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

Re: Advance Notice of Proposed Rulemaking: Debt Collection (Regulation F), 12 CFR Part 1006, Docket No. CFPB-2013-0033, RIN 3170-AA41

Dear Consumer Financial Protection Bureau:

MFY Legal Services, Inc. submits the following comments on the Advanced Notice of Proposed Rulemaking regarding debt collection practices issued by the Consumer Finance Protection Bureau (CFPB), and published in the Federal Register on November 12, 2013.

MFY envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for over 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We provide advice and representation to more than 8,000 New Yorkers each year. MFY launched its Consumer Rights Project in 2005 in response to our clients' growing demand for legal representation and information about debt collection and other consumer issues. Through a weekly hotline and our participation in courthouse clinics, we see first-hand debt abuses and unfair practices by debt collectors and their attorneys, and provide these comments from that perspective.

We welcome the CFPB's actions to help alleviate debt collection problems. We believe that strong federal rules, coupled with aggressive investigations and enforcement measures, will ensure consistent protections for New Yorkers and all Americans. The following are our suggestions for molding and focusing the proposed rules, which we believe are imperative to make the rules strong and beneficial to consumers.

As a general matter, we urge the CFPB to adopt, and expand upon, the heightened protections already existing in New York City. New York City's Department of Consumer Affairs has led the nation in employing novel protections to regulate the debt collection industry. In particular, the local rules expand upon the FDCPA's vague verification requirement by specifying that a debt collector must provide the debt document, or an original written confirmation, issued by the original creditor; the final statement issued by the original creditor; and a breakdown of the remaining principal balance owed to the original creditor, each additional charge and the basis for each. The NYC rules also require debt collectors to disclose a person's legal rights when the debt is past the statute of limitations; confirm in writing an agreed-upon debt payment schedule or settlement agreement within five business days; maintain records for the debts upon which it collects; and provide a call-back number answered by a natural person. N.Y.C. Admin. Code § 20-489; Rules of the City of New York § 5-77.

In our experience serving New York City residents, these measures have effectively helped consumers enforce their rights and protected them against abusive debt collection practices. We urge the CFPB to adopt similar rules, and recommend strengthening them in the following areas, discussed in more detail below:

(1) regulating debt sales to ensure continuity and reliability of information;
(2) specifying meaningful validation notice and verification requirements;
(3) improving protections for consumers with limited English proficiency;
(4) imposing stricter limits on communications;
(5) maintaining a centralized registry with debt collectors' contact information;
(6) banning the collection of time-barred debts and payments from exempt funds;
(7) mandating regular statements for all settlement and payment plans;
(8) ensuring fair litigation conduct; and
(9) encouraging private enforcement of the FDCPA.

The CFPB should also clearly define its regulatory authority to include all debt collectors, including original creditors and collection attorneys.

Additionally, effectuating compliance with the stricter New York City rules has been a problem, and the CFPB should assume that clever debt collectors will seize on any potential loophole or interpretive discretion to evade the rule's intended benefit. For example, despite New York City's clear requirement that verification include an itemization of the remaining principal balance owed to the original creditor, each additional charge and its basis, debt collectors often provide no breakdown or list the balance at the time they purchased the account. Because noncompliance is such an issue, it is particularly important for the rules to be specific and concrete, and for enforcement to be rigorous.

Our comments focus on the following areas:

SECTION	TOPIC	QUESTIONS ADDRESSED
I	Scope of Coverage	113
II	Debt Buying Industry Practices	3-5, 13-15
III	FDCPA Validation Notice	9-10, 16, 19-21, 23, 24
IV	FDCPA Verification Requirement	33, 35, 37, 39, 44-47, 49, 50, 53

V	Communications	56, 58, 59, 66, 68, 77, 79, 83, 85, 86, 89
VI	Unfair, Deceptive and Abusive Acts	104, 105, 112, 121-123, 126
VII	Litigation Conduct	74, 144, 145

I. Scope of Coverage (Q 113)

We urge the CFPB to take advantage of its expansive powers under the FDCPA and, particularly, the Dodd-Frank Act to ensure that its rules cover the entire debt collection industry, including original creditors and collection attorneys. Broad coverage ensures both consistency and effectiveness.

