DEBT COLLECTION & DEBT BUYING

The State of Lending in America & its Impact on U.S. Households

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AN INTRODUCTION TO DEBT COLLECTION AND DEBT BUYING

Once a consumer obtains a loan, an entirely different set of actors and rules comes into play in collecting the loan should it go into default. For many consumers, defaulting on a loan is inevitable when unemployment, medical emergencies, or some other financial crisis leaves them unable to cover the payments. The Great Recession only made this outcome more likely for more U.S. households. Currently, more than one in seven adults is being pursued by debt collectors in the U.S., for amounts averaging about $1,500 (Federal Reserve Bank of New York, 2014).

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If a borrower is unable to make payments on a loan for a certain period of time, the lender will typically deem the obligation to be in default and attempt to collect on the debt. The lender can do so by pursuing the borrower itself using an internal collections department or by outsourcing collection activities to a third-party debt collector or law firm. The lender generally will also report the debt to the major credit reporting agencies (CRAs).

The third-party debt collection industry has grown tremendously over the past few decades, with 2010 revenue more than 6.5 times that of 1972, after controlling for inflation (Hunt, 2013). The industry's participants make more than one billion consumer contacts annually for hospitals, government entities, banks and credit card companies, student lenders, telecommunications companies, and utility providers (Hunt, 2013).

The federal Fair Debt Collection Practices Act (FDCPA) prohibits unfair, deceptive, and abusive debt-collection practices, such as threatening consumers, misrepresenting consumers' rights, and making harassing phone calls. However, the FDCPA only applies to third-party debt collectors and thus does not apply to creditors—such as many banks and hospitals—that collect their own debts. The Consumer Financial Protection Bureau (CFPB) has the authority to write and enforce rules related to this statute and can also examine "larger participant" debt collectors for compliance. In many states, debt collectors must be licensed in order to collect debts in the state and thus are also subject to state oversight.

Although debt collection plays an important role in the functioning of the U.S. credit market, it may also expose American households to unnecessary abuses, harassment, and other illegal conduct. The Federal Trade Commission (FTC) received over 200,000 complaints about debt collection in 2013—second only to complaints regarding identity theft (FTC, 2014a).

As federal and state regulators look at ways to address debt collection abuses, a growing concern is the expansion of the debt-buying industry (FTC, 2013). Debt buyers are specialized companies that purchase charged-off or other delinquent debt from credit card companies, banks, and other creditors for pennies-on-the-dollar. These companies then attempt to collect the debts themselves or through collection agencies or law firms. Some debt buyers also repackage and sell the debt they have bought to another debt buyer, either almost immediately or after already having attempted to collect the debt. Credit card debt is the most prevalent type of defaulted debt purchased by debt buyers. Debt buyers also purchase student loans, medical debt, utility and phone bills, tax liens, car loans, and mortgage and auto deficiencies.

When debt buyers acquire portfolios of charged-off debt, they rarely purchase documentation of the debts, but instead purchase an electronic file containing limited information on all of the debts in the portfolio. These portfolios are typically sold "as is"; often, account information is inaccurate, outdated, or missing, particularly if the debt is resold multiple times. The inaccuracies and lack of basic information—as well as the collection tactics used by debt buyers—result in consumers being harassed and wrongly sued for debts they do not owe or have already paid or settled, and courts around the country are overwhelmed by a flood of cases filed against consumers.

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Consumers have no say in whether and to whom their accounts are sold and are not informed when the debt they owe has been sold. Instead, they receive an onslaught of collection phone calls, letters, and e-mails from a company they do not know. Sometimes consumers learn of collection attempts only after having been sued or having had a default judgment entered against them, often when they discover their wages being garnished or their bank accounts frozen.

As described more fully later, consumers (many of whom are of low and moderate incomes) are being sued for old debts without their knowledge and often with little proof of the claims. As a result, debt-buying companies are taking advantage of financially-distressed consumers and have overwhelmed state court systems, extracting billions of dollars in judgments against consumers around the country for debts that may not even be owed.

MARKET AND INDUSTRY OVERVIEW

Industry Beginnings and Growth

The large-scale sale and purchase of charged-off debt portfolios had its start in the aftermath of the savings and loan crisis. In 1989, Congress created the Resolution Trust Corporation (RTC) to deal with insolvent and soon-to-be insolvent thrifts by closing, selling, and merging institutions as well as disposing of thrift assets to the private sector (Davison, 2005). In order to rid itself of thrift assets quickly, the RTC began selling the assets in bulk sales to companies that began buying, collecting, and profiting from the low-cost debt portfolios (Davison, 2006).

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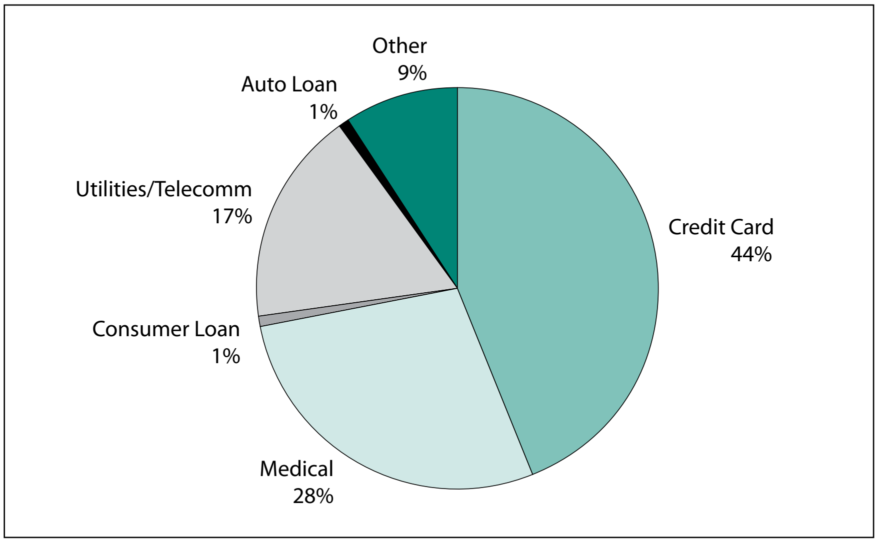
Since the 1990s, the debt-buying industry has grown substantially, with companies shifting toward buying (and re-selling) charged-off consumer debts. Three main trends have spurred industry growth: increasing availability of consumer credit, particularly credit cards, in the 1990s and 2000s; higher delinquency and charge-off rates in the 2000s; and the routine incorporation of sales of charged-off debts into creditor accounting strategies (FRB, 2013; FTC, 2013).

The FTC considers debt buying to be one of the most significant changes in debt collection in recent years (FTC, 2010). Revenue in the debt-collection industry has increased by more than six times the levels of the early 1970s (FTC, 2010). According to the FTC (2013), credit card debt consistently makes up the majority of debt sold to debt buyers. The FTC's own analysis of more than 5,000 debt portfolios found that credit card accounts made up 65% of the face-value of debts purchased and represented 44% of the total number of accounts in those portfolios (FTC, 2013). However, while credit card debt will remain a significant portion of debts purchased by debt buyers, decreasing charge-off rates and amounts in recent years[1] and changes in banks' sales practices mean that debt buyers are looking to purchase other types of debt, including cell phone bills, auto loan deficiencies, student loans, and mortgage deficiencies (FRB, 2013; OCC, 2013; Hebeisen, 2012).

