



August 22, 2014

Consumer Financial Protection Bureau
(Attention: PRA Office)
1700 G Street, NW
Washington, DC 20552

Re: *Debt Collection Survey from the Consumer Credit Panel*
Docket No.: CFPB-2014-0017

To whom it may concern:

The American Financial Services Association (“AFSA”)¹ welcomes the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) revised debt collection survey (“Revised Survey”)² to learn about consumers’ experiences with debt collectors.

We support several of the changes the CFPB made to the Revised Survey. The Revised Survey is shorter than the previously proposed version, which we believe may help increase the response rate. The Bureau also removed some questions that would yield misleading and biased survey responses. AFSA appreciates that the CFPB took several of our concerns seriously and made appropriate changes.

The CFPB also stated that it generally agrees with the point made in AFSA’s letter on the initial survey that it may be beneficial to maintain the distinction between creditors and debt collectors more clearly. We appreciate that the CFPB is sensitive to our concern. As a result, the Revised Survey refers to “creditor or debt collector,” rather than “debt collector.” The Revised Survey also includes two new questions that ask respondents whether they are thinking of debt collected by a creditor or debt collector.

Although these changes are an improvement, we believe that the difference between creditors and debt collectors should be more clearly emphasized. The final survey should be designed to obtain separate lines of information relating to creditors and debt collectors. This will allow the CFPB to collect and analyze appropriate data and promulgate more appropriate rules for each industry if necessary.

In addition to suggestions as to how to more clearly distinguish between creditors and debt collectors, AFSA also offers some suggestions to increase the response rate and raises concerns about some of the questions in the Revised Survey.

¹ AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its more than 350 members include a broad spectrum of consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

² Agency Information Collection Activities, 79 Fed. Reg. 42764-42765 (July 23, 2014).

I. There is a Difference between Creditors and Debt Collectors.

If, when reviewing the results of the Revised Survey, the CFPB cannot distinguish between problems consumers may experience with debt collectors and problems consumers may experience with creditors collecting their own debt, the Bureau may write rules in areas where rules are not necessary. This is likely to create unintended consequences such as additional red-tape for consumers, difficulty in getting future credit, customers feeling that they are not appreciated or trusted because of the nature of the disclosures, and higher costs to creditors (which will inevitably be passed along to consumers).

Creditors

We cannot sufficiently emphasize that creditors and debt collectors are different. Most creditors originate their own accounts or acquire accounts shortly after origination, and usually well before default. They service these accounts, accept agreed upon payments, and provide assistance throughout the life of an obligation. Accounts that go into default or do not pay timely ultimately affect a company's costs and risks, so creditors want to avoid defaulted loans or accounts. There is an incentive to maintain a customer in a "paying" relationship as the creditor assumes the risk of extending credit in the first place. Creditors stand to lose the entire balance owed if they cannot collect the debt and salvage the relationship with their customers, while the customers stand to lose goods they purchased and potentially tarnish their good credit.

A creditor's primary business is selling goods or services on credit, purchasing and taking assignment of those credit obligations, or making new loans, not collecting on defaulted loans or accounts. Maintaining customer relationships is critical to creditors. They do not want or need charged-off or uncollectible debt precisely because that type of debt will not give creditors access to new customers to whom credit may be extended in the future. Captive finance companies, for example, service accounts with customer interests in mind in order to promote brand loyalty to their parent manufacturers. Because of this imperative, it is not in their interest to mistreat their customers. Additionally, creditors often have a long-term and continuous relationship with their customers, who may carry other balances with the creditor that are not delinquent. They understand that how they treat delinquent customers can impact their overall business if they get a reputation for treating customers badly. Moreover, creditors use debt collection as a customer retention strategy and are incentivized by avoiding costs to acquire new customers. As a report from the Tower Group states, "The cost to replace one bank card customer ranges from \$160 to over \$200, and issuers that work with their customers through this difficult period will retain customer for life."³

