RECEIVABLES MANAGEMENT ASSOC.
SETTING THE GLOBAL STANDARD

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By Email and Post

Chairman Mike Crapo
Ranking Member Sherrod Brown
Senate Banking Committee
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Crapo and Ranking Member Brown:

The Receivables Management Association ("RMA," formerly known as DBA International) greatly appreciates the opportunity to provide proposals that foster economic growth. As background, RMA is the nonprofit trade association that represents more than 575 companies that purchase performing and nonperforming receivables on the secondary market. RMA member companies work in a variety of financial services fields, including debt buying companies, collection agencies, law firms, originating creditors, international members, and industry-related product and service providers. RMA's Receivables Management Certification Program and its Code of Ethics set the "gold standard" within the receivables industry due to its rigorous uniform industry standards of best practice which focuses on protecting consumers.

Enclosed within this submission you will find five proposals that seek to increase the amount of credit at reasonable rates in the U.S. financial system, particularly to underserved markets. Specifically, the proposals seek to clarify laws and regulations of the secondary consumer debt market (i.e., performing and nonperforming debt sold by original creditors) that will allow the market to operate more efficiently. Also, included is a proposal that seeks to ensure that consumers are able to rehabilitate their credit after a negative credit event (e.g., default). Specifically, we propose the following:

- Sale and Resale of Consumer Debt - Ensure that secondary consumer debt market participants are able to buy and sell assets freely.

- Documentation Requirements - Ensure that consumer debt is sold and resold with proper documentation.

- Itemization of Debt - Require debt collectors to provide consumers with an itemization of the account post-charge-off.

- Out-of-Statute Debt - Ensure that state statutes regarding non-litigation collection of out-of-statute debt are not preempted by federal laws and regulations.

- Modernize Fair Debt Collection Practices Act - Update Fair Debt Collection Practices Act ("FDCPA") to allow for debt collectors to utilize modern communication when contacting consumers.

Please do not hesitate to contact me if you have any questions or concerns.

Very truly yours,

Jan Stieger
Executive Director

Sale and Resale of Debt Assets

1. Brief description

RMA believes that the ability to sell and resell consumer debt on the secondary market (also referred to as the "debt buying" industry) and the account receivables ecosystem play a critical role in the preservation of the credit-based economy. As background, the secondary market for consumer receivables is the marketplace where ownership of performing and nonperforming receivables (i.e., the asset) are purchased by companies that were not a party to the originating transaction. Perhaps the most familiar example of this is when a bank sells the ownership of its defaulted credit card receivables to a debt buying company. As a result of the sale, the ownership of the receivables and all legal rights associated with that asset are now held by a company not a party to the original transaction.

The use of credit is a cornerstone of the U.S. financial system. Consumers, businesses, and the government all rely on the availability and extension of credit to purchase goods and services. In fact, the economic prosperity and standard of living enjoyed in the United States today can be largely attributed to the nation's movement to a "credit-based economy" in the 1950s.

The sale and resale of consumer debt was called into question when the Consumer Financial Protection Bureau ("CFPB") entered into consent orders with large banks and large debt buyers that prohibited the resale of debt. While the consent orders only apply to the parties to the order, it has a chilling effect on the secondary market. To prevent the CFPB from rulemaking through enforcement, legislation is needed that clarifies that consumer debt can be sold and resold.

2. Impact on economic growth

The benefits of a secondary market differ based on the characteristics of the asset but all share the universal benefit of providing a vehicle for the transfer of ownership interest in an asset. What would life be like without secondary markets – to have no place to dispose of property? It would be hard to provide a definitive answer given that the U.S. economic and political system has never been conducive to an environment that would prohibit free market transfer of property.

The United States' credit based economy by its very description relies on businesses extending credit for the purchase of goods and services. Businesses calculate into the price of the goods and services they offer to the public the anticipated losses that will result from nonperforming receivables and the value they will receive for the sale of those nonperforming receivables on the secondary market. If a business is unable to recuperate market value for their nonperforming receivables, the cost of their goods and services will increase because the recuperation value will not be factored into the price. Additionally, business will begin to restrict the extension of credit if they are unable to sell their nonperforming assets. Simply stated, a healthy secondary market helps to ensure that low and middle income consumers have access to credit at affordable interest rates and are provided enhanced purchasing power through lower prices.