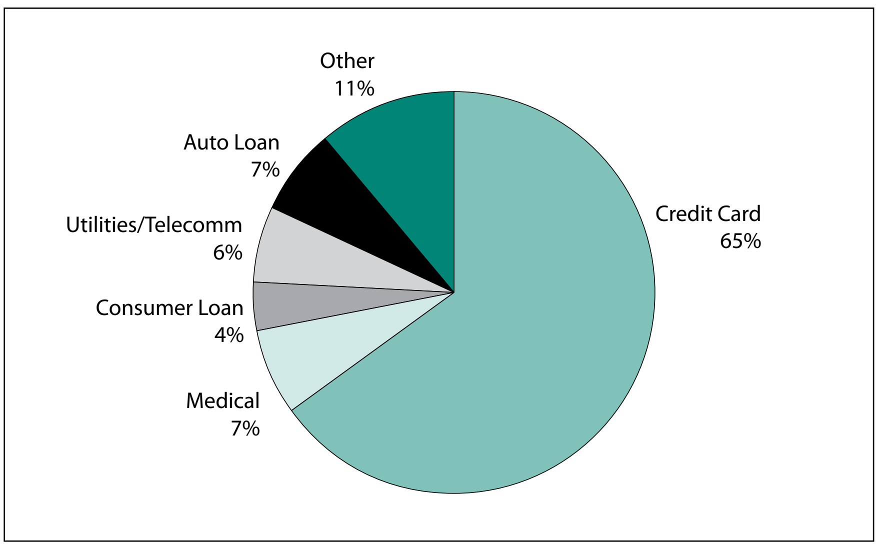
1 According to Federal Reserve Board statistics, charge-off rates of credit card debts (and other consumer loans) peaked in 2010 (FRB, 2013). Similarly, the OCC recently reported that charge-off amounts by the 19 largest banks have declined from their peak of $130 billion in 2010 to $67.8 in 2012, a 48% decline (OCC, 2013).

Figure 1: Type of debt acquired by large debt buyers, as a share of total accounts purchased



Source: FTC, 2013

Figure 2: Type of debt acquired by large debt buyers, as a share of total face value of debt



Source: FTC, 2013

The Debt-Buying Market

Debt Buyers

Although expansion in the debt-buying industry has slowed in recent years, it remains relatively new and growing. DBA International, the industry's trade association, reports it has over 400 debt-buying company members, in addition to associated vendors (DBA, 2007). The majority of debt buyers—including the largest debt buyer, Sherman Financial Group—are privately-held companies. Only four companies are publicly-traded.[2] As a result, only sparse data and other information are available on the size and attributes of the industry as a whole, although reports in recent years shed some light.

From 2006-2009, the top nine debt buyers purchased more than 5,000 portfolios comprising almost 90 million consumer accounts for about $143 billion of consumer debt.[3] These companies paid less than $6.5 billion for the debt, or about 4.5 cents-per-dollar (FTC, 2013). Publicly-traded debt buyers, as well as the larger privately-held ones, purchase large portfolios of credit card and other debt from originators (DBA, 2007). This market is heavily-concentrated: These nine debt buyers purchased three-quarters (76%) of all consumer debt in 2008 (FTC, 2013).

Over the past decade, debt buyers experienced significant revenue growth, despite the Great Recession. Analysis of company 10-K public filings between 2003 and 2012 shows that Encore Capital Group saw a 373% increase in revenue, and Portfolio Recovery Associates experienced almost 600% revenue growth. These increases in part result from larger debt portfolio purchases and changes in collection strategies and technologies, including an increased focus on using lawsuits to collect the purchased debts.

Debt Sellers

Banks are the most common entities that sell charged-off consumer debt, as they originate some of the common debts purchased by debt buyers: credit card balances, student loan debt, mortgage deficiencies, auto loan deficiencies, and other forms of consumer credit. Other common debt sellers are healthcare providers, telecommunications companies, utility service providers, and municipalities.

Bank debt sales are highly concentrated among the largest banks. According to the Office of the Comptroller of the Currency, the 19 largest banks make up the majority of bank debt sales, with 82% of annual total average sales of debt concentrated among the five largest banks (OCC, 2013). Over the past few years, those 19 banks sold approximately $37 billion in charged-off debt annually (OCC, 2013). In part because of increased regulatory focus, at least two banks—Wells Fargo and JPMorgan Chase—stopped selling charged-off debt in 2013 (Aspan, 2013; Aspan & Horwitz, 2013).

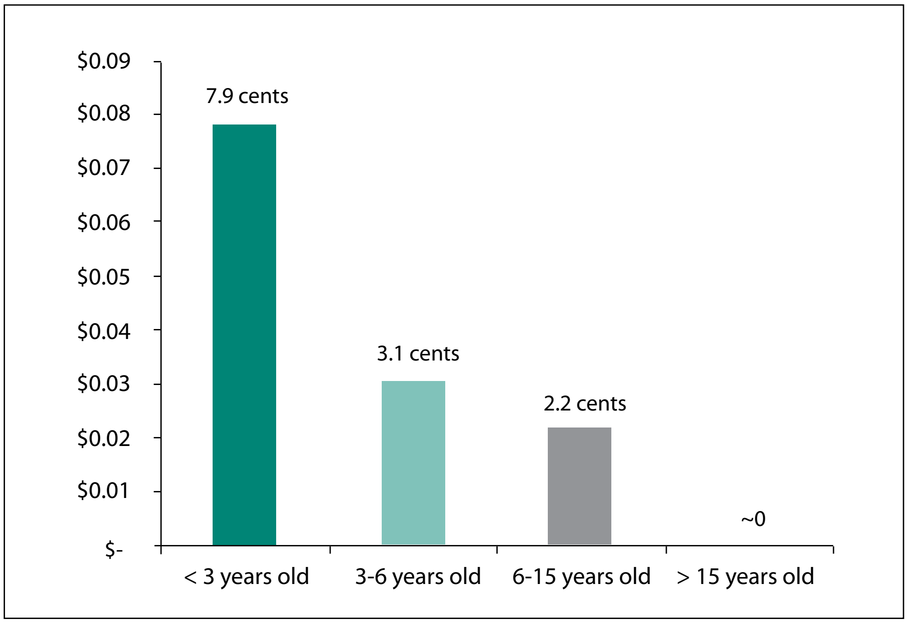
2 These publicly-traded debt buyers are Encore Capital Group, Inc.; Portfolio Recovery Associates, Inc.; Asta Funding, Inc.; and SquareTwoFinancial Corp. Encore Capital Group acquired another previously publicly-traded company, Asset Acceptance Capital Corp. in June 2013 (Encore Capital Group, 2013b).

3 More than 80% of these debts were acquired from the original creditor (FTC, 2013).

Sale and Pricing of Debt

Various factors—including the demand and availability for the type of debt, age of the debt, and number of times it has been placed for collection or sold—influence charged-off-debt prices (GAO, 2009). The constriction in the credit market since the Great Recession has resulted in the lower supply and higher prices for charged-off debt portfolios (Collections & Credit Risk, 2011). In addition, debt becomes less expensive as it ages or is sold multiple times. The FTC's recent analysis of approximately 3,400 debt portfolios bears this out, finding that the average price of debts was 7.9 cents-on-the-dollar for debts less than three years old, while essentially nothing for debts older than fifteen years (FTC, 2013). Other factors that can influence the price of the debt include the geographic location of the accounts [4] and the amount of documentation included for the debts in the portfolio[5] (GAO, 2009).

Figure 3: Cost of buying $1 of debt by the age of the debt



Agreements Between Buyers and Sellers of Debt

The purchase and sale agreements between the portfolio seller—typically a bank—and the debt buyer dictate the price and face-value of the debt being sold. The agreements also outline what is being sold to the debt buyer: the types of debts included in the portfolio, the information accompanying the accounts, the accuracy of the account information, and any documentation supporting the accounts.