³ Moroney, Dennis, "Revitalize the Credit Card Pre-Charge-off Collection Process and Improve the Bottom Line." TowerGroup. April 2009. Quoted in "Leveraging Collections as a Customer Retention Tool," by Julie Austin and Vytas Kisielius of Collections & Recovery, TSYS, Jan. 2010. Available at: http://www.ftc.gov/sites/default/files/documents/public_comments/ftc-workshop-debt-collection-2.0-protecting-consumers-technology-changes-project-no.p114802-00007%20A0/00007-58348.pdf

Collections are still an important part of a creditor's business, but the nature and underlying basis of the contact by a creditor is fundamentally different from a debt collector. When a customer goes into default under a contract, the creditor makes contact to identify and resolve the issue with the customer in an effort to avoid having to repossess the collateral or charge off the account. Customers may not want to be contacted because they may not be able to cure the default. So, while a creditor may try to make frequent contact, it is often doing so to ensure the customer is informed and that it has made every reasonable effort to resolve the customer's issues before the account is past the point of any chance of reconciliation. Frequent contact from a creditor, which has a contract and relationship to maintain, is different than frequent contact from a collection agency collecting amounts that are owed, but not part of an ongoing relationship.

If the CFPB chooses not to make a distinction in the final survey between creditors and debt collectors, we request at a minimum that the Bureau acknowledge and differentiate the business models and objectives of both types of businesses when analyzing their collection strategies.

Debt Collectors

Debt collectors operate a completely different business model with very different incentives. Debt collectors only collect mature, static balances from consumers with whom they have no prior or ongoing relationship. They do not have any incentive or desire to establish relationships with consumers for repeat business. The sole mission of debt collectors is to collect defaulted debt without regard to any future relationship with the consumer. The amount a debt collector must collect to recover its initial investment is quite small and its profit potential is very significant, as long as it collects more than it is paid for the accounts.

All of this means that debt collectors do not have substantial "skin in the game." They have little to lose. That accounts for some of the practices the Fair Debt Collection Practices Act ("FDCPA") was designed to guard against. Creditors are at the opposite end of that spectrum. They have all of their "skin in the game," both with their money and their valuable customers – customers they very much want to keep.

II. Congress Distinguishes between Creditors and Debt Collectors.

Congress has recognized that creditors have "skin in the game," and so decided that creditors should not be subject to the same debt collection restrictions as debt collectors. When Congress passed the FDCPA in 1977, lawmakers realized that creditors do not operate like debt collectors. Consequently, debt collectors are covered by the FDCPA, but creditors are not. While much has changed in the consumer credit industry since 1977, creditors are still restrained by their inherent motivation to protect their goodwill when collecting overdue accounts – just like they were in 1977.⁴ While consumers cannot choose their debt collectors, they usually make conscious decisions regarding which creditor to use. The Senate Report on the FDCPA states, "Unlike creditors, who generally are restrained by the desire to protect their goodwill when collecting

⁴ U.S. House. Subcommittee on Consumer Affairs of the Committee on Banking, Finance and Urban Affairs. Statement re: H.R. 29, A Bill to Amend the Consumer Credit Protection Act To Prohibit Abusive Practices by Debt Collectors. March 9, 1977.

past due accounts, independent collectors are likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them.”⁵

The Government Accountability Office affirmed Congress' distinction, stating, “Because first-party collectors use the issuers' name and are collecting from current customers, there is an emphasis on preserving the relationship with the consumer and mitigating the negative perception that consumers can have about their accounts being forwarded to collection.”⁶

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) did not give the CFPB unlimited authority to regulate debt collection. The Dodd-Frank Act revised the FDCPA, giving the CFPB authority to issue rules under the statute. These rules, though, will address concerns related to debt collectors, not creditors. The CFPB has limited authority to issue rules to creditors regarding debt collection.

