Comments of the Center for Responsible Lending
to Proposed Rules Regarding Unfair Debt Collection Practices in Missouri

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Thank you for the opportunity to provide these comments on the proposed rules to address unfair debt collection practices in Missouri.[1] The Center for Responsible Lending (CRL) is a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices.[2]

Unfair debt collection practices, particularly those of debt buyers, undermine individuals' financial security, especially among low-income households and households of color. When people are pursued or sued for debt they do not owe, these unfair collection attempts not only threaten the unnecessary extraction of money from individuals, but also hinder opportunities to build assets for the future. Towards this end, strong, effective rules to prevent unfair practices can help keep hard earned wages in consumers' pockets and build pathways to financial security.

In this comment regarding the Missouri Attorney General's proposed rules to address unfair debt collection practices, the Center for Responsible Lending submits background on debt buying abuses, highlights the disproportionate impact on communities of color, and provides three recommendations to: prevent the unfair collection of zombie debts, prevent additional unfair collection activities, and prevent the unfair accrual of interest above the usury limit.

Debt Collection Abuses Are Widespread and Well-Documented

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 Consumer Financial Protection Bureau reports that debt collection complaints comprise about 32% of all complaints, and 40% of the debt collection complaints are for debts not owed, up from 36% the year before.[3] Further, debt collection complaints comprise 50% of complaints from servicemembers, veterans, and their dependents.[4] As federal and state regulators look at ways to address debt collection abuses and complaints, a consistent concern centers on the debt-buying industry.

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.

The scope and consequences of debt buying activity is staggering. According to a recent Human Rights Watch report, a single national debt buyer, Encore Capital Group, claims that 1 out of 5 consumers in the country owes or has owed it money.[5] Another large debt buyer, Portfolio

Recovery Associates, may own 750,000 accounts in Missouri alone, 37,500 of which are in litigation.[6] These amounts are of significant concern because debt buyer collection activities are often pursued without sufficient (or any) evidence of the underlying debt, or in many cases, pursued even with the knowledge that they might not be collecting the debt from the correct person or for the correct amount.

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.

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.

Missourians, like people across the country, are being sued for old debts without their knowledge and often with little proof of the claims. For example, according to documents in the Consumer Financial Protection's consent order with Portfolio Recovery Associates: "when a PRA senior manager raised a concern about the poor quality of sellers' balance information and asked how PRA can know actual balances owed if it does not receive information on post charge-off payments, PRA's Vice President for Collections responded, 'We don't. 90% of our cases are default judgments.'"[7] (emphasis added)

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.

Unfair Debt Collection Practices Perpetuate the Racial Wealth Gap

Communities of color are disproportionally affected by collection lawsuits, particularly those brought by debt buyers. Recent reports by the New Economy Project and ProPublica show how debt buyers have hit these communities harder than white ones. For example, in 2011, debt buyers in the state of New York filed almost 200,000 lawsuits against New Yorkers, and the communities most affected were predominately non-white and low-income.[8] These are the same communities that had been redlined in the past and suffered the most during the foreclosure crisis by being victims of predatory lending.[9]

The city of St. Louis, Missouri, is another example of how this practice affects communities of color at a higher rate than other communities. A recent article by ProPublica showed how debt buyers, through a massive number of suits filed between 2008 and 2012, extracted at least $34 million from black neighborhoods.[10] The ProPublica data also showed that debt buyers filed the most number of lawsuits over that time period. Further, even after accounting for income, judgments obtained by debt buyers in the cities of St. Louis, Chicago, and Newark were twice as frequent in black neighborhoods than in white ones.[11]

Debt buyers also sued for smaller amounts than major banks, usually about 30 percent smaller on average; and since White families have more financial means to draw upon in case of emergencies than Black families, this lack of resources has made it more difficult for these low-income families to escape the debt.[12] It is important to note that once a creditor obtains a judgment, the judgment appears on a person's credit report,[13] often preventing individuals from accessing employment and housing,[14] thus cementing the already very wide racial wealth gap.

Recommendations

The Center for Responsible Lending makes the following three recommendations to ensure strong rules against unfair practices:

1. Prevent unfair zombie debts*:* *Amend proposed rule 15 CSR 60-8.110 by striking the phrase to "seek or obtain without valuable consideration a reaffirmation of" and replace with "to sue, collect, or attempt to collect."*

As proposed, 15 CSR 60.8-110 is very troubling. Under these rules, debt buyers will still be allowed to bring back to life debt which borrowers no longer legally owe, such as for the following debts: debt which has been discharged in bankruptcy; debt which has been declared void by a court of competent jurisdiction; and debt which been deemed fully satisfied pursuant to an agreement with the consumer and the creditor or its assigns. In each of these situations, consumers no longer owe these debts. As such, under no circumstance should debt collectors or debt buyers seek to further collect or obtain reaffirmation of these debts.

