



**Supplemental Comment on Federal Trade Commission Workshop  
“Collecting Consumer Debts: The Challenges of Change”  
October 10-11, 2007**

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**I. INTRODUCTION**

DBA International (“DBA”) is pleased to submit to the Federal Trade Commission (“FTC”) these supplemental comments regarding the debt buying industry. DBA greatly appreciated the opportunity to participate in the October 10-11 Workshop, and DBA further appreciates this opportunity to respond and to clarify issues raised during the course of the Workshop. DBA recognizes and applauds the FTC’s commitment to obtaining a greater understanding of the debt industry.

Numerous important issues were raised during the Workshop. In this comment, we will address those issues of particular importance to debt buyers. Our purpose is to explain more fully DBA’s position concerning each of these critical areas: (1) adequate documentation of debts; (2) methods of communication with consumers; (3) reporting of debt to the credit bureaus; (4) abuse of litigation; and (5) levels of compliance.

**II. ADEQUATE DOCUMENTATION**

Debt buyers are financial institutions which purchase uncollected accounts from originating creditors for less than the face value of the debt. For each of the accounts purchased, debt buyers receive account information from the originating creditor to assist in the collection process. The more information that a debt buyer possesses, the more information can be provided to the consumer debtor. Because more information promotes a fair and appropriate result for consumers and therefore also results in higher collection rates, DBA has been and continues to be a very strong advocate for the transfer of all relevant information about a debt at the time of purchase.

From both a legal and a marketplace efficiency perspective, debt buyers have a strong incentive to obtain as much information as possible from the originating creditor or other debt seller. At the time of the purchase, debt buyers customarily receive a computerized summary of the debt from the seller, which the debt buyer imports into the debt buyer’s business records. In addition, debt buyers customarily receive various representations and warranties in the purchase agreement that the information being provided is accurate. The greater the scope and detail of the information which debt buyers obtain from sellers, the greater the likelihood of quick and reliable consumer identification. Once the consumer debtor is properly identified, debt buyers

try to provide sufficient detail to the consumer to satisfy the consumer that a debt is owed. This invariably facilitates a speedy collection process. DBA members are working hard to encourage originating creditors to provide enhanced documentation which includes detailed information about a debt, not only to benefit debt buyers and consumers, but also to fulfill certain legal obligations imposed on debt buyers, such as completing and submitting to the Internal Revenue Service 1099-C forms.

Technology facilitates the streamlined transfer of information among creditors and debt buyers. While it was suggested during the Workshop that debt collectors are not “warehouses” for information, DBA would emphasize that the collection, storage, and availability of information in an increasingly digital world is not only desirable for consumers, but preferable to debt buyers. With the advances in information technology, the burden of warehousing information for data storage and transfer may ultimately be an issue to be resolved by the creditor and the debt buyer. However, before greater implementation of such warehousing of information can occur, there admittedly will be a need for advances in the area of imaged or digital retention of documents. Currently, DBA members not only use technology effectively to collect and retain necessary account information but do so with appropriate levels of security. Debt buyers employ some of the most sophisticated data encryption available in today’s market to ensure that consumer data is protected from inadvertent release.

DBA urges the FTC to continue the dialogue about how best to encourage originating creditors to improve the quantity and the quality of information that a debt buyer receives, thereby allowing the collection process to proceed more smoothly for both debt buyers and consumers.

### **III. METHODS OF COMMUNICATION**

Communication is essential to effective debt collection. By reaching out to an individual debtor, the individual becomes the debt buyer’s customer. DBA members want to be able to communicate with their customers effectively while remaining in compliance with the law. Legal protections for consumers should be clear and unambiguous and should be adaptable to new technology. DBA believes that all reasonable methods of communication should be available to debt buyers as a means of reaching out to their customers. Additional guidance regarding the use of e-mail, answering machines, and cell phones would benefit consumers, as well as help debt buyers to avoid inadvertent violations.

