



The Honorable Kathy Kraninger
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
E-mail: 2019-NPRM-DebtCollection@cfpb.gov

September 18, 2019

Re: Comment from Texas Appleseed regarding notice of proposed rulemaking for debt collection, Docket No. CFPB-2019-0022 or RIN 3170-AA41.

Dear Director Kraninger,

Texas Appleseed is a public interest justice center working to change unjust laws and policies that prevent Texans from realizing their full potential. Working with pro bono partners and collaborators, Texas Appleseed develops and advocates for innovative and practical solutions to complex issues. As part of its work, Texas Appleseed also conducts data-driven research to better understand inequities and identify solutions for concrete, lasting change. Texas Appleseed is part of a non-profit network of 17 justice centers in the United States and Mexico.

Through its Fair Financial Services Project, Texas Appleseed is a state leader in advocating for fair market practices across many financial services areas, including payday and auto title lending, protections for victims of financial abuse, and in support of fair debt collection practices.

We appreciate the effort put in by the CFPB in drafting an expansive proposed debt collection rule, but have deep concerns that certain provisions will lead to market outcomes that go counter to the consumer protection mission of the CFPB and to the letter and intent of the Fair Debt Collections Practices Act. We are particularly concerned about four provisions in the proposed rule.

We are concerned about provisions in the proposed rule that:

1. Establish standards that would exacerbate harassment and fraud by allowing 7 calls per week per debt and permit unlimited emails, texts, and social media direct messages without any obligation to obtain consumer consent. Harassment and fraud are two major sources of consumer abuse and consumer complaints and any CFPB rule should reduce and not increase harassment and fraud. To that end, **calls should be limited to three attempted calls and one conversation per consumer and not per debt, and any electronic communications should occur only after a consumer consents to electronic communications from a particular debt collector.**

2. Allow a loophole around prohibitions against lawsuits over time-barred “zombie” debts, making that provision difficult to enforce. **A clear line should be established to ensure that time-barred debts are not pursued through courts and all collections of time-barred debts should be prohibited.**
3. Create a safe harbor for debt collection attorneys to sue based on wrong, or incomplete information. This standard is particularly harmful in states where court rules do not require substantiation of the debt and amounts owed as well as verification that the correct person is being sued. Allowing lax standards will only exacerbate threats and filing of lawsuits that would not stand up if a debtor were represented by counsel. **Debt collection attorneys must be required to independently verify the alleged debt and debtor before filing a lawsuit.**
4. Neglect to protect consumers who have limited English proficiency and often engage, both with the creditor and debt collector, in a language other than English. **A fair and effective debt collection rule should ensure that debt collectors, from the start of collection actions, notify debtors of their rights and provide other required information and disclosures in a language that the consumer can understand.**

Debt Collection in Texas: An Overview of Consumer Complaints and Court Data

Texas is a large and diverse state with a robust economy, but also many struggling families. Based on the 2013-2017 American Community Survey 5-year estimate, 57% of Texans are nonwhite; 17% are foreign born; 36% live in limited English-speaking households (29% speak Spanish; 3% speak other Indo-European languages; 3% speak Asian and Pacific languages; and 1% other); 12% of all Texas families live in poverty, and 18% of Texans have no health insurance. Texas has strong debtor protections, but also limited consumer protections when it comes to high-cost credit.¹

Texans struggle with debt at rates higher than the national average. Forty-four percent of all Texans have a debt in collections, compared to thirty-three per percent for the nation.² The high rate of debt in collections also corresponds to high rates of complaints from Texans. According to the CFPB 50 state complaint snapshot, in 2017, 32% of all complaints from Texas were related to debt collection compared to 26% nationwide.³

The data below offer an analysis of debt collection consumer complaints from Texas and court data related to debt claims lawsuits. The analysis sheds light on the challenges Texans face in dealing with debt collection and how harmful provisions in the current rule proposal could exacerbate market problems.

¹ For example, payday and auto title loans have uncapped rates in Texas, and often average 500% APR or higher.

² Debt in America: An Interactive Map, https://apps.urban.org/features/debt-interactive-map/?type=medical&variable=perc_debt_collect&state=48.

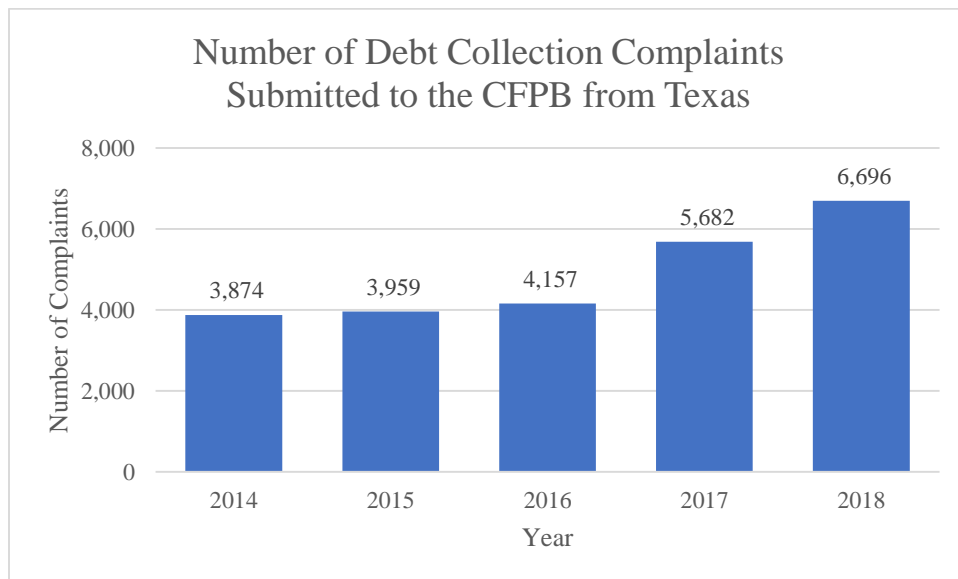
³ Consumer Financial Protection Bureau, *Complaint Snapshot: 50 State Report*, at 5, 14 (Oct. 2018)

Debt Collection Complaints from Texas Consumers

Debt collection consumer complaints are submitted to multiple federal and state agencies. The following analysis focuses on the three most common agencies where Texans submit complaints about debt collection issues: the CFPB, the Federal Trade Commission (FTC) and the Texas Office of the Attorney General. The data sets used in this analysis are not fully compatible, as they apply to different time periods and compile data using different fields. However, in examining all three, key themes emerge from the complaints, including patterns of fraud, harassment through repeated communications and threats, and incomplete or incorrect information about debts in collection.

Complaints Submitted by Texans to the CFPB, 2014-2018

The total number of debt collection complaints submitted to the CFPB from Texas is on the rise, increasing from 3,874 in 2014 to 6,696 in 2018. The substantial rise in the number of complaints—a 72% increase from 2014 to 2018—corresponds to a strong economic period in Texas and low unemployment.⁴ The strong state economy could indicate that the growth in complaints is tied more to a growth in problematic practices rather than an increase in financial hardship.