The FDCPA's current exemption of original creditors allows them to abuse and harass consumers with impunity. For example, we often hear about phone calls so constant and nasty that they drive our clients to disconnect their phones, and to file for bankruptcy even when their income is exempt from collection. The persistent calls at all hours, on the weekends, at work and to relatives exacerbate the stress that already comes from being pursued for an invalid debt, or wanting, but being unable, to pay valid debts. The simple truth is that original creditors (including payday lenders and credit card companies) are debt collectors, and there is no reasoned principle for applying a lower standard to their behavior. In fact, the extent to which original creditors are differently situated from other debt collectors only makes complying with heightened disclosure and verification requirements that much easier for them.

Likewise, based on our experience in New York City, it is extremely important that the CFPB expressly cover debt collection attorneys in its rulemaking authority. The typical debt collection law firm is a mill, staffed mostly with debt collectors and only a handful of attorneys. Debt collectors can easily evade regulations that do not cover attorneys by rebranding as law firms. We have seen this loophole exploited following the Eastern District of New York's decision that the state's judicial authority preempts New York City's debt collection rules to the extent they cover attorneys. *Eric M. Berman, P.C. v. City of N.Y.*, 895 F. Supp. 2d 453 (E.D.N.Y. 2012). Since that decision, our clients have been denied basic—and easily satisfied—protections, such as disclosure of the statute of limitations in dunning letters and written recording of all settlement agreements. Although it has been well settled since *Heintz v. Jenkins*, 514 U.S. 291 (1995), that attorneys can be debt collectors under the FDCPA, we have seen some claim not to be covered. For these reasons, we urge the CFPB to expressly state that debt collection attorneys are covered by its rules, so there is no confusion.

Lastly, the CFPB should expressly state that its rules do not preempt more protective state and municipal regulations. Innovation on the local level has been essential to test-driving novel ideas and ensuring that the unique problems facing consumers in different areas are adequately and promptly addressed. Consistency at the federal level is essential, but should provide a floor, not a ceiling.

II. Debt Buying Industry Practices (Qs 3-5, 13-15)

Debt buying practices must be more closely regulated. We generally recommend taking measures to promote the reliability of the information sold, continuity across transfers, and transparency in the terms of the purchase and related policies.

Presently, anyone with an internet connection and some change can purchase a debt portfolio. Moreover, debts are often sold multiple times, and there is little to no continuity across transfers, trapping consumers in a Groundhog Day-like nightmare where they must reset the clock each time an account changes hands. It is burdensome to require consumers to repeatedly resend statements of dispute, cease contact requests, and proof of exempt income. **For this reason, we urge the CFPB to require that all notifications and any history of prior collection efforts be sent to, and (where applicable) binding upon, subsequent debt buyers and collectors.** In addition, a debt, once disputed, should not be sold until it has been verified. There is some precedent for this practice, as DBA International embraces a certification program that prohibits the selling of disputed debts; and FCRA § 615(f) prohibits the selling and placing for collection of debt resulting from identity theft.

In addition, our clients are often contacted by so many debt collectors for a single account, even multiple debt collectors at the same time, that they lose track of whom to pay. For example, one of our clients had been current on her student loan payments when she lost her job. Two different collection agencies began contacting her for this same account. She contacted the bank that originated the loan, but it could not tell her the company to which she should direct her payments. Unsure of whom to pay, she stopped paying altogether. She was then sued by a third company. She retained MFY and asserted standing as a defense. The case was discontinued with prejudice. While a debt buyer may notify a consumer when it buys a debt, the seller typically does not. As the Civil Court of Richmond County has observed, this practice is confusing because the consumer has had no dealings with the debt buyer-assignee before, and is unlikely to recognize its name and associate it with the particular account. *Chase Bank USA, N.A. v. Cardello,* 27 Misc. 3d 791, 794, 896 N.Y.S.2d 856, 857-58 (2010). **Instead, the assignor should provide a notice of assignment to the consumer.**

In our experience, creditors do not monitor debt buyers after sales, or take any steps to ensure that they fairly and legally pursue collection. Indeed, as described in more detail below, original creditors affirmatively obstruct debt buyers' ability to ensure fair and legal collection, by limiting or preventing them from obtaining documentation to verify the debts, and even disclaiming the validity of the debts they sell. One of MFY's clients, an elderly woman with disabilities, sent her credit card company two letters disputing purchases as fraudulent. The company claimed not to have received the first letter, rejected the second letter as untimely, and then sold her debt. Eventually, a debt buyer sued the client, presented an affidavit claiming personal knowledge that the debt was valid and obtained a default judgment. Our client was not properly served and discovered the lawsuit when her Social Security Disability benefits were seized from her bank account. **The original creditor should be required to provide, and the collector should be responsible for having, all the pertinent information about the debt, the consumer, previous communications and collection attempts, and the collector's ownership of the debt.**

