



housing and
economic
rights advocates

February 28, 2014

Sent Via Email to: <http://www.regulations.gov>

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

RE: CFPB FDCPA ANPR, **RIN: 3170-AA41**

Housing and Economic Rights Advocates (HERA) applauds the CFPB's undertaking this information gathering process as to the critically important subject area of debt collection practices. HERA will offer responses only to those questions for which we currently have information. Due to the constraints on length of comments, we have not repeated the Bureau's question but listed your question number for clarity.

HERA is the only California statewide, 501(c)(3), not-for-profit legal service and advocacy organization with the economic justice mission of ensuring that all people are protected from economic abuses and discrimination that may play into those abuses. We have tremendous expertise in consumer finance problems and laws, counseling individuals, delivering consumer workshops on complex topics. Four years ago, HERA began litigating wrongful debt collection cases, and unfair credit reporting shortly thereafter. We expanded our work on both topics last year, including work to help the public access affordable financial services.

We are joined in our comments by Legal Services of Northern California (LSNC). LSNC is a Legal Services Corporation funded non-profit law firm that provides a broad range of civil legal services to residents across Greater Northern California counties who fall below federal poverty guidelines. The office has broad priorities, but most cases fall into the following: 1) housing; 2) benefits programs; 3) health care and 4) civil rights. The office also provides assistance to a limited number of non-profit organizations engaged in community economic development activities.

A. Information Transferred Between Debt Owners and Debt Buyers or Third-Party Collectors

Q1: If third party debt collectors have very much information about the debt they are collecting on, they are generally not sharing it with the consumer whom they are pursuing for payment. In our experience working with consumers, it appears to us that third party debt collectors have little information about the debt they are collecting on beyond a claim of total dollar amount

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owed and the name of the creditor. Occasionally, even the name of the creditor provided may not match the consumer's recollection of the name of any company they ever owed money to.

Q3: HERA has seen and fought collection by third party collectors (and first-party, national banks) of post-foreclosure mortgage debt that is non-recourse under state anti-deficiency laws. In nearly every case, the debt was non-recourse at the time the account was transferred. Creditors should be required, not merely advised, to ensure that they do not sell non-recourse or time barred debt to third party collectors who likely do not know or care about the status of the debt. Creditors' sale of such debt starts a cascade of wrongful debt collection activity. Furthermore, creditors should be required to monitor the activity of debt buyers as it is the creditor with whom the consumer has or had the contractual relationship that underlies or should underlie the collections activity. Monitoring should cover how debt buyers treat consumers in the collections process, including representations made. Creditors should not be able to absolve themselves of responsibility for the nature of the collections activity that takes place on a debt that they originated by simply selling the debt to someone else and taking no further responsibility. In addition, that responsibility should include a prohibition on selling debt that the creditor knows or should have known was timed out or otherwise no longer due under state or federal law.

Q5: Debt buyers generally do not have anything other than the most cursory information, and consumers who have made requests such as cease communications request often have to renew them each time the loan is transferred. The benefit of debt buyers' and third party collectors' obtaining information about disputes as to the debt in question or other consumer protections would be increased protection for consumers, and, such information could influence the decision of the debt-buyer as to whether or not it makes financial sense to buy a particular debt in the first place. To the extent that such information is turned into electronic form by creditors upon receipt from consumers, the process of transfer of that information to debt buyers and collectors represents almost no expense to the creditor.

Q6:-The benefits of transfer of such information to the consumer would come in the form of improved communication with the debt buyer or collector, decreased stress for the consumer, and a greater ability to verify the information of the buyer/collector. Being contacted by someone who claims you owe debt is highly stressful at the best of times, but when you do not understand what the person is saying to you, or if you are already in a state of distress from the loss of a loved one and the claimed debt pertains to that person, communication is even more difficult.

Q7: When a debt is sold or placed with a third-party collector, the creditor should provide a copy of the original, executed contract and all other supporting documents that are the basis for the claimed debt obligation, all reference and/or account numbers related to the account for which the debt is claimed, a complete payment history for the consumer and debt in question, a record of all communications from the consumer to the creditor regarding the debt, and any other information regarding language needs, or other special needs of the consumer that could aid in communication regarding the claimed debt.