The CFPB states in its ANPR⁷ on debt collection that the Dodd-Frank Act gave the Bureau the authority to issue rules with respect to the collection of debts under several different provisions in the Dodd-Frank Act. Sections 1022(b) and 1089 of the Dodd-Frank Act authorize the CFPB to prescribe rules with respect to the collection of debts by debt collectors as defined under the FDCPA. Section 1031(b) of the Dodd-Frank Act empowers the CFPB to issue regulations “identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or services, or the offering of a consumer financial product or service.” Such rules “may include requirements for the purpose of preventing such acts or practices.” While Section 1031(b) of the Dodd-Frank Act may allow some regulation of creditors and those exempt under the FDCPA in connection with any transaction with a consumer for a financial product or service, those regulations must be limited to preventing “unfair, deceptive, or abusive acts or practices” as defined in the Dodd-Frank Act, and cannot cover all of the areas the regulations the CFPB may deem necessary in connection with the FDCPA.

III. The Revised Survey Should More Clearly Distinguish Creditors and Debt Collectors.

As mentioned above, the Revised Survey includes two questions asking respondents whether they are thinking about a debt collector or a creditor when answering questions about a debt. The Revised Survey questions also ask about a “creditor” or a “debt collector,” not just a debt collector as the previously proposed survey did.

While this is an improvement, we hope that the CFPB will consider making a few additional changes to get the best possible dataset from the final survey results. Since the information collected through this survey will be used to inform the CFPB about the collection environment

⁵ S. REP. 95-382, S. Rep. No. 382, 95TH Cong., 1ST Sess. 1977, 1977 U.S.C.C.A.N. 1695, 1977 WL 16047 (Leg.Hist.)

⁶ U.S. Gov't Accountability Office, GAO-09-748, *Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace and Use of Technology* (2009), available at <http://www.gao.gov/assets/300/295588.pdf>

⁷ Advance Notice of Proposed Rulemaking Concerning Debt Collection. Nov. 6, 2013. pp. 16-18.

as it engages in rulemaking concerning debt collection, it is important that the data collected is as fulsome and accurate as possible. The data should be reflective of the business practices and business models of each type of business the CFPB intends to regulate. If the final survey does not clearly distinguish between debt collected by creditors and debt collected by debt collectors, the results will have less utility for research analysis and possible rulemaking and could leave consumers at a disadvantage.

Congress did not intend that creditors be regulated like debt collectors, and the CFPB should follow Congress' intent as it seeks to regulate collection practices under the FDCPA. Congress realized when it passed the FDCPA and transferred the authority of the Federal Trade Commission to "prescribe rules, issue guidelines, or conduct a study or issue a report mandated under" under Section 1061 of the Consumer Financial Protection Act of 2010, that creditors operate differently than debt collectors, that creditors are different from debt collectors because their financial interests in debt differ radically, and that their motivations have different sources. Therefore rules applicable to debt collectors may be appropriate, but those rules would not be applicable to creditors.

It is not appropriate for debt collectors and creditors to be regulated identically because they have different business models and collection strategies. Further, we believe that additional regulations are unnecessary and could predictably lead to serious disruptions in the extension of consumer credit, increase the costs of credit to consumers, and hasten the exercise of contractual remedies, while providing minimal, if any, incremental benefit or protection to consumers.

If the CFPB determines to write rules regulating the debt collection practices of creditors and debt collectors, the Bureau should write two separate sets of rules. Rules that apply specifically to debt collectors should not apply to creditors and vice versa. The creditor rules should be carefully crafted to solve the problems (if any) that the CFPB determines exist in the creditor collection process. The CFPB should not presume that the problems it determines are caused by debt collectors necessarily apply equally to creditors.

Below, we offer suggestions as to how each section of the Revised Survey could better distinguish between creditors and debt collectors.

Section B. Your experiences with debt collection

We understand that the CFPB believes that there may be a problem with consumers being harassed or contacted erroneously. As previously stated, creditors have no motivation to harass their customers. In addition, since creditors are collecting their own debt, errors are less likely to occur. Thus, we believe that if a problem exists, it exists in the debt collection industry. For that reason, we request that the CFPB ask separate questions about debt collected by creditors and debt collected by debt collectors. With that distinction, the CFPB can better identify and solve any problem that may exist.

In this section, Questions 10, 19, and 20 should either be about creditors or debt collectors. The CFPB could either repeat each question, with the first question being about creditors and the second about debt collectors, or the CFPB could use two different surveys, one that asks

questions about creditors and another that asks questions about debt collectors. If the CFPB decides to use two different surveys, the CFPB should expand the number of surveys mailed in order to get a significant number of responses about both creditors and debt collectors.