Similarly, original creditors often do not communicate with collection law firms during litigation, even when they are the plaintiff. Their attorney is often authorized to agree to a set range of settlement plans, with boilerplate language. This rigid, generic approach to litigation hinders the bargaining that is essential to the adversarial process. For example, an original creditor sued one of our clients for an account that was the result of identity theft. The client consistently and repeatedly asserted that he had never opened the credit card. He proved that payments were made from a different account number than the one he had at the same bank. He was even able to obtain a police report documenting the identity theft—no easy feat in New York City, where filing a police report for identity theft is notoriously difficult. Yet each time he provided the requested information, the collection attorney required something new—a more specific police report, or a copy of his photo identification (notwithstanding the fact that he had personally appeared in court several times). Eventually, MFY filed a Notice of Appearance and obtained a discontinuance with prejudice. However, the collection attorney refused to even consider our requests that the original creditor plaintiff remove the information from our client's credit report or agree that a 1099-c should not issue. The collection attorney acknowledged that our requests were appropriate, but stated that he did not have authority to waver from a boilerplate stipulation, and was not in actual communication with his client about the lawsuit.

To be effective, the rules must be guided by the understanding that original documentation is extremely important because (1) the terms of the Purchase & Sale (P&S) agreements disclaim the reliability of the information in the spreadsheet purchased; and (2) the records of the original creditors themselves are rife with errors.

In 2012, American Banker exposed the distressing conditions under which these accounts are sold. Jeff Horwitz, *Bank of America Sold Card Debts to Collectors Despite Faulty Records*, Am. Banker, Mar. 29, 2012. It reported that many banks' P&S agreements "acknowledge potentially large holes in their records," such as failing to credit payments. One P&S agreement only guaranteed the accuracy of account balances within a 10% margin of error, while another made documentation available for only half the claims. Debt buyers typically have less access to information than the sellers, and the more times a debt is resold, the harder it is to obtain documentation. Purchase and Sale Agreements often explicitly prevent future buyers from obtaining documentation or at least include temporal deadlines that are more likely to affect future purchasers. In addition, original creditors are only required to keep records for a certain length of time, so their record-keeping practices also make it increasingly harder for later purchasers to obtain documentation, even when they have the contractual right to do so.

Because these agreements necessarily mean state court collection actions are impossible to prove on the merits, plaintiff debt buyers are more likely to stall or discontinue a case than produce the governing agreement. If anything, they may produce a bill of sale, which does not list the account number whose ownership they seek to prove, references an unproduced schedule of debts, and incorporates the terms of an unproduced P&S agreement that in fact disclaims the validity of the debt. The withholding of key evidence (relevant to both standing and liability) not only prolongs litigation, but may hinder the consumer's defense.

These restrictions on sharing information are especially problematic in light of the rampant errors and lapses in the original creditor's documentation. *See* Horwitz, *supra* ("Bank of America's caution that its card records may be incomplete or inaccurate suggests that documentation and accuracy problems may originate at the debt's source.") For example, in one debt collection lawsuit against an MFY client by the original creditor, the statements produced were clear facsimiles. Although the foundation witness testified that they were printed off microfiche, the first statement, from 2007, included advertisements dated 2008. These discrepancies were exacerbated by the fact that this fabricated statement contained a mysterious $2,600 transfer, which constituted the bulk of the balance sued for. The statements accounted for only $200 of purchases charged. The foundation witness speculated that the amount may have been transferred from a different account reported lost or stolen and closed, but the consumer had never made such a transfer. Nevertheless, the original creditor obtained a judgment despite its inability to itemize the purchases, fees and other charges comprising the majority of the debt. This story illustrates the need for the CFPB rules to be guided by a firm understanding that even original creditors lack reliable documentation of consumer debts.