The secondary market provides a place for originators to monetize performing and nonperforming receivables. Companies that purchase receivables on the secondary market allow originating creditors to obtain present day market value on assets compared to the potential future value of those assets over time through cumulated payments. Creditors choose to monetize their receivables for a myriad of business reasons, including the following: diversification, shareholder value, capital for other business ventures or priorities, the extension of new consumer credit, minimize loss, and/or capital requirements mandated by the regulatory community.

The collections industry accounts for more than 230,000 jobs nationwide, the majority of which are with small businesses.

3. Impact on the ability of consumer market participants and financial companies to participate in the economy

The business model of an originating creditor is to extend credit for goods and/or services with the expectation of future payment by the consumer. While the type of asset within the business model may differ (e.g., banks provide credit cards, doctors provide medical services, local hardware stores extend store credit, manufacturers provide products to distributors on credit, etc.), what is consistent is that the business model involves the extension of credit and the receipt of on-time payment. Debt collection is generally not considered a core element or competency of an originator's business model (e.g., doctors are not in business to collect debts). Therefore, the secondary resale market provides an opportunity for small businesses to operate in an area often dominated by large national corporations.

When originators initially sell their receivable portfolios, they tend to rely on a few select national debt buyers – frequently small businesses that would like to purchase directly from originators are not even considered. Due to the significant volume and complexity of accounts maintained by large national debt buying companies, it is not unusual for some to resell their more complex accounts or state specific accounts on the secondary market to state, regional, or specialty asset companies who are more familiar with the customers and nuances in a particular market.

The resale market for receivables can result in more consumers receiving lower cost settlements. Additionally, small businesses that purchase debt on the resale market generally operate in a specific state or region. This tends to provide a personal and approachable experience from the consumer's perspective because the consumer has a representative from a small local operation from within their state as the main contact. Small state and regional businesses also offer the benefit of convenience to consumers of the accounts they own. For example, the hours of operation of state and regional companies reflect the local time zone of the consumers that are reaching out to them as well as those they are trying to contact.

Specialized companies that purchase a single asset class (e.g., medical, judgments, student loans, bankruptcies, etc.) on the resale market often have employees who are well equipped to assist consumers and answer their questions due to their specialized knowledge and training. Some large national debt buying companies rely on the resale market to sell specialty asset classes which might not fit into their business model or their area of expertise.

Many small state and regional debt buying companies do not compete with the large national debt buying companies because they want to maintain a niche expertise in a particular state or regional market. These small companies develop an intimate understanding of state and local laws and regulations, judicial rulings, rules of the court, and state licensing requirements. The executives and professionals within these companies often interact directly and in-person with their regulators. This has immense benefits to both the consumer and the local company.

4. Other background material as appropriate

- Appendix A - Office of the Comptroller of the Currency ("OCC") Bulletin 2014-37, Risk Management Guidance on Consumer Debt Sales (2014):
    - Bulletin allows for the right to resell
    - Provides for debt sales as a valid business practice
    - RMA Certification Program directly addresses:
        - Performing appropriate due diligence when selecting debt buyers.
        - Ensuring that debt-sale arrangements with debt buyers cover all important considerations.
        - Providing accurate and comprehensive information regarding each debt sold, at the time of sale.
        - Ensuring compliance by the bank with applicable consumer protection laws and regulations.
- Appendix B - RMA's Value of Resale on the Receivables Secondary Market White Paper
- Appendix C - RMA's Certification Standards on Data and Documentation

5. Legislative language

Dodd-Frank Act – Amend Section 12 U.S.C. § 5553 as Indicated:

This title, and regulations, orders, guidance, and interpretations prescribed, issued, or established by the Bureau, shall not be construed to: *(a)* alter or affect the applicability of any regulation, order, guidance, or interpretation prescribed, issued, and established by the Comptroller of the Currency or the Director of the Office of Thrift Supervision regarding the applicability of state law under federal banking law to any contract entered into on or before July 21, 2010, by national banks, federal savings associations, or subsidiaries thereof that are regulated and supervised by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, respectively.*; or (b) prohibit the sale or resale of any debt.*

Documentation Requirements for Consumer Debt

1. Brief description

RMA supports robust documentation requirements when consumer debt is sold and resold. Both consumers and debt buyers benefit when a debt with proper documentation. For consumers, proper documentation ensures that collection activities are not initiated on the wrong person or for the incorrect amount. Additionally, collectors also are able to operate more efficiently when they have the data included with properly documented debt.

It is important to remember that lending is the primary way by which financial institutions support credit needs of their customers. Although the recent economic recession caused lending contraction, the last few years have seen significant consumer lending growth. As of February 2016, total outstanding U.S. consumer debt stands at $3.6 trillion.[1] As consumer debt continues to grow and return to pre-recession numbers, delinquency rates will also increase, resulting in growing accounts receivable for lenders of all shapes and sizes, from the largest bank, student lenders and auto finance companies to the main street credit unions, local dentist office, or grocery store.

2. Impact on economic growth

As recognized by the OCC, "banks can benefit from debt-sale arrangements by turning nonperforming assets into immediate cash proceeds and reducing the use of internal resources to collect delinquent accounts. In connection with charged-off loans, banks have a responsibility to their shareholders to recover losses".[2]

According to the March 2017 Federal Reserve monthly Consumer Credit report, total outstanding debt increased $15.2 billion, to approximately $3.8 trillion, in February. Revolving debt, including credit card balances, increased $3 billion. Lastly, nonrevolving debt, including student loans and auto loans, increased by $12.3 billion to approximately $2.8 trillion.[3]

February's increase in total borrowing follows a revised increase of $10.8 billion in January. Also, according to the report, credit card borrowing declined by $2.7 billion in January. Outstanding credit card debt is at its highest point since the end of 2008, suggesting that consumers continue to make purchases and demand the use of credit to support their families.[4] While charge-off rates are historically lower, the increase in credit card use naturally supports a larger population of outstanding consumer receivables.

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[1] http://www.flockfinance.com/re-emergence-debt-sales-market/
[2] https://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-37.html
[3] https://www.federalreserve.gov/releases/g19/current/default.htm
[4] https://wallethub.com/edu/credit-card-debt-study/24400/

3. Impact on the ability of consumer market participants and financial companies to participate in the economy

Implementing standards for the purchase, sale, and re-sale of consumer receivables market:

- Supports revitalization of economic growth by making the consumer receivables market more transparent and innovative
- Enables credit to be more widely available to consumers
- Creates accountability by setting a strong standard to participate in the market, driving out bad actors while still giving small businesses the opportunity to engage in the market
- Protects consumers by ensuring that a consumer receivable is being collected from the right individual and for the right amount

4. Other background material as appropriate

- Appendix C - RMA's Certification Standards on Data and Documentation
- Appendix A - OCC Bulletin 2014-37, Risk Management Guidance on Consumer Debt Sales
- Appendix B - RMA's Value of Resale on the Receivables Secondary Market White Paper
- Appendix D - RMA's The Debt Buying Industry White Paper

5. Legislative language

To ensure consumers are protected and to promote a robust consumer receivable marketplace to support continued consumer lending growth, we support the requirement of a sale methodology that creates heightened standards for the purchase, sale, or resale of a consumer receivable. The following shall be provided to a purchase in any sale transaction of a consumer receivable:

- *The consumer's first and last name at time of charge-off or default;*
- *The consumer's Social Security number or other governmental issued identification number, which may be truncated for security purposes, if obtain by the original creditor;*
- *The consumer's address at time of charge-off or default;*
- *The creditor's name at time of charge-off or default;*
- *The creditor's address at time of charge-off or default;*
- *A copy of the signed contract or other account level document(s) that were transmitted to the consumer while the account was active that provides evidence of the relevant consumer's liability for the debt in question. In the case of a credit card debt, a copy of the last activity statement showing a purchase transaction, service billed, payment, or balance transfer shall be sufficient; In the case of a judgment, a copy of the judgment*

order, certificate of judgment, or other court documenting evidence of the judgment shall be sufficient.

