed to the general public;

“(v) issued in paper form only (including for tickets and events); or

“(vi) redeemable solely for admission to events or venues at a particular location or group of affiliated locations, which may also include services or goods obtainable—

“(I) at the event or venue after admission;

or

“(II) in conjunction with admission to such events or venues, at specific locations affiliated with and in geographic proximity to the event or venue.

“(3) SERVICE FEE.—

“(A) IN GENERAL.—The term ‘service fee’ means a periodic fee, charge, or penalty for holding or use of a gift certificate, store gift card, or general-use prepaid card.

“(B) EXCLUSION.—With respect to a general-use prepaid card, the term ‘service fee’ does not include a one-time initial issuance fee.

“(b) PROHIBITION ON IMPOSITION OF FEES OR CHARGES.—

“(1) IN GENERAL.—Except as provided under paragraphs (2) through (4), it shall be unlawful for any person to impose a dormancy fee, an inactivity charge or fee, or a service fee with respect to a gift certificate, store gift card, or general-use prepaid card.

“(2) EXCEPTIONS.—A dormancy fee, inactivity charge or fee, or service fee may be charged with respect to a gift certificate, store gift card, or general-use prepaid card, if—

“(A) there has been no activity with respect to the certificate or card in the 12-month period ending on the date on which the charge or fee is imposed;

“(B) the disclosure requirements of paragraph (3) have been met;

“(C) not more than one fee may be charged in any given month; and

“(D) any additional requirements that the Board may establish through rulemaking under subsection (d) have been met.

“(3) DISCLOSURE REQUIREMENTS.—The disclosure requirements of this paragraph are met if—

“(A) the gift certificate, store gift card, or general-use prepaid card clearly and conspicuously states—

“(i) that a dormancy fee, inactivity charge or fee, or service fee may be charged;

“(ii) the amount of such fee or charge;

“(iii) how often such fee or charge may be assessed;

and

“(iv) that such fee or charge may be assessed for inactivity; and

“(B) the issuer or vendor of such certificate or card informs the purchaser of such charge or fee before such certificate or card is purchased, regardless of whether the certificate or card is purchased in person, over the Internet, or by telephone.

“(4) EXCLUSION.—The prohibition under paragraph (1) shall not apply to any gift certificate—

“(A) that is distributed pursuant to an award, loyalty, or promotional program, as defined by the Board; and

“(B) with respect to which, there is no money or other value exchanged.

“(c) PROHIBITION ON SALE OF GIFT CARDS WITH EXPIRATION DATES.—

“(1) IN GENERAL.—Except as provided under paragraph (2), it shall be unlawful for any person to sell or issue a gift certificate, store gift card, or general-use prepaid card that is subject to an expiration date.

“(2) EXCEPTIONS.—A gift certificate, store gift card, or general-use prepaid card may contain an expiration date if—

“(A) the expiration date is not earlier than 5 years after the date on which the gift certificate was issued, or the date on which card funds were last loaded to a store gift card or general-use prepaid card; and

“(B) the terms of expiration are clearly and conspicuously stated.

“(d) ADDITIONAL RULEMAKING.—

“(1) IN GENERAL.—The Board shall—

“(A) prescribe regulations to carry out this section, in addition to any other rules or regulations required by this title, including such additional requirements as appropriate relating to the amount of dormancy fees, inactivity charges or fees, or service fees that may be assessed and the amount of remaining value of a gift certificate, store gift card, or general-use prepaid card below which such charges or fees may be assessed; and

Regulations.

“(B) shall determine the extent to which the individual definitions and provisions of the Electronic Fund Transfer Act or Regulation E should apply to general-use prepaid cards, gift certificates, and store gift cards.

“(2) CONSULTATION.—In prescribing regulations under this subsection, the Board shall consult with the Federal Trade Commission.

Deadline.

“(3) TIMING; EFFECTIVE DATE.—The regulations required by this subsection shall be issued in final form not later than 9 months after the date of enactment of the Credit CARD Act of 2009.”.

SEC. 402. RELATION TO STATE LAWS.

15 USC 1693q.

Section 920 of the Electronic Fund Transfer Act (as redesignated by this title) is amended by inserting “dormancy fees, inactivity charges or fees, service fees, or expiration dates of gift certificates, store gift cards, or general-use prepaid cards,” after “electronic fund transfers,”.

15 USC 1693l-1 note.

SEC. 403. EFFECTIVE DATE.

This title and the amendments made by this title shall become effective 15 months after the date of enactment of this Act.

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. STUDY AND REPORT ON INTERCHANGE FEES.

(a) STUDY REQUIRED.—The Comptroller General of the United States (in this section referred to as the “Comptroller”) shall conduct a study on use of credit by consumers, interchange fees, and their effects on consumers and merchants.

(b) SUBJECTS FOR REVIEW.—In conducting the study required by this section, the Comptroller shall review—

(1) the extent to which interchange fees are required to be disclosed to consumers and merchants, whether merchants are restricted from disclosing interchange or merchant discount fees, and how such fees are overseen by the Federal banking agencies or other regulators;

(2) the ways in which the interchange system affects the ability of merchants of varying size to negotiate pricing with card associations and banks;

(3) the costs and factors incorporated into interchange fees, such as advertising, bonus miles, and rewards, how such costs and factors vary among cards;

(4) the consequences of the undisclosed nature of interchange fees on merchants and consumers with regard to prices charged for goods and services;

(5) how merchant discount fees compare to the credit losses and other costs that merchants incur to operate their own credit networks or store cards;

(6) the extent to which the rules of payment card networks and their policies regarding interchange fees are accessible to merchants;

(7) other jurisdictions where the central bank has regulated interchange fees and the impact on retail prices to consumers in such jurisdictions;

(8) whether and to what extent merchants are permitted to discount for cash; and

(9) the extent to which interchange fees allow smaller financial institutions and credit unions to offer payment cards and compete against larger financial institutions.

(c) **REPORT REQUIRED.**—Not later than 180 days after the date of enactment of this Act, the Comptroller shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives containing a detailed summary of the findings and conclusions of the study required by this section, together with such recommendations for legislative or administrative actions as may be appropriate.

SEC. 502. BOARD REVIEW OF CONSUMER CREDIT PLANS AND REGULATIONS.

15 USC 1616.

(a) **REQUIRED REVIEW.**—Not later than 2 years after the effective date of this Act and every 2 years thereafter, except as provided in subsection (c)(2), the Board shall conduct a review, within the limits of its existing resources available for reporting purposes, of the consumer credit card market, including—

Deadlines.

(1) the terms of credit card agreements and the practices of credit card issuers;

(2) the effectiveness of disclosure of terms, fees, and other expenses of credit card plans;

(3) the adequacy of protections against unfair or deceptive acts or practices relating to credit card plans; and

(4) whether or not, and to what extent, the implementation of this Act and the amendments made by this Act has affected—

(A) cost and availability of credit, particularly with respect to non-prime borrowers;

(B) the safety and soundness of credit card issuers;

(C) the use of risk-based pricing; or

(D) credit card product innovation.

(b) **SOLICITATION OF PUBLIC COMMENT.**—In connection with conducting the review required by subsection (a), the Board shall solicit comment from consumers, credit card issuers, and other interested parties, such as through hearings or written comments.

(c) **REGULATIONS.**—

(1) **NOTICE.**—Following the review required by subsection (a), the Board shall publish a notice in the Federal Register that—

Federal Register, publication.

(A) summarizes the review, the comments received from the public solicitation, and other evidence gathered by the Board, such as through consumer testing or other research; and

(B) either—

(i) proposes new or revised regulations or interpretations to update or revise disclosures and protections for consumer credit cards, as appropriate; or

(ii) states the reason for the determination of the Board that new or revised regulations are not necessary.

(2) **REVISION OF REVIEW PERIOD FOLLOWING MATERIAL REVISION OF REGULATIONS.**—In the event that the Board materially revises regulations on consumer credit card plans, a review need not be conducted until 2 years after the effective date of the revised regulations, which thereafter shall be treated

as the new date for the biennial review required by subsection (a).

(d) **BOARD REPORT TO THE CONGRESS.**—The Board shall report to Congress not less frequently than every 2 years, except as provided in subsection (c)(2), on the status of its most recent review, its efforts to address any issues identified from the review, and any recommendations for legislation.

(e) **ADDITIONAL REPORTING.**—The Federal banking agencies (as that term is defined in section 3 of the Federal Deposit Insurance Act) and the Federal Trade Commission shall provide annually to the Board, and the Board shall include in its annual report to Congress under section 10 of the Federal Reserve Act, information about the supervisory and enforcement activities of the agencies with respect to compliance by credit card issuers with applicable Federal consumer protection statutes and regulations, including—

(1) this Act, the amendments made by this Act, and regulations prescribed under this Act and such amendments; and

(2) section 5 of the Federal Trade Commission Act, and regulations prescribed under the Federal Trade Commission Act, including part 227 of title 12 of the Code of Federal Regulations, as prescribed by the Board (referred to as “Regulation AA”).

31 USC 5311
note.
Deadline.
Regulations.

SEC. 503. STORED VALUE.

(a) **IN GENERAL.**—Not later than 270 days after the date of enactment of this Act, the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, shall issue regulations in final form implementing the Bank Secrecy Act, regarding the sale, issuance, redemption, or international transport of stored value, including stored value cards.

(b) **CONSIDERATION OF INTERNATIONAL TRANSPORT.**—Regulations under this section regarding international transport of stored value may include reporting requirements pursuant to section 5316 of title 31, United States Code.

(c) **EMERGING METHODS FOR TRANSMITTAL AND STORAGE IN ELECTRONIC FORM.**—Regulations under this section shall take into consideration current and future needs and methodologies for transmitting and storing value in electronic form.

SEC. 504. PROCEDURE FOR TIMELY SETTLEMENT OF ESTATES OF DECEDENT OBLIGORS.

15 USC 1631 et
seq.

(a) **IN GENERAL.**—Chapter 2 of the Truth in Lending Act (U.S.C. 1631 et seq.) is amended by adding at the end the following new section:

15 USC 1651.

“§ 140A Procedure for timely settlement of estates of decedent obligors

Regulations.

“The Board, in consultation with the Federal Trade Commission and each other agency referred to in section 108(a), shall prescribe regulations to require any creditor, with respect to any credit card account under an open end consumer credit plan, to establish procedures to ensure that any administrator of an estate of any deceased obligor with respect to such account can resolve outstanding credit balances in a timely manner.”

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 140 the following new item:

“140A. Procedure for timely settlement of estates of decedent obligors’.”.

SEC. 505. REPORT TO CONGRESS ON REDUCTIONS OF CONSUMER CREDIT CARD LIMITS BASED ON CERTAIN INFORMATION AS TO EXPERIENCE OR TRANSACTIONS OF THE CONSUMER.

(a) REPORT ON CREDITOR PRACTICES REQUIRED.—Before the end of the 1-year period beginning on the date of enactment of this Act, the Board, in consultation with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Trade Commission, shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the extent to which, during the 3-year period ending on such date of enactment, creditors have reduced credit limits or raised interest rates applicable to credit card accounts under open end consumer credit plans based on—

(1) the geographic location where a credit transaction with the consumer took place, or the identity of the merchant involved in the transaction;

(2) the credit transactions of the consumer, including the type of credit transaction, the type of items purchased in such transaction, the price of items purchased in such transaction, any change in the type or price of items purchased in such transactions, and other data pertaining to the use of such credit card account by the consumer; and

(3) the identity of the mortgage creditor which extended or holds the mortgage loan secured by the primary residence of the consumer.

(b) OTHER INFORMATION.—The report required under subsection (a) shall also include—

(1) the number of creditors that have engaged in the practices described in subsection (a);

(2) the extent to which the practices described in subsection (a) have an adverse impact on minority or low-income consumers;

(3) any other relevant information regarding such practices; and

(4) recommendations to the Congress on any regulatory or statutory changes that may be needed to restrict or prevent such practices.

SEC. 506. BOARD REVIEW OF SMALL BUSINESS CREDIT PLANS AND RECOMMENDATIONS.

(a) REQUIRED REVIEW.—Not later than 9 months after the date of enactment of this Act, the Board shall conduct a review of the use of credit cards by businesses with not more than 50 employees (in this section referred to as “small businesses”) and the credit card market for small businesses, including—

Deadline.

(1) the terms of credit card agreements for small businesses and the practices of credit card issuers relating to small businesses;

(2) the adequacy of disclosures of terms, fees, and other expenses of credit card plans for small businesses;

(3) the adequacy of protections against unfair or deceptive acts or practices relating to credit card plans for small businesses;

(4) the cost and availability of credit for small businesses, particularly with respect to non-prime borrowers;

(5) the use of risk-based pricing for small businesses;

(6) credit card product innovation relating to small businesses; and

(7) the extent to which small business owners use personal credit cards to fund their business operations.

Deadline.

(b) RECOMMENDATIONS.—Following the review required by subsection (a), the Board shall, not later than 12 months after the date of enactment of this Act—

Reports.

(1) provide a report to Congress that summarizes the review and other evidence gathered by the Board, such as through consumer testing or other research, and

(2) make recommendations for administrative or legislative initiatives to provide protections for credit card plans for small businesses, as appropriate.

SEC. 507. SMALL BUSINESS INFORMATION SECURITY TASK FORCE.

(a) DEFINITIONS.—In this section—

(1) the terms “Administration” and “Administrator” mean the Small Business Administration and the Administrator thereof, respectively;

(2) the term “small business concern” has the same meaning as in section 3 of the Small Business Act (15 U.S.C. 632); and

(3) the term “task force” means the task force established under subsection (b).

(b) ESTABLISHMENT.—The Administrator shall, in conjunction with the Secretary of Homeland Security, establish a task force, to be known as the “Small Business Information Security Task Force”, to address the information technology security needs of small business concerns and to help small business concerns prevent the loss of credit card data.

Recommendations.

(c) DUTIES.—The task force shall—

(1) identify—

(A) the information technology security needs of small business concerns; and

(B) the programs and services provided by the Federal Government, State Governments, and nongovernment organizations that serve those needs;

(2) assess the extent to which the programs and services identified under paragraph (1)(B) serve the needs identified under paragraph (1)(A);

(3) make recommendations to the Administrator on how to more effectively serve the needs identified under paragraph (1)(A) through—

(A) programs and services identified under paragraph (1)(B); and

(B) new programs and services promoted by the task force;

(4) make recommendations on how the Administrator may promote—

(A) new programs and services that the task force recommends under paragraph (3)(B); and

(B) programs and services identified under paragraph (1)(B);

(5) make recommendations on how the Administrator may inform and educate with respect to—

(A) the needs identified under paragraph (1)(A);

(B) new programs and services that the task force recommends under paragraph (3)(B); and

(C) programs and services identified under paragraph (1)(B);

(6) make recommendations on how the Administrator may more effectively work with public and private interests to address the information technology security needs of small business concerns; and

(7) make recommendations on the creation of a permanent advisory board that would make recommendations to the Administrator on how to address the information technology security needs of small business concerns.

(d) INTERNET WEBSITE RECOMMENDATIONS.—The task force shall make recommendations to the Administrator relating to the establishment of an Internet website to be used by the Administration to receive and dispense information and resources with respect to the needs identified under subsection (c)(1)(A) and the programs and services identified under subsection (c)(1)(B). As part of the recommendations, the task force shall identify the Internet sites of appropriate programs, services, and organizations, both public and private, to which the Internet website should link.

(e) EDUCATION PROGRAMS.—The task force shall make recommendations to the Administrator relating to developing additional education materials and programs with respect to the needs identified under subsection (c)(1)(A).

(f) EXISTING MATERIALS.—The task force shall organize and distribute existing materials that inform and educate with respect to the needs identified under subsection (c)(1)(A) and the programs and services identified under subsection (c)(1)(B).

(g) COORDINATION WITH PUBLIC AND PRIVATE SECTOR.—In carrying out its responsibilities under this section, the task force shall coordinate with, and may accept materials and assistance as it determines appropriate from, public and private entities, including—

(1) any subordinate officer of the Administrator;

(2) any organization authorized by the Small Business Act to provide assistance and advice to small business concerns;

(3) other Federal agencies, their officers, or employees; and

(4) any other organization, entity, or person not described in paragraph (1), (2), or (3).

(h) APPOINTMENT OF MEMBERS.—

(1) CHAIRPERSON AND VICE-CHAIRPERSON.—The task force shall have—

(A) a Chairperson, appointed by the Administrator; and

(B) a Vice-Chairperson, appointed by the Administrator, in consultation with appropriate nongovernmental organizations, entities, or persons.

(2) MEMBERS.—

Recommendations.

(A) CHAIRPERSON AND VICE-CHAIRPERSON.—The Chairperson and the Vice-Chairperson shall serve as members of the task force.

(B) ADDITIONAL MEMBERS.—

(i) IN GENERAL.—The task force shall have additional members, each of whom shall be appointed by the Chairperson, with the approval of the Administrator.

(ii) NUMBER OF MEMBERS.—The number of additional members shall be determined by the Chairperson, in consultation with the Administrator, except that—

(I) the additional members shall include, for each of the groups specified in paragraph (3), at least 1 member appointed from within that group; and

(II) the number of additional members shall not exceed 13.

(3) GROUPS REPRESENTED.—The groups specified in this paragraph are—

(A) subject matter experts;

(B) users of information technologies within small business concerns;

(C) vendors of information technologies to small business concerns;

(D) academics with expertise in the use of information technologies to support business;

(E) small business trade associations;

(F) Federal, State, or local agencies, including the Department of Homeland Security, engaged in securing cyberspace; and

(G) information technology training providers with expertise in the use of information technologies to support business.

(4) POLITICAL AFFILIATION.—The appointments under this subsection shall be made without regard to political affiliation.

(i) MEETINGS.—

(1) FREQUENCY.—The task force shall meet at least 2 times per year, and more frequently if necessary to perform its duties.

(2) QUORUM.—A majority of the members of the task force shall constitute a quorum.

(3) LOCATION.—The Administrator shall designate, and make available to the task force, a location at a facility under the control of the Administrator for use by the task force for its meetings.