Question 10 asks, “Were any of these debts that you have been contacted about since [September 2013]... A debt you did not owe? A debt you owed but the amount the collector was seeking was wrong? A debt for which you were a co-signer for someone else? A debt owed by a family member but that you did not co-sign? A debt owed by a deceased family member?” It is important that the CFPB understands whether the answers to these questions are referring to creditors or debt collectors. If respondents, for example, answer that they are being contacted about debts they do not owe, the CFPB may decide that a rule is necessary to limit the number of consumers being contacted about debts they do not owe. If consumers are mainly being contacted about debts they do not owe by debt collectors, only debt collectors should be subject to the new rule. The CFPB cannot accurately write rules to solve problems if it does not understand what is causing the problem.

Question 19 asks if the creditor or debt collector stopped contacting the borrower after a request to stop communicating. Again, unless the CFPB asks separate questions about creditors or debt collectors, the Bureau will not know if there is a problem with creditors continuing to contact borrowers or debt collectors continuing to contact borrowers.

Question 20 asks, “If a creditor or debt collector contacted you about a debt that you did not immediately recognize, how helpful do you think each of the following pieces of information would be in figuring out whether it was the one you owed?” The choices include: original account number, itemization of the amount owed, Social Security Number of the person who owes the debt, type of debt, name and address of the person who owes the debt, name and address of joint borrowers, date and amount of the last payment made, copy of the last billing statement, and copy of the original invoice.

This question in particular demonstrates the need to ask about creditors and debt collectors separately. Respondents are not going to think of a creditor when answering this question. They may want the information from a debt collector, but the information is not necessary from a creditor.

Section C. Your most recent debt collection

Question 27, which asks whether the person or company that contacted the respondent about the debt was a creditor or debt collector, should be moved up and asked after Question 22. It is important that the respondent be clearly thinking about either a creditor or a debt collector when answering the remaining questions in this section. This would also be a good time to repeat the definitions of creditor and debt collector.

The dataset that the CFPB proposes using could also help the CFPB verify if the respondent is in fact referring to a debt collected by a creditor or debt collector. The CFPB is proposing to use a nationally representative sample of de-identified consumer credit records (the “Consumer Credit Panel” or “CCP”) from one of the three national credit reporting agencies. Using the credit

records, it should be possible to see if the consumer is being approached by a creditor or debt collector. Although the respondents will remain anonymous to the CFPB, the survey responses will be supplied with a key that allows the response to be matched with the sampled credit record.

The CFPB does not say if it will use the key when reviewing the responses. We strongly encourage the CFPB to do so, especially for this section. We also ask that the CFPB make a version on the survey data publicly available to the extent that such release is legally permissible and consistent with protecting consumers' privacy. Consumers may be confused about whether a debt collector or a creditor is calling them, but the CFPB should be able to use the information in the key to determine if consumers are referring to creditors or debt collectors. (Of course, if several of the respondent's accounts are in collection, it may not be possible to tell if the respondent answers the question about whether or not the debt was being collected by a creditor or debt collector accurately or not. We hope that the CFPB will keep this in mind when analyzing the survey results and engaging in rule-writing.)

Section D. Disputing a debt in collection

We appreciate that the CFPB asks respondents in Question 37 whether the respondent disputed the debt with a creditor or debt collector. As with the previous section, we ask that the CFPB use the data in the CPP to see, if possible, whether the respondent answers the question accurately. Again, it may be useful for the CFPB to briefly define creditor and debt collector in Question 37.

Section E. Lawsuits to collect on debts

The CFPB should add a question to this section asking whether the respondent was sued by a creditor or debt collector. Also, in Question 46, the "Other" choice should be the last choice.

Section F. Your Preference for communications about debts

Question 47, which asks respondents to rank the top three ways that they would like to be contacted by a creditor or debt collector, should be two questions, either in the same survey or in different surveys. Consumers may want a creditor to contact them in different ways than they want a debt collector to contact them because of the different relationships between creditors and their customers and debt collectors and delinquent consumers.