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Documentation (Media)

Q9: The last periodic statement or billing statement provided by the original creditor or mortgage servicer would be a bare minimum that should be provided to consumers in connection with the validation notice. Creditors, debt buyers and collectors should also be prepared to provide a copy of the original, executed contract and all other supporting documents that are the basis for the claimed debt obligation, all reference and/or account numbers related to the account for which the debt is claimed, and a complete payment history for the consumer and debt in question.

Q10: See response to Q7. It would be of benefit to both the consumer and the buyer/collector to have full information about the account. Transfer of such information in electronic form to the debt buyer or collector by the creditor would be negligible. However, creditors would have to undertake greater due diligence up front to verify that debt was actually owed, and to make sure consumer disputes and other account information are properly input into their database. That, in turn, would appear to be a benefit to the original creditor, resulting in an improved ability by original creditors to collect and determine whether collections are appropriate.

Q11: Whether a consumer has debt, how much and from whom, and whether the consumer has paid in a timely fashion on that debt are all highly sensitive issues for consumers. This is information that could affect consumers' employment options, as security clearances or being allowed to work in a position that involves handling or managing money for the employer can be dependent on a record of on-time debt payments. There is also a cottage industry of scammers who contact borrowers whom they believe are in financial distress- high-cost lenders offering to consolidate or get the consumer out of debt, and scammers promising to clean up credit.

With respect to the security of consumer data, the Bureau should ensure that confidential data, such as account numbers, telephone numbers, credit reports or social security numbers are transmitted and stored in a manner than protects the data from theft or misuse, and makes third party collectors or debt buyers liable for negligent loss or misuse of the data.

Q12: Centralizing the record keeping function seems instinctively appealing if one pictures the depository as an easy to access, immaculately maintained repository with up to the minute updates of all important information. But centralization does not address key components of the wrongful debt collection problem. And it also poses significant problems that may represent a set-back to the consumer.

Centralization does not address the issue of the quality of the information. The same poorly maintained, inaccurate or incomplete information that the original creditor has will be stored in a centralized location instead of at the original creditor. With original creditors not providing complete or accurate information, or anything more than the most cursory information to the debt buyer or third party debt collector, it is likely that the same quality of information would get transferred to the repository. And what will be deemed compete for purposes of the repository? Nothing short of the complete file- all notes, all recorded phone calls, the complete payment history, the contract, et cetera, would be the bare minimum that should be part of the record for each person.

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Centralization adds cost to creditors without forcing them to improve the quality of their information or ensure completeness.

A centralized repository may create another screen between the consumer and the original creditor, much like in the credit reporting system. In that problematic system, the lives of consumers are deeply affected by a repository of information that is not maintained by the original creditor and is only as accurate as what the original creditor puts into the system. Consumers struggle to get items in their credit report corrected. The proposed debt collection data repository is also reminiscent of the Mortgage Electronic Registration System, which was highly flawed.

If any form of centralized repository is ultimately created, consumers should have full, and free (no charge) access to the information that is stored therein that pertains to them. The repository should not become another opportunity for another industry to start up that sells back to consumers their own information from their own accounts that has been aggregated by industry. The cost of maintenance of the data should be attributed to industry as the cost of doing business. There are significant data security concerns that come with aggregation of information. Theft of this kind of data raises the same concerns as theft directly from creditors or merchants, as when there was a breach of security at Countrywide some years ago, or the recent data theft from the merchant Target. Data security will remain an on-going concern in our modern age. It is not clear that a centralized repository will necessarily improve the quality of information, however.

If such a repository is created, HERA would request the imposition of direct liability on the maintainer of the repository, a right for consumers to challenge information contained in it, hopefully with a process better than the FCRA dispute procedure.