(4) MINUTES.—

(A) IN GENERAL.—Not later than 30 days after the date of each meeting, the task force shall publish the minutes of the meeting in the Federal Register and shall submit to the Administrator any findings or recommendations approved at the meeting.

(B) SUBMISSION TO CONGRESS.—Not later than 60 days after the date that the Administrator receives minutes under subparagraph (A), the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of

Deadlines.
Federal Register,
publication.
Recommendations.

the House of Representatives such minutes, together with any comments the Administrator considers appropriate.

(5) FINDINGS.—

(A) IN GENERAL.—Not later than the date on which the task force terminates under subsection (m), the task force shall submit to the Administrator a final report on any findings and recommendations of the task force approved at a meeting of the task force.

Deadlines.
Reports.

(B) SUBMISSION TO CONGRESS.—Not later than 90 days after the date on which the Administrator receives the report under subparagraph (A), the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives the full text of the report submitted under subparagraph (A), together with any comments the Administrator considers appropriate.

(j) PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—Each member of the task force shall serve without pay for their service on the task force.

(2) TRAVEL EXPENSES.—Each member of the task force shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(3) DETAIL OF SBA EMPLOYEES.—The Administrator may detail, without reimbursement, any of the personnel of the Administration to the task force to assist it in carrying out the duties of the task force. Such a detail shall be without interruption or loss of civil status or privilege.

(4) SBA SUPPORT OF THE TASK FORCE.—Upon the request of the task force, the Administrator shall provide to the task force the administrative support services that the Administrator and the Chairperson jointly determine to be necessary for the task force to carry out its duties.

(k) NOT SUBJECT TO FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the task force.

(l) STARTUP DEADLINES.—The initial appointment of the members of the task force shall be completed not later than 90 days after the date of enactment of this Act, and the first meeting of the task force shall be not later than 180 days after the date of enactment of this Act.

(m) TERMINATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the task force shall terminate at the end of fiscal year 2013.

(2) EXCEPTION.—If, as of the termination date under paragraph (1), the task force has not complied with subsection (i)(4) with respect to 1 or more meetings, then the task force shall continue after the termination date for the sole purpose of achieving compliance with subsection (i)(4) with respect to those meetings.

(n) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$300,000 for each of fiscal years 2010 through 2013.

SEC. 508. STUDY AND REPORT ON EMERGENCY PIN TECHNOLOGY.

(a) **IN GENERAL.**—The Federal Trade Commission, in consultation with the Attorney General of the United States and the United States Secret Service, shall conduct a study on the cost-effectiveness of making available at automated teller machines technology that enables a consumer that is under duress to electronically alert a local law enforcement agency that an incident is taking place at such automated teller machine, including—

(1) an emergency personal identification number that would summon a local law enforcement officer to an automated teller machine when entered into such automated teller machine; and

(2) a mechanism on the exterior of an automated teller machine that, when pressed, would summon a local law enforcement to such automated teller machine.

(b) **CONTENTS OF STUDY.**—The study required under subsection (a) shall include—

(1) an analysis of any technology described in subsection (a) that is currently available or under development;

(2) an estimate of the number and severity of any crimes that could be prevented by the availability of such technology;

(3) the estimated costs of implementing such technology; and

(4) a comparison of the costs and benefits of not fewer than 3 types of such technology.

(c) **REPORT.**—Not later than 9 months after the date of enactment of this Act, the Federal Trade Commission shall submit to Congress a report on the findings of the study required under this section that includes such recommendations for legislative action as the Commission determines appropriate.

SEC. 509. STUDY AND REPORT ON THE MARKETING OF PRODUCTS WITH CREDIT OFFERS.

(a) **STUDY.**—The Comptroller General of the United States shall conduct a study on the terms, conditions, marketing, and value to consumers of products marketed in conjunction with credit card offers, including—

(1) debt suspension agreements;

(2) debt cancellation agreements; and

(3) credit insurance products.

(b) **AREAS OF CONCERN.**—The study conducted under this section shall evaluate—

(1) the suitability of the offer of products described in subsection (a) for target customers;

(2) the predatory nature of such offers; and

(3) specifically for debt cancellation or suspension agreements and credit insurance products, loss rates compared to more traditional insurance products.

(c) **REPORT TO CONGRESS.**—The Comptroller shall submit a report to Congress on the results of the study required by this section not later than December 31, 2010.

SEC. 510. FINANCIAL AND ECONOMIC LITERACY.

(a) **REPORT ON FEDERAL FINANCIAL AND ECONOMIC LITERACY EDUCATION PROGRAMS.**—

(1) **IN GENERAL.**—Not later than 9 months after the date of enactment of this Act, the Secretary of Education and the

Director of the Office of Financial Education of the Department of the Treasury shall coordinate with the President's Advisory Council on Financial Literacy—

(A) to evaluate and compile a comprehensive summary of all existing Federal financial and economic literacy education programs, as of the time of the report; and

(B) to prepare and submit a report to Congress on the findings of the evaluations.

(2) CONTENTS.—The report required by this subsection shall address, at a minimum—

(A) the 2008 recommendations of the President's Advisory Council on Financial Literacy;

(B) existing Federal financial and economic literacy education programs for grades kindergarten through grade 12, and annual funding to support these programs;

(C) existing Federal postsecondary financial and economic literacy education programs and annual funding to support these programs;

(D) the current financial and economic literacy education needs of adults, and in particular, low- and moderate-income adults;

(E) ways to incorporate and disseminate best practices and high quality curricula in financial and economic literacy education; and

(F) specific recommendations on sources of revenue to support financial and economic literacy education activities with a specific analysis of the potential use of credit card transaction fees.

(b) STRATEGIC PLAN.—

(1) IN GENERAL.—The Secretary of Education and the Director of the Office of Financial Education of the Department of the Treasury shall coordinate with the President's Advisory Council on Financial Literacy to develop a strategic plan to improve and expand financial and economic literacy education.

(2) CONTENTS.—The plan developed under this subsection shall—

(A) incorporate findings from the report and evaluations of existing Federal financial and economic literacy education programs under subsection (a); and

(B) include proposals to improve, expand, and support financial and economic literacy education based on the findings of the report and evaluations.

(3) PRESENTATION TO CONGRESS.—The plan developed under this subsection shall be presented to Congress not later than 6 months after the date on which the report under subsection (a) is submitted to Congress.

Deadline.

(c) EFFECTIVE DATE.—Notwithstanding section 3, this section shall become effective on the date of enactment of this Act.

SEC. 511. FEDERAL TRADE COMMISSION RULEMAKING ON MORTGAGE LENDING.

(a) IN GENERAL.—Section 626 of division D of the Omnibus Appropriations Act, 2009 (Public Law 111-8) is amended—

Ante, p. 678.

(1) in subsection (a)—

(A) by striking “Within” and inserting “(1) Within”;

(B) in paragraph (1), as designated by subparagraph

(A), by inserting after the first sentence the following:

“Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services.”; and

(C) by adding at the end the following:

“(2) Paragraph (1) shall not be construed to authorize the Federal Trade Commission to promulgate a rule with respect to an entity that is not subject to enforcement of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Commission.

Consultation.

“(3) Before issuing a final rule pursuant to the proceeding initiated under paragraph (1), the Federal Trade Commission shall consult with the Federal Reserve Board concerning any portion of the proposed rule applicable to acts or practices to which the provisions of the Truth in Lending Act (15 U.S.C. 1601 et seq.) may apply.

“(4) The Federal Trade Commission shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made part of this section.”; and

(2) in subsection (b)—

(A) by striking so much as precedes paragraph (2) and inserting the following:

“(b)(1) Except as provided in paragraph (6), in any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person subject to a rule prescribed under subsection (a) in a practice that violates such rule, the State, as *parens patriae*, may bring a civil action on behalf of the residents of the State in an appropriate district court of the United States or other court of competent jurisdiction—

“(A) to enjoin that practice;

“(B) to enforce compliance with the rule;

“(C) to obtain damages, restitution, or other compensation on behalf of residents of the State; or

“(D) to obtain penalties and relief provided by the Federal Trade Commission Act and such other relief as the court considers appropriate.”; and

(B) in paragraphs (2), (3), and (6), by striking “Commission” each place it appears and inserting “primary Federal regulator”.

15 USC 1638
note.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on March 12, 2009.

16 USC 1a–7b.

SEC. 512. PROTECTING AMERICANS FROM VIOLENT CRIME.

(a) **CONGRESSIONAL FINDINGS.**—Congress finds the following:

(1) The Second Amendment to the Constitution provides that “the right of the people to keep and bear Arms, shall not be infringed”.

(2) Section 2.4(a)(1) of title 36, Code of Federal Regulations, provides that “except as otherwise provided in this section and parts 7 (special regulations) and 13 (Alaska regulations), the following are prohibited: (i) Possessing a weapon, trap or net (ii) Carrying a weapon, trap or net (iii) Using a weapon, trap or net”.

(3) Section 27.42 of title 50, Code of Federal Regulations, provides that, except in special circumstances, citizens of the United States may not “possess, use, or transport firearms on national wildlife refuges” of the United States Fish and Wildlife Service.

(4) The regulations described in paragraphs (2) and (3) prevent individuals complying with Federal and State laws from exercising the second amendment rights of the individuals while at units of—

- (A) the National Park System; and
- (B) the National Wildlife Refuge System.

(5) The existence of different laws relating to the transportation and possession of firearms at different units of the National Park System and the National Wildlife Refuge System entrapped law-abiding gun owners while at units of the National Park System and the National Wildlife Refuge System.

(6) Although the Bush administration issued new regulations relating to the Second Amendment rights of law-abiding citizens in units of the National Park System and National Wildlife Refuge System that went into effect on January 9, 2009—

(A) on March 19, 2009, the United States District Court for the District of Columbia granted a preliminary injunction with respect to the implementation and enforcement of the new regulations; and

- (B) the new regulations—
- (i) are under review by the administration; and
 - (ii) may be altered.

(7) Congress needs to weigh in on the new regulations to ensure that unelected bureaucrats and judges cannot again override the Second Amendment rights of law-abiding citizens on 83,600,000 acres of National Park System land and 90,790,000 acres of land under the jurisdiction of the United States Fish and Wildlife Service.

(8) The Federal laws should make it clear that the second amendment rights of an individual at a unit of the National Park System or the National Wildlife Refuge System should not be infringed.

(b) **PROTECTING THE RIGHT OF INDIVIDUALS TO BEAR ARMS IN UNITS OF THE NATIONAL PARK SYSTEM AND THE NATIONAL WILDLIFE REFUGE SYSTEM.**—The Secretary of the Interior shall not promulgate or enforce any regulation that prohibits an individual from possessing a firearm including an assembled or functional firearm in any unit of the National Park System or the National Wildlife Refuge System if—

- (1) the individual is not otherwise prohibited by law from possessing the firearm; and
- (2) the possession of the firearm is in compliance with the law of the State in which the unit of the National Park System or the National Wildlife Refuge System is located.

SEC. 513. GAO STUDY AND REPORT ON FLUENCY IN THE ENGLISH LANGUAGE AND FINANCIAL LITERACY.

(a) **STUDY.**—The Comptroller General of the United States shall conduct a study examining—

- (1) the relationship between fluency in the English language and financial literacy; and

(2) the extent, if any, to which individuals whose native language is a language other than English are impeded in their conduct of their financial affairs.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that contains a detailed summary of the findings and conclusions of the study required under subsection (a).

Approved May 22, 2009.

LEGISLATIVE HISTORY—H.R. 627 (S. 414):

HOUSE REPORTS: No. 111–88 (Comm. on Financial Services).

SENATE REPORTS: No. 111–16 accompanying S. 414 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD, Vol. 155 (2009):

Apr. 29, 30, considered and passed House.

May 11–14, 19, considered and passed Senate, amended.

May 20, House concurred in Senate amendment.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2009):

May 22, Presidential remarks.





WORKING PAPERS

RESEARCH DEPARTMENT

**WORKING PAPER NO. 13-38
DEBT COLLECTION AGENCIES AND THE SUPPLY OF
CONSUMER CREDIT**

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May 20, 2013

RESEARCH DEPARTMENT, FEDERAL RESERVE BANK OF PHILADELPHIA

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Debt Collection Agencies and the Supply of Consumer Credit

Viktar Fedaseyeu*

May 20, 2013

Abstract

I examine contract enforcement in consumer credit markets by studying the role of third-party debt collectors. In order to identify the effect of debt collectors on credit supply, I construct a state-level index of the tightness of debt collection laws. I find that stricter regulations of third-party debt collectors are associated with a lower number of third-party debt collectors per capita and with fewer openings of revolving lines of credit. One additional restriction on debt collection activity reduces the number of debt collectors per capita by 15.9% of the sample mean and lowers the number of new revolving lines of credit by 2.2% of the sample mean. At the same time, regulations of third-party debt collectors do not affect secured consumer credit, which is consistent with the fact that debt collectors are used to enforce unsecured debt contracts. Stricter regulations of debt collectors decrease credit card recovery rates (by 9% of the sample mean for each additional restriction on debt collection activity), which appears to be the transmission mechanism by which debt collectors affect credit supply. The effect of debt collection laws is significant even when average credit scores are controlled for, meaning that consumer credit risk is not the only driver of credit access. My results can help explain the existence of a large market for unsecured consumer credit and shed light on contract enforcement in this market.

Keywords: household finance, consumer credit, lender protection, creditor rights, debt collection, law and finance

*Assistant Professor of Finance, Bocconi University. Email: viktar.fedaseyeu@unibocconi.it. I am deeply grateful to Phil Strahan for his unwavering support and encouragement and for the extensive feedback he has provided. I thank members of my dissertation committee, Tom Chemmanur, Darren Kisgen, Alan Marcus, Jonathan Reuter, Ronnie Sadka, and Hassan Tehranian, for their guidance. I benefited from helpful comments by Pierluigi Balduzzi, David Chapman, Ethan Cohen-Cole, Cliff Holderness, Edith Hotchkiss, Bob Hunt, Rich Hynes, Miles Kimball, Jeff Pontiff, Jun (QJ) Qian, Dubravka Ritter, Antoinette Schoar, Peter Tufano, Stephanie Wilshusen, seminar participants at Bocconi University, Boston College, Norwegian School of Economics and Business Administration (NHH), the Federal Reserve Bank of Philadelphia, and conference participants at the Household Finance Workshop of the 2010 NBER Summer Institute, the 2010 Financial Management Association Meetings, and the 2011 Western Finance Association Meetings. Aliaksandra Shelestava provided assistance with legal issues. Access to TransUnion's Trend Data solution for this project was provided through the Payment Cards Center at the Federal Reserve Bank of Philadelphia. Views expressed in this paper are not necessarily those of the Federal Reserve Bank of Philadelphia or the Federal Reserve System. All errors are my sole responsibility. This paper is available free of charge at www.philadelphiafed.org/research-and-data/publications/working-papers/.

1 Introduction

Consumer credit markets are large. At the end of 2012, the amount of consumer debt outstanding in the U.S., excluding loans secured by real estate, was \$2.779 trillion, compared to \$8.663 trillion in total nonfinancial corporate debt. Mortgage debt stood at \$9.431 trillion.¹ Despite the large size of retail credit markets, however, very little is known about contract enforcement mechanisms in those markets.² This paper starts to fill this void by examining a mechanism of creditor protection unique to retail credit markets: third-party debt collectors. They ensure that defaulted debts will not go away easily, in effect enforcing creditor rights after default. Debt collectors play a prominent role in retail credit markets, with 14.6% of American consumers having at least one account in collections.³

Unlike in consumer credit markets, contracts in corporate credit markets have been a focus of much academic research. Aghion and Bolton (1992), Bolton and Scharfstein (1990), and Hart and Moore (1998), for example, demonstrated the robustness of debt contracts in corporate debt markets, where creditors receive control rights over debtors' assets after default. In retail credit markets, however, creditors can never obtain control rights over debtors and do not have full access to debtors' assets, especially their most valuable asset—human capital.⁴ In addition, enforcing contracts over a large number of individual accounts with relatively small balances requires a technology different from that used to enforce contracts over relatively large corporate borrowers. Therefore, contract enforcement mechanisms developed

¹Source: <http://www.federalreserve.gov/Releases/z1>, Z.1 Release of March 7, 2013, Table D.3.

²A new strand of theoretical research is emerging that starts to exploit unique features of contract enforcement in consumer credit markets to model unsecured consumer credit. Drozd and Serrano-Padial (2013) show that enforcement of consumer credit contracts via debt collection can help explain the rapid expansion of credit card borrowing in the U.S. in the 1980s and over the 1990s; Athreya, Sanchez, Tam, and Young (2013) introduce a model of unsecured consumer credit in the presence of both formal bankruptcy and informal default.

³Source: The Quarterly Report on Household Debt and Credit, May 2013, Federal Reserve Bank of New York.

⁴This, however, has not always been the case. Debtors' prisons were common in the 19th century: One of English literature's finest authors, Charles Dickens, immortalized this institution in his novel *Little Dorrit* (Charles Dickens' father and his entire family were held in a debtors' prison during the writer's childhood). In Ancient Rome and other slavery-based civilizations, the borrower who defaulted could be sold into slavery, thus literally giving creditors full control over debtors after default. This statement can in no way be interpreted as an endorsement of slavery.

in corporate credit markets cannot function in retail credit markets without modifications.

Since creditors in retail credit markets lack direct access to debtors' human capital, they need a way to pressure the latter to share some of the income that accrues to their human capital. In order to exert this pressure, creditors often employ third-party debt collectors. The range of tactics utilized by such debt collectors is wide. They include repeated phone calls, letters, and other form of direct and indirect communication with debtors. Some debt collectors use unethical (and illegal) practices that include threats, harassment, and abusive language. In fact, third-party debt collection agencies are the most complained about industry in the U.S., generating about 20% of all consumer complaints filed with the Federal Trade Commission.⁵ In addition, more than 5% of all civil cases filed in the entire federal courts system are against debt collectors. Thus, the pressure that third-party debt collectors exert on American consumers is significant. The question that I raise in this paper is whether the presence of third-party debt collectors enables lenders to extend credit in the first place.