It is possible that debt buyers may claim that "reaffirmation" is a service they provide to consumers by helping them remove a debt from their credit report. And it is possible they will claim that the proposed requirement of "value consideration," as currently drafted in the rule, provides protection against unfair practices. This claim is a red-herring, and in fact the language arguably gives collectors and debt buyers legal cover to engage in otherwise illegal or questionable activity.

Right now, there is nothing preventing a person from paying a stale debt that is on a credit report. A reaffirmation of these debts to a debt buyer is not necessary to resolve that or any other debt. Rather, a reaffirmation essentially creates a new legal obligation that could ultimately further harm the consumer.

Furthermore, there are investigations into banks and debt buyer activities over refusing to correct a consumer's credit report even though a debt was discharged in bankruptcy, instead forcing payment on a debt not legally owed in order to fix the credit report.[15] The reality is that reaffirmation, as allowed under the proposed rules, would be used by debt collectors to pursue further collection activities or lawsuits to obtain judgments against consumers for debts no longer legally owed.

For these same reasons, the protection of limiting debt buyers' ability to "sue, collect, or attempt to collect" debts that are beyond the statute of limitations, as currently identified in 15 CSR 60.8-110(A), is critically important. The abuses related to seeking to revive old debt for the purposes of bringing rubber-stamped lawsuits are well-documented aspects in the debt-buyer business model.

Recent enforcement actions by the Consumer Financial Protection Bureau and the New York Attorney General reveal the widespread practice of debt buyers seeking to collect and bring in lawsuits on debts that are beyond the statute of limitations. For example, in a 2015 action by the New York Attorney General against national debt buyer, Encore, the Attorney General found that "despite the clear requirements of New York law, Encore brought debt collection claims that were untimely under the statutes of limitations where the causes of action accrued. Because most consumers fail to respond when they are sued by a debt collector, Encore obtained default judgments in its favor based on these time-barred claims."[16] The New York Attorney General brought similar suits against three other large debt buyers, including Portfolio Recovery Associates, and as a result, more than 7,500 judgments have been vacated, worth more than $34 million.[17]

In its recent actions against Encore Capital Group and Portfolio Recovery Associates, the Consumer Financial Protection Bureau also focused on collection activities related to old debt.[18] In its investigations, the Bureau found that over roughly a two-year period, Encore sent thousands of letters offering a time-limited opportunity to "settle" without revealing that the debt was too old for litigation. And, over a three-year period, Portfolio Recovery Associates sent similar letters to consumers. In addition to these letters, both debt buyers filed lawsuits on debt that was beyond the statute of limitations to do so. As a result, the settlement reached with the CFPB ordered the companies to stop suing or threatening to sue to collect on time-barred debt.

In addition to the federal and state enforcement actions, a number of state courts and legislatures have taken steps in recent years to prohibit the practice of suing, collecting, or attempting to collect on debt beyond the statute of limitations.[19] We urge the Missouri Attorney General to adopt a similarly strong approach to such unfair collection activities.

2. Prevent unfair collection lawsuits: *While 15 CSR 60-8.100 provides important protections that should remain as drafted in the final rules, we urge that 15 CSR 60-8.100 be amended to prevent additional unfair collection tactics, as follows:*

> *(2) It is an unfair practice for any person to threaten to file a civil action, or to file a civil action, for a debt that is primarily for personal, family, or household purposes, if such lender threatens or commences a collection lawsuit against a consumer with no intent of bringing such lawsuit or proving the debt.*

This particular practice of threatening to file, or filing a civil action, has been the subject of recent state and federal enforcement actions, and private lawsuits. For example, in a recent private class action in Missouri, the court found that debt buyer Royal Financial's practices violated the Fair Debt Collection Practices Act for bringing lawsuits which it never intended to substantiate with proper proof or evidence. Among the many unfair practices identified by the court, it noted that "Royal opted to allow its petition to be dismissed rather than go to the trouble of obtaining evidence of its status..."[20] Because the FDCPA is enforceable by private right of action, expanding the proposed rule in this way enhances the Attorney General's ability to prevent these practices that are clearly documented in the state and recognized by the courts as unfair.