- *The account number at time of charge-off or default;*
- *The unpaid balance due on the account, with a breakdown of the post-charge-off or post-default balance, interest, fees, payments, and creditor/owner authorized credits;*
- *The date and amount of the consumer's last payment, provided a payment was made;*
- *Sufficient information to calculate the date of account delinquency and default;*
- *The date of charge-off, if applicable;*
- *The balance at time of charge-off or default;*
- *A copy of a statement that reflects the balance at time of charge-off or default; and*
- *A copy of each bill of sale or other document evidencing the transfer of ownership of the debt from the initial sale to each successive owner that when reviewed in its totality provides a complete and unbroken chain of title documenting the name, address, and dates of ownership of the creditor and each subsequent owner.*

All contracts relating to the sale or resale of consumer debt shall include the following representations and warranties:

- *The seller is the lawful holder of the account(s);*
- *Accounts are valid, binding, and enforceable obligations;*
- *Accounts were originated and serviced in accordance with the law;*
- *Account data is materially accurate and complete; and*
- *Any account that was the subject of a consumer dispute while owned by the seller has been responded to or validated.*

All contracts related to the resale of consumer debt shall be valid and enforceable provided they comply with the above outlined criteria.

The above shall apply to any consumer receivable purchased, sold, or resold 180 days after its effective date.

Itemization of Debt

1. Brief description

RMA proposes raising standards for the collections industry so as to provide consumers with more information and transparency about their account balance. We would support a strong federal standard for the debt collection industry that requires collectors provide consumers with an itemization of the debt as of the date the account was charged-off. This standard has been adopted or considered by the CFPB, as well as multiple states and cities, including New York, California, Oregon, and Chicago.

2. Impact on economic growth

As background, charged-off consumer debt can be defined as a consumer debt that has been removed from a creditor's books as an asset and treated as a loss or expense.[5] The charge-off balance is a heavily regulated federal standard, set forth by the Office of the Comptroller of the Currency.[6] The charge-off balance is not only used in banks' balance sheets, but also in communications with consumers. Indeed, the charge-off balance is what the consumer sees on the bank's charge-off statement and "good-bye letter" (the final letter a bank sends a consumer before sending the credit card debt to collections or selling it to a debt purchaser or debt collector).

3. Impact on consumer market participants and financial companies

It should be noted that any requirement to itemize debt should be after the charge-off date. Precharge-off itemization is impossible to obtain because banks do not keep that information, and are not required to do so under federal or state law. Under the Truth in Lending Act, creditors need to retain records of credit card accounts for two years, and if the account is over two years old (which most charged-off credit card accounts are), the documents and data prior to two years ago no longer exists because of the banks' retention policies.[7]

Both the CFPB and Federal Trade Commission ("FTC") have recognized that obtaining itemization of the debt prior to the point of charge-off is often impossible.[8] On the state level, it is almost universal that states that require itemization of debt in collection litigation require it as of the date of charge-off. In recent years, each of California, New York, and Chicago have instituted itemization of interest, fees, credits, and debts starting at the charge-off balance.

We propose expanding several states' post-charge-off itemization standard to a federal requirement. This would raise data and document standards for the collections industry, still enable the industry to flourish and provide consumers in most states with significantly more account information than they currently obtain from collectors.

4. Other background materials

- Appendix E - Cal. Civ. Code § 1788.50(a)(2)

[5] Cal. Civ. Code § 1788.50(a) (2).
[6] Uniform Retail Credit Classification and Account Management Policy, 65 F.R. 36903 (June 12, 2000); OCC Bulletin 2000-20 (June 20, 2000).
[7] 12 C.F.R. § 1026.25
[8] *See, e.g.,* FTC's *The Structure and Practices of the Debt Buying Industry* (2013), at page 36, which states that "debt buyers often did not receive the information needed to break down outstanding balances on accounts into principal, interest, and fees."