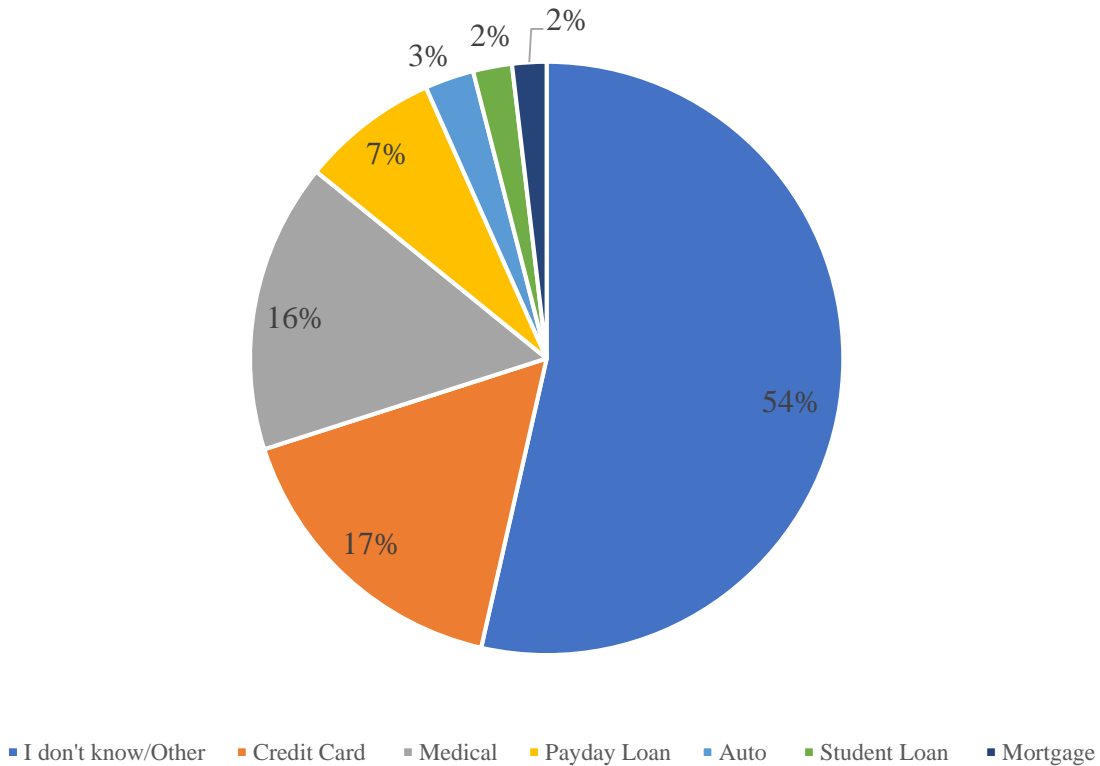


Source: Texas Appleseed analysis of CFPB debt collection complaints data, downloaded July 2019.

The three types of debt that led to the most complaints in Texas are: credit card debt (17% of the complaints), medical debt (16% of the complaints), and payday loan debt (7% of the complaints).

⁴ Texas Workforce Commission, "[Texas' Unemployment Rate Reaches Historic Low, 3.7 Percent.](#)" (Nov. 2018).

Complaints to Submitted to the CFPB from Texas, 2014-2018:
Type of Debt



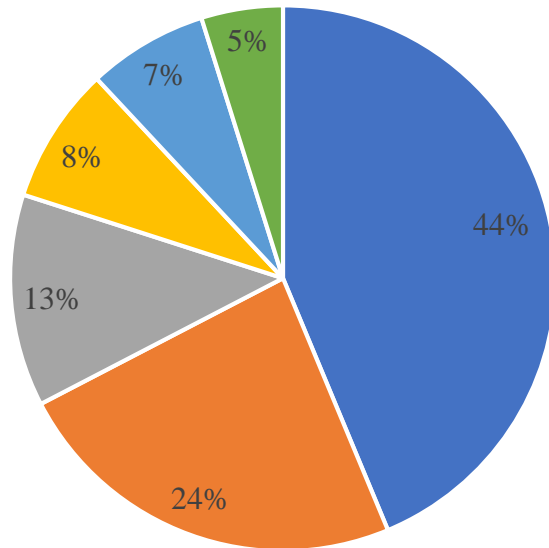
Source: Texas Appleseed analysis of CFPB debt collection complaints data, downloaded July 2019.

Reasons for the complaints vary, but attempts to collect debts not owed, was, by far, the most common complaint issue, making up 44% of all complaints. Fraud, including debts incurred as a result of identity theft, or debts that were never incurred at all, was the reason behind 77% of the complaints in this category. Wrong information—where debts have been paid or discharged through bankruptcy, made up 23% of all complaints related to debts not owed.

Disclosure verification of debt and issues with written notifications was the second most common complaint issue, comprising nearly a quarter of all complaints. Seventy-three percent of all the complaints in this category related to insufficient information shared to verify the debt. Another 24% of complaints in this category related to not receiving required information about the right to dispute a debt.

The third most common complaint issue is communications tactics, at 13% of all complaints. Frequent or repeated calls was the top sub-issues in this category, making up 57% of all complaints about communications tactics. The next highest complaint sub-issue in this category, at 20%, was making threats or using obscene language in communications. Nineteen percent of the complaints related to debt collectors continuing to call after oral or written requests to stop.

Complaints to Submitted to the CFPB from Texas, 2014-2018: *Complaint Issues*



- Attempts to collect debt not owed
- Disclosure verification of debt and written notification
- Communications tactics
- False statements or resrepresentation
- Taking/threatening negative or illegal action
- Improper contact or sharing of information, including threats of improper contact