Our final recommendation for general industry-wide regulations is to require debt buyers and original creditor to have transparent hardship policies. Although Capital One and Midland/Encore have stated publicly that they have hardship policies, they have never articulated what these policies are. While we recognize that having limited resources is not a defense to liability, it is still a good reason to cease collection activity. Our clients commonly report missing rent and utility payments in order to pay debt collectors—either to find some relief from the constant calls and harassment, or because the debt collectors have specifically urged them to divert rent money or exempt benefits to make payments. Although the owner of a debt should be allowed to lawfully collect, there is a strong public good in preventing unnecessary evictions and in ensuring that exempt benefits be used for their intended purpose—to cover food, medicine and other necessary expenses, not to subsidize the debt collection industry.

III. FDCPA Validation Notice (Qs 9-10, 16, 19-21, 23, 24)

The FDCPA requires woefully little information to validate a debt. **The CFPB should take specific measures to make the validation notice meaningful.** First, the validation notice should identify (1) the current balance; (2) a breakdown of (i) the balance at charge off, (ii) each additional charge or fee accrued since charge off, (iii) the name of the creditor or debt collector that levied each additional charge or fee, and (iv) the date and basis for each additional charge or fee; (3) the date of default; (4) the date of the last payment; (5) the current owner of the debt; and, if different, (6) the name of the original creditor.

These pieces of information are most important for enabling consumers to recognize valid accounts. Consumers often report surprise and disbelief at how much the balance has ballooned as a result of interest and fees. Because creditors are not required to send monthly statements after charge off, by the time a consumer receives a particular dunning letter, the balance is often significantly higher than in the last statement they received. For this reason, disclosing the principal as of charge off would help consumers identify the valid debts and dispute the invalid ones.[1]

[1] Debt buyers can require this information at the time of sale, and should do so already in order to prepare IRS 1099-c Forms; to justify the fees and interest rates charged for a breach of contract claim; and to isolate the purchases charged from the contractual interest and fee for an account stated claim.

Second, before sending the validation notice, debt collectors should be required to have some documentation, such as the final 12 account statements and a bill of sale listing the account number. They should be required to provide these documents to the consumer upon request. If they are unable to provide these documents, it should be a deceptive practice to continue collecting or file a lawsuit.

Third, the validation notice should be more detailed for alleged medical debts. In addition to the name of the service provider, the date of service and the insurance company billed, if any, is essential to allow a consumer to recognize and dispute the alleged debt.

Fourth, the validation notice should inform consumers of their right to cease communication with the debt collector, and include a self-addressed form for exercising this right (as well as for disputing the debt). In our experience, consumers are often unaware of this right. Many who have solely exempt income, or who have relatively small amounts of debt, are so persistently contacted by debt collectors that they contemplate bankruptcy to find relief. In these cases, simply sending a cease and desist letter is an easier and less drastic way of attaining relief. But in order for consumers to exercise their right to cease communication, they must be informed of it. The most efficient way is with the validation notice.

Fifth, consumers should be notified that their income may be exempt from collection. As with the right to cease communication, many of the consumers who contact MFY are unaware that the law protects certain federal and state benefits, including Social Security, Supplemental Security Income, pensions, and public assistance. A consumer, particularly one who is elderly or disabled and unlikely to work again, must know the practical consequences of a legal judgment in order to make a rational decision to expend the time and resources in defending against a lawsuit. In addition, knowing that their modest income is protected offers great peace of mind to consumers who are already troubled by their inability to pay their debts.

Lastly, a debt collector that chooses to communicate with a consumer in a language other than English should be required to send all written communications in both English and this other language. Debt collectors often use non-English oral communications as a way to inappropriately gain a consumer's trust, intimidate them or provide misinformation. Yet validation notices are rarely sent in languages other than English. Consumers commonly report being told different information over the telephone than was recorded in writing, yet lack the language proficiency to notice the difference until it is too late. Although we recognize that such a requirement may disincentivize debt collectors from communicating in languages other than English, we believe that outcome is preferable.

IV. FDCPA Verification Requirement (Qs 33, 35, 37, 39, 44-47, 49, 50, 53)

In our experience, debt collectors currently do very little to nothing in response to a timely written request for verification. In most cases, especially with debt buyers, they simply cease contact and the account gets transferred to another debt collector. When verification is actually sent, it is almost always unhelpful and sometimes even fabricated. For example, one of our clients was contacted by a debt collector for a debt allegedly incurred for emergency room services. The client disputed owing any such debt. As "verification," the debt collector sent her a health insurance claim form, which was dated over one year after the date of the service and nearly a week after the date of the cover letter to which it was attached. Worse, the client had never had health insurance, so there is no company to which a claim ever would have been submitted on her behalf.