Stronger creditor protection should lead to more consumer credit, which is the primary hypothesis that I test in this paper. In order to identify the effect of debt collectors on credit supply I use variation in state laws. Stricter debt collection regulations, which make it more difficult for debt collectors to operate, should result in less effective contract enforcement and should therefore lower credit supply. Consistent with this hypothesis, I find that stricter regulations of third-party debt collectors are associated with a lower number of third-party debt collectors per capita and with fewer openings of revolving lines of credit. One additional restriction on debt collection activity reduces the number of debt collectors per capita by 15.9% of the sample mean and lowers the number of new revolving lines of credit by 2.2% of the sample mean. The reduction of debt collection employment comes mostly from large

⁵A complaint filed with the FTC does not necessarily mean that the collection firm violated the law.

debt collection establishments: The share of employment by small debt collection establishments (fewer than 10 employees) grows when debt collection laws are more stringent. This is consistent with the idea that debt collection regulations impose a tax on size for debt collection firms. Further, I find that stricter regulations of debt collectors decrease recovery rates on charged-off unsecured credit cards (by about 1.1 percentage points, or 9% of the sample mean, for each additional restriction on debt collection activity), which appears to be the transmission mechanism by which debt collectors affect credit supply. To summarize, stricter debt collection regulations reduce the number of debt collectors, who can therefore exert less pressure on debtors. This reduces recovery rates and makes lenders less willing to provide credit in the first place.

As with any study of credit supply, separating demand effects from supply effects is a challenge. My results could be driven by demand-side variation if stricter debt collection laws reduce demand for consumer credit. However, this seems implausible. On the contrary, stricter debt collection regulations should increase demand because they lower consumers' indirect costs of obtaining credit. This happens because stricter debt collection laws limit options available to debt collectors, which means it is less likely that consumers will be forced to repay the debt. As a result, this should bias the results against finding a negative effect of debt collection restrictions on the amount of credit. In addition, I include control variables that reflect the riskiness of the pool of borrowers (by using consumer credit scores) and also measure the number of loan applications that consumers have made (by counting the average number of credit inquiries), which should alleviate concerns over the demand-side variation. The fact that debt collection statutes matter even when credit scores are included is significant: It shows that creditor remedies (and debt collectors in particular) complement the protections afforded to creditors from quantification of credit risk through credit scoring. This means that consumer credit risk is not the only driver of credit access.

Another concern with my analysis is that changes in debt collection laws may be driven by general economic conditions that are correlated with the credit cycle. Controlling for income per capita and lags of income growth should mitigate this concern, but cannot eliminate it completely. In order to address this alternative explanation more directly I use a falsification test. Any unobserved variation in the credit cycle is likely to affect all types of credit similarly. In particular, a credit expansion that is not attributable to changes in debt collection laws should increase the levels of both secured and unsecured credit. At the same time, a credit expansion attributable to changes in debt collection laws should have no effect on secured debt. This is because debt collectors are usually employed to collect unsecured debt, since in the case of secured debt the creditor can repossess the underlying collateral. I find that regulations of third-party debt collectors do not appear to affect secured consumer credit. It is therefore unlikely that my results are driven by some unobservable factors that affect the credit cycle.

The results reported in this paper show that consumer credit markets have developed a mechanism of lender protection and that this mechanism has a direct effect on credit supply. I show that this mechanism retains explanatory power even after controlling for consumer credit scores and credit inquiries, which means that consumer credit risk is not the only driver of credit access. At the same time, my results do not imply that credit expansion generated by more efficient debt collection is welfare improving, and further research is needed to shed light on this issue. Although other factors such as social norms and the stigma associated with default surely play an important role, robust contract enforcement can help explain the existence of large and active retail credit markets and contribute to our understanding of how these markets function. In terms of policy implications, my results indicate that financial regulation that institutes strong consumer protection must be balanced with creditor rights in order for the latter to extend consumer credit in the first place.

The rest of this paper is organized as follows. Section 2 reviews related literature. Section 3 provides some institutional details about the debt collection industry. Section 4 provides details about the regulation of debt collection and develops the index of debt collection restrictions. Section 5 describes the data, estimation strategy, and empirical results as well as some robustness tests. Section 6 concludes.

2 Relation to existing literature

This paper is the first empirical study of debt collection in consumer credit markets. Therefore, it complements the large corporate finance literature on investor and creditor rights that followed La Porta, Lopez-de Silanes, Shleifer, and Vishny (1998). Extant work on creditor rights in consumer credit markets mostly focuses on institutional details. Hunt (2007) gives an overview of the debt collection industry and provides details about its institutional structure and regulatory environment. Fedaseyeu and Hunt (2013) propose a model of the debt collection industry to explain existing empirical facts, and they study welfare implications of outsourcing debt collection to third-party agencies. Hynes (2008) examines the process of debt collection in state courts and finds that consumers who are sued by creditors or debt collectors are drawn from low-income areas. He also finds that these consumers are not likely to file for bankruptcy. Hynes, Dawsey, and Ausubel (2009) show that states with anti-harassment statutes that apply to creditors collecting their own debts have lower bankruptcy filing rates, but borrowers living in these states are more likely to default without filing for bankruptcy.

This paper belongs to the growing literature on household finance. Campbell (2006) delineates the field. He finds that many households make effective investment decisions, while a less educated minority make significant mistakes. Tufano (2009) gives a recent overview of

household finance research and proposes the functional definition of this field. An active area of research in household finance focuses on consumers' access to credit and, in particular, on the demand for short-term high-interest loans such as payday loans. Melzer (2009) finds that access to payday loans does not seem to alleviate financial hardship, while Morse (2011) provides evidence that payday lending mitigates individual financial distress. The current paper complements this literature by studying a mechanism that enables traditional financial services providers to extend credit to risky borrowers.

This paper also complements the literature on personal bankruptcy, which focuses on explaining the rising rates of personal bankruptcy filings over the last two decades and on the effect of bankruptcy law on credit availability. Fay, Hurst, and White (2002) and Domowitz and Sartain (1999) find support for the strategic model of bankruptcy, which predicts that households are likely to file when their financial benefit from doing so is high. Gross and Souleles (2002) document that propensity to file for bankruptcy significantly increased from 1995 to 1997, even after controlling for a variety of personal risk characteristics, and they interpret this result as an increase in the borrowers' willingness to default. Dick and Lehnert (2010) show that the expansion of credit supply over time is responsible for rising personal bankruptcy rates, an explanation that was suggested by White (2007). Scott and Smith (1986) document that the Bankruptcy Reform Act of 1978, which made personal bankruptcy more pro-debtor, led to an increase in the contract interest rates on small business loans. Gropp, Scholz, and White (1997) find that generous state-level personal bankruptcy exemptions increase the amount of credit held by high-asset households and reduce the availability of credit for low-asset households. Debt collectors, the focus of this paper, provide a creditor protection mechanism, which complements bankruptcy as a consumer protection mechanism (at least in the U.S.). Moreover, since many consumers who face financial distress do not file for bankruptcy, their experience outside of bankruptcy (when they are in contact with

debt collectors) is highly relevant.

3 Industry overview

The size of the debt collection industry is significant. ACA International, an industry association of third-party debt collection agencies, conducts annual surveys of the industry. According to the latest survey available, the total amount collected in 2010 was \$54.9 billion, of which \$10.3 billion (or 19%) was retained as commissions.⁶ As of March 2010, the industry employed 148,479 debt collectors.⁷ For comparison, the total size of the U.S. police force is about 700,000 officers.

Debt collectors play an active role in retail credit markets by enforcing consumer credit contracts (primarily unsecured credit).⁸ They contact millions of American consumers every year. In the first quarter of 2013, 14.6% of American consumers had at least one account being processed by debt collectors.⁹ According to the Federal Trade Commission (FTC), which tracks consumer complaints, third-party debt collectors generate more complaints than any other industry. In 2010 the FTC received 140,036 complaints about third-party debt collectors, which represents 27% of all complaints received directly from consumers in 2010.¹⁰ In addition, the amount of civil litigation against debt collectors is significant. In 2009, there were 10,128 lawsuits filed by consumers against debt collection agencies,¹¹ which

⁶Source: <http://www.acainternational.org>.

⁷Source: U.S. Census Bureau, County Business Patterns Survey 2010, with imputations for undisclosed values in Arkansas, the District of Columbia, and West Virginia.

⁸In the case of secured debt, the creditor can repossess the underlying collateral after debtors default. Therefore, third-party debt collectors are rarely involved in collecting on secured debt. For example, in the case of auto loans, creditors use repossession agencies (“repo men” as they are known colloquially). Those agencies are separate from debt collectors that are the focus of this paper. County Business Patterns surveys track these two types of establishments in separate categories.

⁹Source: The Quarterly Report on Household Debt and Credit, May 2013, Federal Reserve Bank of New York.

¹⁰Source: Annual Report 2011: Fair Debt Collection Practices Act. Federal Trade Commission, Washington, D.C., March 2011.

¹¹Source: WebRecon LLC, published by InsideArm.com (<http://www.insidearm.com/daily/debt-collection-news/debt-collection/fdcpa-statistics-provided-by-webrecon/>). Of the 10,128 lawsuits, 8,287 were filed under the Fair Debt Collection Practices Act, 1,174 under the Fair Credit Reporting Act, and 28 under the Telephone Consumer Protection Act. The remaining suits were filed under various other federal acts and state consumer statutes.

represents 5.4% of 185,900 original civil cases filed in the U.S. District Courts in 2009.¹² Thus, debt collectors are a very visible presence in the lives of American households.¹³

Creditors turn to collectors after a loan has been in default for a certain period of time (usually after 180 days for credit card loans). Most debt collection agencies work on commission, in which case they return net proceeds to the original creditors. Some debt collection firms purchase debt from original creditors (for a fraction of its face value) and retain all collection revenues they can generate on that debt. This activity is termed debt buying. Debt buyers are usually large collection firms, and collections on purchased debt now constitute a significant share of industry revenues. The collection process is a human-intensive effort that requires debt collectors to constantly communicate with consumers. This communication is usually established over the telephone and by mail. Sometimes collection may require personal face-to-face contact, but such cases are rare.

Debt collectors' compensation is customarily tied to the amount of collections they generate. Therefore, they have incentives to be persistent.¹⁴ The extent to which debt collectors can be persistent is determined by state and federal law and by the way the law is enforced. Actions by federal and state regulators are a major concern and a topic of much discussion in the debt collection community.¹⁵ Collection agencies are sued regularly by state Attorney Generals,¹⁶ and those lawsuits bring high uncertainty owing to the potentially large penalties that can be imposed. In one recent example, on May 28, 2010, a jury in Texas awarded \$1.5 million in punitive damages against a debt collection agency, in addition to \$50,000 in

¹²Source: Judicial Business of the United States Courts, 2009. The total number of civil filings in 2009 was 276,397, which also includes removals from state courts, remands from courts of appeals, reopens, and transfers.

¹³According to InsideARM.com, several movie projects under way feature debt collectors.

¹⁴Being persistent is not illegal, unless debt collectors violate the law.

¹⁵InsideARM.com, a leading on-line resource for debt collectors, regularly sends newsletters to its subscribers. In the first quarter of 2010, 59 newsletters were distributed, 30 of which discussed issues related to regulation, lawsuits involving collectors, and law enforcement matters.

¹⁶New York Attorney General Andrew M. Cuomo, for example, started a statewide initiative in May 2009 to clean up the debt collection industry. As of May 2010, his office had shut down 14 debt collection companies and required others to reform their deceptive practices. Ten collectors were criminally prosecuted. Other recent actions against debt collectors were initiated by Attorneys General in West Virginia and Colorado.

mental anguish damages. The initial debt the agency was trying to collect was only \$200.¹⁷

Examples of debt collectors using unlawful practices are not uncommon; however, it is hard to establish their frequency relative to the total volume of the debt collection activity. At the same time, the large number of consumer complaints and lawsuits against debt collectors implies that the instance of illegal practices is not trivial. Without taking a stand on how prevalent illegal practices are, I list some of the practices mentioned during congressional hearings:¹⁸

- Phoning a debtor’s parent, impersonating a government prosecutor, and requesting the parent to get the debtor to call about a criminal investigation regarding the debtor.
- Threatening the debtor and his or her parent with criminal charges for capital gains tax fraud unless the balance of the debt is put on the parent’s credit card.
- Calling five to 15 neighbors in a brief period of time, informing them that the debtor is suspected of receiving stolen goods, and asking them to go to the debtor’s home and request the debtor to call the collector. This is called a “block party.” A variant is to hold an “office party” by calling the debtor’s fellow employees.
- Soliciting postdated checks in order to later threaten criminal prosecution for passing bad checks.
- Threatening to report Latinos to immigration authorities and posing as an immigration officer.
- Encouraging women to engage in prostitution and men to sell drugs to pay a debt.¹⁹

¹⁷*Allen Jones v. Advanced Call Center Technologies*. Source: InsideArm.com.

¹⁸The information below comes from the 1992 hearings, and it may be the case that industry practices have changed since then.

¹⁹Source: The Fair Debt Collection Practices Act: Hearing before the Subcommittee on Consumer Affairs and Coinage of the Committee on Banking, Finance, and Urban Affairs, House of Representatives, One Hundred Second Congress, second session, September 10, 1992. (Washington: U.S. G.P.O.: For sale by the U.S. G.P.O., Supt. of Docs., Congressional Sales Office, 1993).

It is therefore likely that debt collection regulations bind, at least for some debt collectors. The extent to which they bind and affect the number of debt collectors and the credit supply is an empirical question, addressed in my analysis below.

4 Regulation of third-party debt collection

Debt collection in the United States is regulated by a federal law, the Fair Debt Collection Practices Act of 1977 (FDCPA). Unlike many other federal statutes, the FDCPA permits states to adopt their own regulations if they provide greater protection to the consumer than the federal law. The FDCPA therefore establishes a floor on consumer protection from debt collectors. Forty-three states have their own laws that regulate collection practices. Many of these statutes provide consumers with protections similar to those found in the FDCPA.

However, state laws do differ in some important respects that limit the operations of third-party debt collectors. Some states (Arizona, for example) require third-party debt collection agencies to obtain a license, while others (California, for example) do not. Some states (Arkansas, for example) require third-party debt collection agencies to post bonds with state regulators before commencing debt collection activities, while others (Iowa, for example) do not. States also differ in the responsibilities they assign to state debt collection regulators and in the powers those regulators are granted. For example, some states (Florida is one) allow Attorneys General or special debt collection regulatory bodies to impose civil penalties on violators of debt collection laws. Some states also put limits on consumer civil remedies: Virginia statutes, for example, do not contain private right of action for consumers aggrieved by debt collectors.

State debt collection laws have changed over time: I have been able to identify 33 such changes in 22 states since 1999, of which six changes loosened restrictions on debt collectors

and 27 changes tightened restrictions on debt collectors.²⁰ I use those changes to construct an index of debt collection restrictions that enables me to quantify the tightness of debt collection laws. Initially, I assign to each state a value that is the sum of the following six indicator variables that represent broad restrictions on debt collection activities this state had in 1998: 1) whether the state had a special board or commission that regulated debt collection activities; 2) whether the state imposed licensing requirements on third-party debt collectors; 3) whether the state imposed bonding requirements on third-party debt collectors; 4) whether the state declared certain abusive debt collection practices unlawful; 5) whether the state granted consumers a private right of action against debt collectors; and 6) whether the state made violations of debt collection laws a criminal offense. Then, for each year in which I am able to identify a nontechnical change²¹ in debt collection laws I add 1 to the state index if the change can be interpreted as a tightening of debt collection laws and subtract 1 if the change can be interpreted as a loosening of debt collection laws. As a result, a higher value of the index implies a more restrictive environment for third-party debt collectors. Although giving each change equal importance in constructing the index does not accurately reflect the relative impacts of these regulations, it has the advantage of being transparent and easily reproducible.²² In addition, it does not require any subjective judgment on my part about the relative strengths of each restriction.

Consider Colorado, for example. As of 1998, it had all six of the broad restrictions on debt

²⁰The year 1999 was chosen because this is the first year when most of the dependent variables I use in my analysis are available. See Appendix A for a description of the procedure I used to identify relevant changes in state laws and Appendix B for a summary of those changes.

²¹I disregard technical changes because they are unlikely to have any material impact on the operations of debt collectors. For example, since 2004, California requires debt collectors to provide notice to debtors of their rights under the state and federal law. In another example, Florida replaced “Department of Financial Regulation” with “Office of Financial Regulation” in 2003.

²²States did not change their laws uniformly, which makes it problematic to determine the precise impact of each regulation. Consider the following three examples of tightening of debt collection laws. In 2004, Georgia allowed class action lawsuits against unlicensed debt collection activity. In 2010, Florida authorized its attorney general to take action against third-party debt collectors and increased the amount of administrative fines from \$1,000 to \$10,000. In 1999, Oregon made violations of debt collection laws a criminal offense. It is fairly straightforward to see that each of these changes made it more difficult for debt collectors to operate since it increased their potential losses. However, it is unclear whether administrative fines in Florida should have a smaller or larger impact than class action lawsuits in Georgia or criminal punishment in Oregon.

collection activities mentioned above. Therefore, the initial value of the index for Colorado is 6. In 2000, Colorado repealed the requirement that every individual debt collector has to be licensed (it retained the requirement that debt collection agencies need to be licensed) and shortened the statute of limitations for violations of debt collection laws from two years to one year. I interpret this change as a loosening of debt collection regulations and subtract 1 from the initial value of the index for Colorado. Thus, in 2000 the value of the index for Colorado is 5. It remains 5 until 2003, when Colorado limited applicability of private remedies (violations of regulations are subject only to administrative enforcement) and added an affirmative defense for debt collectors in lawsuits against them. I interpret this change as another loosening of debt collection regulations and subtract 1 from the 2002 value of the index. Thus, in 2003 the value of the index for Colorado is 4. There were no other significant changes in debt collection laws in Colorado after 2003, and hence the value of the index remains 4 until 2012.