Question 48 asks, "If a creditor or debt collector left you a voicemail or answering machine message, would you want the information below included or not included?" Answers include the creditor's or debt collector's name, that the creditor or debt collector is attempting to collect a debt, and that the communication is an attempt to collect a debt and any information obtained will be used for that purpose.

This question should also be asked in two parts – one soliciting responses about creditors and the other for debt collectors. Communication with creditors is much different and should be treated differently. For example, a creditor could call a customer to let the customer know about a new product, and during the call, the customer could ask about a current debt. In addition, some

creditors contact a customer immediately after a missed payment as a reminder, which many customers appreciate and in many cases will avoid a delinquency from being reported to the credit reporting agencies. Would regulations governing a creditor's communication require the creditor to give the debt collection disclaimer when responding to a question about the customer's account or if the creditor is just giving a payment reminder? A debt collector calls for one purpose only, to collect a debt. Given that difference and the fact that these responses will inform the CFPB's rule-writing, the questions about creditors and debt collectors should be different.

IV. Response Rate

The CFPB should increase the number of surveys mailed to get a large enough sample of responses, particularly if the CFPB decides to send some surveys asking about creditors and others asking about debt collectors.

The CFPB plans to mail surveys to up to 10,000 consumers and estimates a 30 percent response rate. That is a good number of responses to seek in order to analyze the data. However, we do not agree that it is likely that approximately 3,000 consumers will complete the Revised Survey, even with the monetary incentive. Based on our members' experience with surveys, we believe it is more likely that only 500 – 1,500 consumers will complete the Revised Survey. We recommend that the CFPB increase the number of surveys mailed, perhaps to 70,000, in order to yield a sample in the range that the CFPB is looking for – 3,000 responses.

We understand that the CFPB is trying to be a good steward of the public's money, but we believe that this issue is important and getting a large number of responses will help the CFPB as it write rules that will affect millions of consumers.

V. Introduction and Specific Questions

Introduction – “Most Americans have debt at one time or another...”

The CFPB should explain the differences between a creditor and a debt collector in this section. We suggest that the CFPB use a simplified version of language in the FDCPA to explain the differences. For example, the final survey could state, “A debt collector is anybody whose principle purpose is the collection of debts. A debt collector is not the same as a creditor. A creditor is anybody who offers or extends credit, such as a bank or finance company.” These definitions should be repeated at relevant points within the questionnaire.

Questions 3-6 – Have you applied for any type of credit or loan in the last five years, etc.

It is unclear how Questions 3-6 fulfill the stated purpose of the Revised Survey. These questions are about applying for credit, not debt collection. Since the Survey is already rather lengthy, we suggest that the CFPB remove these questions.

Question 14 – People may pay a debt that they are uncertain is theirs or that they do not remember borrowing. Which of the following best describes how certain you were about whether this debt was yours?

This question contains a leading first sentence. Suggesting in the first sentence that “people may pay a debt that they are uncertain is theirs or that they do not remember borrowing,” could artificially increase the number of respondents who select the second or third response choices, “I was reasonably certain the debt was not mine” or “I was uncertain whether the debt was mine.” Because the introductory sentence is not necessary to explain the question and is suggestive, the CFPB should remove this sentence from this question.

Question 28 – How often did this creditor or debt collector usually try to reach you each week?

This question should be removed because the answers are unlikely to be accurate. If a respondent was very annoyed by a creditor or debt collector, it is likely that the respondent will greatly exaggerate the number of times she was called. For the large majority of people with imperfect memories, the likelihood is that they will have no idea and will simply guess at this answer. AFSA is concerned that the question will not elicit reliable responses, but only anecdotal evidence that may support a preconceived opinion that creditors or debt collectors call too frequently.

If the CFPB believes that this question is necessary, we ask that it be open-ended. The question could ask, “Thinking about the debt collector that most recently contacted you about this debt, how often did the debt collector usually try to reach you each month?” There should be a blank space for the consumer to write the answer. No response choices should be given.

Question 30 – Thinking about the creditor or debt collector that most recently contacted you about this debt, how would you characterize your communications in trying to collect the debt?

