Ford Motor Credit Company LLC

David L. Korman
Executive Vice President & General Counsel

The American Road
Dearborn, Michigan 48126 USA
(313) 594-7743 – phone
(313) 248-8380 – fax
dkorman@ford.com

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The Federal Trade Commission
Office of the Secretary
Room H-135 (Annex N)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Debt Collection Workshop, P074805

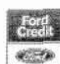
Dear Sirs and Madams:

On behalf of Ford Motor Credit Company LLC ("Ford Credit"), we would like to thank you for the opportunity to participate on the Role of Creditors in Debt Collection panel at the FTC Debt Collection Workshop held in Washington on October 10 and 11, 2007 (the "Workshop"), as well as the opportunity to provide further comments on some of the topics discussed at the Workshop.

Ford Credit is one of the world's largest automotive finance companies and has supported the sale of Ford products since 1959. Ford Credit is an indirect, wholly owned subsidiary of Ford Motor Company and provides automotive financing for Ford, Lincoln, Mercury, Jaguar, Land Rover, Mazda and Volvo dealers and customers. More information can be found at www.fordcredit.com and at Ford Credit's investor Center, www.fordcredit.com/investorcenter. Ford Credit is a member of the American Financial Services Association ("AFSA"), which has also submitted a separate comment letter to the FTC regarding the topics covered at the Workshop. We concur with the comments that have been made by AFSA, and would like to take the opportunity to provide the following additional comments.

Creditor Practices and the Fair Debt Collection Practices Act

The federal Fair Debt Collection Practices Act ("FDCPA") contains a number of exclusions to the definition of "debt collector," which allow creditors to collect their own debts, as well as those of companies affiliated by common corporate control (so long as the principal business of such person is not the collection of debts), without being subject to the requirements imposed on debt collectors under the FDCPA. Notwithstanding the existence of these



exclusions, as noted by AFSA, Ford Credit and other creditors look to the FDCPA as defining minimum standards of acceptable conduct in connection with the collection of debts. Ford Credit has incorporated the standards relating to the manner, frequency and nature of communications with consumers and third parties contained in the FDCPA into our processes and procedures. We do not, however, provide Mini-Miranda notices to our customers or send debt validation notices when collecting our own debts. Our customers receive regular voluntary communication from us, in the form of monthly invoices, setting forth the current amount due and remaining balance owed on their accounts.

Creditors in secured transactions are also subject to additional consumer protection requirements under Article 9 of the Uniform Commercial Code ("UCC"), and in our case, state motor vehicle retail installment sales and leasing acts. Under UCC 9-210, customers have the right to request an accounting of the unpaid obligations secured by collateral, and secured parties have an obligation to comply within 14 days after receipt of such requests. As stated in the Official Commentary to the UCC, this makes information concerning the indebtedness readily available to customers, both before and after default. In addition, secured creditors must comply with the provisions set forth in Part 6, of Article 9 of the UCC in the collection, enforcement, application of proceeds of collection or enforcement, possession and disposition of collateral.

Debt Collector Exceptions Under the FDCPA

Third Party Debt Collector vs. Creditor Collector

There is a significant distinction in the collection of debts by creditors like Ford Credit that have on-going relationships with customers, and third party debt collectors. We concur with the comments submitted by AFSA as to why creditors should not be subject to all requirements set forth in the FDCPA. For the additional reasons described below, we would like to stress the importance of maintaining the creditor, affiliate and servicer exceptions to the FDCPA.

Although creditors and third party collectors may both have the end-goal of collecting monies due, it is more important for a creditor with an on-going business relationship to preserve the relationship with the customer. As a captive finance company, we strive to maintain customers for life and obtain repeat business for our manufacturer parent and us. To that end, the customer often receives benefits from us in the form of marketing materials, incentives and other promotions to encourage future purchases and financing transactions.

Funding Transactions

The manner in which many creditors fund their businesses has evolved significantly over the past ten years in an attempt to achieve the lowest cost funding possible. Securitization transactions and whole-loan sales in which the creditor maintains the servicing responsibilities are commonplace, with the retail or lease contracts being held in the name of a separate legal entity. In the securitization context, the legal title holder to the receivable is generally an affiliate of the servicing creditor. In the whole-loan sale context, legal title to the receivable may technically pass to the purchaser, and a servicing agreement is entered into as an integral part of the funding transaction. The funding transaction is invisible to the customer, and the servicing

creditor remains the party recognized by the customer as the lender. The servicing creditor retains the same interest in maintaining the relationship with the customer for the reasons stated above as if the loan were held in its own name.

Customer Expectations

Finally, we have direct experience with the customer response upon receipt of Mini-Miranda and debt validation notices from us, as creditor, affiliate and servicer. This occurred in response to enactment of a state law in California in 2000 that required creditors, collecting their own debts, to send such notices and to recite the Mini-Miranda warning. Our customers generally were very upset and many felt insulted upon receipt of these notices. Despite the clarity of our communication, the notices gave customers the impression that their accounts had been sent to a third party collection agency, notwithstanding that they may have been only a few days past due.

Further Clarification of FDCPA Needed

As was noted consistently at the Workshop, with the passage of time, introduction of new technologies and business models, there is a need for clarification of certain provisions of the FDCPA.

Methods of Communication

As mentioned above, we look to the FDCPA for guidance regarding minimum standards of acceptable conduct in the collection of our own debt even though we are not technically bound by the provisions of the statute.