5 Empirical analysis

5.1 Data and variables description

The variables I use in my analysis come from two main sources: Trend Data database (compiled by TransUnion) and credit union call reports. TransUnion, which is one of the three largest consumer reporting agencies in the United States, collects data on, among other things, the amount of various types of consumer credit and on delinquency rates in each state. These data are provided in part via a solution called Trend Data, a database built from a series of large random samples of U.S. consumer credit histories. Each quarter, TransUnion draws a nationally representative random sample that contains 10 percent of consumer credit histories on file with TransUnion in that quarter. Each credit history con-

tains variables on the amount of revolving, installment, auto, and mortgage borrowing, as well as consumer repayment behavior and credit scores. TransUnion then aggregates these variables at the county, MSA, state, and national level (I use the state-level dataset because my main explanatory variable is the index of state laws). I convert variables from quarterly to annual frequency by calculating the average of the four quarterly observations every year for each Trend Data variable I use in my analysis.²³

Revolving debt comprises accounts that are conventionally known as credit cards:²⁴ A credit card allows multiple advances up to a predetermined credit limit and repayment amounts largely at the discretion of the cardholder. Once they pay off the balance, cardholders may borrow this amount again. Installment loans are loans that have to be repaid in fixed installments over the life of the loan. They can be secured or unsecured. Auto loans are loans secured by motor vehicles while mortgage loans are loans secured by real estate. I use variables on revolving, bank auto, and mortgage debt in my analysis.

My analysis requires dependent variables that correctly reflect current credit conditions in each state and, in particular, the lenders' willingness to extend credit. Such variables are available in Trend Data beginning in the first quarter of 1999. For each quarter, Trend Data contains the number of new revolving lines of credit, the number of new auto loans, and the number of new mortgages, all normalized by the number of consumers with a credit report. Trend Data also reports average balances on these newly opened accounts.

In addition to variables on the number and balance of various loans by source of credit, Trend Data contains variables that reflect debtors' riskiness and their demand for credit.

²³I did not use quarterly data because doing so may inflate the statistical significance of my results since my main explanatory variable has an annual frequency (state debt collection laws did not change very often). Another reason to use annual frequency is the fact that accounts are reported to credit bureaus with a lag, which ranges from one to three months. Hence, using quarterly data may create measurement error in the dependent variable because some accounts opened in the current quarter will be reported only in the next quarter, which may reduce efficiency. Averaging over the four quarters mitigates this measurement error.

²⁴In Trend Data, revolving debt also includes some small home equity lines of credit. However, according to TransUnion, non-credit-card debt constitutes less than 10% of the total reported amount of revolving debt.

Riskiness can be measured by consumer credit scores, which are a widely used metric of borrowers' default probability and represent a rank-ordering of consumers' creditworthiness at a point in time. Demand for credit can be proxied by the number of credit inquiries: Whenever a consumer applies for a loan, the creditor initiates what is called a "hard pull" on the consumer's credit report (regardless of whether a loan is subsequently extended or not).²⁵ By counting the number of hard pulls, one can create a measure of how often consumers apply for credit, which is a proxy for credit demand.

Trend Data does not contain data on credit pricing or recovery rates. In order to obtain these variables, I supplement Trend Data with credit union call reports. Since commercial banks do not report data on a state-by-state basis, I cannot use bank call reports. By law, credit unions are allowed to lend only to their members, who must have a well-defined common bond (employer, location, or profession). Hence, credit unions are likely to be local credit providers. This enables me to construct credit card recovery rates and interest rates on credit cards and other unsecured loans by state.²⁶

Data on third-party debt collectors (the number of debt collection establishments and their employment) are available from the Census Bureau's County Business Patterns Survey since 1988.²⁷ Data on personal income come from the Bureau of Economic Analysis. Mid-year population estimates come from the Census Bureau, and the Consumer Price Index is obtained from the Bureau of Labor Statistics. Table 1 provides the list of variables I use in

²⁵TransUnion uses all hard pulls from consumers' credit reports in constructing respective Trend Data variables, regardless of whether they are used in the calculation of consumer credit scores. Generally, hard pulls are used in the calculation of consumer credit scores. However, there is an exception to this practice when consumers engage in "rate shopping." That is, when a consumer is looking for a mortgage, auto, or student loan and more than one lender requests his or her credit report, the calculation of the consumer's credit score excludes these inquiries made within 30 days of scoring. Also note that not all credit inquiries go to TransUnion: Many lenders pull a credit report from only a single credit bureau when evaluating a consumer credit application, and the distribution of hard inquiries across credit bureaus is not necessarily uniform. However, this distribution is determined by competition in the credit reporting industry and should be unrelated to state debt collection laws.

²⁶I exclude the Pentagon Federal Credit Union and the Navy Federal Credit Union because they provide credit across state lines. My results are not sensitive to the exclusion of these credit unions.

²⁷A single debt collection agency can have several establishments in one or several states, but the survey does not aggregate information at the agency (firm) level.

my analysis along with the source of data for each variable and the time period for which it is available. Table 2 provides summary statistics.²⁸

[INSERT TABLE 1 ABOUT HERE]

[INSERT TABLE 2 ABOUT HERE]

I exclude Delaware and South Dakota because these two states have the most favorable banking laws in the U.S. and are therefore home to the vast majority of national credit card banks. Note that while the state of incorporation governs the regulation of interest rates that banks with a national charter can offer (which is the primary reason many banks have moved to Delaware and South Dakota), the relevant jurisdiction for creditor remedies and collections law is the state where the consumer resides (or resided when he or she opened the account). I keep the years in which debt collection laws changed if the effective date of the change fell in the month of January. Otherwise, I exclude the years in which debt collection laws changed.

5.2 State laws and the number of debt collectors

After defaulting on unsecured debts, debtors are contacted by debt collectors who try to recover some of the money owed to creditors. Since collection is a human-intensive process, the likelihood that a debtor will be contacted by a debt collector should depend on the number of debt collectors: A higher number of collectors per capita translates into a higher probability that a consumer will be contacted by a debt collector, conditional on default.²⁹ Thus, a higher density of debt collectors should improve contract enforcement, all else equal. Factors that affect the number of debt collectors should therefore also affect the strength of

²⁸Since most of my dependent variables start in 1999, I report summary statistics for 1999-2012 even for the variables for which earlier data are available.

²⁹The probability of being contacted by a debt collector has likely changed over time due to technological changes in the debt collection process. I use time fixed effects in my analysis in order to absorb such technological changes.

contract enforcement in consumer credit markets and, by extension, influence credit supply. My purpose in this section is to establish that debt collection restrictions affect the number of third-party debt collectors.

In principle, stricter debt collection laws may reduce debt collectors' effectiveness without necessarily reducing their numbers (by restricting certain debt collection practices, for example). However, to the extent that lower efficiency of debt collectors translates into lower pay, would-be debt collectors should be more likely to choose other occupations, all else equal. Hence, it seems intuitive that stricter debt collection laws should reduce the number of debt collectors. A higher value of the index indicates a more restrictive environment for third-party debt collectors. Therefore, a higher value of the index should be associated with fewer debt collectors per capita.

I estimate the following model:

$$Y_{i,t} = \alpha_i + \gamma_t + \beta \text{Index}_{i,t} + \eta' \text{Controls}_{i,t} + \varepsilon_{i,t}, \quad (1)$$

where $Y_{i,t}$ is debt collector density (defined as the number of debt collectors per million people). The following controls are included: mean credit score (to control for the riskiness of the pool of borrowers), number of credit inquiries (to account for demand-driven variation), real income per capita (to control for general economic conditions), and three lags of real per capita income growth (in order to account for the local business cycle). Time fixed effects are included to remove macro-level trends, while state fixed effects eliminate unobservable time-invariant heterogeneity across states. Standard errors are clustered by state in all specifications throughout this paper. All nominal variables are converted to 2010 dollars using the Consumer Price Index (CPI).

[INSERT TABLE 3 ABOUT HERE]

Table 3 presents the results of estimating the effect of state debt collection restrictions on debt collector density. As expected, a more restrictive debt collection environment (reflected in a higher value of the index of debt collection restrictions) leads to a lower number of debt collectors per capita. The coefficient is statistically and economically significant: In the specification that includes all control variables, a one-point increase in the value of the index lowers debt collector density by 66.561, or 15.9% of the sample mean. The magnitude of this effect is stable across various specifications.

Stricter debt collection laws may also influence the composition of debt collection agencies, in addition to reducing the number of debt collectors and lowering their effectiveness. For instance, it may be the case, as suggested by Fedaseyeu and Hunt (2013), that smaller debt collection establishments are better able to avoid regulatory scrutiny. Under this hypothesis, stricter debt collection laws impose a tax on size for debt collection firms. Therefore, the share of debt collection employment by small firms relative to total debt collection employment should increase when debt collection laws are more stringent. In order to investigate this hypothesis, I regress the proportion of debt collectors employed by debt collection establishments with fewer than 10 employees relative to total debt collection employment on the index of debt collection restrictions. Table 4 presents the results of this estimation.³⁰

[INSERT TABLE 4 ABOUT HERE]

Consistent with the idea that stricter debt collection laws favor smaller debt collection establishments at the expense of larger ones, the share of employment by small debt collection establishments grows when there are more debt collection restrictions. A one-point increase in the value of the index increases this share by about 1.7 percentage points, or 13.8% of the sample mean. Thus, stricter debt collection laws reduce the number of debt collectors per

³⁰Notice that the Census Bureau often suppresses size distributions because of privacy concerns, which is why the number of observations is significantly reduced.

capita, and most of the decrease seems to come from larger debt collection agencies.

5.3 State laws and the supply of unsecured credit

In this section I study the effect of debt collection laws on unsecured consumer credit. The results of the previous section indicate that a higher value of the index of debt collection restrictions leads to fewer debt collectors. This, in turn, should decrease the supply of unsecured consumer credit.

There are two ways in which lenders can lower credit supply: They may extend fewer loans and/or reduce the size of the loans they offer. I start by analyzing the effect of debt collection restrictions on the number of new loans. Table 5 presents estimates from regressions of the number of new revolving lines of credit per thousand consumers on the index of debt collection restrictions.

[INSERT TABLE 5 ABOUT HERE]

The effect of debt collection restrictions on the number of revolving lines of credit is negative, statistically strong, and economically significant. In the specification that includes all control variables, a one-point increase in the value of the index reduces the number of new revolving lines of credit per thousand consumers by 2.680, or 2.2% of the sample mean. As with debt collector density above, the magnitude of this effect is stable across various specifications.

Even though I cannot observe credit supply directly, this negative effect cannot be attributed to demand since it is implausible that stricter debt collection regulations reduce the demand for credit. On the contrary, stricter debt collection regulations should increase demand because they lower consumers' indirect costs of obtaining credit. This happens because stricter debt collection laws limit the options available to debt collectors, making

it less likely that consumers will be forced to repay the debt. This should bias the results against finding a negative effect of debt collection restrictions on the amount of credit.

[INSERT TABLE 6 ABOUT HERE]

The second channel through which lenders can change credit supply is by adjusting the size of the loan. Table 6 explores this channel, presenting estimates from regressions of average balances of new revolving loans on the index of debt collection restrictions. I do not find any statistically distinguishable effect of debt collection restrictions on revolving loan balances (and the magnitude of the coefficient varies substantially across different specifications). The point estimates are negative, however, suggesting that lenders are reducing the size of the loans.³¹

5.4 State laws and pricing of unsecured credit

Apart from the number of loans and their size, effective debt collection may influence the pricing of credit. Its ex ante effect on pricing, however, is ambiguous. On the one hand, the expansion of credit supply may lead to lower interest rates. On the other hand, lenders may be willing to expand the pool of borrowers by extending credit to riskier applicants. In this case, the average equilibrium interest rate may go up because these new borrowers should be charged higher interest commensurate with their risk characteristics.³²

[INSERT TABLE 7 ABOUT HERE]

I find no significant effect of state debt collection laws on the pricing of unsecured credit card loans (see Table 7). One explanation is that lenders do not adjust their pricing in

³¹Due to the nature of revolving credit, consumers have the flexibility to determine the exact amount of their borrowing (they can borrow up to a prespecified credit limit). Therefore, lenders have less control over revolving loan balances than over the number of revolving loans they issue.

³²Slightly more formally, assume that r_s is the interest rate charged to the safe borrowers and r_r is the interest rate charged to the risky borrowers ($r_s < r_r$). If debt collection is ineffective and only safe borrowers obtain credit, the equilibrium interest rate is r_s . When debt collection is effective and both types of borrowers obtain credit, the equilibrium interest rate is $r_s\omega + r_r(1 - \omega)$, where ω is the share of credit obtained by safe borrowers. It is immediate that $r_s < r_s\omega + r_r(1 - \omega)$.

response to debt collection effectiveness. However, the interest rate I observe (reported by credit unions) is the average interest rate on all credit card loans outstanding, not just the new loans (the latter interest rate is not reported). Therefore, my pricing regressions may have insufficient power.

5.5 The transmission mechanism: The results on loan recoveries

There are two potential channels by which debt collectors can influence credit supply. The first possible channel is changes in debtors' likelihood of default. Stricter debt collection laws and the resulting weaker enforcement of consumer credit contracts may prompt debtors to default more often, and a higher likelihood of default should make lenders less willing to extend credit in the first place. The second channel is changes in recovery rates conditional on debtors' default. Stricter debt collection laws and the resulting weaker enforcement of consumer credit contracts should directly reduce recoveries, which, in turn, should make lenders less willing to extend credit. The effect of debt collection laws on delinquencies and credit card recovery rates is shown in Table 8. In the first three columns of Table 8, the dependent variable is the number of revolving borrowers 90 days or more past due (per thousand consumers). In the last three columns the dependent variable is the average recovery rate on charged-off unsecured credit card loans.

[INSERT TABLE 8 ABOUT HERE]

I find no statistically distinguishable effect of debt collection laws on the likelihood that debtors will default on their revolving loans. On the other hand, stricter debt collection laws do appear to lower recovery rates on charged-off credit card loans. The corresponding coefficient is negative and statistically significant. It's also economically large: A one-point increase in the value of the index (in the specification that includes all control variables)

reduces recovery rates by 1.1 percentage point, or 9% of the sample mean. This suggests that the primary way in which debt collectors influence credit supply is through loan recoveries after default.

5.6 Alternative explanations and robustness tests

One concern with my analysis so far is that changes in debt collection laws may be driven by general economic conditions that are correlated with the credit cycle. Controlling for income per capita and lags of income growth should mitigate this concern, but cannot eliminate it completely. In order to address this alternative explanation more directly, I use a falsification test. Any unobserved variation in the credit cycle is likely to affect all types of credit similarly. In particular, a credit expansion that is not attributable to changes in debt collection laws should increase the levels of both secured and unsecured credit. At the same time, a credit expansion attributable to changes in debt collection laws should have no effect on secured debt. This is because debt collectors are usually employed to collect unsecured debt, since in the case of secured debt the creditor can repossess the underlying collateral.³³

[INSERT TABLE 9 ABOUT HERE]

Table 9 presents estimates from regressions of the number of new bank auto loans (in the first three columns) and the number of new mortgages (in the last three columns) on the index of debt collection restrictions. Changes in debt collection laws do not exhibit statistically distinguishable effects on either auto loans or mortgages. It is therefore unlikely that unobservable variations in the credit cycle drive my results.

³³In the case of auto loans, the collateral can be relocated by the consumer and its repossession by the creditor may be complicated. In those instances, creditors use repossession agencies (“repo men” as they are known colloquially). Those agencies are separate from debt collectors. County Business Patterns surveys track these two types of establishments in separate categories.

Another concern is the influence of outliers. In particular, my results can be driven by individual states that experienced a very rapid growth in the amount of revolving debt after relaxing their debt collection laws or a very rapid decline in the amount of revolving debt after tightening their debt collection laws. In order to investigate this possibility, I run the same regressions as before, but exclude states that changed their debt collection laws from the analysis one by one. The results of these regressions are presented in Table 10. Each row in this table presents the coefficients from two regressions, after excluding the state specified on the left. The first is the regression of debt collector density on the index of debt collection restrictions and all controls. The second is the regression of the number of new revolving lines of credit on the index of debt collection restrictions and all controls. I report the coefficient on the index of debt collection restrictions from each of those regressions, showing standard errors in parentheses.

[INSERT TABLE 10 ABOUT HERE]

The coefficients reported in Table 10 are in line with those reported above in terms of their magnitude and statistical significance. The regression of new revolving lines of credit on the index of debt collection laws produces the smallest coefficient when Rhode Island is excluded from the analysis, which is unsurprising since Rhode Island undertook the most drastic overhaul of its debt collection laws and is therefore likely to be the most informative state.³⁴

[INSERT TABLE 11 ABOUT HERE]

Finally, my results could potentially be driven by some irregularities during the recent financial crisis. In order to alleviate this concern, I repeat the analysis after excluding

³⁴Rhode Island had no restrictions on debt collection activity until 2007, when it adopted a Fair Debt Collection Practices Act that introduced private remedies, defined prohibited practices, and made violations of debt collection laws a criminal offense.

2007-09 from the sample. The results, presented in Table 11, continue to exhibit the same basic pattern as before. The point estimates are also in line with those from earlier tests. I conclude that my results are unlikely to be driven by outliers or by the recent financial crisis.

6 Conclusion

I examine contract enforcement in the consumer credit market by studying the role of third-party debt collectors. I construct a state-level index of the tightness of debt collection laws and find that stricter regulations of third-party debt collectors are associated with a lower number of third-party debt collectors per capita and with fewer openings of revolving lines of credit. One additional restriction on debt collection activity reduces the number of debt collectors per capita by 15.9% of the sample mean and lowers the number of new revolving lines of credit by 2.2% of the sample mean. Most of the reduction in debt collection employment comes from larger debt collection agencies: The share of employment by small debt collection agencies (fewer than 10 employees) grows when debt collection laws are more stringent. I also find that stricter regulations of debt collectors decrease recovery rates on charged-off unsecured credit cards (by 1.1 percentage point, or 8% of the sample mean for each additional restriction on debt collection activity), which appears to be the primary transmission mechanism by which debt collectors affect credit supply. Overall, stricter debt collection regulations reduce the number of debt collectors, making them less able to exert pressure on debtors. This reduces recovery rates and makes lenders less willing to provide credit in the first place. At the same time, regulations of third-party debt collectors do not affect secured consumer credit. It is therefore unlikely that my results are driven by some unobservable factors that affect the credit cycle (since those factors are likely to influence all types of credit at the same time).

