October 21, 2016

Commissioner Terence McGinnis
Massachusetts Division of Banks
1000 Washington Street, 10th Floor
Boston, MA 02118-6400

Mr. Max Weinstein
Chief, Consumer Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108-1518

***Re: Request for input on Massachusetts debt collection statutory and regulatory framework***

Dear Commissioner McGinnis and Mr. Weinstein:

I write on behalf of the American Financial Services Association (AFSA) as a follow-up to our short testimony during the debt collection informational session, held on September 22. Thank you for providing us with the opportunity to submit written comments on this issue. Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

AFSA members do not operate like debt buyers or third-party debt collectors. Most AFSA members originate their own accounts or acquire accounts shortly after origination, and usually well before default. In contrast to third-party debt collectors or debt buyers which usually collect only mature, static balances from consumers with whom they have no prior or ongoing relationship, creditors[1] usually collect delinquent installments from consumers with whom they have a long-term and continuous relationship and who (absent acceleration) may carry other (current) balances with the creditor. Unlike creditors, debt buyers and third-party debt collectors may operate with very limited information regarding the consumer or the account involved. Also, unlike creditors, debt buyers and third-party debt collectors are likely to collect much older charged-off or time-barred debts. As such, Massachusetts' requirement that creditors validate debt[2] is inappropriate for creditors, unnecessarily burdensome, and can create an inadvertent incentive, in the context of vehicle finance, to repossess a vehicle.

[1] The term "creditor" as used in this letter means entities who either originate their own obligations or take assignment of current obligations (generally shortly after origination). Most of these entities go on to service and collect these obligations and those of affiliated entities, and the collection of debt is not their principal business.
[2] 940 CMR 7.08 Validation of Debt

***Massachusetts debt validation requirements***

The Attorney General's March 2012 debt collection regulations required creditors collecting on accounts they own or originate to validate debt for the first time.[3] Previously, creditors, with narrow exception (*e.g.*, creditors collecting in the name other than their own that suggests the involvement of a third party) were not required to provide validation of debt notices like those third-party debt collectors and debt buyers must provide under federal and other states' laws. Validation of debt notices do not make rational sense in ongoing credit relationships, particularly those involving both current and past due balances.

If, for example, a consumer obtains a motor vehicle installment loan from a bank (or enters into a motor vehicle retail installment sales contract with a dealer who immediately assigns the contract to a sales finance company) and makes payments for a period of time to the same creditor, it would not appear to serve any useful consumer purpose for a creditor to: (i) incur the additional cost to send a notice informing the consumer of a right to validate the debt before proceeding to collect an individual delinquent installment; nor (ii) suspend repossession efforts and risk the loss of collateral pending a consumer's request to validate the debt; nor (iii) suspend collection efforts until documents that were previously provided to the consumer as required by law in the ordinary course of the relationship are re-provided upon request. In the context of a creditor collecting an account it originated or obtained immediately after origination, validation serves no rational purpose justifying the additional cost and risk in the credit or context.

940 CMR 7.08: Validation of Debts (1) requires a creditor to send a debtor a validation notice within five days after the initial communication in connection with the collection of a debt, which occurs when the obligation to pay a creditor is 30 days past due or as otherwise agreed. The validation notice is similar to the validation notice required under the federal Fair Debt Collection Practices Act,[4] where the name of the creditor, the amount owed, and a statement that information will be provided if requested, is contained in the letter. While the attorney general's regulation does apply to charged off accounts that are being collected by a creditor, it also applies to current accounts at any point the accounts become 30 days delinquent. If, for example, a customer has a five-year contract for personal property, which is over 30 days past due 10 times, the customer will receive 10 letters reminding him of the open account, who the creditor is, the amount owed, and information about obtaining validation. This is all information already provided on the monthly invoice. The only difference is the invitation to request validation of the debt. In these instances, it is unlikely the customer does not recognize the debt. Allowing the customer to write in to get basic information on an account that is still open adds no value to the customer. In fact, if the customer is reviewing his correspondence and invoices, it is likely the customer knows exactly what is owed. This extra notice is unnecessary and it costs the creditor additional amounts in employee time to monitor the days past due of the account and then generate a letter. Sending the letter is also difficult to automate because collections may start at different times. The unnecessity of multiple validation notices for customers who are frequently delinquent is further demonstrated by the attorney general's guidance, which states:[5]

[3] 940 CMR 7.03 applies the debt collection regulations to all creditors, by defining a "creditor" as "any person and his or her agents, servants, employees, or attorneys engaged in collecting a debt owed or alleged to be owed to him or her by a debtor and shall also include a buyer of delinquent debt who hires a third party or attorney to collect such debt."
[4] Fair Debt Collection Practices Act, 15 U.S.C.A. § 1692g
[5] Mass. Att'y Gen., Guidance with Respect to Debt Collection Regulations (Jan. 24, 2013).