Q14: A consumer, ideally, will have already received notification of the claimed debt long before placement with a third party buyer for collection. However, notice of such sale or placement is beneficial to the consumer by letting the consumer know the status of the debt, with whom to communicate, and it should include validation information and/or the invitation to request the validation information as listed in our response to Q7. HERA is seeing mixed credit files with some frequency, with consumers pursued for debts that do not belong to them. If creditors maintain adequate records up front, then transfer of records in electronic form to buyers/collectors should represent a negligible expense.

In California, SB233 passed last year and went into effect this year, protecting consumers against some of the abuses they have experienced at the hands of third party buyers. It imposes a much needed higher standard on buyers to have adequate information in their hands before making a written statement to a debtor in attempt to collect a debt. That information, codified at Civil Code, Section 1788.52, includes proof:

“... (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

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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."

In addition, this new law requires the debt buyer to have access to "...a copy of a contract or other document evidencing the debtor's agreement to the debt". And, for revolving credit, "...the most recent monthly statement recording a purchase transaction, last payment, or balance transfers".

Q15: See response to Q14. In addition, we note that, in our experience in the mortgage context, even if information is transferred, it does not serve its purpose of protecting the consumer if it is voluminous and unlabeled. Careful data collection up front that is properly maintained and labeled by the creditor is a key theme to improved debt collection processes on the back-end.

Q16: Yes, it can be beneficial for the consumer to make contact with the creditor directly to negotiate on the debt claimed, and/or to verify the debt and share information about the collections practices the consumer is experiencing.

Other alternatives.

- Validation responses should also include a copy of the last statement, and the reported date of the consumer's last payment on the debt in addition to an itemized break-down of categories 2 through 5 listed in Alternative 3 above. Itemization is key to identification of unlawful or erroneous packing of charges into various categories.

Q17: Itemization should be required as to all types of debts collected, though, certainly, the more complex the transaction, the more important that itemization is. For medical debt, a clear statement of each item billed and related reference numbers, as well as dates of when the service was incurred, as consumers get billed sometimes for the same item on different statements and need to be able to compare apples to apples. For mortgage debt, a breakdown of amounts held in suspense, paid towards escrow, principal, interest, late charges, and all other fees should be required. We find that servicers still charge for a foreclosure attorney when a case has not yet been referred to foreclosure. The break-down of fees that we request helps us identify that fact. The more complicated the math may be on a transaction (as for mortgages), the more important a complete break-down of payments made, and received and how these were allocated is essential.

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Q18: All of the suggested information listed by the Bureau in this question can be extremely helpful in aiding the consumer to quickly identify whether they recognize the debt or whether it may pertain to someone else with a similar name whose file is mixed with theirs. HERA has seen mixed credit files even between people whose names are not at all similar.

Q19: Debt collectors should notify consumers that if they do not dispute within a certain amount of time, collections activity may proceed, but that the consumer can still challenge collections thereafter.

Q20: Yes, consumers should be informed in the validation notice of all of the above. Collections activity is highly stressful for the consumer, and clear communication in writing is preferable, with options and rights outlined. That also helps ensure consistency and accuracy of information.

Q21: Yes, it would help the consumer to know about the additional above-listed rights and may smooth the collections process for both collector and consumer.

Q22: A Summary of rights from the Bureau would be idea. It could also tell the consumer to go on the CFPB website for different languages, if the bureau is able to translate the notice into various languages. In California, the Department of Real Estate translated a number of key real estate documents into the 5 required languages under our Civil Code, Section 1632, to save time and money for industry members and ensure consistency of information.

Q24: We occasionally see notices provided in Spanish, but not all of the notice is translated.

Q25: See answer to Q22. Consumers should be able to request information in the language they can read. If the creditor or debt buyer is aware of the primary language, notices should be in that language.

Q26: In our experience, debt validation notices are not provided electronically.

Q27: We are finding that disputes have to be in writing, as well as requests for original creditor, and the request to cease communicating.

Q28: It is unusual to see debt collectors give consumers the option to communicate by email.

Q34: HERA recommends erring on the side of not defining what a dispute is such that any inquiry by the consumer is treated seriously, investigated, and responded to. This avoids time wasting on the part of debt collectors seeking to avoid investigation and a substantive response.