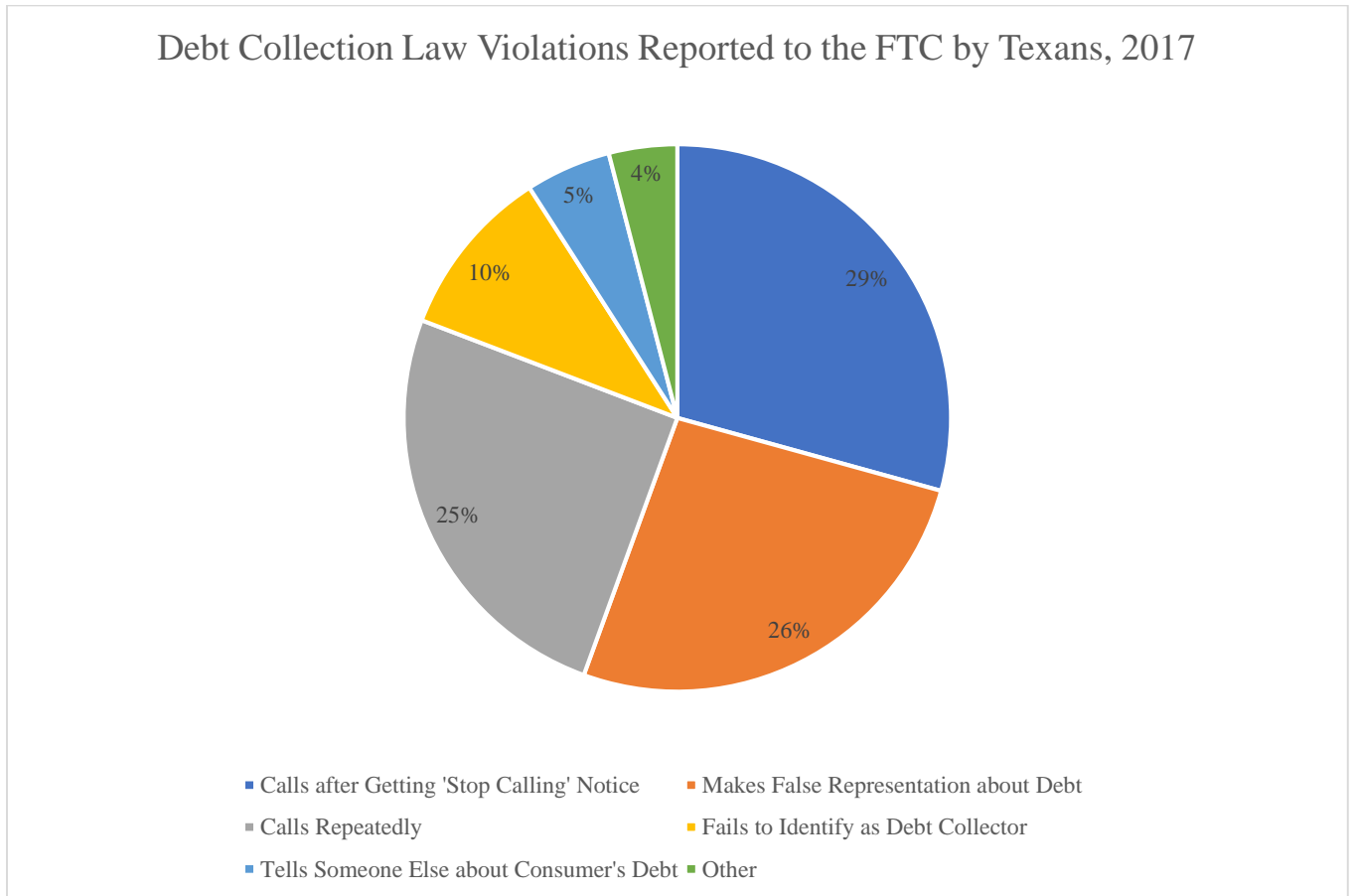
Source: Texas Appleseed analysis of CFPB debt collection complaints data, downloaded July 2019. Issues listed in the original data that were substantially similar were combined for this analysis,

Complaints from tagged populations, including older Americans and service members, made up 1 in 6 of all debt collection complaints from Texas, and included substantially similar challenges to the total population—with attempts to collect debts not owed the top complaint issue, at 47% of all complaints.

Complaints Submitted by Texans to the FTC, 2017

The Federal Trade Commission, through the Consumer Sentinel Network Data Book, compiles consumer debt collection complaints. An analysis of the 2017 complaints by the National Consumer Law Center, documented 97,225 debt collection complaints submitted by Texans. Sixty-nine percent of the complaints focused on harassing communications. Receiving ongoing calls after getting ‘stop calling’ notice, was the most common complaint related to harassing communications, making up 29% of all complaints. Complaints about repeated calls made up

25% of the total, and failing to identify as a debt collector or telling someone else about a consumer's debt comprised 15% of the complaints.



Source: National Consumer Law Center [analysis of 2017 Federal Trade Commission data](#) from the Consumer Sentinel Network Data Book.

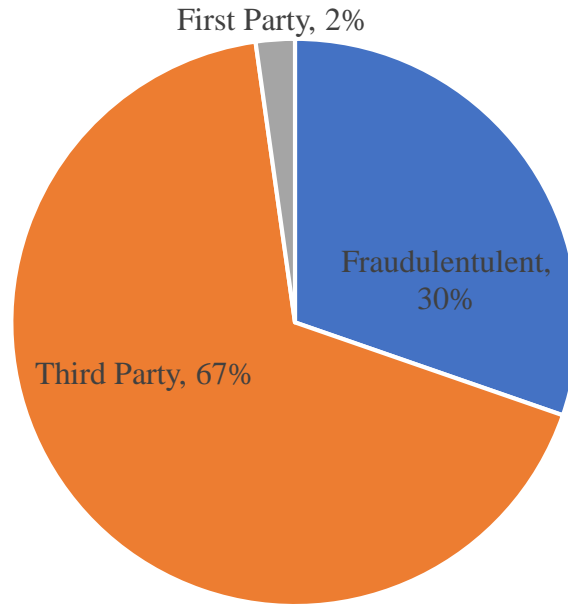
Making false representations about a debt was the second highest complaint category—making up 26% of all complaints.

Complaints Submitted Texas Office of the Attorney General, Dec. 2017 to May 2019

The Texas Office of the Attorney General received 1,887 consumer complaints about debt collection from December 11, 2017 through May 10, 2019.⁵ The consumer complaints data was broken down into three primary categories: first-party debt collection, third-party debt collection, and fraudulent debt collection. First-party debt collection complaints made up 2% of the total. Complaints categorized as fraudulent debt collection made up 30% of the complaints. Third-party debt collection complaints made up the majority, with 67% of all complaints.

⁵ Data obtained through a public information request to the Texas Office of Attorney General by Texas Appleseed in May of 2019.

Consumer Debt Collections Complaints Submitted
to the Texas Attorney General:
Breakdown by Debt Collection Category



Source: Texas Appleseed analysis of debt collection consumer complaints submitted to the Texas Attorney General, Dec. 11, 2017-May 10 2019.