In an earlier action against Portfolio Recovery Associates, the Missouri Attorney General recognized these harmful practices as well, alleging that PRA was "engaging in deception by filing cases in Missouri without documentation supporting a good faith basis for the suit and dismissing when the consumer contests the action."[21] In a similar manner, the Consumer Financial Protection Bureau took actions against debt buyers Encore Capital Group and Portfolio Recovery Associates for engaging in the illegal activity of threatening to file or filing collection lawsuits without intending to prove the debts.[22]

Furthermore, in a recent action by the Consumer Financial Protection Bureau against a law firm that essentially operated as a lawsuit factory for collection lawsuits, the Bureau noted: "The Hanna firm relied on deception and faulty evidence to coerce consumers into paying debts that often could not be verified or may not be owed."[23]

Along the same theory, the Massachusetts Attorney General brought a similar action against a law firm in its state. In its case against the Lustig Firm, the Massachusetts Attorney General noted: "To make their practice possible, the Lustig Firm allegedly relied on simple spreadsheets provided by national debt buyers, which allowed them to process up to thousands of consumer accounts for collection and litigation in a single day. The firm has continued to use these spreadsheets, even though the information provided is often unreliable or incomplete."[24] Furthermore, "The Lustig Firm frequently demanded payments on old debts without any meaningful proof that the consumer had incurred the debt or that the amount was accurate. Even after learning that their demands against consumers were premised on inaccuracies, the firm regularly continued to pursue consumers."[25]

3. Prevent the unfair accrual of interest above the usury limit: *We also urge that 15 CSR 60-8.100 be amended to prevent the unfair accrual of interest above the usury limit, by adding an additional section as follows:*

> *(3) It is an unfair practice for any person to assess fees and interest above the usury limit without written documentation evidencing an agreement to pay the higher interest or fees.*

A recent study of collection litigation cases filed in Maryland found that debt buyers were able to inflate the judgments they obtained by about 18% due to interest, attorney's fees, and other costs.[26] Under the Fair Debt Collections Practices Act, it is an unfair practice to collect any amount, including interest or fees, not expressly authorized by the agreement creating the obligation.[27] In Missouri, where some lenders are allowed to charge triple-digit interest rates and then charge those rates on any judgments they obtain, a $1,000 loan can balloon to become a $40,000 debt.[28]

This level of interest should not be allowed if the collector cannot provide evidence showing the right to collect that interest. For example, in its action against Portfolio Recovery Associates, the Attorney General alleged that the company engaged in "assessing fees and interest above the usury limit without written documentation evidencing an agreement to pay the higher interest or fees."[29] A number of states have taken steps to prevent the unfair charging of interest and fees in their states.[30]

For these reasons and given the history of debt collectors, particularly debt buyers, failing to have relevant documents to prove their cases, requiring any person to possess and provide the necessary documentation showing an agreement exists to pay interest rates or fees above the usury limit is critical in ensuring that the financially vulnerable are not unlawfully trapped in a cycle of debt.

Conclusion

Given the wide swath of unfair debt collection tactics by debt buyers, we appreciate Attorney General Koster's leadership is recognizing the racial disparities in debt collection practices and his multi-pronged efforts in reining them in for all Missourians. In previous enforcement actions against debt buyers in Missouri, the Attorney General described their activity as "engaging in unfair practice through unethical, oppressive and unscrupulous conduct in forcing consumers to choose between paying a debt they do not owe and having false collection information on their credit."[31]

In addition to these proposed rules, we appreciate the recommendations made to the Missouri Supreme Court regarding new rules to prevent lawsuits without sufficient evidence of the debt. The court rule suggestions in combination with strong final rules under Missouri's Merchandising Practices Act have the potential to create a necessary framework of common sense protections to prevent people from being pursued for debt they do not owe.

For more information or questions, please contact Diane Standaert, Director of State Policy, Center for Responsible Lending, at 919-313-8550 or dianes@responsiblelending.org

[1] Vol. 41, *Missouri Register*, page 93 (Jan. 15, 2016).
[2] CRL is an affiliate of Self-Help, a nonprofit community development financial institution. For thirty years, Self-Help has focused on creating asset-building opportunities for low-income, rural, women-headed, and minority families, primarily through financing safe, affordable home loans and small business loans. In total, Self-Help has provided $6.4 billion in financing to 87,000 homebuyers, small businesses and nonprofit organizations and serves more than 80,000 mostly low-income families through 30 retail credit union branches in North Carolina, California, Chicago, and Florida.
[3] Consumer Financial Protection Bureau, "Semi-annual Report of the Consumer Financial Protection Bureau," Nov. 20, 2015, http://files.consumerfinance.gov/f/201511_cfpb_semi-annual-report-fall-2015.pdf.
[4] Consumer Financial Protection Bureau, A Snapshot of Servicemember Complaints, http://files.consumerfinance.gov/f/201511_cfpb_snapshot-of-servicemember-complaints.pdf.
[5] Chris Albin-Lackey, Human Rights Watch, Rubber Stamp Justice: US Courts, Debt Buying Corporations, and the Poor, https://www.hrw.org/report/2016/01/20/rubber-stamp-justice/us-courts-debt-buying-corporations-and-poor.
[6] Portfolio Recovery Associates v. Guadelupe Mejia, Circuit Court of Jackson County, https://www.nclc.org/images/pdf/unreported/portfolio-mejia-judgment.pdf.
[7] Consumer Financial Protection Bureau, Consent Order, In the Matter of Portfolio Recovery Associates, LLC, at Paragraph 28, Sept. 9, 2015, http://files.consumerfinance.gov/f/201509_cfpb_consent-order-portfolio-recovery-associates-llc.pdf.
[8] New Economy Project, The Debt Collection Racket in New York, http://www.neweconomynyc.org/wp-content/uploads/2014/08/DebtCollectionRacketUpdated.pdf.
[9] Id.
[10] Paul Kiel & Annie Waldman, ProPublica, The Color of Debt, https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods.
[11] Id.
[12] Id.
[13] Lisa Stifler & Leslie Parrish, Center for Responsible Lending, The State of Lending: Debt Collection & Debt Buying, http://www.responsiblelending.org/sites/default/files/uploads/11-debt-collection.pdf.
[14] New Economy Project, The Debt Collection Racket in New York, http://www.neweconomynyc.org/wp-content/uploads/2014/08/DebtCollectionRacketUpdated.pdf.
[15] Jessica Silver-Greenburg, New York Times, "Debts Canceled by Bankruptcy Still Mar Consumer Credit Scores," Nov. 12, 2014.