This question should be removed from the Survey. The answers depend too much on how the respondent interprets the question. Specifically, the terms “too frequently”⁸ and “threatened” are too vague. A respondent could believe that a creditor or debt collector calling once a week, or even once a month, qualifies as calling “too frequently.” The word “threatened” presents difficulties as well. “Threatened” could mean threaten physically, a warning about a possible repossession, or a possible lawsuit being filed. The first is impermissible and inexcusable. The latter two are simply facts of life. If you do not pay your debt, your security can legally be repossessed and/or you can be sued. Because the questions are so vague, the answers will be meaningless.

Removing the question from the Survey would be the simplest way to avoid meaningless responses. However, the CFPB could try to improve the question by defining “too frequently” and “threatened.” For example, instead of “the collector contacted me too frequently,” the Survey could state, “the collector contacted me over 15 times per day.” Instead of “the collector

⁸ A creditor or debt collector may call a consumer more than once in a certain time period because the consumer does not answer the phone. The consumer could think that the creditor or debt collector is calling “too frequently,” but if the consumer answered the phone, the calls could stop.

threatened me,” the Survey should state, “the collector threatened to physically harm me or someone I know.”

Question 36 – Did you dispute the following?

As you may know, AFSA members routinely receive form letters reflecting consumers’ dissatisfaction with their debt. The letters question or dispute the debt that is reporting on the person’s credit report, with no explanation of the basis of the dispute. These letters are usually submitted by credit repair organizations and debt settlement companies or are form letters found on-line. While the consumers, for their own reasons, are disputing or disagreeing with the debt, the disputes are not based on any inaccuracy relating to the debt.

If the CFPB unintentionally receives affirmative responses based on disputes that are not based on creditor or debt collector errors or where the customer simply did not want to pay the debt, the CFPB’s data will be inaccurate. In order to analyze creditors or debt collectors handling of true disputes regarding the debt or its collection, we recommend the CFPB base subsequent questions on whether the consumer provided a dispute qualifying under the first 4 choices and remove the “Other,” which could produce false data, including credit bureau disputes (while important, are not relevant for this Survey).

Question 40 – Did the creditor or debt collector do any of the following in response to this most recent dispute?

We recommend two additional choices to the responses to this question. It is possible the respondent’s dispute was addressed when it was raised. An additional choice should be, “Resolved dispute.” While the next question asks about additional information and verification of the debt, providing verification of the debt is one way to resolve a dispute under the FDCPA. We recommend adding the choice of, “Provided additional information.” If the CFPB chooses to open up the choices in this manner, if “Provided additional information” is chosen, the respondent can be directed to Question 42. If no additional information was provided, the respondent can be directed to Question 44.

Question 42 – Did the creditor or debt collector provide the following in response to your dispute?

The responses to this question will be hard to analyze without knowing the nature of the dispute. The CFPB should improve the question by rephrasing it to ask the following, “If applicable to your dispute, did the creditor or debt collector provide the following in response to your dispute?” The CFPB should then add a “not applicable” column to the response choices.

VI. Conclusion

We understand that the CFPB has received a number of complaints about the debt collection industry and has subsequently determined that some kind of additional regulation is likely needed. Above, we explain why creditors have every motivation to treat their customers, including their customers in default, well. Thus, we do not believe that more regulation on how creditors collect their own debt is necessary.

However, we know that the CFPB strives to be a data-driven agency. Thus, we support the CFPB's data collection effort in this area. The CFPB should survey consumers on their experience with how debt is collected. Such a survey could yield valuable data, but only if the survey distinguishes between creditors and debt collectors. If the final survey does not clearly distinguish between creditors and debt collectors, the results will not inform the CFPB if a problem the survey identifies from the data emanates from creditors collecting their own debt or debt collectors.

We look forward to working with the CFPB on this Revised Survey. Please contact me by phone, 202-466-8616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,

A handwritten signature in black ink that reads "Bill Himpler". The signature is fluid and cursive, with the first name "Bill" being particularly prominent.

Bill Himpler
Executive Vice President
American Financial Services Association