Q35: The question becomes what recourse the consumer has if the consumer does not have written records. Consumers do not generally have extensive or sophisticated data maintenance systems, which creditors have, and a consumer disputing, for example, that a debt belongs to her would likely have no records at all. To the extent that a consumer may be required to provide records or other information to dispute, the requirement should be limited to basic information

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on the nature of the dispute and should be effective only after the creditor or debt collector has responded properly to a validation request.

Q38: A time limit on responding to a validation request or dispute would give clarity to consumers about their ability to move forward without fear of further pursuit on a debt that they may or may not owe. If the creditor or debt collector does not respond in writing within a reasonable time frame, that should terminate the ability of anyone- not just those parties- to pursue collections. Such a rule would elevate the level of responsibility and care taken by creditors and collectors in the collections process and would create clarity and the ability to move forward for consumers.

Q39: We already know that collectors frequently do not have much if any information from the original creditor, and this creates problems for the collector and consumer alike. Collectors should have or be able to obtain basic requested information from the original creditor. That does not appear to be happening now.

Q44: We would anticipate that such an exception would result in debt collectors sending “frivolous and irrelevant” form letters in response to nearly every dispute. There should absolutely not be an exception for “frivolous and irrelevant” disputes. The harm caused to consumers by unlawful, unverified collections attempts is tremendous. The process of challenging an unseen, unknown entity that claims you are a dead beat for not paying what they ask is upsetting and intimidating. Abuses are even more rampant as to those who are more vulnerable- people with limited English proficiency, seniors, and people with disabilities.

As an example, HERA has been (and still is) litigating against Heritage Pacific, which is third party debt collector that decided to file collections cases in court against former homeowners with Latino or non-Caucasian sounding last names. They accused former homeowners of fraud in the origination of the loan. Yet they had no documentation to support that claim. Their business model was to obtain default judgments whenever possible, and, if a consumer did respond, then to frighten the consumer into making a payment plan on a debt that California law makes clear that the consumer no longer owes after foreclosure. Here’s an article on the practice: *Texas Firm Sues Homeowners With Foreclosed Second Mortgages*, ABC News at <http://abcnews.go.com/Business/texas-firm-sues-calif-homeowners-foreclosed-mortgages/story?id=16433371>. See *Gonzales v. Heritage Pacific*, HERA litigation in partnership with private attorneys Will Kennedy and Dan Mulligan, the Superior Court of the State of California, Santa Clara County, Case NO. 110-cv-173203. And please note the great work of a private attorney, Peter Fredman, on another case against Heritage: <http://www.peterfredmanlaw.com/representative-cases/heritage-pacific-financial-unlawful-debt-collection-litigation/>.

We also know from our experience with the gross failures to properly implement the Home Affordable Modification Program (HAMP), that what you end up with is fairly low level, sometimes very low level representatives, making a determination about what the consumer owes, then not investigating disputes of consumers bold enough to complain. An inadequate investigation then cuts off further investigation, as the mortgage servicer or lender refused to put more effort into the process. In addition, these are industries that rely on bulk and speed and

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churning. They are not designed to ensure maximum care or accuracy. The law needs to protect consumers against the high-volume, high-pressure mentality that leads to abuses.

Q46: Providing the last periodic or billing statement is definitely not sufficient. At the very least, the consumer needs a complete payment history on the account in question that includes post charge-off amounts and an itemization of amounts currently requested.

Q53: The benefits to the consumer to have time to resolve the matter are significant, as an immediate hit to their credit means instant damage when the reporting may, ultimately, not be accurate. Similarly, it takes time to resolve any dispute as to debt claimed. As an example, in recognition to the harm to tenants from the early reporting of eviction/unlawful detainer filings, California has a masking law that requires that no one but the consumer and landlord have access to the court filing for a period of months, as a way of giving the tenant consumer time to dispute the eviction case and achieve a resolution before the matter hits his/her credit. This law also reflects an understanding of the fact that sometimes unlawful detainer cases are erroneous. Similarly, we know that debt collection requests are sometimes erroneous, requesting an amount of money that is not owed, or payment on a debt that is not owed at all.