When the seller is the original creditor, the seller controls portfolio creation and dictates which accounts are included in the portfolio (FTC, 2013). The seller also determines what account and portfolio information is shared with prospective debt buyers in the bidding process prior to the actual sale (FTC, 2013). The seller is also the party that tends to dictate the purchase-and-sale agreement contract terms (FTC, 2013). These contracts dictate which debts are included in the portfolio, the

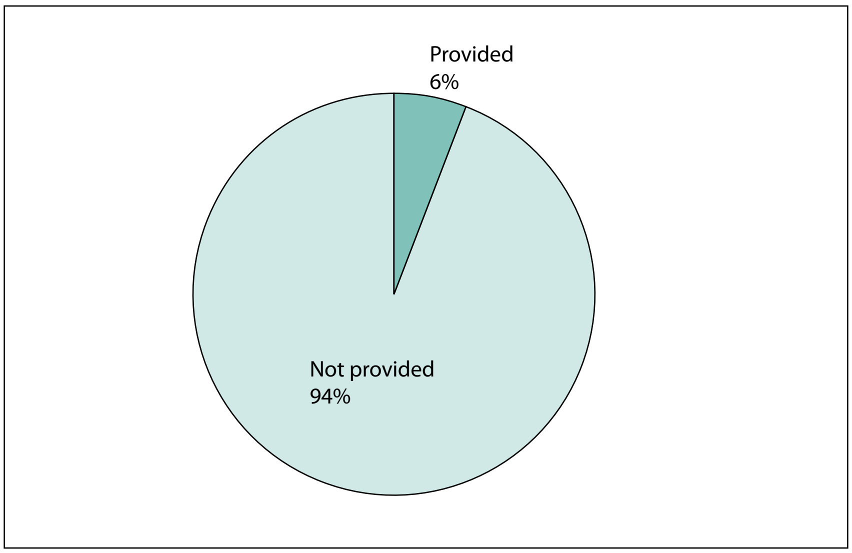
4 Debts located in states where debt collection laws or statutes of limitations are less favorable to debt collectors or debt buyers are less expensive.

5 The more documentation associated with the accounts, the higher the price will be, all else being equal.

pricing, the information that flows with the accounts at the time of sale or is available later, the resale of the debts, and any guarantees (or lack thereof) on the debts and accompanying information.

When debt buyers purchase debt portfolios, they receive an electronic database or spreadsheet (or access to such a database) summarizing the debts included in the portfolio (DBA, 2007). These files often include only a name, last known address (sometimes the address on the original credit application), the amount allegedly owed, the charge-off date, and the date and amount of the last payment (FTC, 2010). Notably, very few portfolios include documentation for the debts being sold. Based on an analysis of 3.9 million accounts purchased by six of the largest debt buyers from March to August 2009, the FTC estimated that debt buyers received documentation for as little as six percent of the accounts at the time of purchase (FTC, 2013).

Figure 4: Share of accounts with documentation provided at time of purchase



Source: FTC, 2013

Further, charged-off debts are often sold "as is," without any representations, warranties, or guarantees as to the accuracy of the amounts claimed to be owed or the collectability of the debts (Horwitz, 2012). Although some contracts allow debt buyers to obtain documentation of the debt for a small percentage of cases or for a certain period of time, subsequent purchasers of the debt often either are unable to obtain documentation from the original creditor or have to rely on previous purchasers of the debt to obtain the documentation (GAO, 2009). Even if a debt buyer may have the contractual right to obtain documentation from the original creditor, the creditor may no longer have such documentation or, if it does, may charge a high price for it (Holland, 2011).

Collection Practices

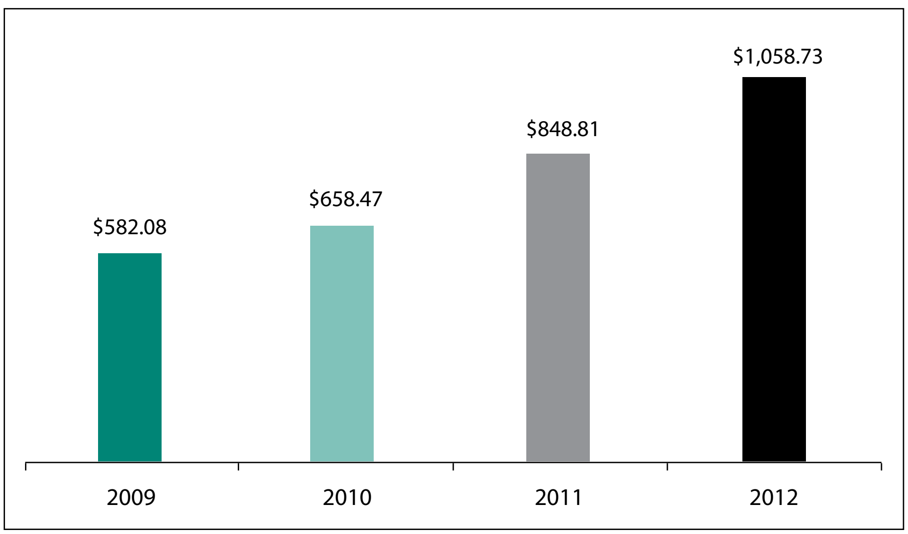
Like original creditors, debt buyers use a variety of practices to collect on the debt they have purchased, including keeping the collection attempts with their in-house operations or outsourcing the collection actions to other collection agencies or law firms (GAO, 2009). The collection activities range from using phone or mail contacts with the help of technologies like skip-tracing and predictive dialing systems to track down consumers, to reporting debts to credit bureaus and refinancing the debts into new credit products (FTC, 2008; GAO, 2009).

Debt buyers also use litigation to collect accounts, either immediately after purchase or after other collection activities fail. Similar to non-legal collections, debt buyers use in-house legal departments or outsource the work to attorneys and law firms around the country to file suits on the accounts they purchase.

Many debt buyers use exclusive networks of attorneys or law firms with which the debt buyers place accounts for legal collections (Encore Capital Group, 2013; Portfolio Recovery Associates, 2013; SquareTwo Financial Corp., 2013). These attorneys and firms are paid on a contingency basis, often a fee-per-dollar-collected, and they sometimes earn higher fees for exceeding targets for the accounts placed with them (Encore Capital Group, 2013; SquareTwo Financial Corp., 2013).

Numerous reports have documented the rise in litigation as a means to collect debts (GAO, 2009; FTC, 2010; Wilner & Sheftel-Gomes, 2010).[6] SEC filings from publicly-traded debt buyers similarly reveal an increased focus on the use of legal collections for the debts they purchase (Portfolio Recovery Associates, 2013; SquareTwo Financial Corp., 2013). Among the four debt buyers that disclose proceeds from legal collections in their public filings,[7] this income increased from $582 million to just over $1 billion between 2009 and 2012. Similarly, a 2009 debt-collection industry survey conducted in the midst of the economic crisis found that collection agencies—including debt buyers—were turning more frequently to legal collections, litigation, and post-judgment strategies and doing so more quickly (Lunsford, 2009).

Figure 5: Increased proceeds from legal collections over four years at four publicly-traded debt buying firms (in millions)



Source: Aggregated proceeds from legal collections from data reported in 10-K filings from Asset Acceptance Capital Corp.; Encore Capital Group, Inc.; Portfolio Recovery Associates, Inc.; and SquareTwo Financial Corp.

State civil courts, including small-claims courts, have experienced a deluge of debt collection litigation, often overwhelming court and judicial capacity (Healy, 2006). The FTC observed that "[t]he majority of cases on many state court dockets on a given day often are debt collection matters," and the surge of cases "has posed considerable challenges to the smooth and efficient operation of courts" (FTC, 2009). A successful lawsuit gives the debt buyer additional and more powerful tools to collect on the judgment, including wage garnishment, bank account seizure, and property attachment.

6 Original creditors use legal collections as well and are increasingly resorting to lawsuits to collect debts. These suits contribute to the increase in debt-collection litigation in state courts, but the business model described above relates solely to debt buyers. In addition, original creditors have been accused of some of the debt-buying abuses described later in this chapter, such as robo-signing and using inadequate and/or inaccurate proof to collect on a debt.
7 Please note that in June 2013, Encore Capital Group acquired Asset Acceptance Group (Encore Capital Group, 2013b).

