

# CREDITORS AND DEBT COLLECTION LAWS

Laws designed to protect consumers from unscrupulous debt collectors, particularly third parties that exist solely for the purpose of collecting debt, may inadvertently create unforeseen risk for creditors who hold and collect their own accounts. This is primarily through increasing the compliance burden and limiting creditors' ability to exercise self-help remedies and repossess collateral in which they hold a perfected security interest. This can lead to serious disruptions to the availability of consumer credit and increased cost for consumers.

As Congress recognized in establishing the federal Fair Debt Collection Practices Act ("FDCPA"), creditors "generally are restrained by the desire to protect their good will when collecting past due accounts," which distinguishes them from third party debt collectors who are "likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them."<sup>1</sup>

Debt *validation* requirements compound this issue, inviting a consumer to challenge a debt's validity (thus delaying collection at a critical time), when the creditor, as the original party to the loan or having obtained it immediately after origination, is certain that the debt is valid. Debt validation requirements also may, in the context of a creditor collecting an account it originated or obtained immediately after origination, mandate the collection of certain information about the debt prior to initiating collection efforts. Many creditors believe that these laws serve no rational purpose to justify the additional cost and risk.

## AFSA'S POSITION

AFSA acknowledges the importance of laws that protect consumers from abusive debt collection practices, but believes strongly that good public policy can only be developed by recognizing in legislation the fundamental differences between a creditor<sup>2</sup> and a debt collector.

AFSA believes that laws imposing debt validation requirements on creditors create an unnecessary burden in exchange for little or no increased protections for consumers. They strike at the very heart of the consumer credit model, artificially raising the cost of credit by increasing the risk that the creditor will not be able to collect on a loan.

Most AFSA members originate their own accounts or acquire accounts shortly after origination (and before any possible default), thus do not operate like debt buyers or third-party debt collectors, which exist only to collect monies owed.

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<sup>1</sup> See, e.g., S. Rep. No. 382, 95th Cong., 1st Sess. 2, *reprinted in* [1977] U.S.C.C.A.N. 1695.

<sup>2</sup> The term "creditor" as used in this documents means entities who either originate their own obligations or who take assignment of current obligations (generally shortly after origination). These entities service and collect their own debts and those of affiliated entities, and the collection of debt is not their principal business.