My results are unlikely to be driven by credit demand since stricter debt collection regulations should increase demand because they lower consumers' indirect costs of obtaining credit. This happens because stricter debt collection laws limit the options available to debt collectors, making it less likely that consumers will be forced to repay the debt. As a result, this should bias the results against finding a negative effect of debt collection restrictions on the amount of credit.

The results reported in this paper show that consumer credit markets have developed a mechanism for lender protection and that this mechanism has a direct effect on credit supply. I show that this mechanism retains explanatory power even after controlling for consumer credit scores and credit inquiries, which means that consumer credit risk is not the only driver of credit access. At the same time, my results do not imply that credit expansion generated by more efficient debt collection is welfare improving, and further research is needed to shed light on this issue. Although other factors such as social norms and the stigma associated with default surely play an important role, robust contract enforcement can help explain the existence of large and active retail credit markets and contribute to our understanding of how these markets function. In terms of policy implications, my results indicate that financial regulation that institutes strong consumer protection must be balanced with creditor rights in order for the latter to extend consumer credit in the first place.

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Table 1: Variables

VARIABLES	Availability	Source
Index of debt collection restrictions	1998-2012	State session laws
Debt collectors per million people	1988-2010	County Business Patterns
Share of debt collectors employed by establishments with fewer than 10 employees	1988-2010	County Business Patterns
Number of new revolving lines of credit, per thousand consumers	1999-2012	Trend Data (data item rennc, multiplied by 1,000)
Average balance of new revolving lines of credit	1999-2012	Trend Data (data item reabn, expressed in 2010 dollars using CPI)
Number of revolving borrowers 90 days or more past due, per thousand borrowers	1992-2012	Trend Data (data item repb90m, multiplied by 1,000)
Average recovery rate on charged-off unsecured credit card loans	1998-2012	Credit union call reports (account 681, divided by account 680)
Average interest rate on unsecured credit card loans	1998-2012	Credit union call reports (account 521)
Number of new bank auto loans, per thousand consumers	1999-2012	Trend Data (data item bannc, multiplied by 1,000)
Number of new mortgage loans, per thousand consumers	1999-2012	Trend Data (data item mtmnc, multiplied by 1,000)
Average number of credit inquiries	2000-2012	Trend Data (data item itoinq180)
Average TransUnion credit score	1998-2012	Trend Data (data item tmmean)

Table 2: Summary statistics (for the sample period 1999-2011)

VARIABLES	Mean	Median	St. dev.
Index of debt collection restrictions	3.40	4.00	1.96
Debt collectors per million people	419.90	376.09	211.25
Share of debt collectors employed by establishments with fewer than 10 employees	12.13%	9.63%	8.86%
Number of new revolving lines of credit, per thousand consumers	119.26	119.33	24.67
Average balance of new revolving lines of credit	\$1930.28	\$1724.23	\$779.83
Number of revolving borrowers 90 days or more past due, per thousand borrowers	15.72	13.88	6.58
Average recovery rate on charged-off unsecured credit card loans	11.84%	11.00%	5.36%
Average interest rate on unsecured credit card loans	5.74%	5.57%	2.05%
Number of new bank auto loans, per thousand consumers	6.93	6.51	2.75
Number of new mortgage loans, per thousand consumers	9.25	8.44	4.15
Average number of credit inquiries	104.84	103.48	24.95
Average TransUnion credit score	660.47	664.20	22.39
Real income per capita (in \$000)	38.71	37.08	6.80
Growth rate of real income per capita	1.02%	1.09%	2.39%

Summary statistics for 1999-2012. All dollar values are expressed in 2010 dollars using the CPI.

Table 3: Regressions of debt collector density on the index of state debt collection restrictions

VARIABLES	Debt collector density		
Index of debt collection restrictions	-52.471** (19.571)	-66.604*** (20.830)	-66.561*** (20.805)
Average number of credit inquiries over 180 days		0.956 (0.731)	1.282* (0.740)
Average TransUnion credit score			-4.328* (2.407)
Real income per capita, \$000	-7.580 (7.727)	-9.170 (8.385)	-5.493 (8.410)
First lag of income growth	339.318 (332.318)	293.220 (347.026)	282.051 (347.170)
Second lag of income growth	-58.755 (375.174)	-70.585 (358.832)	6.594 (346.144)
Third lag of income growth	172.496 (327.640)	138.498 (343.670)	240.302 (320.794)
Year fixed effects	YES	YES	YES
State fixed effects	YES	YES	YES
Observations	520	483	483
Adjusted R-squared	0.821	0.829	0.832

Standard errors (clustered by state) are reported in parentheses below the coefficients. *** indicates statistical significance at the 1% level, ** indicates statistical significance at the 5% level, * indicates statistical significance at the 10% level. The dependent variable comes from County Business Patterns.

Table 4: Regressions of the share of debt collectors employed by establishments with fewer than 10 employees on the index of state debt collection restrictions

VARIABLES	Share of debt collectors employed by establishments with fewer than 10 employees		
Index of debt collection restrictions	0.016** (0.007)	0.018** (0.007)	0.017** (0.007)
Average number of credit inquiries over 180 days		0.000 (0.000)	-0.000 (0.000)
Average TransUnion credit score			0.002 (0.002)
Real income per capita, \$000	0.006 (0.008)	0.009 (0.009)	0.008 (0.008)
First lag of income growth	-0.029 (0.197)	-0.093 (0.215)	-0.088 (0.214)
Second lag of income growth	-0.261* (0.150)	-0.271 (0.181)	-0.306 (0.199)
Third lag of income growth	-0.204 (0.234)	-0.240 (0.271)	-0.256 (0.279)
Year fixed effects	YES	YES	YES
State fixed effects	YES	YES	YES
Observations	257	236	236
Adjusted R-squared	0.870	0.871	0.872

Standard errors (clustered by state) are reported in parentheses below the coefficients. *** indicates statistical significance at the 1% level, ** indicates statistical significance at the 5% level, * indicates statistical significance at the 10% level. The dependent variable comes from County Business Patterns. The number of observations is significantly reduced because of missing observations due to nondisclosure by the Census Bureau.

Table 5: Regressions of the number of new revolving lines of credit (per thousand consumers) on the index of state debt collection restrictions

VARIABLES	Number of new revolving lines of credit, per thousand consumers		
Index of debt collection restrictions	-2.789** (1.084)	-3.147*** (1.062)	-2.680*** (0.746)
Average number of credit inquiries over 180 days		0.099** (0.042)	0.054* (0.031)
Average TransUnion credit score			0.623*** (0.129)
Real income per capita, \$000	-0.599*** (0.159)	-0.372 (0.271)	-1.014*** (0.198)
First lag of income growth	17.856 (15.143)	17.724 (14.918)	22.344 (14.110)
Second lag of income growth	27.999 (21.468)	26.635 (19.136)	23.040 (15.241)
Third lag of income growth	31.794 (20.020)	18.973 (19.688)	12.818 (17.598)
Year fixed effects	YES	YES	YES
State fixed effects	YES	YES	YES
Observations	658	613	613
Adjusted R-squared	0.955	0.961	0.966

Standard errors (clustered by state) are reported in parentheses below the coefficients. *** indicates statistical significance at the 1% level, ** indicates statistical significance at the 5% level, * indicates statistical significance at the 10% level. The dependent variable comes from Trend Data.

Table 6: Regressions of the average balance of new revolving lines of credit on the index of state debt collection restrictions

VARIABLES	Average balance of new revolving lines of credit		
Index of debt collection restrictions	-42.458 (41.106)	-27.459 (49.893)	-6.629 (50.963)
Average number of credit inquiries over 180 days		12.438*** (3.389)	10.434*** (2.785)
Average TransUnion credit score			27.826*** (8.506)
Real income per capita, \$000	79.883*** (10.063)	99.437*** (14.695)	70.763*** (13.266)
First lag of income growth	1154.310 (1,494.626)	1029.248 (1,448.314)	1235.419 (1,424.549)
Second lag of income growth	1765.119 (1,383.337)	1146.988 (1,169.886)	986.542 (1,062.074)
Third lag of income growth	549.679 (1,053.161)	55.111 (928.653)	-219.552 (888.912)
Year fixed effects	YES	YES	YES
State fixed effects	YES	YES	YES
Observations	658	613	613
Adjusted R-squared	0.810	0.835	0.845

Standard errors (clustered by state) are reported in parentheses below the coefficients. *** indicates statistical significance at the 1% level, ** indicates statistical significance at the 5% level, * indicates statistical significance at the 10% level. The dependent variable comes from Trend Data.

Table 7: Regressions of the average interest rate on unsecured credit card loans on the index of state debt collection restrictions

VARIABLES	Average interest rate on unsecured credit card loans		
Index of debt collection restrictions	-4.210 (13.491)	-7.405 (12.217)	-4.536 (11.004)
Average number of credit inquiries over 180 days		-0.229 (0.356)	-0.505 (0.372)
Average TransUnion credit score			3.832** (1.455)
Real income per capita, \$000	-0.325 (4.288)	0.363 (4.066)	-3.586 (4.312)
First lag of income growth	218.875 (192.573)	176.180 (170.567)	204.574 (174.895)
Second lag of income growth	276.887* (153.303)	223.242 (145.528)	201.145 (137.169)
Third lag of income growth	298.264* (149.968)	273.129* (140.366)	235.301* (134.236)
Year fixed effects	YES	YES	YES
State fixed effects	YES	YES	YES
Observations	658	613	613
Adjusted R-squared	0.917	0.925	0.930

Standard errors (clustered by state) are reported in parentheses below the coefficients. *** indicates statistical significance at the 1% level, ** indicates statistical significance at the 5% level, * indicates statistical significance at the 10% level. The dependent variable comes from credit union call reports.

Table 8: Regressions of revolving borrowers' delinquency rates and credit card recovery rates on the index of debt collection restrictions

VARIABLES	Number of revolving borrowers 90 days or more past due, per thousand borrowers	Average recovery rate on charged-off unsecured credit card loans
Index of debt collection restrictions	0.685 (0.547)	0.667 (0.656)
Average number of credit inquiries over 180 days	-0.034 (0.022)	-0.012** (0.005)
Average TransUnion credit score	-0.118 (0.077)	0.001*** (0.000)
Real income per capita, \$000	-0.376 (0.226)	-0.003 (0.002)
First lag of income growth	-1.929 (9.182)	0.383*** (0.126)
Second lag of income growth	-20.311** (8.253)	0.324** (0.126)
Third lag of income growth	-15.299** (6.568)	0.202** (0.095)
Year fixed effects	YES	YES
State fixed effects	YES	YES
Observations	658	613
Adjusted R-squared	0.894	0.655

Standard errors (clustered by state) are reported in parentheses below the coefficients. *** indicates statistical significance at the 1% level, ** indicates statistical significance at the 5% level, * indicates statistical significance at the 10% level. The number of revolving borrowers 90 days or more past due comes from Trend Data; the average recovery rate on charged-off unsecured credit card loans comes from credit union call reports.

Table 9: Regressions of secured credit on the index of debt collection restrictions

VARIABLES	Number of new bank auto loans, per thousand consumers	Number of new mortgage loans, per thousand consumers
Index of debt collection restrictions	-0.298 (0.269)	-0.348 (0.262)
Average number of credit inquiries over 180 days	0.003 (0.007)	0.076*** (0.012)
Average TransUnion credit score	0.007 (0.030)	0.117*** (0.035)
Real income per capita, \$000	0.160*** (0.059)	0.264** (0.101)
First lag of income growth	6.977** (3.021)	0.411*** (0.046)
Second lag of income growth	6.354** (2.834)	2.972 (5.225)
Third lag of income growth	6.717*** (2.219)	5.299 (4.332)
Year fixed effects	YES	YES
State fixed effects	YES	YES
Observations	658	613
Adjusted R-squared	0.830	0.870

Standard errors (clustered by state) are reported in parentheses below the coefficients. *** indicates statistical significance at the 1% level, ** indicates statistical significance at the 5% level, * indicates statistical significance at the 10% level. Dependent variables come from Trend Data.

Table 10: Results of regressions of debt collector density and the number of new revolving lines of credit on the index of debt collection restrictions, excluding individual states

STATE	Debt collector density		Number of new revolving lines of credit, per thousand consumers	
Arkansas	-67.409***	(20.797)	-2.768***	(0.787)
Colorado	-64.589***	(23.240)	-2.558***	(0.878)
Connecticut	-66.349***	(21.874)	-2.524***	(0.885)
Florida	-69.787***	(21.670)	-2.759***	(0.765)
Georgia	-64.497***	(20.273)	-2.614***	(0.856)
Hawaii	-67.167***	(20.750)	-2.638***	(0.829)
Idaho	-64.468***	(21.451)	-2.733***	(0.838)
Illinois	-70.520***	(21.292)	-2.779***	(0.782)
Indiana	-68.287***	(20.824)	-2.709***	(0.805)
Louisiana	-71.867***	(21.824)	-2.682***	(0.854)
Maine	-72.563***	(21.520)	-2.452***	(0.866)
Maryland	-66.261***	(21.607)	-2.529***	(0.866)
Minnesota	-68.090***	(21.205)	-2.428***	(0.903)
Nevada	-66.721***	(21.146)	-2.714***	(0.831)
North Carolina	-67.129***	(21.286)	-2.740***	(0.829)
North Dakota	-69.472***	(22.256)	-2.851***	(0.768)
Oregon	-69.587***	(21.338)	-2.518***	(0.857)
Pennsylvania	-68.295***	(20.735)	-2.593***	(0.824)
Rhode Island	-75.501***	(21.453)	-1.847**	(0.851)
South Carolina	-67.311***	(21.012)	-2.560***	(0.831)
Tennessee	-50.598***	(13.724)	-2.664***	(0.863)
Utah	-67.805***	(20.848)	-2.598***	(0.829)
Washington	-67.248***	(20.946)	-2.660***	(0.816)

Each row presents regression results after excluding observations pertaining to the specified state. The first number in each row is the coefficient of the index of debt collection laws from the regression specification given in the right-most column of Table 3. The third number in each row is the coefficient of the index of debt collection laws from the regression specification given in the right-most column of Table 5. Standard errors (clustered by state) are reported in parentheses next to the coefficients. *** indicates statistical significance at the 1% level, ** indicates statistical significance at the 5% level, * indicates statistical significance at the 10% level.

Table 11: Regressions of debt collector density and number of new revolving lines of credit on the index of debt collection restrictions, excluding 2007-2009

VARIABLES	Debt collector density		Number of new revolving lines of credit, per thousand consumers	
Index of debt collection restrictions	-41.701** (18.156)	-66.679*** (15.335)	-65.988*** (16.031)	-2.460** (1.188)
Average number of credit inquiries over 180 days		1.169 (0.791)	1.406* (0.805)	0.109** (0.048)
Average TransUnion credit score			-3.396 (2.444)	0.613*** (0.152)
Real income per capita, \$000	-3.507 (7.185)	-5.750 (8.048)	-2.231 (8.399)	-0.442 (0.268)
First lag of income growth	366.605 (379.608)	286.436 (434.416)	231.038 (435.619)	26.695 (20.836)
Second lag of income growth	-51.099 (454.007)	-75.605 (431.343)	-58.400 (422.465)	12.127 (24.968)
Third lag of income growth	128.286 (397.004)	144.356 (454.538)	205.707 (437.154)	9.364 (23.594)
Year fixed effects	YES	YES	YES	YES
State fixed effects	YES	YES	YES	YES
Observations	387	350	350	474
Adjusted R-squared	0.808	0.818	0.819	0.959

Standard errors (clustered by state) are reported in parentheses below the coefficients. *** indicates statistical significance at the 1% level, ** indicates statistical significance at the 5% level, * indicates statistical significance at the 10% level. Debt collector density comes from County Business Patterns; the number of new revolving lines of credit comes from Trend Data.

A Appendix A: Identifying Changes in State Debt Collection Laws

I use three sources to identify the statutes that regulate third-party debt collection in each state: 1) National Consumer Law Center’s publication “Fair Debt Collection” (various years), 2) National List of Attorneys white papers with summaries of debt collection laws, and 3) Google search. Having identified relevant statutes, I then obtained the history of legislative changes. Some states after each section of their statutes list individual laws that either enacted or amended a particular section. Some of the states that do not list relevant laws in their statutes publish annual correspondence tables of laws that affected particular statutes. For the remaining states, I obtained the list of relevant laws either by keyword search on the websites of those states’ legislatures or via LexisNexis (whenever LexisNexis provides references to the legislative history).

Having thus obtained the list of laws that enacted or amended debt collection statutes, I obtained the text of those laws either from the websites of state legislatures or from the HeinOnline database (I managed to obtain all relevant session laws in either of these two ways). After reading all of those laws, I discarded technical changes and used the rest in constructing the index of debt collection restrictions described above.

B Appendix B: A Brief Summary of Changes in State Debt Collection Laws

I briefly describe changes in debt collection laws below.

1. ARKANSAS: In 2009 (effective April 10, 2009), Arkansas adopted a state Fair Debt Collection Practices Act, which introduced private remedies (including class action lawsuits) and added prohibited practices and various other provisions.