Q54: Creditors and collectors have no compunction about invading the privacy of the consumer, utilizing Facebook, MySpace and other electronic communications to demand payment. We commend to you an article on the topic that examines practices and evolving jurisprudence in the area, entitled Debt Collection in the Information Age: New Technologies and the Fair Debt Collection Practices Act, (2011) 99 CALIF. LAW REV. 1601., Consumers do not expect their mobile phones, webpages, or email to be the gateway for unfettered contacts by creditors or collectors. Nor should they expect that. Creditors and collectors should be required to obtain written authorization to use these methods for contact, and any authorization they may have initially obtained that may have been buried amongst other, fine-print disclosures at the time when the consumer signed up for a service, should be deemed insufficient. Before collections activity begins, or as part and parcel of initiating the process, the creditor and/or collector should be required to mail a hard-copy request for permission to use email, or any other form of communication that party seeks, as a way to request payment of debt, and the written request should make clear to the consumer that the consumer does not have to agree to use of those means of communication.

The other advantage to the consumer of a hard copy communication is that the consumer can then have a record that he/she can refer back to of what the creditor/collector is demanding. And, with a hard copy, it is harder for a creditor or collector to dispute the information that was delivered.

Q55: Social media platforms create a public presence identified with each individual. In some systems, it is possible for a stranger to contact an individual, either privately or publicly. Since the primary purpose of these platforms is to allow people to see information about others, debt collectors should certainly be barred from leaving any kind of message on a social media platform that could be viewed by anyone but the debtor.

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Q56: Through social media, individuals create a persona that is something between public and private; most people view it as at most a limited public space. The Legislature recognized when it passed the FDCPA the incredible toll on individuals and families that debt collection can take, and how stressful debt collection can be. The social media arena should be one where individuals can be free of debt collection activity.

Q65: Because a mobile phone can be carried by the consumer everywhere, it creates an unparalleled degree of potential access to the consumer, which also increases the potential for abuse. Contact by the collector or creditor by text or should have to be authorized in writing by the consumer. Since authorizations are frequently blocked together with other authorizations or onto disclosures at the time of purchase of an item or service when the consumer may not be focused on the disclosures, the request for authorization to communicate by text should be requested again in a stand-alone written communication to which the consumer should have to respond in writing. Texts and emails should be restricted to business hours only, if authorized by the consumer. The consumer should be allowed to retain the ability to specify in writing that communications during those hours or by those methods are not allowed.

Q90: The servicers referenced in this question nearly always separate—by department and function—collection activities from escrow, transfer, and other required notice activity. Mortgage servicers can, and should be required to, cease collection activities such as repeated telephone calls and demands for payment at a consumers request while providing consumer protection-oriented mandatory disclosures.

Q93: HERA would encourage the Bureau to impose the same prohibitions on first-party debt collectors. There is no logical reason for a first- party creditor to be allowed to engage in abuses that at third party cannot engage in. To have a standard of conduct that is uniform as to all collectors is good for consumers—it creates clarity of expectation.

Q103: Creditors routinely tell surviving spouses, as well as surviving children, that they are legally responsible for the deceased's debt. They call or make other contact repeatedly, and they are aggressive. Collectors, when notified that the debtor has died, should have a uniform notice that they have to send to the consumer explaining clearly whether the survivor may have liability, and advising the survivor of free legal resources or reputable non-profit counselors in their state.

Q104: The use of shared credit, or the credit of a primary person where there is a secondary person also on the account is an area that is little understood by consumers. In a recent consultation, HERA was contacted by a consumer who said he was on a family member's credit card account when he was in his late teens through his twenties, and that the account is showing as open on his credit report though the card account was closed out by the family member some years ago. The creditor, in turn, has records showing that the account was closed, but not that another card was ever issued under the secondary person's name.

Q113: HERA would encourage the Bureau to impose the same prohibitions on first-party debt collectors. There is no logical reason for a first- party creditor to be allowed to engage in abuses

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that at third party cannot engage in. To have a standard of conduct that is uniform as to all collectors is good for consumers—it creates clarity of expectation.