The FDCPA's vaguely worded verification requirement is ripe for regulatory clarification. It is essential that a rule fleshing out this requirement be concrete and detailed, as a similarly vague standard such as a "reasonable investigation" will have no teeth. Likewise, it is unfair to allow debt collectors to determine which disputes are "frivolous and irrelevant." Any approach that confers discretion to the debt collector is akin to asking a wolf to guard the henhouse, and will cause heightened requirements to be easily evaded.

Rather, the CFPB should specifically define what documents must be provided to satisfy the verification requirement. We recommend requiring debt collectors to send the final 12 account statements issued by the original creditor and a bill of sale listing the account number—both of which they should be required to have before sending a validation notice. In addition, the debt collector should provide the chain of assignment, including the name and address of each assignee and assignor. Finally, as under the New York City rules, the debt collector should be required to provide the debt document, or an original written confirmation of the obligating transaction, issued by the original creditor. These documents will effectively help jog memories and confirm whether the debt being sought is legitimate.

Debt buyers can easily satisfy this heightened requirement by demanding such documentation at the point of sale. The corresponding increase in price is justified by the increased efficiency of the industry and the amount of money saved to consumers in payment of invalid debts. In addition, this practice would ease state court dockets by weeding out meritless claims earlier in the process.

In our experience, the verification process is particularly inadequate for dealing with cases of identity theft. The debt collectors that are more reasonable in responding to such disputes accept the FTC identity theft affidavit and recognize that police reports are often impossible to obtain. The worst offenders require their own form affidavits, send consumers on wild goose chases to police precincts and district attorneys' offices, and fail to understand that identity thieves often make payments on fraudulently opened accounts, particular when they know the victim. In order to better protect identity theft victims, **debt collectors should be required to accept the FTC identity theft affidavit**, rather than their own forms, which are materially identical but must be renotarized and, for consumers with limited English proficiency, retranslated. **Debt collectors should also be required to articulate in writing the specific basis for rejecting an identity theft-based dispute.** Until they do so, they should not be permitted to pursue collection of, sell or report the allegedly fraudulent debt.

Furthermore, the 30-day window for requesting verification is onerous on consumers. Many consumers do not understand the verification process and those who seek out legal services often do not connect with them within the 30 days. For this reason, a debt collector should have to verify all disputed debts, regardless of when the dispute is received. In addition, no debt should be reported to a credit reporting agency before the end of the 30-day window; and once the debt is reported, any subsequent disputes should also be reported. As raised in Question 35, consumers should not be required to provide any information or documents before requesting verification. Such a rule—which is not currently required—would be illogical, as some level of verification is often required just to identify the debt being sought.

Finally, while it is advisable for the consumer to request verification in writing, literacy and mobility may make writing and mailing such a request extremely burdensome. As addressed in Section V, *infra,* a consumer should be allowed to use email to satisfy any writing requirement, without opening the door to debt collector-initiated email contact. We also note that, in keeping with the Second Circuit's decision in *Hooks v. Forman, Holt, Eliades & Ravin, LLC*, 717 F.3d 282, 286 (2013), the CFPB should make explicit that the FDCPA permits oral disputes.

V. Communications (Qs 56, 58, 59, 66, 68, 77, 79, 83, 85, 86, 89)

Effective debt collection rules should maximize the consumer's ability to limit communications. Harassing and abusive debt collection communications are the most commonly reported problem among our clients. Recently, a debt collector was so persistently calling the front desk of a client's residential building, clogging its main phone line, that he was afraid he would be evicted. He contacted MFY seeking to file for bankruptcy, even though his sole source of income was SSI.

This scenario is not at all uncommon; as noted above, many consumers are so bothered by phone calls that they contemplate bankruptcy, even when their income is exempt from collection. **For this reason, the CFPB should limit debt collection calls to three per week and actual contact to once a week. Collectors should also be required during each contact to inform consumers of their right to stop these communications, and to honor any oral requests to do so.**

We applaud the CFPB's interest in modernizing the FDCPA in light of technological advances, which can be utilized to facilitate the consumer's ability to limit communications. **For example, as noted, a consumer should be allowed to use email to present disputes and requests.** Doing so should not, however, permit the debt collector to continue contacting the consumer by email unless the consumer affirmatively consents in a separate email. In addition, we do not support allowing debt collectors to contact consumers by text message or social media. There is not enough space to make adequate disclosures, and mini-Miranda disclosures are especially important in untraditional communications because they are unexpected. If text is allowed, however, it should be conditioned on being free-to-end-user because text messages cannot be blocked short of changing one's phone number.