The consumer complaint data from the Texas Office of the Attorney General show trends similar to those in the data from the CFPB and FTC, with complaints about debts not owed, including fraudulent debts, making up the largest category of complaints—38% of all complaints.⁶ Twenty-three percent of the complaints involved threats or harassing communications and 12% of the complaints involved threats of arrest or criminal prosecution.⁷ Threats of arrest and wrongful use of the criminal justice system to collect debts have been long-standing problems in Texas and, as the complaints reflect, these illegal practices are on-going.⁸

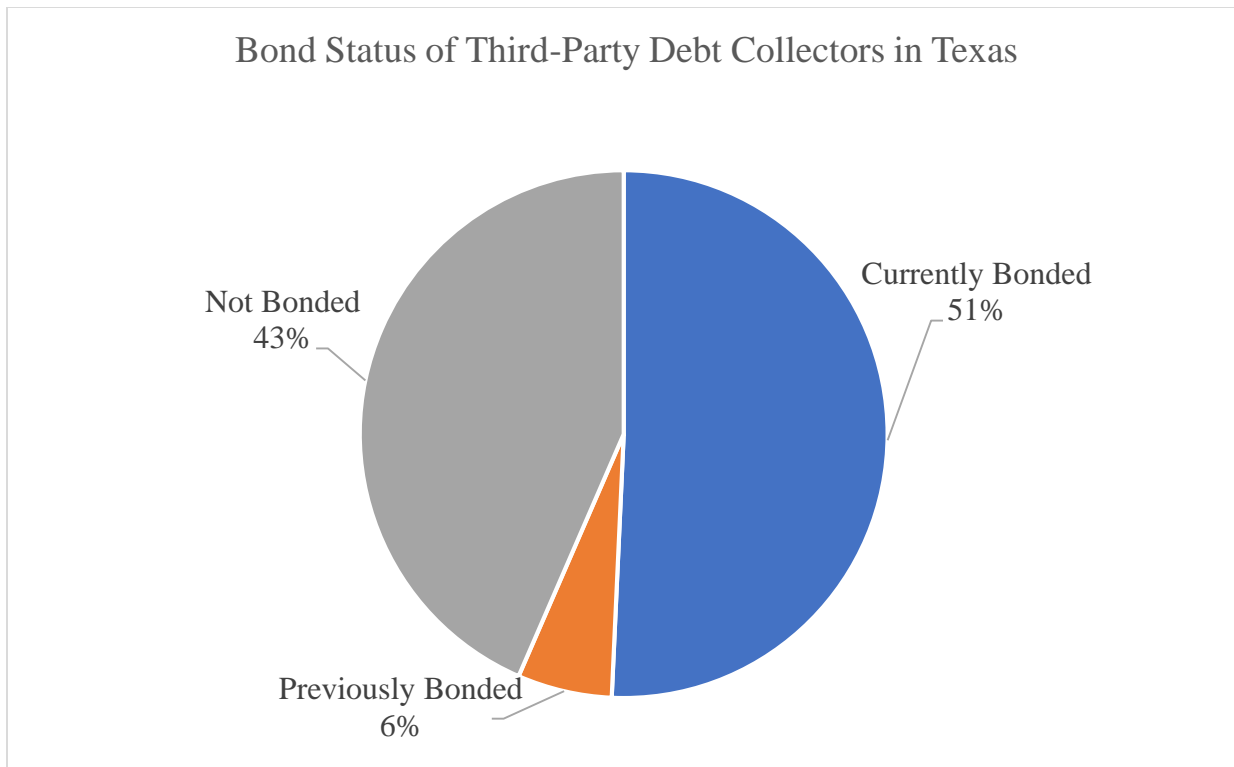
In addition to analyzing categories of complaints in the data, we analyzed the consumer complaint data to assess compliance with a basic legal standard in Texas for third-party debt

⁶ The data from the Texas Attorney General does not assign categories to the data. Key word searches in the text of the complaint narratives were used to establish categories of complaints. Words used to support this statistic include: “fraudulent”, “not my debt”, “fake”, “false”, and “debt not owed”.

⁷ The percentage of complaints involving threats or harassing calls pulled complaints that included the words “threat”, “harass”, “not stop”, or “not to call”. Complaints involving threats of arrest or criminal prosecution including the words “jail”, “arrest”, “crim”, “police”, “marshal”, or warrant.

⁸ See, for example, Texas Appleseed complaint submitted to the Honorable Richard Cordray, the Honorable Edith Ramirez, the Honorable Greg Abbott, and The Honorable Leslie Pettijohn (Dec. 17, 2014), available at: <https://www.texasappleseed.org/sites/default/files/Complaint-CriminalCharges-PaydayBusinesses-Final2014.pdf>, documenting more than 1,500 instances where payday loan businesses filed criminal bad check or theft by check complaints to collect on a defaulted loan.

collectors—a requirement to be bonded in order to engage in debt collection activities in the state.⁹ Based on a random sample of third-party debt collectors listed in the consumer complaints to the Texas Attorney General (randomly selecting 69 out of a total of 690 different debt collectors), only 51% were bonded. Six percent previously had been bonded, but did not



Source: Texas Appleseed analysis of complaints about debt collection submitted to the Texas Office of Attorney General, Dec. 11, 2017 to May 10, 2019. A random sample of 10% of unique third-party debt collectors was selected and checked with the list of third-party debt collectors bonded with the Texas Secretary of State.

have a current valid bond and 43% were not bonded, indicating that just under half of the third-party debt collectors in the sample were not operating legally in Texas.

Court Data for Debt Collection Lawsuits in Texas

Texas has robust debtor protections. State law prohibits wage garnishment for most debts, protects people’s homes and offers substantial personal property and livestock protections.¹⁰ As of September 1, 2019, a new law is in effect in Texas adding protections for time-barred debts. Debt buyers are now prohibited, through state fair debt collection laws, from filing a lawsuit or engaging in arbitration to collect a time-barred debt and from reviving a time-barred debt.¹¹

⁹ Tex. Fin. Code §392.101.

¹⁰ Tex. Property Code §§41.001, 42.001-42.002 and Tex. Civil Practices and Remedies Code §63.004.

¹¹ See HB 996, 86th Regular Texas Legislative Session. It is important to note that a time-barred debt is defined in a manner consistent with existing state law. No new definition or accommodation was adopted through this bi-partisan legislation that was supported by both industry and consumer advocates.

These protections are essential, but absent standards to ensure that only legitimate debt claim lawsuits are filed—cases where the debt is not time-barred and there is sufficient information to support the validity of the underlying debt—the system is still open to abuse. The potential for abuse is exacerbated by high rates of default judgments and low rates of representation for Texans in debt claim proceedings.¹²

Most consumer debt claim cases in Texas go through justice courts and the number of new cases filed is exploding—growing by 141% from 2014 to 2018, and by 30% in just one year.¹³ In 2017, default judgments comprised 34% of the 141,658 debt claim cases disposed in justice court.¹⁴ That means 43,363 Texans ended up with judgements and potential garnishments based on debts that were never proven to be valid or within the statute of limitations period. For some Texas counties, default judgment rates are even higher. Nearly one in three Texas adults (28%) lives in a county with a higher than average default judgment rate for debt claim cases, with rates ranging 35% to 100%.

Bexar County, home to San Antonio, has the highest adult population among the 10 largest Texas counties with higher than average default judgment rates for debt claim cases. In Bexar County, 49% of all debt claim cases ended up with a default judgment. For Lubbock and McLennan Counties, with Lubbock and Waco as their largest cities, over half of disposed debt claim cases, 51% and 52% respectively, ended in default judgment.