Q116: Low-income consumers are more likely to be on lower limited minute and data mobile phone plans. These plans charge per minute and per text for consumers who exceed the plan limits. The rates from these mobile service providers vary, but in general, the lower cost plans have higher costs for consumers who exceed plan limits. As a result, permitting debt collectors to contact borrowers on mobile phones through calls and texts is more likely to negatively impact low-income consumers. This conduct should therefore be prohibited unless a consumer expressly consents.

Q117: Yes, proposed rules should presume that consumers incur charges for contacts to mobile phones for the reasons discussed in our response to Question 117. The U.S. Postal Service- is still the best medium for consumers to receive contact from creditors or collectors. The communication will, of necessity, be in a form that the consumer can keep, think about, and take to counsel for advice, as well as retain as proof of the communication. All other forms of communication- phone, text, email- run the risk of not being easily captured or retained or being more easily subject to a claim of tampering.

Q118: Collectors should have to obtain consent from consumers in a separate solicitation in writing that is not mixed with other questions or solicitations, so as to avoid confusion. The fact that certain forms of communication could result in charges to the consumer should be highlighted in the request for consumer permission as to which forms of contact are permissible.

Q119: Yes, consumers should have the right to opt out of contact anywhere other than their home phone and address (which is subject to consumers' right to demand to cease communications), even where they have previously given consent. Consumers might give mobile-phone contact consent to a debt collector in a good-faith effort to resolve the debt, only to find themselves subjected to repeated and abusive calls. The same applies to calls at work or other locations that would be prohibited but for the consumers' consent.

Q122: HERA recently worked with a consumer who had been making irregular monthly payments to a debt collector for over two years in response to the debt collectors repeated threats to sue her. Despite these payments, the debt collector's monthly demand letters to her stated a balance that varied wildly, with no apparent relation to the amount of her monthly payments. When the consumer came to us, the balance the debt collector demanded from her had actually **increased** over the two years she had been making payments. The debt collector refused to provide her with any accounting of how it had arrived at her balance and instead threatened again to sue her when she stopped making payments. The debt collector failed to provide any accounting records to our office on our specific request, instead simply giving her a new balance that appeared to reflect that she had been making payments. Debt collectors should be expected to not only give consumers records of any payments made, but should be required to give written offers of settlement on a debt when they reach an agreement with a consumer to settle an account and regular account statements listing payments made and any itemized revolving balances to consumers who are making partial payments on the debt. Addressing some of these concerns, California Civil Code §1788.54 requires debt buyers to: reduce settlement agreements to writing

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and give them to consumers; give consumers receipts for payments within 30 days; give consumers a final statement if their account is paid in full.

Q123: California's recently enacted legislation affecting collection practices for debt buyers is a good model for substantiation concerns. In our experience, debt collectors often seek to use the courts and the threat thereof, as a blunt tool for collection without concern for due process or minimum standards of proof. Instead, collectors look to file volume complaints in the hope of getting default judgments or judgments against unsophisticated and unrepresented consumers. At a minimum, debt collectors should be required to show reliable documentation and information as to their right to collect the debt, the amount of the debt, their right to post-charge off fees and interest, and the date of the last payment. Consumers should have the right to request this information at any point in the collection process

Under Civil Code § 1788.52, a debt buyer can't make written collection efforts unless it has specific identified information on the debt and a copy of the underlying contract. A homeowner has the right to request this information at anytime in the collection process, and all collection efforts have to stop until this information is provided to the requesting consumer. Information and documentation that the debt buyer is required to have includes:

- Records showing that debt buyer has right to collect.
- Debt balance including explanation of post-charge off fees and interest.
- Name of original creditor and account number.
- Name and last known address of debtor from original creditor's records.
- Names of entities that purchased debt.