#### **A. E-mail**

E-mail has become a widespread method of communication for both business and personal uses. However, privacy considerations arise due to concerns that third parties may have access to an individual consumer’s e-mail account. Businesses may have Internet usage policies that permit administrative review of individual emails in an employee’s account. Personal accounts may be shared among family members. Because debt buyers are prohibited by law from revealing any information concerning a debt to a third party,<sup>1</sup> these scenarios present legal

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<sup>1</sup> 15 U.S.C. § 1692c(b).

complications that require additional guidance so that debt buyers can use e-mail as a means of communication without running the risk of inadvertent violations or unnecessary litigation.

## **B. Answering Machines**

The prohibition against disclosure of debt information to third parties also creates potential uncertainty about the permissibility of leaving messages for consumers on telephone answering machines. As more and more people have access to caller ID technology, debt buyers find an increasing number of consumers do not answer calls from unfamiliar numbers, instead allowing answering machines to record a message before deciding whether to respond. The possibility that another individual in a household, other than the consumer debtor, could hear the message and learn about the debt at issue causes concern to debt buyers. When a debt buyer chooses not to leave information for a customer on an answering machine because of these concerns, this greatly reduces the ability of a debt buyer to contact consumers by telephone.

## **C. Cell Phones**

Cell phones present problems for debt buyers seeking to comply with existing laws and regulations. At the outset, debt buyers find it difficult to identify whether a number provided by the consumer is a cell phone number unless the consumer so specifies. Even when a consumer initially indicates that a certain phone number is a landline, consumers are now permitted to transfer a landline phone number to a cell phone, leaving debt buyers with no way to track such transitions unless notified by the consumer.

Also, for those consumers that inform debt buyers that a cell phone is the best means of contact with the consumer, debt buyers still face uncertainty in complying with the law when calling these telephone numbers. The Fair Debt Collection Practices Act (FDCPA) specifies certain requirements when contacting a consumer. 15 U.S.C. § 1692f(5) prohibits a debt collector from having a consumer incur an additional charge in the collection of a debt, thus preventing many debt buyers from calling cell phones.

With the transportability of numbers and the ability to forward calls, debt buyers also risk inadvertent and unintentional violations of the FDCPA when making a call to a cell phone that may fall outside of permissible calling hours. For example, a debt buyer may call a cell phone with an area code indicating that the call will occur at 8:00pm Pacific time. However, if the individual user has traveled to the Eastern time zone, this results in a communication to the consumer at 11:00pm.

The more opportunity that a debt buyer has to contact its customers, the more likely a satisfactory resolution can be reached. Unfortunately, debt buyers are whipsawed by the existing legal requirements in a growing number of situations, such as those described above. DBA seeks to provide its members with as much guidance as possible on how to remain in full compliance with existing laws. Therefore, DBA requests that the federal government provide clarification on the methods of communications permissible to contact consumers.

#### **IV. ABUSE OF LITIGATION**

Debt buyers want to work with consumers to settle debts quickly and efficiently without litigation whenever possible. Because debt buyers purchase debt below the face value, favorable settlement terms that can assist a consumer to find the way out of financial difficulty are routinely reached with consumers without litigation. As stated during the Workshop, the filing of lawsuits on time-barred debts and the so-called “reaging” of a debt’s delinquency date are prohibited practices. DBA does not condone such tactics. Litigation is typically a last resort.

Unfortunately, a great deal of the misinformation is directed toward consumers concerning the legal process. Some law firms give consumers information that would appear to guarantee success at either avoiding the debt or success and financial rewards for suing debt collectors. Many web-sites contain “debtor scams” that provide incorrect legal information from non-attorneys aimed only at enticing financially struggling consumers to purchase form letters or books on how to avoid a debt. When consumers unwittingly fall prey to misinformation, this can result in litigation because the consumer has been ill-advised to refuse paying a justly owing debt.

To resolve many of the litigation issues discussed during the Workshop, DBA supports an enhanced enforcement role by the FTC in FDCPA cases. A centralized voice to resolve alleged violations would benefit both debt buyers and consumers.