- Appendix F - OCC Bulletin 2000-20, Uniform Retail Credit Classification and Account Management Policy
- Appendix G - 12 C.F.R. § 1026.25
- Appendix H - FTC - *The Structure and Practices of the Debt Buying Industry* (2013)

5. Legislative language

RMA proposes legislative language in line with the California Fair Debt Buying Practices Act, Cal. Civ. Code § 1788.52(a):

> *A debt collector shall not make any written statement to a debtor in an attempt to collect a consumer debt unless the debt collector possesses the following information: the debt balance at charge off and an explanation of the amount, nature, and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor, collection agency, or any subsequent purchasers of the debt. This paragraph shall not be deemed to require a specific itemization, but the explanation shall identify separately the charge-off balance, the total of any post-charge-off interest, and the total of any post-charge-off fees.*

Out-Of-Statute-Debt

1. Brief description

RMA believes that state statutes regarding non-litigation collection of out-of-statute debt ("OSD") (also known as "Time Barred Debt") should not preempted by federal laws and regulations. As background, OSD is a debt which, if a lawsuit were filed to collect the debt, is subject to the defense of an expired state law statute of limitations. These time periods are set by state, not federal law. For consumer debt, OSD time limits vary from three to 10 years, depending upon the state and the type of consumer debt (e.g. credit card, auto, medical, etc.). The national average statute of limitation period is 5.1 years. However, the expiration of a statute of limitations is only a defense to a judgment, does not extinguish the debt and the debt can continue to be lawfully collected, with few exceptions.[9]

The OSD market provides an important opportunity for consumers to pay their debts, especially for consumers who, due to economic hardship, need more time to do so. Additionally, because OSD paper is by definition "older," OSD paper is customarily priced at a discount. This discount

[9] *Dubios v. Atlas Acquisitions LLC (In re Dubois)*, 834 F.3d 522, 529 (4th Cir. 2016); *Huertas v. Galaxy Asset Mgmt.*, 641 F.3d 28, 32 (3d Cir. 2011)

gives debt buyers an opportunity to settle the debt with the consumer for an amount that is very attractive to the consumer.

2. Impact on economic growth

RMA estimates that annually, tens of billions of dollars are collected on OSD. That substantial return helps to keep the price of credit affordable for consumers. It also promotes the availability of credit to lower-income consumers.

Debt buying and debt collecting provide important benefits to the economy and to consumers. In July, 2014, ACA International, a national trade association representing third party collection agencies, released a report prepared by Ernst & Young that found that the collections industry returned about $44.9 billion to creditors in 2013. This cumulative economic return was equal to 1.9 percent of all US corporate profits before tax and 3.1 percent of before tax profits of all US domestic, nonfinancial corporations.

3. Impact on consumer market participants and financial companies

An outright ban on OSD collection would have the following unintended and adverse consequences for consumers:

- Prohibition of non-litigation-related collection on OSD increases the number of lawsuits brought against consumers resulting in a judgment rather than working out a payment plan.
- An outright OSD collection ban would increase the interest rate offered to most consumers, even those who pay their bills on time.
- Consumers who have defaulted and passed the applicable statutory period would no longer be able to repair their credit score by making voluntary payments on their obligations because the creditor's right to receive payments cease to exist.
- Low-income consumers would be disproportionally harmed as lenders would almost inevitably restrict the availability of consumer credit for those consumers who pose the highest default risk.
- Consumers would face potential tax increases. Debt buyers and lenders are required to issue 1099-c statements to consumers, arising from the cancellation of the OSD. Consumers will, in many circumstances, owe taxes on the difference between the amount of the now uncollectable debt and the minimum amount for which the 1099-c must be provided ($600.00).