Another prevalent issue we see, particularly among Spanish-speaking consumers, is the debt collector's refusal to disclose its name and mailing address. When the consumer asks where to send a payment, they are told to provide their bank account number. Without the debt collector's name and mailing address, it is much harder to exercise one's right to verification and to cease contact. If the client has caller ID, she can try to search on-line for an address associated with the phone number, with mixed success. **To prevent this common situation, the CFPB should require each agency to have a single main line number that appears on all call recipients' caller ID, and that is registered, with a working mailing address, in a centralized database.** There is no legitimate reason to allow debt collectors to call consumers from obscured, untraceable phone numbers and refuse to identify themselves.

Our clients often report that debt collectors persistently contact third parties, such as relatives. One client reported that a debt collector for a cellular company called his brother, whose number they obtained because he used the same provider. **There is no legitimate reason for a debt collector to communicate with a third party more than once, and the CFPB should prohibit them from doing so, even if the debt collector doubts the accuracy of the information received from the third party.**

Similarly, the CFPB should prohibit debt collectors from communicating with the spouses of deceased debtors unless the spouse is legally responsible to pay the debt as a co-debtor. Our clients consistently report being pressured and shamed by debt collectors into making payments in such cases. One client reported that, shortly after her husband died, a debt collector went to her home, told her neighbor he was collecting a debt her husband owed, and inquired about his estate. When he eventually made contact with our client, he informed her that she was personally responsible for his credit card debt, even though the account was not in her name. Our client, already grieving and overwhelmed, was fearful that she would lose her home if she were forced to divert her mortgage payments to this collector.

Clients also complain about calls to their place of employment, fearing negative consequences. Currently, many consumers are unaware that debt collectors must cease such calls upon request. **If collectors reasonably should know they are contacting consumers at a place of employment, they should be required to obtain consent from the consumer before proceeding.**

Several acts of communication are so deceptive that disclosure is not sufficient—they should be banned altogether. For example, in Section VI, *infra*, we recommend extinguishing the right to collect debts that are past the statute of limitations. **We note here that if collection of time-barred debts is permitted, the debt collector should be required to disclose the fact that the debt is time-barred in every communication with the consumer.** Debt collectors regularly contact consumers about debts that are beyond the statute of limitations. These consumers sometimes feel they must pay back a debt, even if they do not recall owing it and have no information about it. Worse, by making even a small payment on the debt, the consumer may unknowingly restart the statute of limitations. New York City rules requiring disclosure when a debt is time-barred have helped consumers make informed financial decisions.

VI. Unfair, Deceptive and Abusive Acts (Qs 104, 105, 112, 121-123, 126)

In exercising its authority under the FDCPA and Dodd-Frank Act, the CFPB should be guided by the belief that mere disclosure of an unfair, deceptive or abusive act is inadequate. Rather, all such acts must be banned in the first place. For example, if the spouse of a deceased consumer is not legally responsible to pay his debts, a debt collector should not be permitted to seek payment from her. Similarly, debt collectors should not be allowed to collect time-barred debts, or pursue payments from consumers whose sole source of income is exempt from collection. These acts are unfair, deceptive, and abusive, and they should be banned on principle.

Similarly, as discussed in the context of validation notices, communicating over the telephone in one language but sending written communications only in English is an unfair, abusive, and potentially deceptive practice. It should be banned. **Debt collectors should be required to send all written correspondence in both English and any other language actually used in communicating.**

Another way to protect against unfair, deceptive and abusive acts is to more closely regulate debt settlement and payment plans. In our experience, consumers often enter into agreements they do not fully understand. Others—many of whom receive exempt income—felt pressured to enter into repayment plans they knew they could not afford. **As under the New York City rules, any settlement or payment schedule must be confirmed in writing within five days.** This requirement helps avoid misunderstandings about the material terms of an agreement, and we urge the CFPB to adopt it.