#### **V. REPORTING OF DEBTS TO CREDIT BUREAUS**

DBA members recognize that the accuracy of the information contained in credit reports is dependent on the voluntary reporting of accurate debt information from data furnishers such as debt buyers. The accuracy of credit reports is important to debt buyers, who both contribute to and obtain credit reports. The bulk purchase of debts by debt buyers necessitates that an acquired portfolio’s accounts be evaluated in order to identify those with the highest likelihood of successful collection. This evaluation process relies on credit history information obtained from credit bureaus. DBA members make every effort to provide accurate debt information to the credit bureaus.

The Fair Credit Reporting Act (FCRA) imposes accuracy-related obligations on data furnishers.<sup>2</sup> In addition, debt buyers that habitually fail to perform proper reinvestigations may not be permitted to furnish information to the credit bureaus. The credit bureaus can refuse data if it does not conform to the bureaus’ accuracy standards, which could affect the willingness of creditors to enter into business with a particular debt buyer.<sup>3</sup>

DBA continues to work closely with the Consumer Data Industry Association to ensure that responsible reporting practices are the standard in the industry.

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<sup>2</sup> 15 U.S.C. § 1681s-2.

<sup>3</sup> See Statements of Michael Tormey, *Credit Reporting and Debt Collection: Key Concerns*, Federal Trade Commission Workshop: “Collecting Consumer Debts: The Challenges of Change”, Oct. 11, 2007 (available at [http://htc-01.media.globix.net/COMP008760MOD1/ftc\\_web/transcripts/101107\\_sess2.pdf](http://htc-01.media.globix.net/COMP008760MOD1/ftc_web/transcripts/101107_sess2.pdf)).

## **VI. LEVELS OF COMPLIANCE**

Chairman Majoras said in her Workshop opening statement, “Self-regulation can encourage voluntarily compliance with the law through the adoption of industry standards that meet or exceed legal requirements and educating industry members as to what must be done to comply with these standards, which is especially important in an industry experiencing rapid growth.” DBA agrees.

DBA currently has 484 professional debt buyer member companies and 120 vendor and affiliate member companies. DBA has a strict code of ethics which states that its members must comply with federal laws, such as the FDCPA and the FCRA, as well as any applicable state and local laws. DBA provides its members with information and education to develop internal legal, training and compliance programs for their employees.

As Chairman Majoras noted, the debt buying industry is growing rapidly. Debt buyers annually purchase portfolios containing charged-off receivables in amounts exceeding \$100 billion dollars in face value of delinquent credit card debt alone. During the Workshop, the phrase “more, better, faster” as a characteristic of debt collection today was both praised and maligned. However, the increase in consumer debt and the need to collect on that debt in a better and more efficient manner does not necessarily correlate to increased violations of the FDCPA. Compliance with federal, state and local laws enables a debt buyer to provide quality assurances to creditors selling charged-off receivables that their debts will be collected in an ethical manner. Without these assurances, creditors are less likely to sell debt portfolios to debt buyers unable to provide such quality assurances.

DBA believes that the vast majority of debt buyers utilize ethical and consumer-friendly collection processes and procedures. The “rampant abuses” in the industry that certain panelists during the Workshop alleged to be “simply inherent in the nature of debt collection” are not supported by empirical evidence. Resolving the central disagreement concerning compliance that separated the consumer and the industry perspectives at the Workshop is critical. DBA recommends that a study be undertaken to identify the level of compliance in the industry.

## **VII. CONCLUSION**

DBA strives to ensure compliance with the FDCPA, the FCRA, and related consumer laws by encouraging the ethical collection of valid and enforceable debt while also safeguarding the privacy of the consumer. DBA emphasizes that before any changes to existing laws and regulations should be made, a comprehensive study must be conducted to evaluate the impact of these changes. As Robert Hunt, Senior Economist in the Research Department of the Federal Reserve Bank of Philadelphia, stated during the Workshop, “There is very little formal research on the effects of the collections process ... the bottom line remains there’s a lot to be learned and there’s a lot more data to be gathered.” DBA looks forward to working with the FTC to collect more data and to assess its implications.

Respectfully submitted,

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