4. Other background materials

- Appendix I - RMA's whitepaper on Statute of Limitations
- Appendix J - RMA's Amicus Brief on Midland v. Johnson Proof of Claim matter
- Appendix D - RMA's Whitepaper on the Debt Buying Industry

- Appendix K - Zywicki, The Role of Debt Collection in the Ecosystem of Consumer Credit, 2015

<u>RMA's Certification Program</u>

One standard of RMA's Certification Program concerns debts subject to expired limitations periods. This standard provides:

> Statute of Limitations. A Certified Company shall now knowingly bring or imply that it has the ability to bring a lawsuit on a debt that is beyond the applicable statute of limitations, even if a state law revives the limitations period when a payment is received after the expiration of the statute. This standard shall not be interpreted to prevent a Certified Company from continuing to attempt collection beyond the expiration of the statute provided there are no laws and regulations to the contrary.

The Program's standard protects consumers from the possibility that a payment may revive an expired limitations period while at the same time allowing companies certified by the program to continue collections efforts. RMA has worked with state legislatures and attorneys general in an effort to adopt this standard to all debt collection activity.

<u>OSD and Bankruptcy Proof of Claim Filing</u>

- RMA filed an Amicus Brief in *Midland Funding, LLC v. Johnson*, a matter now pending before the Supreme Court of the United States, relating to the filing of a proof of claim in a bankruptcy proceeding on a debt that was alleged to be out of statute. The several federal Courts of Appeals that have considered the issue all agree (except for the Eleventh Circuit Court of Appeals) that such debts are valid, collectible claims that should be included in consumer bankruptcy cases.[10]
- RMA believes, as do the majority of Courts of Appeals, that filing a bankruptcy proof of claim on OSD furthers consumer protections and creditors' rights and is not a violation of the FDCPA if state law permits collection of a debt following the expiration of the applicable limitations period.

RMA's Certification Program has been addressing the subject of OSD from its implementation, and continues to evolve as regulations are updated. Our self-regulatory certification standards prohibit suing on out-of-statute debt, and we agree to the prohibition of post-OSD litigation.

- RMA supports appropriate and reasonable reforms to implement both an effective OSD notice regime and a prohibition on re-tolling OSD (starting the time clock for statute of limitations if a payment is made on an out of statute debt). RMA supports a policy that once a consumer debt is OSD, it is always OSD.

[10] *Dubios v. Atlas Acquisitions LLC (In re Dubois)*, 834 F.3d at 529; *Owens v. LVNV Funding, LLC*, 832 F.3d 726 (7th Cir. 2016); *Nelson v. Midland Credit Mgmt.*, 828 F.3d 749 (8th Cir. 2016). *But see, Johnson v. Midland Funding, LLC,* 823 F.3d 1334 (11th Cir. 2016).

- RMA supports providing consumers with effective notices about all material elements of their loan or debt, including whether the statute of limitations has expired.

- RMA strongly advocates that a valid debt should continue to be collectible after the running of a statute of limitations, although not collectible through litigation. RMA's members have adopted rigorous policies and procedures to assure that a suit is filed only before the expiration of the applicable statutes of limitation.

5. Legislative language:

Dodd-Frank Act – Add the following new subsection: *12 U.S.C. § 5551(d)*

> *This title and regulations, orders, guidance, and interpretations prescribed, issued, or established by the Bureau, shall not be construed to alter or affect the statute of limitations adopted by any state for the collection of debt or the ability to seek collection on the debt after the expiration of the statute of limitations, unless otherwise provided by State law.*

Modernization of FDCPA: Communications with Consumers

1. Brief description

RMA believes that The manner in which consumers communicate has changed dramatically since Congress passed the FDCPA nearly 40 years ago. Today, many consumers prefer to conduct their business online and through email, text messages, or even social media. A significant number of people who grew up in the age of the Internet and smartphone actually view those technologies as much less intrusive and more convenient than a phone call, and there is case law to support this[11]. Accordingly, legislation to modernize the FDCPA to clarify that debt collectors can use modern forms of communications – while still maintaining appropriate protections related to those technologies in order prevent harassment and abuse by unscrupulous actors – would be an extremely positive step that will help produce better outcomes for consumers. Modernizing the FDCPA to enabling communications via text, email, and other communications formats would establish broader benefits for consumers in communicating with debt owners and debt collectors in a private and responsible way. Consumer receivables management companies need to be able to communicate through email, cell phones, and voice mail, and there need to be flexible rules put in place to address additional communications technologies that may be developed in the future.