A county-level correlation analysis using basic demographic variables—including nonwhite population and family poverty rate—did not reveal any moderate or large correlations with case outcomes. When looking at counties with the highest default judgment rates, poverty had a moderate positive correlation whereby the default judgment rate increased as poverty increased.¹⁵ Other studies that take a more nuanced look at race, using census tract as the basis

¹² Texas Commission to Expand Legal Services, *Report of the Texas Commission to Expand Legal Services*, at 1- 2 (2016), available at <http://www.txcourts.gov/media/1436569/cecls-report.pdf> (citing American Bar Association, Report on the Future of Legal Services (2016)).

¹³ Texas Office of Court Administration, “Annual Statistics Report for the Texas Judiciary, Fiscal Year 2018,” (2018) at D5. Available at: <http://www.txcourts.gov/media/1443455/2018-ar-statistical-final.pdf>.

¹⁴ Texas Office of Court Administration Calendar Year 2017 Justice Court Data obtained through public information request (July 2019).

¹⁵ For the full sample, there was a significant small negative correlation between the default judgment rate per 1,000 adults and percentage of the population with a disability ($\tau_b = -.10, p < .05$), such that as the percentage of population with a disability increased, the default judgment rate decreased. There was also a significant small negative correlation between the default judgment rate per 1,000 adults and the percentage of seniors ($\tau_b = -.20, p < .05$), such that as the percentage of seniors increased, the default judgment rate decreased. Lastly, there was a significant small positive correlation between default judgment rate per 1,000 adults and the percentage of single-mom households ($\tau_b = .18, p < .05$), such that as the percentage of single-mom households increased, the default judgment rate increased. For counties with particularly high default judgment rates, we isolated counties that had default judgment rates that were at least one standard deviation above the average default judgment rate per 1,000 adults and reran the correlation analysis. There was one significant moderate positive correlation between extreme default judgment rates and percentage living in poverty ($\tau_b = .26, p < .05$), such that as the percentage living in poverty increased, the default judgment rate increased.

of analysis, have found disparate impacts, leaving communities of color with worse outcomes in court.¹⁶

Largest Texas Counties with Above Average Default Judgment Rates in Debt Claim Cases

Texas County	Justice Court Debt Claim Case Data 2017			County Demographic Data 2017		
	New Cases Filed	Total Cases Disposed	Default Judgment Rate	Adult Population	Nonwhite	Families Below Poverty
Bexar	15,999	11,824	49%	1,398,786	72%	13%
Fort Bend	4,229	3,214	35%	512,565	66%	6%
Nueces	2,795	2,221	41%	268,364	70%	13%
Bell	2,201	1,648	42%	242,982	53%	11%
Lubbock	2,127	1,716	51%	226,111	45%	12%
Jefferson	2,833	2,587	40%	194,055	58%	15%
McLennan	1,384	1,093	52%	184,712	43%	13%
Webb	1,686	1,411	41%	178,245	97%	28%
Smith	1,014	806	40%	167,102	40%	11%
Hays	1,086	887	36%	149,148	45%	9%

Source: Texas Office of Court Administration 2017 Debt Claim Case Information in Justice Court by County; and 2013-2017 American Community Survey 5-Year Estimate.

An analysis of the spike in debt claim cases and the high default judgment rates in justice courts in Texas by the *Houston Chronicle* found that the increased volume was largely being driven by a small number of large debt buyers, including Encore Capital Group and Portfolio Recovery Assets.¹⁷ These businesses were fined by the CFPB in 2015 for deceiving consumers to collect debts that were inaccurate or had other problems.¹⁸ According to interviews with justice court judges and clerks, “half or more of credit card debt claim cases are defaults, so the cumulative cost savings to debt companies to file thousands of cases can be significant.”¹⁹ Another reason for the spike in debt claim cases cited in the article was a 2017 state law change that permitted more expansive and lower cost use of turnover orders, often accompanied by requests to the judge to appoint a receiver. Receivers often engage in aggressive tactics and charge a premium of 25% of the debt, which is then charged to the struggling debtor. One Texas judge commented on the borderline abusive tactics in some receiver requests, “some of the orders are just so all-encompassing — ‘We can take your mother’s first-born.’”²⁰

¹⁶ See, for example, Paul Kiel and Annie Waldman, [The Color of Debt: How Collection Suits Squeeze Black Neighborhoods](#), Pro Publica (October 8, 2015). The study found that the risk of judgment in majority black census tracts was almost double the risk in majority white census tracts, holding income constant.

¹⁷ Eric Dexheimer, [“The Economy is Booming. So Why Are Credit Card Debt Cases Clogging Texas Courts?”](#) *Houston Chronicle* (July 24, 2019).

¹⁸ [CFPB Takes Action Against Two Largest Debt Buyers for Using Deceptive Tactics to Collect Bad Debts](#) (Sept. 9, 2015).

¹⁹ *Supra* note 16.

²⁰ *Id.*

This analysis of consumer complaints and debt claim court outcomes demonstrates that Texans experience meaningful barriers to fair outcomes in debt collection. Fraud and harassment are common complaints, abusive threats of arrest and criminal prosecution continue to be a problem, many Texans complain of problems receiving information to verify debts being collected, and there is a high incidence of default judgments in debt claim cases filed in justice court, without standards in place to ensure that cases filed are within the statute of limitations and include appropriate documentation of the debt to stand up to scrutiny in court.

Provisions in the Proposed Debt Collection Rule Would Exacerbate Abusive Practices

The debt collection rule proposal includes concerning provisions that would offer protection to debt collectors while leaving consumers more vulnerable to abuse. Of particular concern are:

1. Proposed §1006.14(b)(2), which allows 7 calls per week per debt and unlimited electronic communications that are subject to opt out rather than an opt in standard (proposed §1006.6(e)), provides a safe harbor for harassment and facilitates fraud and miscommunication.
2. Proposed §1006.26(b), which prohibits threats to sue or lawsuits for a debt that the collector “knows or should know” is time barred, creates an exceedingly high bar to prove a violation, thereby effectively permitting abusive practices in this area.
3. Proposed §1006.18(g) creates a safe harbor for meaningful attorney involvement that would harm consumers by expanding lawsuits in state court based on wrong or incomplete information.
4. Proposed §1006.34(d)(3)(vi) establishes that “optional” Spanish language may be included with the validation notice. No other languages are addressed in the proposed rule. To ensure a fair debt collection system in a state like Texas, with a large foreign born population and substantial language diversity, required notices must be offered in a language the consumer understands.

1. Proposed §1006.14(b)(2), which allows 7 calls per week per debt and effectively allows unlimited electronic communications that are subject to opt out rather than an opt in standard (proposed §1006.6(e)), provides a safe harbor for harassment and facilitates fraud and miscommunication.

Allowing 7 calls per week per debt and unlimited electronic communications with only an opt out, and no opt in, amounts to formalizing a system of debt collection harassment.

The detailed complaint data described in the previous section of this comment highlight multiple complaints related to repeated phone calls, including calls not ceasing even when an opt out notice was submitted. Between 13% and 25% of complaints in the data sets analyzed above related to repeated phone calls. In the Texas complaint data submitted to the FTC, fully 29% of

the complaints related to debt collectors failing to cease calls after receiving a notice to stop calling.