With the prevalence of technologies such as cell phones, voicemail, e-mail, and caller ID, we strongly urge the FTC to clarify certain provisions of the FDCPA to allow for open communication with customers. We request that any revisions to the FDCPA contain clear guidelines to follow in the use of these technologies. The uncertainty created by the current environment has resulted in increased risk to creditors and the inability to communicate with customers through customer preferred media.

Cell phone technology has become ubiquitous in our society today. Due to current limitations on the ability to use automated phone dialers to place calls to cell phones, the ability to contact customers on cell phones today is limited. Even if calls are not routed through an automated phone dialer, there is concern as to the time or place where the customer may receive the call subjecting the creditor to liability under the FDCPA (15 USC 1692c(a)(1)). If a customer has provided a creditor with a cell phone number (orally or in writing), there should be a safe-harbor under the FDCPA permitting the creditor to contact the customer on that cell phone, until such time as the customer requests that communication to the cell phone be discontinued.

Caller ID provides limited information on the identity of a caller, without any effective means to control the audience that may have access to it. We request that the FTC clarify, that

information displayed by caller id technology should not constitute communication or disclosure by the creditor or debt collector for purposes of debt collection activities.

De Facto Employee

Many companies today are using a variety of staffing models to perform various functions throughout their organizations. These may include the use of temporary employees, agency employees, outside contractors, consultants, and third party vendor employees, each of whom may qualify as "de facto employees" under the analysis set forth in the non-binding advisory opinion issued by the FTC on May 23, 2002 to Richard T. De Mayo, Esq. We request that the FTC incorporate the standards set forth in that opinion into any revisions to the FDCPA.

Sole Purpose Funding Entities

As stated above, the manner in which creditors fund their businesses has evolved significantly over the past ten years. We request clarification that affiliated sole purpose entities established for the sole purpose of funding transactions do not need to be disclosed to the customer in the context of collection transactions.

Debt Sales

Debt Sales and re-sales have become prevalent and the subject of many consumer complaints. There has been a call for stricter FDCPA regulations particularly focused on debt sales, including additional notices to customers, a federal statute of limitations, and additional credit reporting requirements. While there have been increased complaints on debt sale accounts, these have not been the result of inadequate laws. Aside from the communications issues addressed in this comment letter, most of the debt buyers' business practices are already regulated by law.

With respect to the sellers of debt sending notices to customers upon sale of debt, usually the debt sellers have already attempted to contact the customers, to no avail. In many instances the sellers may not have accurate addresses, or the customers are not interested in the status of the debt at the time it is sold. Therefore, requiring debt sellers or buyers to send additional notices informing customers that their debts have been sold will yield little benefit to the customer, and will create additional expense for the selling and/or buying creditors. Debt buyers are already required to send the validation notice under the FDCPA (15 USC 1692g), providing notification to the customer that someone is interested in collecting a debt, and also providing the customer an avenue for obtaining debt verification and additional information on the original creditor. Therefore, we request that the FTC not impose additional notice requirements on debt sellers or buyers, with the sole purpose of informing customers that their debt has been sold or purchased.

Statute of Limitations

Some consumer complaints are based on the age of the debt because the debt may already be beyond the statute of limitations. We support the arguments set forth by AFSA in its comment letter that limitations periods on debt obligations are purely matters of state law, and an

amendment to the FDCPA or FTC rule making on this issue would fundamentally change the elements of state created causes of action which are already sufficient, We recommend that this issue be left to the jurisdiction of the state courts, interpreting existing state statutes, and that it not be addressed in proposed amendments to the FDCPA.

Credit Reporting

The Fair Credit Reporting Act ("FCRA") has very specific requirements for handling customer disputes and credit reporting. "The Credit Reporting Resource Guide" published by the Consumer Data Industry Association sets the standards for all credit reporting. It does not allow re-aging of accounts. The law and the processes should be uniformly applied. There is no need to modify FDCPA to include provisions concerning credit bureau reporting.

At the Workshop, there was a suggestion that FDCPA validation requests should trigger the notation of credit bureaus that a credit bureau report is in dispute. A request for validation of the debt is not synonymous with a credit dispute. FCRA provides very specific requirements for credit disputes. In addition, it should be recognized that not all third party collectors credit report on the accounts they are collecting. In many, if not most, cases the creditors retain the responsibility of credit reporting the debt they own.

Conclusion

Due to the rapid evolution of technologies and business models since the enactment of the FDCPA, we support the enactment of updates to the FDCPA to address funding transactions and new methods of communications that are commonplace in today's society, and to clarify the 'de facto employee' exception. We support the maintenance of the creditor, affiliate and servicer exceptions to the FDCPA because of the significant distinctions between third party debt collectors and creditors collecting their own debts. We recommend that debt sellers and buyers not be required to send notices to customers to inform them of debt sales/purchases. Lastly, because current state and federal laws addressing statutes of limitations and credit reporting matters are adequate, we do not support further revisions to the FDCPA to address these issues.

Thank you for the opportunity to comment upon these important issues. Any questions you may have should be addressed to either Kathleen Pierce at (480) 610-3104 (kpierce@ford.com), Johanna Kaipainen at (313) 390-6430 (jkaipain@ford.com) or me. In addition, we would welcome the opportunity to meet with you to discuss our business, collection practices, and implications of any proposed modifications to the FDCPA.

Very truly yours,

David L. Korman