ABUSES AND PREDATORY PRACTICES

As mentioned previously, debt collection makes up a large share of all complaints received by the FTC. Common complaints include misrepresentation about the amount or legal status of the debt, harassing and excessive contact, obscene or abusive language, and illegal threats to sue (GAO, 2009; FTC, 2009). National polling results show that 90% of consumers are concerned about debt collectors using bad or incomplete information to target the wrong people, seek payment on debts already paid, or file lawsuits without the necessary evidence to prove their cases (CRL, 2013).

Common complaints include misrepresentation about the amount or legal status of the debt, harassing and excessive contact, obscene or abusive language, and illegal threats to sue.

Consumers face significant harm from debt-buyer collection litigation abuses such as (1) defective, inaccurate, and/or insufficient proof of debt; (2) robo-signing; (3) suing to collect "time-barred" debt; (4) "zombie debt"; (5) improper and "sewer" service; and (6) default judgments.

Defective, Inaccurate, and/or Insufficient Proof of Debt

As previously mentioned, the agreements between debt sellers and debt buyers often dictate that accounts are sold "as is" with limited information and documentation for the accounts (FTC, 2013). As a result, unreliable records are used to collect or bring suits on debts that cannot be substantiated, are inaccurate in amount, or may not be owed by the consumer. In its 2009 workshop report, the FTC concluded that the information received by debt buyers is frequently "inadequate and results in attempts to collect from the wrong consumer or to collect the wrong amount" (FTC, 2009). The FTC also found in its study of debt-buyer practices that "both sellers and buyers know that some accounts included within a portfolio might have incomplete or inaccurate data, including data on important information such as the then-current balances on accounts" (FTC, 2013).

Even if debt buyers receive account documents with the portfolio or at a later date, the sales contracts make clear that "account documents, when available, may be inaccurate and that the provision of account documents could not be relied upon to establish the outstanding balance of an account or that the account represented a valid and collectable amount" (FTC, 2013).

Given these problems, it is very possible that debt buyers could attempt to collect from or sue the wrong person, for the wrong amount, or for illegitimate or already-paid debts. Nevertheless, insufficient and inaccurate proof of the claims often goes undetected by consumers and the courts. In most states, the information required in a collection lawsuit is minimal, particularly in small-claims courts where procedures and evidentiary standards are often relaxed. Complaints rarely contain more information than the fact or allegation that the consumer had a credit card account (or other service contract) that he or she used, that the debt buyer purchased the account, and the amount allegedly owed. Significantly, these complaints do not provide critical information on the debt that would be helpful to consumers in deciding whether and how to respond to the complaint, such as the original creditor's name; the date of default; or a breakdown of the principal, interest, and fees claimed to be due (Appleseed & Jones Day, 2010).

An even more fundamental problem occurs when debt buyers do not provide evidence that they own the debt subject to the lawsuit. This issue is more prevalent with debt buyers who are not the initial purchasers of the debt. Typically, the debt buyer offers the chain of ownership of the debt in its complaint only if required to do so, and even then the proof of ownership is often lacking or false.

Debt buyers may also file lawsuits knowing that they cannot prove ownership or the amount owed, in hopes of obtaining a default judgment (Royal Financial Group, LLC v. Perkins, 2013).[8] In recent years, state courts have sometimes rejected debt buyer lawsuits when consumers challenge them, finding a lack of necessary documentation to prove that they own the debt (Green v. Calvary Portfolio Services, LLC, 2010; Shipley v. Unifund CCR Partners, 2010; Unifund CCR Partners v. Youngman, 2011; CACH, LLC v. Kulas, 2011; CACH, LLC v. Askew, 2012). However, these cases are not the norm, and most debt-buyer lawsuits go unchallenged, as described below.

Robo-Signing

To obtain a default judgment against a borrower, a debt buyer typically submits an affidavit of proof of the debt. Even when a case goes to trial, affidavits are frequently used to establish proof of the debt or to support business records being entered as evidence in the cases. Disturbingly, many of these affidavits may be false, as court cases and news stories suggest many are being "robo-signed" (that is, produced with no attempt to verify that the claim is accurate).

Examples of robo-signing are not hard to find. After investigating JPMorgan Chase for more than two years, the OCC found that the bank filed false and improperly-signed affidavits in court (In the Matter of JPMorgan Chase Bank, 2013). A 2010 study of New York debt-buyer cases found that one individual signed all affidavits filed by three debt buyers, and if extrapolated to every case filed by those companies in one year, that individual would have signed affidavits in more than 47,500 cases during that year (Wilner & Sheftel-Gomes, 2010). In Ohio, an employee of Midland Credit Management, an Encore Capital Group subsidiary, signed 200 to 400 affidavits per day, attesting to personal knowledge of the facts related to each account subject to the lawsuit, despite having none (Midland Funding, LLC v. Brent, 2009).[9] According to a *New York Times* article, an employee of Asta Funding, one of the publicly-traded debt buyers, testified in court that she signed about 2,000 affidavits per day, swearing in each affidavit that she personally reviewed and verified the debts sought in the lawsuit (Segal, 2010).

Collecting Time-Barred Debts

Debt buyers may sue or threaten suit on time-barred debts (beyond the time period allowed to bring a lawsuit). These statutes of limitations protect consumers and courts by ensuring that evidence necessary for the case will be in existence at the time of the lawsuit (U.S. v. Kubrick, 1979). Debts beyond the statute of limitations are not extinguished in most states, however; if a lawsuit is filed, the consumer must raise this issue in court or the debt buyer will succeed in its lawsuit (FTC, 2010).

8 During the course of litigation, debt buyer Royal Financial Group admitted that it did not purchase the debt from the original creditor, did not have evidence of prior transfers of ownership, could make no representations as to the accuracy or enforceability of the debt because it had received none, and had no documentation of the debt showing that the consumer owed the debt or the additional fees, interest, and charges claimed. The court concluded: "On the contrary, the record clearly demonstrates that Royal could not legally prosecute its claim and never had any intention to do so. As such, the petition was an empty threat of further action that could not legally be taken. . . ."

9 The court in Midland Funding v. Brent found that the affidavits were false and misleading, and as a result, Midland Funding violated the FDCPA by using those affidavits in support of its lawsuits.

A debt buyer might also attempt to collect on a time-barred debt out of court (FTC, 2010). If a consumer is pressured into making a payment on a time-barred debt, that action may "revive" the debt in many states and triggers the start of a new statute of limitations period (FTC, 2010).

One of the primary issues regarding the aging of debts in the debt-buying process is that "the information that collectors have about these debts may become less accurate over time, making it more likely that collectors will seek to recover from the wrong consumer, recover the wrong amount, or both" (FTC, 2013).

Although courts have generally held that bringing a lawsuit on a time-barred debt is an unfair practice under the Federal Debt Collection Practices Act (Basile v. Blatt, Hasenmiller, Leibsker & Moore LLC, 2009), there is currently no widespread prohibition or ban on the practice. As a result, the FTC concluded that debt buyers' conduct in collecting, threatening to sue, or suing on time-barred debt remains a major concern (FTC, 2013).[10]

Zombie Debt

"Zombie debt" is debt that is so old that the original creditor has given up on it and is likely well past the statute of limitations. It may also describe debt that has been settled, paid, or discharged in bankruptcy and yet is still the subject of collection attempts by debt buyers and other collectors. In addition, it can refer to debts that are subject to collection attempts by multiple debt buyers simultaneously or over time. Some debt buyers specialize in purchasing debts in bankruptcy, even those debts that were already discharged by the bankruptcy court (Berner & Grow, 2007).

Court cases and news reports highlight what appears to be a growing problem, although studies have not yet examined the frequency of lawsuits and collection on zombie debt (Weston, 2006; Holland, 2011; Terp & Bowne, 2011). Much like debt buyers collecting on time-barred debt, the lack of documentation and frequent sale and resale of debt result in debt buyers pursuing settled, paid, or discharged debt.