Individual consumer complaints submitted by Texans to the state Office of Attorney General highlight harmful psychological and professional impacts of these repeated harassing calls.

- Laura, from The Woodlands Texas, submitted a complaint in April of 2019, stating, “I work nights at a hospital 7p-7a on weekends. On 4/10 they called 3 times to the main number in the unit I work in. This number is reserved for emergencies and for doctors, and other hospital related calls for newborn and premature ICU patients. They were told numerous times that they could not give any information and would give me the message but they continued to harass that number and HR where they were transferred to. They continued to tell my colleagues what I consider my personal information of details about being sued. The same harassment happened on 4/11 and 4/12, but this time they threatened that if I did not call back, the sheriff’s office would be contacted and they weren’t going to bother serving me, they were just going to pick me up. I received the all the threatening and harassing messages when I went into work on Saturday and called the number that was given all day Monday with no answer. Monday evening, I received a message from my brother telling me that someone was leaving messages that sounded pretty serious and to call 888-212-8261. This was a different number that I figured I would try. This number is Greensburg and Associates. They said they are a firm who represents Ace cash express and I was being sued for \$1,642. They said they would contact their client, Ace, and see if they were willing to settle. I Set up a payment plan and made an initial payment of \$300. He scared me into making a payment and setting it up immediately.”

This account is rife with problematic practices, but the repeated harassing phone calls resulted in intimidation of the consumer to make payments without any validation of the debt or validation that the person calling her had the right to collect the debt.

- Heather, from Huntsville, Texas, gave birth to her daughter in June 2015 and made an agreement with her doctor’s office to pay off her related medical expenses on a payment plan. She had not missed a payment. In her April, 2019 complaint, she shared, “Medicredit started contacting me on this account several months ago, asking me to pay more than what is owed on the account. They relentlessly call me several times a day at all hours. They have called and have woken up my children too many times by calling too early or too late. I am fed up with it. They call from many different phone numbers so I cannot screen my calls. When I am forced to talk to them, they do not take me seriously. They disregard what I tell them. They interrupt me and they tell me they will continue to call even though I have told them to stop calling. I will continue to pay my debt directly to Constance Faro at her office, regardless. But these people need to stop harassing me. This debt should not be in collections and they should not try to get me to pay more than what is owed on the account.”

Heather’s story illustrates how the combination of ongoing harassing calls and incomplete information about a debt can lead to debt collection abuses.

- Randall, a permanently disabled veteran from Spring, Texas, who served for 24 years in the United States Army, submitted a complaint in April of 2019. He stated, “An account #xxxxxxxxxxxxx was created by a creditor or creditors called Knox Hills. Knox Hills created an account in 2016 for an apartment dwelling I had not lived in for over 4 months after my 24 year retirement from the military. After a year of legal battles, Knox Hills gave this account to perpetrators RS Clark and Assoc. who placed a \$3,026.84 debt in all three credit agencies fraudulently. Not only was this fake account created in 2016 after I had retired from the Army, somehow this account was placed into an active account while I was living in Texas since August of 2015. My social security number was attained is also in question by RS Clark and Associates On or around June 2018 RS Clark and Assoc. contacted my ex-wife of 12 years in Florida and my eldest son, in reference to my whereabouts, my current living information and my personal numbers. In the same week, my teenage daughter was also contacted by RS Clark and Assoc. and also questioned of my location, and personal information. I contacted RS Associates and spoke with a young man who would only go by the name of David and he was told not to contact my family members, ex family members or anyone associated to me. Yet, the phone calls continued and I sent them 2 formal letters asking for a cease and desist. To no avail the company sent me a letter back refusing to remove this fraudulent account or to the contacting of myself or anyone associated with me. I know this is a common practice with some companies but when your life is threatened verbally and you continue the personal harassment it warrants outside help. On April 3rd, 2019 I once again received a letter form RS Clark and Assoc. saying it would not remove the fraudulent account nor would the contacting through mail or phone stop. I humbly ask for your intervention because this has gone way out of the scope of the FAIR TRADES ACT and it has become verbally threatening. I am a total and permanent disabled veteran and this is beyond the scope of civility.”

For Randall, Laura, and Heather, allowing 7 calls per week per debt would not alleviate the harassment they experienced and could exacerbate it. For individuals who may have multiple debts, 7 calls per debt can quickly mount to tens of calls per week.

By failing to address limits on electronic communications and allowing an opt out rather than requiring an opt in for each new collector in the event of the sale of a defaulted debt, the proposal creates new avenues for harassment, miscommunication and fraud.

Electronic communications, because of changing email accounts and cell phone numbers, have a higher risk of miscommunication—communicating with the wrong person and sharing personal information of a debtor with the wrong person. Allowing such communications with no limits and only with an opt out requirement opens up consumers to additional abuse.

- Kristi from Sachse, Texas, submitted a complaint in January of 2019 regarding a debt that she was making payments on and yet still receiving harassing communications. She shared, “This company calls from different phone numbers anywhere from 7-10 calls a day which is interfering with my work. I've told them repeatedly to stop the calls, texts, emails. I've made my payments on time and sometimes a week late but never not pay

them and there is no excuse for the harassing calls. I have received text messages from them, emails and then the harassing calls. It's affecting me while I am at work and also at home. I am willing and ready to file a civil suit against this company and any other charges against them to stop this practice from happening.”

Under the proposal, though the total weekly calls could be fewer in Kristi's case, the combination of calls, emails and texts would persist, and, likely, the harassing electronic communications would increase, because those would be allowed without an opt in requirement and without limit.

The high incidence of fraud and collection on debts people do not owe in the stories and complaints data cited further support a need for a more restrictive communication standard than the current rule proposal.

We recommend a maximum of three attempted calls per week per consumer (not per debt) with one contact. All electronic communications should require an opt in, in addition to the opt out, and a new authorization with each new collector in the event a debt is sold.

2. Proposed §1006.26(b), which prohibits threats to sue or lawsuits for a debt that the collector “knows or should know” is time barred, creates an exceedingly high bar to prove a violation, thereby effectively permitting abusive practices in this area.

The proposed “knows or should know” standard for prohibiting threats to sue or lawsuits for time-barred or zombie debts would be a step backwards for consumer protection. Under current law in Texas, debt buyers have a clear bright line prohibition from filing a lawsuit or engaging in arbitration related to a time-barred debt.²¹ They are also prohibited from reviving a time-barred debt.²² The proposed standard in the rule is far weaker than the bi-partisan law adopted in Texas in 2019, which received support from both industry and consumer advocates.²³

It is difficult to prove that a debt collector knows or should know that a debt is time barred. With so few debtors represented in court and high default judgment rates, it is unlikely serial abusers will face consequences for suing over time-barred debts under the proposed standard, particularly those where the statute of limitations recently expired,

Many of the complaints submitted to the Texas Office of Attorney General mention attempts to collect time-barred debts. They support the need to prohibit the sale and collection of these old debts, as efforts to collect these zombie debts too often include aggressive, intimidating, and illegal tactics.