Still, greater protections are needed, particularly in light of many debt collectors' refusal to provide consumers with proof of payments or regular statements. One client called us confused because he had received discovery requests even though he had made timely payments towards an in-court settlement agreement. The debt collection law firm had lost track of his payments and erroneously believed he had defaulted. After confirming that he was current and did not need to provide discovery responses, the client asked the collection attorney to send him monthly statements and payment confirmations. She refused, stating that "[b]ecause we are a law firm, we simply are not set up to provide this service." Another client stopped making payments when the debt collection attorney refused to tell her the remaining balance, making her concerned that she was not being properly credited. **In light of this troubling trend, debt collectors should be required to send prompt payment acknowledgments including the remaining balance, as well as a notice of satisfaction when the amount is paid in full.**

Finally, all settlement agreements should require the debt collector to notify the consumer of any missed payments, and provide a ten-day opportunity to cure before filing a lawsuit. These protections similarly avoid misunderstanding and poor record-keeping from snowballing into burdensome, harmful situations. For example, one client reached a $25 per month in-court settlement agreement with a debt collection attorney. The agreement only stated that payment should be received "on or by" a certain date each month. Because the client was caring for her infirm aunt, she decided it would be easiest to prepay five months at once. She sent a $125 check, along with a cover letter clearly listing the months for which she was prepaying. Nevertheless, and without notifying her, the collection attorney went to court and obtained a default judgment based on her alleged violation of the agreement.

VII. Litigation Conduct (Qs 74, 144, 145)

The burgeoning debt buying industry has increasingly turned toward litigation as a collection tool. When a consumer requests verification, but the debt collector cannot procure the necessary information, it generally files a lawsuit. In our experience, collection attorneys do not meaningfully review the account to determine whether they can actually succeed in court. Rather, they rely on obtaining default judgments and usually, if not always, discontinue the case in the rare instance when the defendant retains an attorney. As a result, the clogged state courts divert valuable resources to processing these unmeritorious lawsuits. Consumers also are repeatedly dragged to court to defend against invalid debts, causing them to miss work and incur childcare expenses.

The CFPB is well positioned to make a coordinated effort to protect consumers from baseless litigation. **It should require original creditors and debt buyers to have the following documents before filing a consumer credit lawsuit: the credit or loan application; all governing agreements; statements accounting for the entire debt; complete records of payments and prior collection efforts; a full chain of title specifically listing the account number and attaching all referenced documents; and an affidavit by a witness with personal knowledge of the original creditor's record-keeping practices.**

There are several other ways in which debt collection mill firms employ unfair, deceptive and abusive litigation conduct. **We urge the CFPB to pursue bad acts by debt collectors in the course of litigation.** For example, plaintiffs usually submit robo-signed, fraudulent affidavits to the court. They also often fail to return court-ordered restitution, requiring unrepresented defendants to learn how to serve an information subpoena and enforce upon assets. Likewise, venue selection can be exploited to the consumer's detriment. Consumer credit plaintiffs often file suits in foreign states and obtain default judgments because travelling to defend a lawsuit is too cost-prohibitive for most debtors. The judgment creditor may then bypass the home state's judgment domestication procedure or other protections, and convince an unknowing bank or employer to improperly levy funds.

In addition to using its own enforcement, regulatory, and interpretive authority, the CFPB should strongly encourage private enforcement of the FDCPA. One way to do so is to interpret § 1692k to permit statutory damages of up to $1,000 per violation, as opposed to per case. Likewise, the CFPB should specify that payments voluntarily made in response to unlawful collection efforts, or involuntarily extracted pursuant to unlawfully obtained judgments, constitute actual damages, regardless of whether the underlying debts are valid. Finally, we note that the availability of injunctive relief to private litigants is essential to ensuring compliance with the law. As the FDCPA is silent on this point, there is room for clarification that the remedy provisions were enacted with the understanding that equitable, injunctive relief is available unless expressly precluded. More severe penalties, such as these, make it harder for unscrupulous debt collectors to simply factor in litigation expenses as a routine business cost.

VIII. Conclusion

For the foregoing reasons, the CFPB should expand upon already-existing protections to ensure that consumers are pursued only for valid debts and treated respectfully in the process.

Thank you for the opportunity to comment on this Advance Notice of Proposed Rulemaking. If you have any questions, please feel free to contact us.

Sincerely,

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