2. COLORADO: In 2000 (effective July 1, 2000), Colorado repealed the requirement that every individual debt collector is obliged to be licensed (the requirement that debt collection agencies need to obtain a license was retained) and shortened the statute of limitations for violations of debt collection laws from two years to one year. In 2003 (effective May 21, 2003), Colorado limited the applicability of private remedies (violations of regulations issued by the collection agencies' board were limited only to administrative enforcement) and added an affirmative defense if the debt collector believed, in good faith, that the debtor was other than a natural person.
3. CONNECTICUT: In 2002 (effective October 1, 2002), Connecticut clarified instances in which a license may be revoked and authorized the banking commissioner to proceed on bond to collect civil penalties; further, a new requirement was added that any change of location of a place of business shall require prior written notice to the commissioner; licensing fees were increased from \$400 to \$800. In 2009 (effective October 1-5, 2009), Connecticut authorized the banking commissioner to deny a license based on certain convictions and increased the amount of bond from \$5,000 to \$25,000.
4. FLORIDA: In 2001 (effective July 1, 2001), Florida put a limit on the aggregate amount of statutory damages that can be awarded in class action lawsuits against debt collectors and specified a two-year statute of limitations for debt collection violations. In 2010 (effective October 1, 2010), Florida added a requirement that debt collectors maintain records and present them to the office of financial regulation; additionally, the Florida attorney general was authorized to take action against debt collectors for violations involving debt collection; further, administrative fines increased from \$1,000 in total to \$10,000 per violation; other restrictions and clarifications were added.
5. GEORGIA: In 2004 (effective May 1, 2004), Georgia explicitly authorized class action

lawsuits against unlicensed debt collection activity.

6. HAWAII: In 2012 (effective April 23, 2012), Hawaii increased fines for violations of debt collection laws from \$1,000 in total to \$5,000 per violation.
7. IDAHO: In 1999 (effective July 1, 1999), Idaho increased the amount of bonds required from \$5,000 to \$15,000 (this state has an unusual provision requiring two bonds). In 2002 (effective July 1, 2002), Idaho revised the definition of prohibited conduct and enabled the director of the Idaho Department of Finance to issue certain cease and desist orders; further, the monetary civil penalty increased from \$1000 to \$2,500, and the director's authority to bring an action to enjoin certain violations was extended. In 2008 (effective July 1, 2008), Idaho instituted licensing requirements (before it required permits) and revised powers of the director of the Department of Finance; further, a new civil penalty was added (courts were allowed to award the director \$5,000 for each violation) and the amount of penalties that the director can impose increased from \$2,500 to \$5,000 per violation.
8. ILLINOIS: In 2005 (effective December 31, 2005), Illinois increased fines that the Department of Financial and Professional Regulation may impose from \$1,000 per licensee per complaint to \$5,000 for a first violation and to \$10,000 for a second or subsequent violation.
9. INDIANA: In 2007 (effective July 1, 2007), Indiana authorized the Secretary of State to conduct investigations into violations of debt collection laws and to issue orders, including cease and desist orders; further, the Secretary of State was authorized to impose a civil penalty of up to \$10,000 for each violation.
10. LOUISIANA: In 2006 (effective June 22, 2006), Louisiana provided for the validity of the assignment of debts to a debt collection agency by a client for collection of

delinquent amounts owed and clarified that such debts are valid and enforceable by the collection agency in court; further, it allowed the collection agency to represent the original creditor in all instances for the purpose of collecting such debt, including the right to bring legal action to collect the debt.

11. MAINE: In 2005, Maine added a clause that exempted licensed attorneys from bonding, licensing, and enforcement requirements for debt collection agencies. In 2009 (effective September 12, 2009), Maine specified that debt collectors cannot bring legal action in court unless represented by an attorney or unless the debt collector is an attorney; also in 2009 (effective June 3, 2009), Maine increased license fees from \$400 to \$600 and instituted some additional fees.
12. MARYLAND: In 2007 (effective October 1, 2007), Maryland debt collection laws were extended to debt buyers and added a clause that a license may be revoked or suspended if any owner, director, officer, or partner of a debt collection agency violated debt collection law (before that, only debt collection agency itself was covered); further, the reasons for revoking a license were expanded.
13. MINNESOTA: In 2004 (effective January 1, 2005), Minnesota clarified that individual collectors (and not just debt collection agencies) were subject to penalties if they engaged in prohibited practices. In 2010 (effective January 1, 2011), Minnesota increased the amount of bond from \$20,000 to \$50,000 (plus an additional \$5,000 for each \$100,000 received in collections in the previous year, up to a total of \$100,000).
14. NEVADA: In 2001 (effective October 1, 2001), Nevada authorized administrative fines of up to \$10,000 on unlicensed debt collection agencies and reclassified violations of debt collection laws from misdemeanors into gross misdemeanors. In 2007 (effective June 13, 2007), Nevada specified a procedure for debt verification that requires debt collection

agencies to send certain documents to the debtor in order to verify the debt; further, violations of the federal FDCPA were deemed violations of state debt collection laws; in addition, the upper bound on the initial registration fee was eliminated.

15. NORTH CAROLINA: In 2001 (effective October 1, 2001), North Carolina increased the amount of initial bond from \$5,000 to \$10,000 and increased the maximum amount of bond upon renewal from \$50,000 to \$75,000 (nonresident collection agencies were required to post a second bond in the amount of \$10,000); further, the definition of deceptive representation was clarified and expanded. In 2009 (via three separate bills, effective August 15, 2009 and October 1, 2009), North Carolina increased license application fees from \$500 to \$1000, required collection agencies to notify the state Commissioner of Insurance of any convictions or administrative actions against them, both within the state and in any other state, and increased civil penalties from \$100 to \$2,000 per violation to \$500 to \$4,000 per violation; further, North Carolina increased the standard of evidence required to establish the amount and nature of debt when debt collectors initiate legal action against debtors.
16. NORTH DAKOTA: In 2003 (effective March 17, 2003), North Dakota granted the Department of Financial Institutions the power of subpoena and reclassified violations of debt collection laws from misdemeanors into felonies. In 2011 (effective April 18, 2011), North Dakota expanded the power of the state regulator and added new prohibited practices; further, it instituted a minimum net worth requirement of \$25,000 for debt collection agencies operating in the state.
17. OREGON: In 1999 (effective October 23, 1999), Oregon made violations of debt collection laws a criminal offense. In 2005 (effective January 1, 2006), Oregon authorized the Director of the Department of Consumer and Business Services to conduct investigations

and serve orders.

18. PENNSYLVANIA: In 2000 (effective June 26, 2000), Pennsylvania enacted the Fair Credit Extension Uniformity Act that wrote prohibited debt collection practices into state law and specified private remedies.
19. RHODE ISLAND: In 2007 (effective July 7, 2007), Rhode Island adopted a state Fair Debt Collection Practices Act, which specified prohibited practices and private remedies and made violations of debt collection laws a criminal offense.
20. TENNESSEE: In 2004 (effective July 1, 2004), Tennessee allowed collection agencies to take assignments of debts and to sue in their own name and also specified procedural requirements as to how such suits can be initiated.
21. UTAH: In 1999 (effective March 18, 1999), Utah introduced registration and registration fees for debt collection agencies.
22. WASHINGTON: In 2011 (effective April 22, 2011), Washington expanded the list of prohibited practices and required debt collectors to provide itemization of the claim and debtor's payment history; further, limits were introduced on debt collection agencies' ability to act upon debtors' bonds if the latter appear in court.



THE DEBT BUYING INDUSTRY

A White Paper

THE DEBT BUYING INDUSTRY

The debt buying industry is a critically important segment of the nation's credit-based economy. This white paper will explain the industry, the economic benefits that are returned to originating creditors and consumers, the regulatory framework in which the industry operates, recent state regulatory trends, and DBA International's Debt Buyer Certification Program.

Who are Debt Buyers and What Do They Do

Debt buyers are companies that purchase contractual-based accounts receivables (hereinafter referred to as "accounts") from originating creditors on the secondary market. The types of accounts can differ dramatically based on the asset class that was the foundation of the contractual agreement not to mention other factors such as whether the accounts:

- Are associated with "consumer" or "corporate" obligations,
- Are "performing" or "nonperforming,"
- Have "guarantees" made by third parties, or
- Have "collateral" for payment.

A debt buyer analyzes all of these factors as well as numerous others when valuing accounts prior to purchase. For example, whether an account is characterized as "performing" or "nonperforming" will significantly impact what the originating creditor can expect to receive for the sale of the account on the secondary market. Performing accounts are frequently valued at or near face value whereas nonperforming accounts are usually valued at a discount due to the challenges associated with rehabilitating contractual performance.

When a debt buying company purchases an account from a creditor, it essentially purchases the contract and all rights, benefits, and liabilities that were held by the creditor that are associated with the contract – which includes receiving payments on performing accounts and the right to collect on all nonperforming accounts.

While debt buying companies are often characterized as "debt collectors" which thereby makes them subject to the federal Fair Debt Collection Practices Act (FDCPA), this is not automatically the case. The mere act of purchasing accounts from an originating creditor is not a determining factor for FDCPA compliance. Rather, the determining factor is based on the type of accounts that are purchased. For example, if a debt buyer purchases accounts that are performing, or are the obligations of a corporation, or that consist of federally guaranteed student loans, the FDCPA would not apply. However, if a debt buyer purchases nonperforming consumer accounts, the FDCPA would apply.

Debt buying companies employ thousands of U.S. taxpayers nationwide and operate in all 50 states. While most debt buying companies are privately held small businesses that

operate on a state or regional basis there are also a number of publicly traded companies. The largest companies each typically employ over 1,000 individuals.

Many debt buyers specialize in specific asset classes of accounts, such as credit cards, auto loans, corporate, medical, student loans, or utility while others handle the entire spectrum of asset classes.

The Credit Based Economy

The use of credit is a cornerstone of the United States financial system. American businesses, consumers, and the government itself rely on the availability and extension of credit by originating creditors to purchase goods and services.

Approximately \$2.8 trillion in non-mortgage consumer receivables are outstanding at any given time.¹ Though credit card debt is often associated with these outstanding receivables, revolving credit actually makes up only about 36 percent of the total balance. Non-revolving credit such as auto loans, student loans, utilities, and other types of loans make up the remainder of the balance.

Originating creditors extend credit with the expectation they will be repaid by the consumer. Given that over 90 percent of all accounts in the U.S. are repaid pursuant to the terms of the contractual agreement, creditors have been able to focus their energies on the products and services they provide rather than expending significant resources on collection efforts that are not a core element of their business model. For those accounts that default, debt buyers provide originating creditors a convenient secondary market to receive economic value for their nonperforming accounts.

At the point of initial delinquency, the originating creditor may attempt to collect the balance owed on an account internally or may use a third-party collection agency. Many accounts are successfully restored in these early collection attempts as the average consumer generally recognizes their responsibility to honor their contractual obligations.

However, by the time an account is more than 180 days old and several unsuccessful collection attempts have been made, the likelihood that the originating creditor will receive payment has greatly diminished. In fact, federal law requires banks to “charge-off” distressed accounts at this point, largely to ensure that the financial health of banks are not being obscured by the diminished expectations of payment from the nonperforming accounts they own.

The act of “charging-off” an account is merely an accounting action and has no impact on the underlying contractual obligation owed to the originating creditor. Because originating creditors still have an asset with value, it is at this point that they may choose to sell that asset to debt buyers who are better equipped to return the nonperforming

¹ “G. 19 Statistical Release.” August 7, 2013. U.S. Federal Reserve Board. Preliminary data for quarter ending June 30, 2013. <http://www.federalreserve.gov/releases/g19/current/>

accounts to a performing status. By creating a market for charged-off receivables, debt buyers return money to originating creditors, which reduces their losses, improves shareholder value, and creates capital that can be used to support the extension of new credit to consumers.

In February 2012, ACA International, a national trade association representing third-party contingency collection agencies, released its most recent PricewaterhouseCoopers LLP survey that showed the collection industry returned \$44.6 billion to creditors in 2010. The cumulative economic return to creditors was equal to 2.5 percent of all U.S. corporate profits before tax, 4.7 percent of before tax profits of all U.S. domestic non-financial corporations, and 9.9 percent of the before tax profits of all U.S. domestic financial corporations.²

Putting Complaints into Perspective

The total raw number of collection-related complaints is often cited as evidence of a systemic problem within the collection industry. However, raw numbers only tell part of a story as they are frequently used without any context and can suggest or imply conclusions that may or may not be accurate. For example, even though the majority of “complaints” in a recent DBA International analysis of Federal Trade Commission (FTC) data are against unknown or fictitious entities, which is often a sign of a fraudulent criminal enterprise, the raw number is frequently used to suggest wrongdoing by legitimate and legally compliant companies. Despite the raw number of complaints, the following statistics demonstrate that very few U.S. consumers ever experience a “default” status (which usually occurs when an account is 180 days past due) on their accounts:

- Approximately 95 percent of all consumer debt is paid off on time;
- According to the Fair Isaac Corp., less than half of all consumers have been reported as 30 or more days late on a payment;
- Approximately three out of 10 consumers have ever been 60 or more days overdue on any credit obligation; and
- Approximately two out of 10 consumers have ever been 90 or more days overdue.

As these statistics confirm, only a very small percentage of accounts ever wind up in collection. Of all the contacts that third-party collectors make each year, only 0.002 percent of those consumers complained to the FTC.³ And that statistic is significantly inflated due to incorrect categorizing of simple inquiries, complaints against government entities or originating creditors, and complaints stemming from the illegal and fraudulent activity of criminal enterprises as “debt collection” complaints.

² “The Impact of Third-Party Debt Collection on the National and State Economies.” ACA International. February 2012, page 6.

³ “Annual Report 2010: Fair Debt Collection Practices Act.” U.S. Federal Trade Commission. Washington, D.C., 2010. Print.

The Better Business Bureau also accepts complaints about debt collections. Of the 24,486 complaints received, 85.9 percent were settled by the companies. That is well above the 76.7 percent average resolve rate for all other industries in the United States. In fact, the collection industry has consistently ranked among those industries with the highest resolve rates in the nation.⁴

The collection industry understands that contacting consumers to seek payment on contractual obligations is a difficult task and most consumers would prefer not to receive these calls. The very nature of the subject matter tends to create an emotional situation that is uncommon in most other industries. It is an unfortunate truth, however, that not all consumers pay their bills and subsequently the services of the collection industry are required.

Collection Helps Consumers

While the percentage of consumers who fail to honor their contractual obligations on time is small, the dollar figures associated with consumer default are staggering. According to the Federal Reserve, at the end of the second quarter of 2013, Americans' revolving debt – essentially all general-purpose credit cards and private label credit cards – was approximately 849.1 billion.⁵ For the same quarter, commercial banks wrote off 3.83 percent, or some \$22 billion, of their credit card losses.⁶

Creditors often respond to financial losses by changing their lending standards in ways that make it harder for the average U.S. consumer to obtain credit. News organizations including *Reuters*, *The New York Times*, *Financial Times* and the *Wall Street Journal's Market Watch*, have reported that banks have significantly increased their lending standards to reduce their exposure to loss. In one article, Curt Beaudouin, an analyst at Moody's Investment Services told the *Financial Times* "We are getting back to an old-fashioned basis of lending, providing credit only to people who have the ability to repay".⁷

Credit is a simple idea that has become a part of our national fabric, from the loans that make receiving a college education, buying a car, or purchasing a home possible, to the revolving credit that makes smaller purchases convenient. In today's economy, it is incredibly difficult to operate without access to at least some form of credit. For instance, credit cards are used as an assurance when renting a car or movie. Hotels require credit cards upfront to ensure guests pay their bills. For many U.S. consumers, it would be

⁴ "2012 Complaint and Inquiry Statistics." Better Business Bureau Web. Aug. 2013.
<http://www.bbb.org/us/2012-complaint-and-inquiry-statistics/>.

⁵ "G. 19 Statistical Release." U.S. Federal Reserve Board. August 7, 2013. Revised data for quarter ending March 31, 2013. <http://www.federalreserve.gov/releases/g19/current/>

⁶ "Statistical Release: Charge-Off and Delinquency Rates on Loans and Leases at Commercial Banks." U.S. Federal Reserve Board. Data for quarter ending March 31, 2013.
<http://www.federalreserve.gov/releases/chargeoff/delallsa.htm>

⁷ Kapner, Suzanne. "Surprise slowdown in US credit card losses." *Financial Times* via FT.com. Aug. 26, 2010. <http://www.ft.com/cms/s/0/611b1210-b14c-11df-b899-00144feabdc0.html#axzz1Mq41cxKs>

difficult to make large dollar purchases such as refrigerators or automobiles without the ability to spread the cost out over a period of time through the use of credit.

Many individuals may not realize that collection activities protect the average U.S. consumer by (1) ensuring they continue to have access to credit at affordable interest rates which would not otherwise exist if defaults on credit were uncollectible and (2) enhancing consumer purchasing power by mitigating the losses that businesses would otherwise have to pass on to consumers in the form of higher prices. The 2012 ACA International PricewaterhouseCoopers LLP survey estimated a \$396 average savings per American household in 2010 which is the amount consumers would have had to absorb if businesses had to raise prices to cover the unrecovered debt.⁸

Consumer Protection Laws

The collection industry is one of the most heavily regulated industries in the nation when it comes to consumer protections. Debt buyers and collectors must comply with the federal Fair Debt Collection Practices Act (FDCPA), the Fair Credit Reporting Act (FCRA), the Fair and Accurate Credit Transaction (FACT) Act of 2003, the Gramm-Leach-Bliley Act (GLB), the federal Telephone Consumer Protection Act (TCPA), the Servicemembers Civil Relief Act (SCRA), and the United States Bankruptcy Code, as well as numerous other federal and state consumer protection laws. The industry is also supervised or monitored by multiple governmental agencies, including but not limited to, the Consumer Financial Protection Bureau (CFPB), the Federal Trade Commission (FTC), the Federal Communications Commission (FCC), the 50 state Attorneys General, and licensure laws in 32 states with a number of bonding and corporate registration requirements in the remaining states.

The CFPB is the primary regulator of debt buyers and collectors at the national level. Its primary regulatory tool is the FDCPA. Approved by Congress in 1977, the Act provides over 45 prohibitions and mandates to ensure that consumers are treated in a fair and ethical manner, including provisions to eliminate abusive practices in the collection of consumer debt, promote fair debt collection, provide consumers with an avenue for disputing collection attempts, and prescribe penalties and remedies for violations of the Act. However, another stated (albeit infrequently cited) purpose of the FDCPA is “to insure those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged” and can collect on legitimately owed obligations.⁹ While the FDCPA governs collection activity at the national level, each state generally has its own set of laws that govern the industry. Whenever state and federal laws conflict, collectors must follow the more restrictive standard.