- Valverene, a senior citizen from Hurst, Texas, submitted a complaint in March of 2019, stating, “On or around Feb 25, 2019 I received a phone call from an unknown number in

²¹ Tex. Fin. Code §392.307(c).

²² Tex. Fin. Code §392.307(d).

²³ [HB 996](#), from the 86th Texas Legislative Session, was sponsored in the Texas House by Democratic Chair Nicole Collier and in the Texas Senate by Republican Senator Angela Paxton.

which the speaker identified himself as Christopher Rasedi- a deputy from the Tarrant County Court. He stated that there was a judgement against me and that he was calling to find out when and what would be the best time for him to come and service me with the papers. He went on stating that if I wanted to know what this was about I had to call a 855 number and use the case # to speak with someone who can help me. I became so nervous because I had no idea what this could be that my blood pressure shot up very high. I took down the information and called the 855 number only to be spoken to very badly, shouted at and disrespected by the man who answered the phone. He said that this was about an old credit card debt of 1585.00 that was taken out in 2007 and defaulted on 2011. He stated that his office had a judgement against me and that his office was going to take my car from me. He said this over 5 times. Finally, I hung up because he was shouting at me and I couldn't say anything due his shouting. After hanging up this man called over 5-6 times shouting that they were going to take my car away. I was so upset I immediately went to a walk-in clinic to have my blood pressure checked because I had such a headache after this call and the nurse said by pressure was up in stroke range. She asked me if anything happened to me and I told her about what I was going through and she said that I had to try to relax because those people are known for upsetting senior citizens over the phone. She said you need to speak to a Lawyer to see what can be done so this doesn't happen again to you. I was told to return to the clinic the next day; meanwhile this man Christopher kept calling me and threatening me several times, and I would hang up. My blood pressure stayed up for 3 consecutive days due to this man constantly calling me. I contacted a Lawyer in the afternoon and she told me that this man's office can be sued for what is considered harassing calls; and threatening a sick senior citizen to the point of her blood pressure going very high. After going to the clinic on the third day, the nurse got an order to get blood work from me because she said the doctor wanted to make sure that I didn't have anything else that might be causing my pressure to be very high like that. When I got home I called the Tarrant County Courthouse and asked if this man - Christopher Rasedi worked for them and after putting me on hold for a few minutes she came back to me and said no one by that name worked there. The lady also told me that they get several calls a day with seniors complaining about people impersonating police and officials from the courts. She said that it's illegal for people to do this and that this man was probably a scammer. She said don't give him any money and report this to the State Attorney General; and the Consumer Protection Agency. I called the 855 number this man gave me and spoke with David Moore, who stated that he was sorry this man who worked in his office spoke to me so poorly and that he would help me. He explained that his office didn't have a judgement against me and that he was calling about an old credit card debt. I am making this complaint for two reasons: 1) Christopher Rasedi represented himself as an officer of the Tarrant County Court over the phone to me (I have a recorded message which he left after calling me, of him stating this) which is illegal. 2) His actions of constantly making harassing calls to me caused my blood pressure to go sky high to the point of having to be seen by a doctor 3 days in a row. 3) The old credit card debt David Moore referred to was a 'Bared Debt' of 8-9 years old. No senior citizen should have to endure this kind of health risking ordeal; especially since I had never received a letter from this office of any kind regarding this matter.”

- Richard, of Bohemia, New York, submitted a complaint against a Texas-based debt collector in January of 2018. He wrote, “On December 18th I received a phone call from an associate from Nelson Cruz and Associates asking to speak with my ex-wife. I said we are no longer married and I don't know where she is. I was out at the time and couldn't carry on a conversation, so she said she was going to begin proceedings and hung up on me. When I returned home, I called her back and I spoke with another woman and she asked for my name. When I told her my name, she said I had to pay back taxes on an old debt that had been written off in 2010 in the amount of \$1,707.86. She said if I don't pay, they will garnish my disability and freeze my bank accounts. I panicked, thinking she was with the IRS and gave her my credit card information so as not to have this done. I felt like I was under duress and didn't think to check them out or if this was indeed true. They kept harassing me, even after I paid them, saying they never received payment. This is a debt for which my wife was the primary cardholder and I felt as though this was a scam to collect money not still owed. I spoke with my bank and they said there was not much I could do, since I had given them my credit card information, but it is still under investigation. I had a consultation with an attorney who advised me that according to the fair debt collection practices act, this was illegal. Can you please help me get my money back, since I am on a fixed income and this has caused me a great financial hardship?”
- Michelle of Richmond, Texas complained in January of 2019 about a debt beyond the statute of limitations; however, every few years it gets resold to a new debt collector that uses illegal tactics and lies to try to get her to pay. She wrote, “I missed a call from (833) 746-9304 on January 18, 2019. No message was left. My job phone then rang displaying this same number. The caller asked for me by name. I stated, "this is Michelle." Guy said his name (don't remember it), said he was calling with some law office (Like XYZ Law Offices). Told me he was calling because they were going to file suit in my county today for fraud. Then stated someone was supposed to come out to my job today to serve papers. Then stated this was a tax lien. He just couldn't get his story together. I just let him do all the talking. He told me he was an arbitrator for this XYZ Law Office. He then asked for my social security number. I told him I wasn't verifying my personal information. Then he said a date and asked was it my birthday. I told him, again, I'm not verifying personal my information. He eventually got around to the truth of his call, said I had taken out a payday loan from GreenGate, and said he wanted to resolve this before it ended up a court matter (something to that effect). I told him "to go to court was no problem, see you in court." He started laughing then proceeded to keep talking, so I hung it. About an hour later, my mom texted me saying someone had called my grandmother leaving her a message stating, "Someone had damaged some of my property in Fort Bend County (where I live) and they needed me to call ASAP." The call came from this same number. I want this problem to go away. Every few years this debt gets resold to some scummy bill collector who uses illegal tactics to get me to pay them, now they are involving and scaring my 70+-year-old grandmother and my mother. I want to know who this debt was sold to so I can seek counsel. I filed a complaint regarding this same account several years ago. The statute of limitations is grossly over in this situation, and they are doing and saying illegal things to collect this debt.”

Allowing the on-going sale and collection of time-barred debts enables the kinds of illegal and abusive practices that are exemplified by these three complaints. Scaring financially vulnerable individuals with credible information is what makes these collection efforts successful for the collector and also what makes them so abusive for consumers.

The CFPB, in the debt collection final rule, should prohibit threats or lawsuits over time-barred debts and also prohibit the collection altogether of these very old debts. By the time the statute of limitations has expired, the facts of the debt are too often hazy, opening up consumers to abuse and harassing collections tactics.

3. Proposed §1006.18(g) creates a safe harbor for meaningful attorney involvement that would harm consumers by expanding lawsuits in state court based on wrong or incomplete information.