In addition, Civil Code §1788.58 mandates that any debt buyer filing a suit in state court against a consumer state allegations which if proven are sufficient to meet basic standards of a due process right to a judgment. Complaints must allege:

- That plaintiff is debt buyer
- That plaintiff is sole owner of debt or has authority to act on behalf of all creditors.
- Nature of underlying debt and consumer transaction from which it is derived.
- Debt balance at charge off and explanation of all post-charge off fees and interest.
- Date of default or last payment.
- Identify original creditor and account number.
- Name and last known address of debtor from original creditor's records.
- Names of entities that purchased debt.
- That debt buyer complied with notice provisions of statute.
- Copy of contract or other doc evidencing debt.

Section 1788.58 also prohibits a debt buyer from initiating a legal action if the applicable statute of limitation has expired. Similar common sense basic fairness rules should be applied to all debt collectors under federal law.

Q132: Some of our clients, they believe they may lose their work since the collector is calling them at work, or that they may be sued. Immigrants, even with regularized status, are afraid collection will hurt their status.

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Q135: Collectors sue frequently on time-barred debts that they claim have been revived. They also sue frequently on debt that is time-barred. An interesting study to consider regarding the reaction of consumers to disclosure of the fact that the debt is time-barred is *Testing Materiality Under the Unfair Practices Acts: What Information Matters When Collecting Time-Barred Debts?*, Nathalie Martin, University of New Mexico - School of Law, and Timothy E. Goldsmith, University of New Mexico - Dept. of Psychology, August 2010, *Consumer Finance Law Quarterly Report*.

Q141: See response to Q135.

Q143: We are seeing suit filed in our Superior Court in the locations where the consumer lives, regardless of the type of debt or where the contract was signed.

B. State Debt Collection Litigation

Q147: Rules issued by the CFPB should constitute minimum standards that are not deemed to preempt higher, stronger standards that states may impose.

Q148: Deceptive claims include the amount owed, who owes the debt, whether collection is valid or legally permissible, and what type of collections activity has been undertaken. For example, we have seen married couples sued twice by collections companies acting on behalf of homeowner associations, for jointly held debt, potentially leading to (if not defended by consumer counsel) double recovery on the same debt.

Q159: Registration of debt collectors could have the benefit of incentivizing more professionalism amongst collectors and their firms. As with all registration systems, a required standard of conduct that is tied to licensing, along with consequences for breach of those rules and enforcement of some kind all are key to a successful system intended to maintain a higher quality of performance and deter abuses. For example, most states have had some form of mortgage broker and real estate licensing system, but few have been vigorous about enforcing standards of conduct that are part of licensure, and some licensing systems have had only modest standards of conduct in place. It is not enough to have registration if you do not have standards of conduct and consequences, including the loss of the license and worse for breaches of those standards.

Q160: If the NMLSR is a robust enough database to double as a debt collector registry, it may be an excellent idea to use it for that purpose as well. Certainly a national registry of debt collectors could be highly beneficial to consumers as a way of trying to reduce abuses and could be platform for standardization of licensing.

Q162: It is rational that the length of time for maintenance of records correlate to how long a consumer may be pursued for the debt. It may also be rational that the amount of time should vary by type of debt. For example, for a mortgage that could be 30 or 40 years long, one would want the servicer to have a complete payment history that goes back to the first payment, as that could affect the claimed payment amount due today. In addition, it may be important to build a time cushion into record retention to account for younger people who may have had their identity

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used to open an account, without their knowledge, and then may not realize until many years later—10, 15, 20—when they become active consumers themselves, that they have an entry on their credit report that should not be there. Sometimes is it the credit report that is the trigger for the consumer's understanding that there was or is a debt collection problem.

For example, in a recent consultation, HERA was contacted by a consumer who said he was on a family member's credit card account when he was in his late teens through his twenties, and that the account is showing as open on his credit report though the card account was closed out by the family member some years ago. The creditor, in turn, has records showing that the account was closed, but not that another card was ever issued under the secondary person's name. This is a story that highlights the poor record keeping of creditors (a national bank in this case), and the difficulty in trying to get records straightened out. However, it also speaks to the issue of retention of records, raised above, as the account was closed about 8 years ago, but the secondary person on the account just recently noticed that it was showing as an open line of credit.

Sincerely,

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