In a 2009 report, the Government Accountability Office (GAO) concluded that the FDCPA, while a mainstay of federal consumer protection efforts, is outdated and no

⁸ “The Impact of Third-Party Debt Collection on the National and State Economies.” ACA International. February 2012, pages 6-15.

⁹ Fair Debt Collection Practices Act. 15 USC 1692 (e). <http://www.ftc.gov/os/statutes/fdcpa/fdcpact.shtml>

longer reflects the way today’s consumers communicate or the way the collection industry operates. The debt buying industry generally accepts these findings and is working with government regulators to propose and enact new laws that bridge the gap between the outmoded regulation and modern methods of collecting without creating undue burdens on either the consumer or the industry.

DBA International strongly supports the three recommendations for Congressional action contained in the GAO report as a much needed and overdue step to update the FDCPA for the benefit of the consumer and business communities alike. The first area is to improve the amount of information attached to each account to ensure contact is made with the proper consumer. This will greatly reduce the chance of mistaken identity and also gives consumers greater protection when dealing with collectors.

The second is to allow collectors to use modern forms of technology as an approved method of communication. When the FDCPA was written, landline phones and U.S. mail were the only referenced forms of communication because they were essentially the only forms of communication that existed at that time. Today, even though approximately 34 percent of the U.S. adult population (80 million individuals) live in houses with only cell phones¹⁰ and the use of email, texting, and social media has essentially replaced the U.S. mail service, the language contained in the FDCPA has remain unchanged, effectively preventing collectors from using these technologies to work with consumers.

The third area the GAO identified was the FTC’s lack of rule-making authority. In many respects, this concern has been rendered unnecessary by the creation of the CFPB in 2011 which has both oversight and rule-making authority over the FDCPA. Nevertheless, any changes to this law are the purview of Congress and so far Congress has failed to make the statutory changes to the FDCPA that are needed to allow the CFPB to address modern day situations.

Current Trends at the State Level

Due to the lack of Congressional action to update the FDCPA, some states have independently sought consumer reforms at the state level. DBA International generally supports these efforts provided that the language is written in a neutral and balanced manner that considers the valid and legitimate interests of both the consumer and business communities.

Generally, legislative action at the state level seems to be following one of four trends not addressed by the FDCPA. The first trend is to require collectors to be licensed. DBA does not oppose legislation of this nature provided that it is applied uniformly to industry participants.

¹⁰ “Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2012.” Centers for Disease Control and Prevention. December 2012, page 2. <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201212.pdf>

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The second trend is to provide additional account documentation. DBA supports uniform standards on account documentation provided that they serve a legitimate purpose and is information that originating creditors are required to maintain. In fact, DBA has developed a specific and uniform industry standard on data and documentation within the DBA International Debt Buyer Certification Program.

The third trend is recent attempts by some states to require itemization of pre-charge-off principle, interest, and fees to substantiate the balance on a debt. The challenge, however, is that this type of information is not always available for all accounts, most notably revolving lines of credit such as credit cards. Revolving lines of credit are different from other forms of debt because of the consumer's option to carryover balances associated with prior purchases to the next statement which is then combined with balances from new purchases. The National Bank Act recognizes this inherent difficulty which explains why banks are not required to provide itemization of balances to consumers on credit card statements.

Recognizing this is a complex situation that needs attention, DBA is actively working with legislators and regulators at the state and federal level to find alternative approaches such as requiring post-charge-off balances be subject to a breakdown that provides consumers with information on how much of the balance consists of principal (here being the charge-off balance), interest, and fees. The reason why a breakdown of the balance is possible on post-charge-off accounts but not on pre-charge-off accounts is because post-charge-off accounts no longer are subject to revolving balances.

The fourth trend is to push for the adoption of shorter statutes of limitations, as little as two years in some cases, and/or the complete extinguishment of the debt when the statute has run out. The intent is to curtail abusive practices by restricting the time frame in which they can happen.

This approach is fraught with unintended consequences. Most significantly, it severely restricts the ability of consumers to settle their debts and clear their credit records, which must be maintained for a full seven years. Once a debt has been extinguished, a consumer cannot pay the money back even if he or she wanted to. Unsettled debts can hurt individuals who need a clean credit report in order to secure a job, purchase a house, or obtain a security clearance.

Another unintended consequence of a shorter statute of limitations is the potential "rush to litigate." Given a shorter window to collect on accounts, originating creditors and debt buyers will spend less time negotiating settlements and working out extended payment plans and more time litigating them. In the end, legal fees will be piled on top of the debts, increasing the burden on consumers.

DBA International's Debt Buyer Certification Program

In March 2013, DBA launched a national Debt Buyer Certification Program that consists of both company and individual certification. The goal of the program is to provide

additional consumer protections through the adoption of uniform industry standards and best practices.

Company certifications will be granted to those Debt Buyers who comply with 20 uniform certification standards based on recognized industry best practices. These standards address core principles including account documentation, chain of title, consumer complaint and dispute resolution, posting of contact information for the Chief Compliance Officer, establishing a CFPB portal for the receipt of consumer complaints, statute of limitation compliance, representations & warranties, vendor management, credit bureau reporting, resale, as well as other relevant operational procedures. Certification is a requirement of DBA membership.

Individual certifications will be required for each certified company's Chief Compliance Officer and will be a voluntary designation for others within the industry. Certification will be granted to those who complete 24 credit hours of relevant industry education requirements every two years. Included within the 24 credit hours are several mandatory classes, including an Introductory Survey Course (for initial certification), a Current Issues Course (for recertification); and Ethics Courses. Additionally, individuals who hold the individual certification must pass a criminal background screening conducted by DBA International.

The DBA International Debt Buyer Certification Program was designed to provide three distinct compliance audits in order to ensure multiple and varied opportunities to verify compliance. These audits include an independent third-party audit on all 20 standards that will be conducted on a regular basis, a limited compliance audit if a violation of a specific standard is suspected, and self-compliance audits to be regularly performed by each certified debt buyer's Chief Compliance Officer.

In most cases, when a certified debt buyer is found not to be conforming with a standard they will be asked to enter into a remediation agreement with a plan to achieve conformity. If remediation is not possible, disciplinary action may occur, including expulsion from DBA International.

Summary

Debt buyers and the collection industry play an integral and necessary role within the complex credit based economy. The ability of debt buyers to purchase distressed accounts from originating creditors provides benefits not only to the originating creditors but to all consumers and businesses that rely on the availability of credit at reasonable rates for their purchasing needs.

DBA International is committed to continuing our collaborative efforts with regulators, legislators, consumer groups, and other industry participants at both the state and federal level to ensure that new consumer protections are adopted when appropriate and existing laws are strengthened and modified to reflect modern realities without impairing the vital role of the debt buying and collection industry.

About DBA International

DBA International (DBA) is the nonprofit trade association that represents the interests of public and private companies that purchase performing and nonperforming receivables on the secondary market. Founded in 1997 by a small group of companies to provide a forum to advance best practices within the industry, today DBA has grown to represent over 500 companies. DBA provides its members with networking, educational, and legislative advocacy opportunities through an annual conference, an executive summit, regional seminars, state and regional committees, newsletters, webinars, teleconferences, and other media. DBA maintains a code of ethics and a national certification program that promote uniform industry standards of best practice which member companies must comply with in order to maintain membership. DBA is headquartered in Sacramento, California.

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EXHIBIT A

SUMMARY OF PROPOSED AFFIDAVITS

Together with any other affidavits required under New York law, the following affidavits would be required on debt purchases made after September 1, 2014 as part of an application for a default judgment in a consumer credit case.

A. Original Creditor Actions

In an action by an original creditor to collect on a consumer credit debt, the plaintiff must submit the following affidavits in conformance with NY CLS - CPLR-4518(a) based on personal knowledge containing the following information as part of an application for a default judgment:

1. Affidavit of Facts by Original Creditor

- a. Facts constituting the asserted cause of action: name of debtor, last four digits of account, date and terms of original agreement, date and amount of last payment;
- b. If the complaint asserts an account stated cause of action, a statement indicating that an accounting was sent to the debtor and no and the debtor retained the accounting without objection was received;
- e. Summary of amount debtor allegedly owes, including a post charge-off itemization of how the amount was calculated based on principal, interest and fees and charges; and

2. A True and Correct Copy of statement with a true and correct copy of a credit agreement -or a copy of a document provided to the debtor while the account was active, demonstrating that the debt was incurred by the debtor. For a revolving credit account, the most recent monthly statement recording a purchase transaction, last payment, or balance transfer shall be deemed sufficient to satisfy this requirement~~Original Agreement governing the account upon which the action is based, and any amendments thereto,~~ shall be attached to the Original Creditor's Affidavit of Facts.

3. Affidavit of Non-Expiration of Expiration of Statute of Limitations (Limitations (All Actions)). An affidavit from plaintiff or ~~plaintiff~~ plaintiff's counsel setting forth where and when the cause of action accrued, the statute of limitations for New York and any other jurisdiction where the cause of action accrued, and stating that after reasonable inquiry the plaintiff has reason to believe that the statute of

limitations has not expired.

B. Debt Buyer Actions

In an action by a debt buyer (defined as a person or entity that is regularly engaged in the business of purchasing charged-off consumer Credit card or furniture debt for collection purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney-at-law for collection litigation. 'Debt buyer' does not mean a person or entity that acquires a charged-off consumer debt incidental to the purchase of a portfolio predominantly consisting of consumer debt that has not been charged off), plaintiff to collect on a consumer credit debt, the plaintiff must submit the following affidavits based on personal knowledge containing the following information as part of an application for a default judgment.

I. Affidavit of Facts and Sale of Account by Assignee ~~Original Creditor~~ (Debt Buyer Actions). An affidavit based in conformance with NY CLS-CPLR - 4518(a) ~~on personal knowledge from the original creditor~~ setting forth:

a. Facts constituting the asserted cause of action;

~~b. If the complaint asserts an account stated cause of action, a statement indicating~~

~~that an accounting was sent to the debtor and the debtor retained the accounting without objection;~~

b. Statement that the debt was assigned to the debt buyer (or intermediary debt buyer) and date of assignment;

c. Statement that records specific to the debt at issue were created and maintained in the ordinary course of the original creditor's business and subsequently ~~tranferred~~transferred to the debt buyer (or intermediary debt buyer) including a statement with a true and correct copy of a credit agreement or a copy of a document provided to the debtor while the account was active, demonstrating that the debt was incurred by the debtor. For a revolving credit account, the most recent monthly statement recording a purchase transaction, last payment, or balance transfer shall be deemed sufficient to satisfy this requirement; and

d. Statement of the amount owed to the original creditor at the time ~~of~~ assignment.

2. Affidavit of Purchase and Sale of Account by Debt Seller (Debt Buyer Actions). An affidavit ~~based on~~in conformance with NY CLS - CPLR-4518(a) personal knowledge from any debt seller who owned the debt prior to the plaintiff, setting forth:

a. Date that debt seller purchased the account and from whom it was purchased;

b. Date that debt seller sold the account and to whom it was sold;

c. Amount owed by the debtor at the time of sale, post charge-off itemization~~ed~~ by the of the amount owed at time of purchase, ~~plus~~ (including s post-purchase interest, fees and charges, less post-purchase payments)) by the debtor; and

d. Statement that records pertaining to the debt were maintained in the ordinary course of the debt seller's business and such records were subsequently transferred along with the debt to the debt buyer.

3. Affidavit of Facts and Purchase of Account by Debt Buyer Plaintiff (Debt Buyer Actions). An affidavit based in conformance with NY CLS CPLR 4518 (a) on personal knowledge from plaintiff's representative setting forth:

- a. Facts constituting the asserted cause of action;
- b. Date that debt buyer purchased the account and from whom it was purchased;
- c. Summary of the complete chain of title of the debt;
- d. Summary of the amount allegedly owed to the debt buyer, including post charge-off itemization ~~(ed by the amount owed at the time of purchase, plus post-purchase~~ interest, fees and charges, less post-purchase payments by the debtor); and

~~4. A True and Correct Copy of Original Agreement governing the account upon which the action is based, and any amendments thereto, shall be attached to the Affidavit of Facts~~4. A True and Correct Copy of a **statement with a true and correct copy of a credit agreement** -or a copy of a document provided to the debtor while the account was active, demonstrating that the debt was incurred by the debtor. For a revolving credit account, the most recent monthly statement recording a purchase transaction, last payment, or balance transfer shall be deemed sufficient to satisfy this requirement shall be attached to the Original Creditor's Affidavit of Facts.

~~and Sale of Account by Original Creditor.~~

4.5. True and Correct Copies of All Written Assignments or Bills of Sale of the Account shall only be required to be attached to the Affidavit of Facts and Purchase of Account by Debt Buyer Plaintiff.

5.6. ~~Affidavit of~~ Affidavit of Non-Expiration of Expiration of Statute of Limitations (All Actions). An affidavit from plaintiff or plaintiff's counsel setting forth where and when the cause of action accrued, the statute of limitations for New York and any other jurisdiction where the cause of action accrued, and stating that after reasonable inquiry the plaintiff has reason to believe that the statute of limitations has not expired.

Effective Date: Together with any other affidavits required under New York law, the following affidavits would be required on debt purchases made after September 1, 2014 as part of an application for a default judgment in a consumer credit case.

Proposed Court Rules

- § 208.14-a. Proof of Default Judgment in Consumer Credit Matters (Uniform Civil Rules for the New York City Civil Court)
- § 210.14-a. Proof of Default Judgment in Consumer Credit Matters (Uniform Civil Rules for the City Courts Outside the City of New York)
- § 212.14-a. Proof of Default Judgment in Consumer Credit Matters (Uniform Civil Rules for the District Courts)

(a) Applicability. In any action arising from a consumer credit transaction, a default ~~judgment shall~~ judgment shall not be entered against the ~~defendant~~ defendant unless the plaintiff has complied with the ~~requirements of~~ requirements of CPLR 3215 and submitted the affidavits required under this section.

(b) Where the plaintiff is the original creditor, the plaintiff must submit the ~~AFFIDAVIT OF FACTS BY ORIGINAL CREDITOR and~~ CREDITOR and the ~~AFFIDAVIT OF~~ AFFIDAVIT OF NON-EXPIRATION OF STATUTE OF LIMITATIONS.

(c) Where the plaintiff has purchased the debt, the plaintiff must submit the ~~AFFIDAVIT OF FACTS AND SALE OF ACCOUNT BY ORIGINAL CREDITOR the~~ AFFIDAVIT OF PURCHASE AND SALE OF ACCOUNT BY DEBT SELLER for each debt buyer who owned the debt prior to the plaintiff, the ~~AFFIDAVIT OF~~ AFFIDAVIT OF FACTS AND PURCHASE OF ACCOUNT BY DEBT BUYER PLAINTIFF and the AFFIDAVIT OF NON-EXPIRATION OF STATUTE OF LIMITATIONS.

AFFIDAVIT OF FACTS BY ORIGINAL CREDITOR

(~~Original-Creditor~~Original -

~~Actions~~Creditor Actions) The undersigned, being duly sworn, deposes and says:

1. I am a/an [title: employee/officer/member] of Plaintiff herein and I am the custodian of have personal knowledge and access to plaintiff s books and records, including electronic records, relating to the account ("Account") of ___[name of debtor] ("Debtor"). The last four digits of the account number of the Account are _____[last four digits]. In my position, I also ~~have~~ am aware of personal knowledge of Plaintiff s procedures for creating and maintaining its books and records.

Plaintiff s records were made in the regular course of business and it was the regular course of such business to make the records. The records were made at or near the time of the events recorded. Based on my review of Plaintiff s books and records, ~~Have-I am aware~~personal-knowledge of the facts set forth in this affidavit.

2. On or about [date], Plaintiff and Debtor entered into a credit agreement ("Agreement"). Debtor agreed to pay Plaintiff for all goods, services and cash advances provided pursuant to the Agreement. The amount of the last payment made by Defendant was \$___ made on _____[date]. Debtor is now in default and demand for payment has been made.

3. [Include this paragraph if seeking judgment on an account stated cause of action.] I am aware of~~have personal knowledge of~~ Plaintiff s procedures for generating and mailing account statements to customers. It is the regular practice of Plaintiff s business to provide periodic account statements to its customers. Plaintiff sent one or more account statements relating to the Account to Debtor and Debtor retained the account statement without objection.

4. At this time, Debtor owes \$_____ on the Account. This amount includes \$ _____ in principal, \$ with a true and correct copy of a credit agreement -or a copy of a document provided to the debtor while the account was active, demonstrating that the debt was incurred by the debtor. For a revolving credit account, the most recent monthly statement recording a purchase transaction, last payment, or balance ~~applicable~~transfer applicable to the Account, is attached as an exhibit to this affidavit.

WHEREFORE, deponent demands judgment against Debtor for \$_____ (plus interest from _____[date>Date], if applicable), together with the costs and disbursements of this action.

The above statements are true and correct to the best of my personal knowledge.

Dated: _____ Sworn to before me this ___ day of_, 20_____.

Notary Public

[Name]

~~AFFIDAVIT OF~~ AFFIDAVIT OF FACTS AND SALE OF ACCOUNT BY
ORIGINAL CREDITOR

(Debt Buyer

Actions) The undersigned, being duly sworn, deposes
and says:

1. I am a/an [title: employee/officer/member] of [original creditor]

("Original Creditor") ~~the custodian of and have personal knowledge~~ and access to
Original Creditor's books and records, including electronic records, relating to the account
("Account") of _____ [name of

debtor] ("Debtor"). The last four digits of the original account number of the Account are ____ [last four digits]
were made in the regular course of business and it was the regular course of such business
to make the records. The records were made at or near the time of the events recorded.

Based on my review of Original Creditor's books and records, I have am aware
~~of personal knowledge of~~ the facts set forth in this affidavit.

2. On or about [date], Original Creditor and Debtor entered into a credit
agreement ("Agreement"). Debtor agreed to pay Original Creditor for all goods, services
and cash advances provided pursuant to the Agreement. The amount of the last payment
made by Defendant was

\$ _____, made on [date]. Debtor defaulted and a demand for payment was
made by Original Creditor.