> Consistent with the articulated rationale for the federal validation provision[5], 940 CMR 7.08 is intended to assist the debtor when, among other things, a creditor inadvertently contacts the putative debtor *at the start* of his collection efforts.[6] A single disclosure notice is required following the initial communication in connection with the collection of a debt determined as articulated above. (emphasis in original)

Additionally, if the customer did want to dispute the debt, the customer can dispute the debt in writing under the Uniform Commercial Code[6] and in the case of credit cards, the Fair Credit Billing Act.[7] Even if the attorney general would like to give the customer the opportunity to dispute the debt, it would be more efficient for the notice to be required on the invoice. This would allow the customer to always remember the customer may dispute the amounts owed or request validation. The letter could also be required by creditors after an account charges off where the creditor continues to collect on the debt.

***Additional regulatory concerns***

940 CMR 7.04: Contact with Debtors (1)(d) requires a creditor to disclose the collector's first and last name in telephone communications with the debtor. While many creditors have provided another identifier for employees to use with their first name, as allowed under the regulation, the first and last name requirement raises security concerns with a creditor's employees.

940 CMR 7.04: Contact with Debtors(1)(f) allows only two calls to be initiated to consumer's residence, cell phone number, or other personal number provided by the debtor. "Initiating" the call does not allow for actual contact with the consumer. This could lead to a consumer not knowing the consumer's account is in default and not realizing the consumer can work out a resolution to a delinquency. Where the consumer does not make some sort of arrangement to pay the amount then owed, the consumer's credit report is updated with delinquencies, charge offs, repossessions, etc. When a creditor does not have contact with consumers, they are more likely to pursue remedies like repossession and charge off sooner.

940 CMR 7.07: General Unfair or Deceptive Acts or Practices (22) requires all written communications to the debtor to disclose the telephone number and office hours of the creditor or his agents. This requirement is problematic because, while most businesses are open normal business hours, the hours open may change. This may lead to understating hours for national companies on correspondence. Additionally, because of the number of characters necessary to provide the hours, the requirements may preclude text communications unless specifically requested by the customer.

***Specific input in response to the DOB & AG's questions***

*Do consumers have access to all or part of the information typically provided to a debt buyer as part of a sale of a debt upon request?*

Consumers always have access to information when personal property, such as a vehicle, has been financed.

[6] Uniform Commercial Code § 3-311
[7] Fair Credit Billing Act, 15 U.S.C. § 1666

*Aside from residential mortgage debt, do creditors typically notify consumers that their debt has been sold? If not, should notification be required for all types of debts?*

Creditors do not notify consumers that their accounts have been sold because the creditors have been trying to reach the consumers to resolve the debt, to no avail. Consumers are responsible for providing updated addresses to creditors; if the consumer fails to provide this information, the addresses on file for the consumers may be out of date. If the debt buyer is going to provide notice to the last known address upon sale, the creditor's providing notice to the same address upon closing the sale is duplicative and nonproductive. There is nothing the creditor can do if the consumer did call the creditor at this point besides refer the consumer to the debt buyer. Two letters arriving close together may confuse the consumer.

*How should changes in the federal laws and regulations governing debt collection practices be reflected in the Commonwealth's regulations?*

The Commonwealth should not duplicate federal laws and regulations. If the Commonwealth feels the federal regulations address the Commonwealth's concerns, there is no need to create duplicative laws and regulations.

***Conclusion***

We appreciate the opportunity to outline our concerns with Massachusetts' debt collection regulatory framework, particularly the attorney general's regulations' debt validation requirements for creditors. The regulations' treatment of creditors like debt buyers and debt collectors is like putting a square peg in a round hole, given that creditors have an ongoing relationship with the consumer, operate with more information regarding the debts and accounts, and thus do not have the problems intended to be addressed by the validation requirements (*i.e.*, attempting to collect debts from the wrong consumer for the wrong amount of money). These parties are also restrained by the desire to protect their good will when collecting past due accounts from their customers with whom they have continuous relationships. The regulations' burdensome requirements may result in creditors and servicers not engaging in customer contact to resolve delinquencies, potentially serving as an inadvertent incentive for creditors and servicers to exercise remedies, such as vehicle repossession, earlier than they would have previously.

If you have any questions, or would like to discuss our concerns further, please do not hesitate to contact me by phone at 952-922-6500 or e-mail at dfagre@afsamail.org. Thank you again for your time and consideration.

Sincerely,

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