Improper and "Sewer" Service

Debt buyers and their associated law firms typically hire process server agencies to serve collection lawsuits on consumers. According to a report by New York legal service providers, process services are usually independent contractors who are paid a rate of $3-$6 per purported completed service. Significantly, they are not paid for attempted but unsuccessful service (Wilner & Sheftel-Gomes, 2010). These payment practices provide little incentive for the process servers to ensure actual service on debtor defendants in debt collection suits. Reports document the prevalence of "sewer service" in certain jurisdictions, the practice of intentionally failing to serve court papers on debtors (instead, figuratively throwing them in the sewer) and then filing false affidavits of service with courts (Wilner & Sheftel-Gomes, 2010; Appleseed & Jones Day, 2010). However, no studies have explored the extent of service of process problems or sewer service nationwide (FTC, 2010).

10 Although there are few data on the frequency that debt buyers file suit against or otherwise collect on time-barred debt, reports indicate that the phenomenon is not uncommon (FTC, 2009; FTC, 2010). Significantly, a study of nearly 90 million consumer accounts purchased by the nine largest debt buyers from 2006-2009 found that debt buyers were significantly more likely to collect internally and send to contingency debt collectors accounts six to fifteen years old—debts likely to be time-barred according to the FTC—than on debts less than three years old (FTC, 2013).

Some consumers do not receive notice of the suit because it is sent to the wrong person or an old address, often the borrower's address at the time of credit card account application (Wilner & Sheftel-Gomes, 2010; FTC, 2010). A report by New York legal services providers includes one case study of a consumer who found out about six collection suits against her only after her wages were garnished. Three of the lawsuits were served at the wrong address, and the other three were allegedly served on a family member who did not exist (Wilner & Sheftel-Gomes, 2010).

Default Judgments

Debt collectors have increased their use of the court system, relying on the assumption that for a variety of reasons, many people will not show up in court when sued on their debts. If a consumer does not respond to or appear in court to defend a debt-collection lawsuit, a collector typically obtains a default judgment against them, and problems with insufficient and inaccurate proof of debt, robo-signed affidavits, and improper service of process usually go unquestioned. The result is that default judgments are obtained against consumers based on questionable evidence, falsified court documents, or in cases that should never have been filed in the first place (Holland, 2011).

Reasons that consumers may not respond to or appear in court to defend a debt-collection lawsuit include lack of notice of the case, the amount of the alleged debt, the income of the defendant, the inability to obtain legal representation, the inability to appear in person because the case is out of state or due to employment constraints, confusion about the debt or plaintiff suing, and misleading information from the collector's attorney (Engler, 1997; Wilner & Sheftel-Gomez, 2010; Spector, 2011).[11] Additionally, consumers simply may not understand the process and the need to appear.

Default judgments appear to be the norm in debt-collection lawsuits. A recent report on cases in New York state found that in 2011, 80% of all default judgments in the state were in debt-collection cases (Shin & Wilner, 2013). Another study of the Minnesota courts determined that debt collectors won an estimated 2,400 default judgments *per month* throughout the state in 2007 (Glover, 2009). In 2007, in Cook County, Illinois, debt collectors won default judgments in 60,699 cases out of 130,000 cases filed (Sachdev, 2008).

Judges and clerks generally do not challenge the evidence debt buyers offer for default judgments (Healy, 2006). The high rate of default judgments appears to be a direct outcome of the increasing focus on litigation.

Default judgments extend the life of the debts, and allow collectors to seize bank accounts, garnish wages, and place liens on property. Default judgments are often difficult to overturn, even if wrongly obtained or against the wrong person.

11 Once a consumer does not answer a complaint or appear in court, it is easy for a debt buyer to obtain a default judgment. This is even more problematic when cases are filed in small-claims courts, which are overburdened and where in some states court clerks, rather than judges, are entering default judgments. Typically, all a debt buyer needs to do is motion the court for a judgment and submit minimal evidence supporting the amount claimed to be owed, usually in the form of an affidavit.

These specific issues relevant to the debt buyer industry remain largely unregulated at both the federal and state levels. There is, however, increased in attention and activity focused on debt buyers, with state and federal legislative and regulatory bodies looking for ways to curtail the abuses that stem from debt buying.

Federal Legislation and Regulation

There is currently no federal law or administrative rule that specifically regulates the sale of charged-off consumer debt or debt buyers and their activities. However, a handful of federal laws regulate debt-collection activities, and debt buyers must comply with those laws. The federal Fair Debt Collection Practices Act (FDCPA) prohibits and regulates abusive debt-collection activities by companies collecting on behalf of others, e.g., through restrictions on when and where collectors can contact consumers, along with prohibitions on abusive, threatening, deceptive, and harassing collection tactics.[12] Although debt buyers have tried arguing that the FDCPA does not apply to them, it is generally understood that debt-buyer collection activities are subject to the FDCPA, including common debt-buyer tactics such as threatening to sue or filing suit on time-barred debts (FTC, 2010).

The CFPB has primary responsibility for administering the statute, including through rulemaking and investigations, and the CFPB and FTC share enforcement responsibilities over the FDCPA.[13] The FDCPA also gives consumers a private right of action, allowing them to file lawsuits against collectors who violate the law.

Under the Federal Trade Commission Act (FTC Act), the FTC has the ability to regulate, investigate, and bring enforcement actions against debt-collection companies and debt buyers for unfair or deceptive acts or practices that affect commerce.[14] In 2012, the FTC settled a case against Asset Acceptance, one of the largest publicly-traded debt buyers at the time, for $2.5 million for various debt-collection abuses against consumers. Among other things, the complaint alleged that Asset Acceptance (1) made claims to consumers about debts even though the company could not prove the claims, (2) failed to tell consumers that they could not be sued for time-barred debts and that any payment would revive the debt, and (3) knowingly provided inaccurate information to credit reporting agencies about consumers' accounts (U.S. v. Asset Acceptance, LLC, 2012).

In January 2013, the CFPB began supervision over "larger participant" debt collectors,[15] including debt buyers, marking the first-ever supervision of the debt-collection industry.[16] The supervision authority allows the CFPB to examine these larger participant debt collectors to determine whether the businesses are complying with federal law and to assess any risks to consumers.

12 Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p (1996). Just as with the FTC Act, the FDCPA does not apply to companies collecting on behalf of themselves, and thus does not apply to banks' own collection activities.
13 Fair Debt Collection Practices Act, 15 U.S.C. § 1692l.
14 Federal Trade Commission Act, 15 U.S.C. §§45, 46, 57a (2013). The FTC Act does not apply to banks' activities in selling charged-off debts, however.
15 "Larger participant" debt collectors are defined as having more than $10 million in annual receipts from consumer debt collection activities. The CFPB estimates that the definition captures about 175 debt collectors, representing more than 60% of the debt collection market. See http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-to-oversee-debt-collectors/.
16 12 C.F.R. §1090.105 (2013).

In July 2013, the CFPB issued guidance in response to two specific consumer harms that it observed during its first few months of supervision of the debt-collection industry. The first bulletin outlines examples of debt collection acts and practices that the CFPB considers unfair, deceptive, or abusive and thus is subject to CFPB regulation. It also extends certain FDCPA prohibitions to original creditors (CFPB, 2013a).[17] The second bulletin addresses claims that debt collectors and debt owners often make about the effect that payments will have on consumer credit scores and reports, warning that such claims may be considered deceptive in violation of the FDCPA, Dodd-Frank, or both (CFPB, 2013b). These bulletins put creditors, debt collectors, and debt buyers on notice that the CFPB could take enforcement action should they violate the standards in the bulletins.