[11] *See* Reno v. American Civil Liberties Union,117 S.Ct. 2329, 2343 (1997)("The District Court specifically found that "[c]ommunications over the Internet do not 'invade' an individual's home or appear on one's computer screen unbidden. Users seldom encounter content 'by accident.'").

Without clear guidance, collectors, and creditors will stick to known tools – calls and litigation – and shy away from using new technology that delivers a better experience for consumers. Accordingly, our proposal addresses several areas where we believe additional clarifications will help debt collectors responsibly pursue innovations that are beneficial for consumers and overall beneficial for the credit economy.

Our legislative proposal would touch on the following points:

- **Using emails:** clarify that using emails does not violate the FDCPA, that emails are considered letters for the purpose of collection communication and offer additional guidance, for example, regarding sending times. Evidence shows that emails reduce contact frequency and lead to better consumer protection compared to calls. Expands the definition to allow consumers to affirmatively agree to being contacted via email or text. We would propose that a consumer responding to an email or text (by clicking a link, texting or emailing back, and so on) and discussing payment arrangements or otherwise responding in any way that is not a request to stop communication, is in fact agreeing to continue communications. Email should be excluded from any limitation for inconvenient places. Unlike phone calls, consumers can choose to not read or even download emails to a mobile device as a way to limit their availability. Therefore, unlike phone calls or even text messages, email can be perceived as completely in the consumer's control. As a result, if a consumer reads an email, it is by definition a convenient time and place for them to read the email. One could compare email to postal mail in this case: postal mail may be sent to consumers when they are at inconvenient places; because email and postal mail are similar in the degree of consumer control, we propose that emails be treated similarly.

- **Using text messages:** clarify that use of text messages in a way that does not violate the FDCPA and Telephone Consumer Protection Act ("TCPA"), as well as allow including links in the body of the text. Evidence exists that text messages reduce contact frequency and drive consumer contacts. When using email or text, we propose the inclusion of a CAN SPAM-like unsubscribe mechanism requirement on emails, and a similar one for text messages.
- **Distilling contact frequency guidelines:** clarify that engaging with technology (clicking a link, replying to an email) can be considered an exception to the proposed limits on contact frequency, since the consumer is engaged in live conversation. Evidence shows that contacting consumers in a timely manner, following their engagement, greatly improves response rates and will support reducing contact frequency.

- **Consumer consent:** clarify that using emails and text messages does not require extra consent, or that prior consent can be transferred to debt buyers and collectors, if required and given.

2. Impact on economic growth

Embracing the use of technology in debt collection as a way to overcome the changes it is proposing will allow consumer receivables management companies to succeed financially while serving consumers in a compliant manner.

3. Impact on consumer market participants and financial companies

The use of modern technology (including email, text messages, social media, and online marketing tools) is common in other industries and is widely available to collectors who choose to pursue a similar approach at a minimal cost.

Major advantages from incorporating modern technology into the FDCPA for consumer include: 1) increased consumer protection, 2) overall reduction in contact frequency, and 3) reducing consumer friction, all while meeting or exceeding traditional collection rates. Consumers react positively to choosing their preferred channel to engage, and when given the choice of channel, are less likely to complain about the collection process. Many dislike phone conversations since they are disruptive, and make consumers feel judged. Expanding the FDCPA to encourage the use of modern technologies by encouraging communications via different mediums most convenient for and preferred by the consumer.

4. Other background materials

- Appendix L - CFPB Debt Collection Proposal Outline - True Accord Response, SBREFA Panel, October 2016
- Appendix M - Section 1.6 of 23 NYCRR 1, Debt Collection by Third-Party Debt Collectors and Debt Buyers Regulation

5. Legislative language

RMA does not have specific legislative language but nonetheless want to propose modernizing the FDCPA to increase the ability of consumers and consumer receivables management companies to communicate using modern technologies.