[16] Office of the New York Attorney General, Press Release, "A.G. Schneiderman Obtains Settlement From Major Debt Buyer Who Filed Thousands Of Time-Barred Debt Collection Actions," Jan. 9, 2015, http://www.ag.ny.gov/press-release/ag-schneiderman-obtains-settlement-major-debt-buyer-who-filed-thousands-time-barred.
[17] See generally, Lisa Stifler and Caryn Becker, Center for Responsible Lending, "State, Federal Regulator Actions Highlight Widespread Debt Buyer Abuses," April 2015, http://www.responsiblelending.org/other-consumer-loans/debt-settlement/research-analysis/policybrief_statefederal_regulator_actions_highlightdebtbuyerabuses.pdf.
[18] Consumer Financial Protection Bureau, Press Release, "CFPB Takes Action Against the Two Largest Debt Buyers for Using Deceptive Tactics to Collect Bad Debts," Sept. 9, 2015, http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-the-two-largest-debt-buyers-for-using-deceptive-tactics-to-collect-bad-debts/.
[19] See, e.g., N.C. Gen. Stat. §58-70-115(4) (declaring suit or other collection attempts on time-barred debt to be unfair practices); Cal. Civil Code §1788.56 (prohibiting debt buyers from filing suit or initiating other legal proceedings to collect time-barred debt); Wash. Rev. Code §19.16.250(23) (prohibiting suit or arbitration proceeding on debt beyond the statute of limitations).
[20] Royal Financial Group, LLC vs Terri Perkins, Aug. 20, 2013, http://www.courts.mo.gov/file.jsp?id=64644.
[21] State ex rel. Koster v. Portfolio Recovery Associates, 351 S.W.3d 661.
[22] Consumer Financial Protection Bureau, Press Release, "CFPB Takes Action Against the Two Largest Debt Buyers for Using Deceptive Tactics to Collect Bad Debts," Sept. 9, 2015, http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-the-two-largest-debt-buyers-for-using-deceptive-tactics-to-collect-bad-debts/.
[23] Consumer Financial Protection Bureau, Press Release, "CFPB Takes Action to Stop Illegal Debt Collection Lawsuit Mill," Dec. 28, 2015, http://www.consumerfinance.gov/newsroom/cfpb-takes-action-to-stop-illegal-debt-collection-lawsuit-mill/.
[24] Office of the Massachusetts Attorney General, Press Release, "AG Healy Sues Major Debt Collection Law Firm Over Widespread Consumer Abuses," Dec. 23, 2015, http://www.mass.gov/ago/news-and-updates/press-releases/2015/2015-12-23-debt-collection-lawsuit.html.
[25] Id.
[26] Peter Holland, Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers, 26 Loyola Consumer Law Rev. 179 (2014).
[27] 15 U.S.C. § 1692f(1).
[28] See generally, Paul Kiel, ProPublica, "When Lenders Sue, Quick Cash Can Turn into a Lifetime of Debt," Dec. 13, 2013.
[29] State ex rel. Koster v. Portfolio Recovery Associates, 351 S.W.3d 661.
[30] See, e.g, N.C. Gen. Stat. § 6-21.2(6) (requiring written documentation supporting an obligation to pay attorney's fees, including the written contract or other writing evidencing the debt); Conn. Practice Book, Sec. 17-20(b)(1)(B) (requiring the terms and conditions of the contract if there are claims for fees and charges, other than interest).
[31] State ex rel. Koster v. Portfolio Recovery Associates, 351 S.W.3d 661.