Banks' sale of charged-off debt is also receiving increased attention from federal regulators. In July 2013, the Office of the Comptroller of Currency announced a set of "best practices" that it uses when examining the banks within its supervisory purview (OCC, 2013). In its statement, the OCC publicly recognized for the first time that the sale of charged-off debt can implicate safety-and-soundness concerns for banks if they do not have proper policies and controls in place to manage the sale of debt (OCC, 2013). According to the "best practices" developed by the OCC, bank policies and procedures should, among other things, limit the types of debts that are sold, ensure the accuracy of accounts, and provide detailed and accurate documentation supporting the accounts sold (OCC, 2013). The OCC is currently developing supervisory guidance with which banks must comply based on its "best practices" (OCC, 2013).

State Legislation, Regulation, and Enforcement

States began addressing problems caused by debt-buyer abuses in the late 2000s. In 2009, North Carolina passed the Consumer Economic Protection Act, the first state legislation aimed at stopping debt-buyer abuses. The law makes it an unfair practice to collect on time-barred debt and to collect on debt without proof of ownership and "reasonable verification" of the debt.[18] The law also requires debt buyers that file debt collection lawsuits to attach a copy of the contract "evidencing the original debt" that is signed by the consumer as well as proof of ownership of the debt.[19] Additionally, before a default judgment is entered in a case brought by a debt buyer, the debt buyer must establish the debt using admissible evidence, including an itemization of the debt and all fees and charges.[20]

California followed suit with the passage of the Fair Debt Buying Practices Act in 2013.[21] The law prohibits debt buyers from making written statements in an attempt to collect a debt without possessing information to show ownership of the debt, the amount owed, and the name of the original creditor, among other things; it also gives consumers the right to request that information and documentation of the debt. Further, any agreements between a debt buyer and consumer to pay the debt must be in writing. The new law also requires certain disclosures when a debt buyer is collecting on time-barred debt and prohibits lawsuits on such debt. Additionally, debt buyers are required to include certain information in a lawsuit complaint establishing the nature of the debt and ownership of it, and they are prohibited from obtaining a judgment if they cannot provide to the court business records supporting the facts in the complaint.

17 The bulletin does so by clarifying that certain FDCPA violations are violations of Dodd-Frank, which applies to many actors, such as banks, not just debt collectors as in the FDCPA.

18 N.C. Gen. Stat. § 58-70-115 (2013). "Reasonable verification" requires documentation of the name of the original creditor, the name and address of the consumer as it appeared in the original creditor's records, the original account number for the consumer, and an itemization of the amount claimed to be owed, including all fees and charges.

19 N.C. Gen. Stat. § 58-70-150.

20 N.C. Gen. Stat. § 58-70-155.

21 2013 Cal. Legis. Serv. Ch. 64 (SB 233) (West) (effective 1/1/14).

Illinois[22] and Minnesota[23] also addressed debt buyer abuses to varying degrees in 2012 and 2013 with successful legislation aimed at regulating the industry in these states, and at least ten other states considered similar legislation in recent years. Wisconsin[24] and Mississippi[25] both have long-standing laws that extinguish debt that is beyond the applicable statutes of limitations, meaning that any collection attempts (in or out of court) are prohibited.

Instead of legislation, some states have made strong changes to statewide court rules to address "robo-suing" practices and inadequate documentation in debt collection lawsuits by debt buyers. For example, the Maryland Court of Appeals adopted new rules in 2012 that requires debt buyers to provide admissible evidence proving the debt (correct consumer and amount) and proof of ownership, including a complete chain of title, when filing a debt collection complaint that is supported by an affidavit.[26] In addition, Delaware's Court of Common Pleas issued a directive in 2012 on consumer debt-collection actions that requires all complaints to include specific information about the debt (such as a description of the original creditor that will allow the consumer to identify the account; the last four digits of the account number in default; and a breakdown of the principal amount due, as well as interest, fees, and other charges). Complaints must also include an Affidavit of Ownership and Amount Due, signed under penalty of perjury, which includes additional detail about the debt, as well as an affirmation that the information is based upon a personal review of the plaintiff's records.[27]

Other states have addressed problems with debt buyers and "zombie debt" through administrative regulation. In New Mexico, changes made to the state Administrative Code in 2010 require that anyone collecting on a debt first make a good-faith determination that the debt is not beyond the statute of limitations or otherwise unrecoverable by law and to support that determination with documentation.[28] If the debt is time-barred, the collector may not collect on the debt in or out of court unless it provides notice to the consumer that the debt is time-barred, there is no obligation to pay the debt, and the debt could be revived by making a partial payment on it. Similarly, regulations by the Massachusetts Attorney General changed the definition of "creditor" to include debt buyers, thus requiring all debt collectors to determine whether a debt is time-barred and to provide certain disclosures to a consumer if they are collecting on a time-barred debt.[29] Additionally, the failure to do so is considered an unfair or deceptive practice or act for which the Attorney General may bring an enforcement action.

State Attorneys General and other regulators have also successfully brought enforcement actions against some of the largest debt buyers in recent years. The Maryland Commissioner of Financial Regulation entered an agreement with LVNV Funding and Resurgent Capital (both part of the Sherman Financial Group, one of the largest debt buyers) to settle allegations of unlicensed collection activities, hiring attorneys that filed false or misleading complaints and supporting affidavits in court, and misrepresenting the amounts of the claims in court (In the Matter of LVNV Funding LLC *et al*,

22 2012 Ill. Legis. Serve. P.A.97-1070 (H.B. 5016) (West) (effective 1/1/13).
23 2013 Minn. Sess. Law Serv. Ch. 104 (H.F. 80) (West) (effective 8/1/13).
24 Wisc. Stat. § 893.05 (2013).
25 Miss. Code Ann. § 15-1-3 (2013).
26 Md. R. P. 3-306 (2013).
27 Del. Ct. Com. Pl. Admin. Directive No. 2012-2 (2012). The 2012 directive actually replaced a more stringent directive issued in 2011. That directive required the name of the original creditor instead of a description; a full chain of ownership if the suit is not filed by the original creditor, including copies of all assignments of the debt; a breakdown of the amount claimed including the principal due at default, interest, fees, and charges; and a copy of the original contract or other evidence of the debt. See Del Ct. Com. Pl. Admin. Directive No. 2011-1. Available at http://courts.delaware.gov/commonpleas/docs/AD2011-1ConsumerDebto.pdf
28 N.M. Code R. § 12.2.12.8 (2013).
29 940 Mass. Code Regs. 7.03, 7.07 (2013).

2012). The Texas, Minnesota, and West Virginia Attorneys General all filed enforcement actions against Encore Capital Group and their subsidiaries in 2011 and 2012 alleging that the debt buyer engaged in "robo-signing" of affidavits in support of complaints filed in state courts (Office of Texas Attorney General, 2011; Office of Minnesota Attorney General, 2011; Weidlich, 2012). In 2009, the New York Attorney General filed two lawsuits against a process server and more than 30 debt collection law firms seeking to overturn more than 100,000 default judgments that it alleged were the result of "sewer service" (Rivera, 2009).

A handful of states have gone in the opposite direction, loosening existing rules on debt buyers and debt collection. Arizona passed legislation in 2012 that loosens the evidentiary standards in uncontested credit card cases by establishing minimal requirements for the documents necessary to prove the amount owed on a credit card, thus allowing debt buyers to rely on the often inaccurate electronic records they typically receive from banks to prove that the amount they claim is actually owed.[30] Tennessee similarly passed legislation in 2013 that has the effect of loosening the evidentiary standards for business records used in support of credit card cases by sanctioning debt buyers' use of records created by the banks, including the electronic spreadsheets often received by debt buyers, to establish the debt despite more stringent state court rules of evidence requiring more reliable documentation.[31] Also in 2013, Arkansas passed legislation that establishes a presumption of accuracy in favor of the creditor or debt buyer in credit card debt cases of the amount owed and of ownership of the debt and places the burden of disproving that presumption on the consumer.[32]

30 Ariz. Rev. Stat. Ann. §§ 44-7804, 44-7805 (2013).
31 2013 Tenn. Laws Pub. Ch. 186 (S.B. 224) (2013). The Tennessee bill that was originally filed was identical to the law that passed in Arkansas, and both the Tennessee and Arkansas bills used the Arizona bill as a template.
32 2013 Ark. Laws Act 1495 (H.B. 2028) (2013).