3. [Include this paragraph if seeking judgment on an account stated cause of action.] I am
~~aware of have personal knowledge of~~ Original Creditor's procedures for generating and
mailing account statements to customers. It is the regular practice of Original Creditor's
business to provide periodic account statements to its customers. Original Creditor sent
one or more account statements relating to the Account to Debtor and Debtor retained the
account statement without objection.

4. On or about [date], Original Creditor sold or assigned the Account to
_____ [debt buyer] (the "Sale"). At that time, Original Creditor assigned all of its
interest in the Account, including the right to any proceeds from the Account, to _____ [debt buyer]. As
of Original Creditor.

5. At the time of the Sale, Debtor owed \$_____ on the Account. This amount included
\$ _____ in principal, \$ _____ ~~in~~ in post charge off interest, and \$ _____ ~~in~~ in post charge
off fees and charges. A true and correct copy of the Agreement, as well as all documents
modifying the interest rate or fees applicable to the Account, is attached as an exhibit to
this affidavit.

The above statements are true and correct to the best of my ~~personal~~ knowledge.

Dated: _____

-

_____ [Name]

e]

Sworn to before me this
___ day of ___, 20___.

Notary Public

AFFIDAVIT OF PURCHASE AND SALE OF ACCOUNT BY DEBT SELLER

~~(Debt Buyer Debt -~~

~~Actions Buyer Actions)~~ The undersigned, being duly sworn, deposes and says:

1. I am a custodian ~~/an~~ *[title: employee/officer/member]* of *[debt seller]* ("Debt Seller") and ~~I have personal knowledge - a m~~ aware of and have and access to Debt Seller's books and records, including electronic records, relating to the account ("Account") of _____ *[name of debtor]* ("Debtor"). The last four digits of the original account number of the Account are *[last four digits of original account number]*. In my position, ~~also - I also am aware have personal knowledge of - Debt of Debt~~ Seller's procedures for creating and maintaining its books and records. Debt Seller's records were made in the regular course of business and it was the regular course of such business to make the records. The records were made at or near the time of the events recorded. Based on my review of Debt Seller's books and records, I am aware of ~~have personal knowledge of~~ the facts set forth in this affidavit.

2. On or about *[date]*, Debt Seller purchased or was assigned the Account from _____ *[original creditor or previous debt seller]* (the "Purchase"). At that time, _____ *[original creditor]* the Account were transferred to Debt Seller. Following the Purchase, those records were maintained in the ordinary course of business of Debt Seller.

3. On or about *[date]*, Debt Seller sold or assigned the Account to _____ *[debt buyer]* (the "Sale"). At that time, Debt Seller assigned all of its interest in the Account, including the right to any proceeds from the Account, to _____ *[debt buyer]*. As part of the Sale, electronic and other records relating to the Account were transferred to *[debt buyer]*. Prior to the Sale, those records had been created and maintained in the ordinary course of business of Debt Seller.

4. At the time of the Sale, Debtor owed \$ _____ on the Account. This amount includes the amount' at the time of Purchase of \$ _____, plus post- ~~charge - Purchase off~~ interest of \$ _____ and post- ~~charge - Purchase fee off fees~~ and charges of \$ _____, less post-Purchase payments by the Debtor of \$ _____.

The above statements are true and correct to the best of my ~~personal~~ knowledge

Dated: _____ day of _____, 20 ____.

Sworn to before me this ____

Notary Public

[Name]

AFFIDAVIT OF FACTS AND PURCHASE OF
ACCOUNT BY

DEBT BUYER PLAINTIFF (Debt Buyer

Actions) The undersigned, being duly sworn, deposes and says:

1. I am a/an a custodian [title:
employee/officer/member] of [debt buyer
~~plaintiff~~plaintiff ("Debt Buyer") and I ~~am aware of have personal knowledge~~ and
~~access~~have access to Debt Buyer's books and records, including electronic records,
relating to the account ("Account") of _____ [name of debtor]
("Debtor"). The last four digits of the original account number of the Account ~~is~~are
_____ [las
t four digits of original account number]. In my position, I also ~~am aware~~ ~~have personal~~
~~knowledge~~ of Debt Buyer's procedures for creating and maintaining its books and
records. Debt Buyer's records were made in the regular course of business and it was the
regular course of such business to make the ~~records~~records. The records were made at or
near the time of the events recorded. Based on my review of Debt Buyer's books and
records, I ~~am have personal knowledge of~~am aware of the facts set forth in this affidavit.

2. On or about [date], Debt Buyer purchased or was assigned the Account
from
_____ [original creditor or debt seller] (the "Purchase"). At that time,
[original creditor or debt seller] assigned all of its interest in the Account,
including the right to any proceeds from the Account, to Debt Buyer. As part of the
Purchase, electronic and other records
relating to the Account ~~were~~was transferred to Debt Buyer. Following the Purchase,
those records were maintained in the ordinary course of business of Debt Buyer.

3. As set forth in the affidavit(s) from [original creditor and all debt sellers]
submitted herewith, the complete ~~chain~~ chain of title of the Account is as follows:

- a. _____
- b. _____
- c. _____
- d. _____

True and correct copies of all written assignments or Bill of Sales of the Account are
attached to this affidavit.

4. At this time, Debtor owes \$_____ on the Account. This amount includes the

amount at the time of Purchase of \$ _____, plus post-~~charge~~Purchase interest of \$ _____ and post-~~charge off~~Purchase fees and charges, ~~if -of~~any of \$ _____, less post-Purchase payments by the Debtor of \$ _____.

WHEREFORE, deponent demands ~~judgment against~~judgment against Debtor for \$ _____ (plus interest from _____ *[date]*, if applicable), together with the costs and disbursements of this action.

The above statements are true and correct to the best of my ~~personal~~ knowledge

Dated: _____

- _____ *[Name]*

Sworn to before me this
____ day of ____, 20____.

[me]

Notary Public

AFFIDAVIT OF NON-EXPIRATION OF STATUTE OF LIMITATIONS

(All

Actions) The undersigned, being duly sworn, deposes and says:

1. I am a/an [title: employee/officer/member/counsel; if counsel, indicate that deponent is ~~counsel~~counsel for plaintiff] of [plaintiff or lawfirm].

~~2. The cause(s) of action asserted herein accrued in New York and [other jurisdiction where jurisdiction where cause of action accrued, if applicable], where [original creditor] resides. The cause(s) of action accrued on [date of default]. The statute(s) of limitations for the cause(s) of action asserted herein is/are ~~f~~years years] years for New York and [years] years for [other jurisdiction where cause of action accrued, if~~

~~3.2. applicable applicable].~~ Based on my reasonable inquiry, I have reason to believe that the applicable statute (s) of limitations for the cause(s) of action asserted herein has/have not expired.

The above statements are true and correct to the best of my ~~personal~~ knowledge

Dated: _____ [Name]

Sworn to before me this
____ day of ____, 20____.

Notary Public

EXHIBIT B

Proposed Rule Relating to ~~Additional Notice~~ Additional Notice of Consumer Credit Action

(a) Additional mailing of notice on an action arising from a consumer credit transaction.

(1) At the time of filing with the clerk of the proof of service of the summons and complaint in an action arising from a consumer credit transaction, or at any time thereafter, the plaintiff shall submit to the clerk a stamped envelope addressed to the defendant together with a written notice, in both English and Spanish, containing the following language:

CIVIL/DISTRICT/CITY COURT. CITY/COUNTY OF ____

COUNTY OF _____ INDEX NO. _____
Plaintiff _____ Defendant _____

ATTENTION: A lawsuit has been filed against you claiming that you owe money for an unpaid consumer debt. You should go to the court clerk's office at the address listed on the face of the envelope as soon as possible to ~~respond~~ ~~to~~ respond to the lawsuit by filing an ~~"answer"~~ "answer." You may wish to contact an attorney. If you do not respond to the lawsuit, the court may enter a ~~judgment~~ ~~against~~ judgment a g a i n s t you. Once entered, a ~~judgment~~ ~~is~~ judgment i s good and can be used against you for twenty years, and your personal ~~property~~ ~~and~~ property and money, including a portion of your ~~paycheck~~ ~~and~~ paycheck and/or bank account, may be taken from you. Also, a judgment will affect your credit score and can affect your ability to rent a home, find a job, or take out a loan. You cannot be arrested ~~o~~r sent to ~~jail~~ ~~for~~ jail for owing a debt.

It is important that you go to the court clerk's office listed above as soon as possible. You should bring this notice and any legal papers you may have received. ~~Additional~~ ~~information~~ Additional information can be found on the court system's website at: www.nycourts.gov

[INSERT SPANISH TRANSLATION]

The face of the envelope shall be addressed to the defendant at the address at which ~~pro~~cess was served in the summons and complaint, and shall contain the defendant's

name, address (including apartment number) and zip code. The face of the envelope also shall contain, in the form of a return address, the appropriate address of the clerk's office to which the defendant should be directed. These addresses are:

[INSERT APPROPRIATE COURT ADDRESS OR ADDRESSES]

(2) The clerk promptly shall mail to the defendant the envelope containing the additional notice set forth in paragraph (1). No default ~~judgment-based~~judgment based on defendant's failure to answer shall be entered unless there has been compliance with this subdivision and at least 20 days have elapsed from the date of mailing by the clerk.

EXHIBIT C

CIVIL COURT OF THE STATE OF NEW YORK COUNTY **OF** _____

.....

Index **No.** _____

Plaintiff(s),

- against -

WRITTEN ANSWER
CONSUMER CREDIT
TRANSACTION

Defendant(s).

.....

ANSWER: (Check all that apply)

- 1. ___ General Denial: I deny the allegations in the Complaint. SERVICE
- 2. ___ I did not receive a copy of the Summons and Complaint.
- 3. ___ I received the Summons and Complaint, but service was not correct as required by law. DEFENSES
- 4. ___ It is not my debt. I am a victim of identity theft or mistaken identity. 5. ___ I have paid all or part of the alleged debt.
- 6. ___ I dispute the amount of the debt.
- 7. _____ I had no business dealings with Plaintiff (Plaintiff lacks standing) and/or Plaintiff is not the legal owner of my debt.
- 8. _____ The NYC Department of Consumer Affairs shows no record of plaintiff having a license to collect debt (only for cases filed in New York City).
- 9. ___ Plaintiff does not allege a debt collector's license number in the Complaint (only for cases filed in New York City).

10. ___ signed by the creditor and not the assignee debt buyer, Statute of

~~limitations (the time has passed to sue on this debt). 11. This debt has been discharged in bankruptcy.~~

12. The collateral (property) was not sold at a commercially reasonable price. 13. Failure to provide proper notice before selling collateral (property).

14 .__ Failure to mitigate damages (Plaintiff did not take reasonable steps to limit damages).

15 .__ Unjust enrichment (the amount demanded is excessive compared with the original debt). 16.__ Violation of the duty of good faith and fair dealing.

17.__ Unconscionability (the contract is unfair).

18 .__ Laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage).

19. _____OUTSIDE OF NEW YORK CITY ONLY: Lack of personal jurisdiction under Uniform City Court Act § 213 (applies if you do not work in the city where the case was filed and you are not a resident of that city or (for all counties except Westchester and Nassau counties) you are not a resident of a town next to that city within the same county).

OTHER

20. Other

Reasons _____

21.__ Defendant is in the military

22 _____ .__ Please take notice that my only source of income is _____, which is exempt from collection. (note- this defense is not an absolute bar to recovery of a judgment).

COUNTERCLAIM(S)

23 _____ .__ Counterclaim(s): \$__ Reason:

I

VERIFICATION

State of New York, County of _____ ss:

_____ being duly sworn, deposes and says: I have read the Answer

in Writing and know the contents to be true from my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

Sworn to before me this __day of_____, 20____.

Signature of Defendant

Notary/Court Employee

Defendant's address

This¹ case is scheduled to appear on the calendar as follows:

Date: ____ Part: Room: Time: Both sides notified

FREE CIVIL COURT FORM No fee may be charged to fill in this form.

CIV-GP- 58b Written Answer Consumer Credit (2/14) Form can be
found at: [http://www.nycourts.gov/courts/nyc/civi
l/for11s/CIVGP58B.pdf](http://www.nycourts.gov/courts/nyc/civil/for11s/CIVGP58B.pdf).

COURT

IndexNumber:

County of

Part

ORDER TO SHOW CAUSE

To restore case to the calendar. and vacate any judgment, liens and income executions on this defendant on this Index number, allow answer or dismissing the action

UPON the annexed _____ sworn to on and upon all papers and proceedings affidavit of herein:

Let the Plaintiff(s) or Plaintiff(s) attorney(s) show cause at:

Court: County

Court:

Address:

Part Room

on At 9:30 AM

or as soon thereafter as counsel may be heard, why an order should not be made: VACATING the Judgment, and all income executions and restraining notices, if any, restoring the case to the calendar, deeming the proposed answer filed and /or allowing defendant to file an answer and/or dismissing the action if warranted, and/or granting such and further relief as may be just.

PENDING the hearing of this Order to Show Cause and the entry of an Order thereon, let all proceedings on the part of Plaintiff(s), Plaintiff(s) attorney and agent(s) and any Marshal or Sheriff of the City of New York for the enforcement of said Judgment be stayed.

SERVICE of a copy of this Order to Show Cause, and annexed Affidavit, on the: Plaintiff(s) or named attorney(s): Sheriff or

Marshal:

(Judge to Initial)

(Judge to Initial)

_____ by Personal Service by ¹¹In Hand Delivery"

by Personal Service by "In Hand

Delivery"

_____ by Certified Mail, Return Receipt Requested
Requested

by Certified Mail, Return Receipt

_____ by First Class Mail with official Post Office
official Certificate of Mailing

by First Class Mail with
Certificate of Mailing

on or before _____, shall be deemed good and sufficient

PROOF OF SUCH SERVICE may be filed with the Clerk in the
Part indicated above on the return date of this Order to Show
Cause.

Mail to Attorney or And
Sheriff/Marshal _____

Date

Judge Signature

Civil Court of the City of
New York
COUNTY OF _____

!PLEASE PRESS HARD!
Index No. _____ AFFIDAVIT
To Vacate a Default
Judgment for
failure to appear and
answer and to file an
answer or to dismiss the
Address: _____

Plaintiff(s).

against

Defendant(s)

ss.

:

State of New York, County of _____

_____ being duly
sworn, deposes and says:

Put your initials in the sections that apply to you

1. a) I am the party named as defendant in the above entitled action.
PAR
TY

2. a) I was not served in the right way as required by the law
with a summons and complaint in this action SERVICE

b) I was not served a summons and complaint.
and my first notice of legal action was a
notice from the Clerk's office
_____ a notice of Default Judgment mailed to me.
_____ a Restraining Notice on my bank account.
_____ a copy of an Income **Execution** -

Other:

3.

EXCUSABLE DEFAULT (You must tell the Judge a reason why you did not come to court to answer)

I did not come to court and answer in the Clerk's Office because: (Initial all sections that explain why you did not come to court)

~~17. I did not receive the court papers~~_____ ~~28. I received the court papers~~ too late_____

~~9. The plaintiff told me not to worry about~~ ~~310. I was on military duty~~_____ ~~y~~_____ ~~the case or not to answer~~_____ ~~11. I receive exempt income~~

~~(examples social security SSI, Public Assistance, Veteran's Benefits, Unemployment)~~_____

OTHER EXPLANATION (You can write down any other reason why you did not come to court to answer in your case:

4.

DEFENSES (You must tell the Judge a reason or reasons why you should not have to pay the money the plaintiff is suing for.)

Look at the defense information sheet to see what defenses you may have and write them down here. I have a good defense because:

5. a) I have not had a Order to Show Cause before in this case.

PRIOR b) I have had a Order to Show Cause before in this case but I am making

APPLICA another

TION application because_____

6. _____ I request that the Judgment be vacated. I ask that I be allowed to file an answer or this case be dismissed. I ask permission to serve these papers in person.

Sworn to before me this _____ day of _____, 20_____

(Signature of Defendant)

(Signature of Coun Employee 11nd Title) _____

CIV-GP-17 (Revised 11/02)

Order to Show Cause Information Sheet on Defenses

1. ___ General Denial: I deny the allegations in the Complaint.

SERVICE

2. ___ I did not receive a copy of the Summons and Complaint.

3. ___ I received the Summons and Complaint, but service was not correct as required by law.

DEFENSES

4. ___ I do not owe this debt.

5. ___ It is not my debt. I am a victim of identity theft or mistaken identity. 6. I have paid all or part of the alleged debt.

7. ___ I dispute the amount of the debt.

8. ___ I had no business dealings with Plaintiff (Plaintiff lacks standing) and/or Plaintiff is not the legal owner of my debt.

9. ___ The NYC Department of Consumer Affairs shows no record of plaintiff having a license to collect debt (only for cases filed in New York City).

10. ___ Plaintiff does not allege a debt collector's license number in the Complaint (only for cases filed in New York City).

11. ___ Statute of limitations (the time has passed to sue on this debt). 12. ___ This debt has been discharged in bankruptcy.

13. ___ The collateral (property) was not sold at a commercially reasonable price. 14. ___ Failure to provide proper notice before selling collateral (property).

15. ___ Failure to mitigate damages (Plaintiff did not take reasonable steps to limit damages). 16. ___ Unjust enrichment (the amount demanded is excessive compared with the original debt). 17. ___ Violation of the duty of good faith and fair dealing.

18. ___ Unconscionability (the contract is unfair).

19. ___ Laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage).

20. ___ OUTSIDE OF NEW YORK CITY ONLY: Lack of personal jurisdiction under Uniform City Court Act § 213 (applies if you do not work in the city where the case was filed and you are not a resident of that city or (for all counties except Westchester and

Nassau counties) you are not a resident of a town next to that city within the same county).

21 .__Defendant is in the
military.

OTHER

22 .__Other
—

23 .__ Please take notice that my only source of income is _____, which is
exempt from collection. (note that this defense is not an absolute bar to the recovery of a
judgment).

For more information on defenses please see NYCourts.gov