IMPACT ON U.S. HOUSEHOLDS

Although the financial impact of debt-buyer abuses on U.S. households has not yet been fully calculated, the following harms are evident: (1) a disproportionate impact on vulnerable consumers, (2) excessive financial costs, (3) overriding protections of Social Security and other exempt funds, and an inability to deal effectively with lawsuits due to (4) lack of legal representation and (5) overwhelmed courts.

Disproportionate Impact on Vulnerable Consumers

Some reports and news articles suggest that communities of color, older Americans, and low- and moderate-income communities experience higher rates of debt buyer lawsuits and abuses. In addition, military service members also face abusive debt-collection practices as well as potential violations of the Servicemember Civil Relief Act (SCRA), which affords additional protections to members of the military while serving on active duty.

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Senior citizens, many of whom are living on fixed incomes, are frequently victims of these abuses. Studies report that older Americans are sometimes pressured or threatened into lawsuit settlements with harassing phone calls, threats to personal property, and threats of the loss of what little money they have (Wilner & Sheftel-Gomes, 2010; Terp & Bowne, 2011). Others are sued without their knowledge and must hire an attorney in order to get the judgments overturned, sometimes after their bank accounts have already been seized or their wages garnished (Terp & Bowne, 2011). Still other older Americans are sued but then contacted by collectors and their attorneys and incorrectly told that as long as they make payments they do not need to appear in court, resulting in default judgments (Rezendes & Latour, 2006). Many of these older consumers are victims of identity theft or had already paid off the debts years previously (Healy, 2006; Wilner & Sheftel-Gomes, 2010; Terp & Bowne, 2011).

Some studies indicate that a greater percentage of debt-buyer cases end in default judgments when the consumers are from communities of color or low- and moderate-income communities. A study of 365 debt-buyer cases in New York City found that default judgments obtained by debt buyers were disproportionately concentrated among these consumers (Wilner & Sheftel-Gomes, 2010). Of those cases, 91% of people sued and 95% of people with default judgments against them lived in low- and moderate-income communities. About half of the people sued by debt buyers (51%) and with default judgments entered against them (56%) lived in communities that had majority African-American or Latino populations. Similarly, as illustrated in Figure 6 below, a study of New York State debt collection cases found that the ten zip codes with the highest concentrations of default judgments per 1,000 residents were all predominantly (75% or more) non-white communities (Shin & Wilner, 2013).

Figure 6: New York zip codes with the highest concentrations of default judgments (per 1,000 residents)

Rank	Zip Code	Neighborhood	% Non-White
1	12207	Greater South End, Albany	80%
2	14215	Kenfield, Buffalo	86%
3	11422	Rosedale, Queens	95%
4	12202	Arbor Hill, Albany	75%
5	11411	Cambria Heights, Queens	99%
6	11412	Jamaica, Queens	100%
7	14211	Schiller Park, Buffalo	84%
8	11434	Jamaica, Queens	99%
9	11420	South Ozone Park, Queens	93%
10	11413	Jamaica, Queens	99%

Source: Shin & Wilner, 2013

As they are in the civilian population, debt-collection complaints are among the most common made to the FTC by members of the military, especially enlisted service members (FTC, 2014b).[33] A report of debt-collection complaints from military members to the CFPB found that attempts to collect on a debt not owed and abusive or illegal communications or actions were among the most prevalent problems (CFPB, 2014). These abusive practices can be especially problematic for service members, since their security clearances could be revoked or they may suffer other professional impacts if purported to be not repaying debts as agreed (CFPB, 2014). Further, active-duty service members are afforded additional protections under the SCRA[34] related to their debts, such as a reduced interest rate, which may not be accounted for as a debt is sold and re-sold to subsequent debt buyers with inadequate documentation.

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Excessive Financial Costs

As previously noted, default judgments often mask debt-buying and collection abuses and are often improperly sought and granted. Debt buyers also use judgments to inflate the amounts owed by tacking on court costs, interest, and attorneys' fees, some of which are not authorized by the underlying loan contract (Wilner & Sheftel-Gomes, 2010).

With a judgment in hand, the debt buyer becomes armed with the ability to freeze a consumer's bank account, garnish wages, report the judgment to a credit reporting agency, or pressure the consumer into an unaffordable and improvident payment plan (Wilner & Sheftel-Gomes, 2010). In some states, debt collectors can have consumers arrested when judgments go unpaid (Gallagher, 2013; Healy,

33 Debt collection ranked third of all types of complaints made to the FTC by members of the military in 2013, behind identity theft and imposter scams. Among enlisted military, debt collected ranked second.

34 50 U.S.C. App. §§501 et seq.

2006) or seize personal property to satisfy the judgments. Collectors are often able to do the same when consumers do not comply with settlement agreements entered into the court record. In most states, judgments are enforceable for 10-20 years; in some states, judgments may be renewed continuously. This ability to enforce judgments for an extended amount of time prevents consumers from being able to get a fresh start.

Overriding Protections of Social Security and Other Exempt Funds

Federal and state laws exempt certain funds from collection and seizure to satisfy judgments. These funds include Social Security and Supplemental Security Income, disability benefits, child support and alimony, unemployment benefits, workers' compensation benefits, public assistance, pension funds, and veterans' benefits.[35] When a collector obtains a judgment against a consumer, the collector is then able to recover on the judgment by seizing or garnishing the consumer's bank account. Notwithstanding federal and state laws that protect certain funds, banks will often freeze consumers' accounts that contain exempt funds while the collector obtains a garnishment order from the court (FTC, 2010).

Debt buyers can also coerce consumers into agreeing to settlement or payment plans even when consumers' income consists entirely of funds exempt from collection and seizure. Often consumers are unaware that their income is protected from collection, and collectors and their attorneys take advantage of this imbalance in knowledge and threaten consumers with proceeding with a lawsuit if they do not pay something on the debt.

Lack of Legal Representation

The few consumers who do appear at court proceedings when sued by debt buyers usually lack legal representation. Although there is a right to legal representation in criminal cases, there is no such corresponding right in civil cases. Low- and moderate-income consumers are often unable to afford legal representation, and legal services providers' ability to represent such consumers is increasingly limited (Legal Services Corporation, 2009). Additionally, because of the nature of debt-collection cases and the small dollar amount involved, many private attorneys are reluctant to take collection defense cases (Bradlow, 1988; Holland, 2011). Court statistics from New York State indicate that only two percent of consumers sued by creditors have legal representation (Shin & Wilner, 2013).

Debt buyers hold a distinct advantage over unrepresented consumers who are not aware of potential defenses to raise, such as a statute of limitations defense or an objection to unreliable evidence. In many courts, judges urge unrepresented consumers to talk with the collection attorneys to come up with a settlement agreement, even though the consumer may have valid defenses (Sachdev, 2008). Other times threats of jail and seizure of property from courts and collector attorneys alike are enough to pressure consumers into settlements that are unaffordable and unfavorable to them (Healy, 2006; FTC, 2009; Appleseed & Jones Day, 2010; Wilner & Sheftel-Gomes, 2010).

35 States exempt funds to varying degrees. The list provides examples of sources of financial support that are considered exempt from collection in some states.

As a result of a lack of representation, debt-buyer abuses go largely uncontested and unnoticed, resulting in judgments for debt buyers and negative impacts for consumers (Goldberg, 2006). In contrast, in those infrequent cases where a consumer does have representation, debt buyers often quickly drop the lawsuit, and if not, rarely prevail (Goldberg, 2006; Rudolf, 2010; Wilner & Sheftel-Gomes, 2010).

Overwhelmed Courts

State courts, particularly small-claims courts, have become overwhelmed by debt collection lawsuits. The majority of cases on state court dockets on any given day are debt collection cases (FTC, 2009). In 2008, the Chicago Tribune reported that one judge in Cook County had 12,000 debt collection lawsuits on his docket, more than double from the year before (Sachdev, 2008). In New York State, debt collectors filed almost 200,000 cases in 2011 (Shin & Wilner, 2013).

These courts are not equipped to deal with this volume of debt-collection cases (Healy, 2006). As a result, courtrooms are run inefficiently; cases are not necessarily given the attention they need; judges struggle to adequately handle all of the cases on their dockets; and consumers are sometimes pressured into improvident settlements (Healy, 2006; Sachdev, 2008; FTC, 2009; Wilner & Sheftel-Gomes, 2010). The relentless volume of cases often results in consumers facing a judicial system where they are treated as guilty until proven innocent (Healy, 2006). Ultimately, the clogged court systems harm the consumers—who frequently lack legal representation—preventing them from the due process to which they are entitled.

DEBT-BUYING POLICY RECOMMENDATIONS

Federal Regulation

- Hold banks accountable for the debts they sell. Currently, banks sell charged-off debts without any warranties and retain no liability for inaccuracies in the information passed on or the amounts claimed to be owed. Further, they are also not liable for any debt-buyer abuses. Banks need to be held accountable for their own practices and should retain liability for the debts they sell and records that they pass on to debt buyers. Banks should also be required to repurchase accounts that are not collectible due to insufficient documentation. These rules will promote compliance among banks and thus ease enforcement, while protecting consumers against unlawful and abusive collections.

- Require banks to conduct more oversight of the debt sales process and of the debt buyers to whom they sell. Banking regulators—such as the OCC, Federal Reserve Board, and FDIC—should establish rules and guidance on the policies and practices that banks must follow if they are going to sell debt to debt buyers. These policies should include: (1) increased internal oversight of the sales process, (2) greater management of the debt buyers used, (3) limits on sales to debt to debt buyers who use litigation frequently as a means to collect, (4) restrictions or an outright prohibition on debt buyers reselling debts, and (5) procedures to identify debts that the bank will not sell or is prohibited from selling.

- Regulate the flow of information in the debt-collection market. Federal regulators, including the CFPB and OCC, should require increased and accurate documentation and information for each debt sold at the time of sale, including (1) documentation necessary to substantiate and verify the debt (i.e., the identity of the debtor, the original creditor, that the debt is owed, the amount of the debt, and that the debt buyer is the true and only owner of the debt), (2) the evidence that debt buyers must have to file lawsuits, and (3) important information about the consumer, such as whether the consumer has an attorney, past collection history, and dispute history. If they cannot provide the required information, banks and other creditors should be prohibited from selling the debt. By requiring this information at the federal level, federal regulators will pave the way for states to pass legislation and change regulations and court rules to address debt buyer abuses in debt collection litigation prevalent in their states.

- Prohibit the initiation of collection efforts on any debt unless the debt buyer has the information necessary to substantiate and verify the debt being sought. The CFPB should prohibit debt buyers from initiating collections on any debt without first verifying the debt, as indicated above.

- Prohibit the sale, collection of, and lawsuits on time-barred debt. Debt that is beyond the statute of limitations should not be sold to debt buyers by original creditors or subsequently by debt buyers to other debt buyers. The collection of time-barred debt should be prohibited, particularly where consumers are not advised of the consequences of payment on a time-barred debt. Finally, lawsuits to collect time-barred debt should also be banned. State legislation and court rules should shift the burden of establishing that the debt is not time-barred to debt buyers suing on purchased debt.

- Prohibit the sale of certain accounts. Federal regulators should establish rules providing that certain accounts cannot be sold under any circumstances. These accounts include those that have been paid in full, settled, or discharged in bankruptcy; those that lack documentation; and those for which the debtor is deceased and no responsible party remains. Likewise, the OCC should prohibit banks from selling accounts that are subject to protections under various federal laws, such as accounts of active-duty service members subject to SCRA protections and accounts that are currently subject to bankruptcy law protections. Selling such accounts would likely subject consumers to repeated unlawful collection attempts. Similarly, accounts that are currently in active settlement or for which the bank has received a recent payment should not be sold, as in those situations the consumers are showing an active interest in paying the accounts.

- Clarify and improve available remedies for harmed consumers. Improved regulations by themselves will not stop the illegal acts of debt collectors and debt buyers. Strong provisions giving harmed consumers the ability to challenge these illegal actions and the threat of real consequences for debt collectors are also necessary. The CFPB should adopt new rules and bolster existing ones that facilitate private enforcement against debt-collection abuses. Currently, debt collectors who are deliberately and routinely violating the FDCPA have no incentive to refrain from violating the law, since numerous harassing and abusive collection efforts precipitate the same amount of statutory damages as one violation. The CFPB should clarify that injunctive relief—a court-ordered act or prohibition of an act—is available to put a stop to illegal collection actions and that multiple statutory damages may be awarded in a single action for multiple violations of the FDCPA.

State Regulation

- Require more detailed and accurate evidence when debt buyers file lawsuits. State legislatures should adopt legislation or state court systems should establish statewide court rules that require debt buyers to possess more detailed and accurate information and evidence when they sue to collect on the debts. This information and evidence includes the name of the original creditor (which should be familiar to the consumer); information about the consumer to ensure that the right person is being sued; an itemization of the amount claimed to be owed; documentation establishing the debt, such as the original contract or credit application and recent billing statements; proof of ownership, including documentation establishing a complete chain of title; and the terms and conditions that applied to that specific account. Much of this information should also be reviewed by debt collectors and debt buyers before collecting out of court.

- Tighten evidentiary requirements for obtaining a judgment, including a default judgment or summary judgment on debt-related cases. States, through legislation or court or administrative rules, should require plaintiffs in all debt-collection cases (including those in small-claims courts), to establish through admissible evidence the following: (1) the debtor-defendant's underlying liability on a contract; (2) its own standing to sue by virtue of an uninterrupted chain of title; and (3) accurately and legally-calculated damages.

- Require judicial review to ensure protection of exempt funds to pay debt-collection judgments and settlements and to ensure the consumer's ability to pay. Judicial policies and procedures are needed to ensure that exempt funds are not used to satisfy judgments and garnishment orders. Likewise, judicial review should be required for settlement agreements to ensure that exempt funds are not the basis for repayment plans and to ensure that the consumer is able to afford the payment plans after meeting basic needs.

- Rigorously enforce state and federal laws and regulations against debt collectors, debt buyers, and debt collection law firms. One of the only ways to ensure that strong consumer protections are followed is through state and federal enforcement actions. The debt-collection industry, including the originating creditors and debt buyers, must be held accountable for their illegal, unfair, deceptive, or abusive acts and practices.

- Ensure more consumers have legal representation. When consumers have legal representation in debt-buyer cases or are sufficiently armed to represent themselves, the cases are overwhelmingly dismissed or dropped. Although other proposed recommendations may lessen some concerns around proof of ownership, inaccuracies, and default judgments, the only way to ensure that consumers who want to challenge their cases do so is through legal representation. A few local jurisdictions and local and state bar associations are experimenting with programs that will provide pro bono legal representation to consumers or pro se support so consumers can represent themselves in collection cases so that they can better defend their interests and rights.

Other Policy Recommendations

- More research. More substantial and empirical research is needed to document the extent of debt buyer abuses and the harms on vulnerable populations like low- and moderate-income families, communities of color, and older Americans. The CFPB and FTC could collect and release data that could be used for this purpose. This research will allow states and local courts to tailor more effective responses to the specific problems.

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