In assessing a fair standard for meaningful attorney involvement in debt collection lawsuits, it is essential to consider the built-in imbalance in the court process. Whereas debt collectors are by and large represented by attorneys, consumers are not. Many do not respond to lawsuits for multiple reasons ranging from lack of appropriate service to lack of time or knowledge. Default judgment rates for debt claim cases in one of the largest counties in Texas, Bexar County, is nearly 50 percent. There is also a prevalence, among consumer complaints, of identity theft, other fraud and assertions that the, “debt is not mine.”

In an environment where there is such an imbalance of information and such a high likelihood that the case filed will win with limited legal scrutiny, through a default judgment, it is essential that meaningful attorney involvement be defined in a manner that upholds the integrity of our legal system and the rights of consumers.

- A consumer recently contacted Texas Appleseed with the following plea for assistance, “I am being sued by a debt collector over a credit card account that an identity thief opened in my name three years ago. I only learnt about this when I was served papers last week and I have until the 11th to file a response to the lawsuit, so I need help urgently.”
- Donna, who currently lives outside of Texas, but was a Texas resident in the past, submitted a complaint to the Texas Office of the Attorney General in October of 2018, after her bank account was garnished due to a judgment on an account that was not hers. She stated, “I Donna [REDACTED] was checking my online bill pay @ Wells Fargo 9/10/2018. I noticed an alert message that read my bank accounts were Frozen & so I notified my bank Wells Fargo to find out more information they said they had a court order from the Justice Court of Harris County for the plaintiff Midland Funding LLC for them to be able to garnish my funds. That there was a Judgement set against me for Writ of Garnishment on 9/28/2013 Justice Court of Harris County, Precinct 8 Place 1 7330 Spencer Highway Pasadena Tx. 9/10/18 my 2 accounts @ Wells Fargo were depleted. My household bills now are in nonsufficient fund mode. I contacted Midland funding 4xs & had spoken with a few different employs & was told that I Donna A [REDACTED] had a writ of garnishment against me for indebtedness of a credit card (Chase Master Card). Midland Funding

continued to say that I Donna A [REDACTED] had opened a line of credit on a Chase Mastercard on 11/1/1977 & had closed the account 6/27/10. That the balance was \$9534.34 They also said I had been making payment's on this account from 1977 till 2010 @ the address: 1607 E Hedgecroft Dr.SeaBrook Tx. I replied to Midland Funding that in 1977 I never opened up a line of credit @ Chase Mastercard that it would've been impossible because in 1977 I would've been the age of 13. I also stated my name wasn't in Donna A [REDACTED] in 1977 that would've also been impossible & that my name has never been Donna A [REDACTED]. My name is Donna L [REDACTED] or Donna LH [REDACTED]. Also in 1977, I had only been living in Texas a short time that I had moved from New Jersey with my parents. My last name was [REDACTED] in 1977, not [REDACTED]) Also, I stated that I never made a payment from 1607 E HedgeCroft Dr. Seabrook Tx in 1977. That in 1977 E HedgeCroft Dr.didnt even Exist. And in 1977 I lived in Houston Tx, not Seabrook Tx In 1979 the neighborhood (Taylorcrest) was Established & streets were constructed where 1607 E HedgeCroft was created. I also had told Midland funding that they had removed funds from the account which was child support Funds. I continued to tell Midland Funding that there has been some huge mistake of Identity & that this Donna A [REDACTED] wasn't me Donna L [REDACTED] & that I wasn't responsible for this debt. As I write this I'm in tears & Emotionally upset I'm Lost I have done all that I could I got a Police report on 9/10/2018 & I'm still working on a Fraud Affidavit & this Consumer Complaint. Midland Funding LLC is WRONG !!! This Credit Management Corporation is Pure Evil. Midland funding never notified me that all this was going to take place I was not served to my knowledge @ 1607 E HedgeCroft Dr. Seabrook Tx, my home 5 yrs ago. When I was notified by certified letter was on 9/20/2018 after the fact that on 9/10/2018 that my funds had already been removed from accounts @ Wells Fargo & the accounts Froze. In Midlands letter, they stated: saying that they were writing in response to the recent communication disputing the referenced account & understood that I was disputing the accuracy of their records of the account & that they will open an investigation of this concern of my dispute. In the letter, I'm supposed to do 1-4 things so this matter may be resolved. Which are- 1. pay in full account settled 2.get a Fraud/identity theft report 3.balance discrepancy When I spoke to Midland Funding I said that all this is NonSense & this is Wrong & Extremely UnFair. This ordeal has put my family in disappear & we've been turned upside down. I said to Midland Funding this is Ridiculous that I'm a hard working woman & that my family & I are honest people & that I don't Understand Why they don't see that the information that's right in front of them in Black & White that none of this adds up & that this clearly isn't me. That there must be some sort of Mistake here @ hand. Midland had said to me well this is how the world works nowadays. I thought to myself well not in my world... Wow, I was Crushed & I've been Overwhelmed with mental anxiety and emotionally upset distraught over this whole ordeal. This has really upset my family financially. Now I am behind on daily & monthly expenses & I have No bank account I will now have to try to get an attorney which I will endure more expense to retrieve funds that are legally my family's. This ordeal is completely unnecessary Midland Funding LLC has me & my family on a loop de loop roller coaster ride which we want off. Please I'm reaching out for HELP.”

These two cases illustrate the havoc a debt claim lawsuit and the ensuing collections can create for families when there is no due diligence to ensure that the underlying debt is legitimate and that the suit is filed and collected against the correct person.

The CFPB should establish a standard of meaningful attorney involvement that, at a minimum requires a debt collection attorney to: ensure his or her client has the legal authority to collect the debt; review the original account-level documentation of the debt being collected; and determine, based on evidence, that the lawsuit is being filed against the correct individual and that the amount of the debt is correct.

4. Proposed §1006.34(d)(3)(vi) establishes that “optional” Spanish language may be included with the validation notice. No other languages are addressed in the proposed rule. To ensure a fair debt collection system in a state like Texas, with a large foreign born population and substantial language diversity, required notices must be offered in a language the consumer understands.

The proposed rule does not adequately protect consumers with limited English language proficiency. It states that if a debt collector chooses to make a Spanish-to-English translation available, then it could be beneficial. It goes on to say debt collectors may want to provide validation information in Spanish, making the decision for this up to each debt collector instead of mandating each consumer be presented with what is required of them in a language they understand.²⁴ The rule is also silent as to non-Spanish languages that consumers may speak.

In the Texas market, credit is often marketed and sold in languages other than English. Some credit contracts are required to be provided in Spanish or other languages if the contract is negotiated in a language other than English.²⁵ With 17% of Texans foreign born and 36% of Texas households considered limited English speaking, it is not surprising that businesses would offer information and advertising for credit in languages other than English. Debt collectors, when engaging in telephone communications also may use other languages in order to communicate with someone who is not comfortable speaking in English.

Given the realities of the market where credit contracts and collections are often negotiated in languages other than English, it is essential that legally required debt collection notices also be provided in a language that the consumer can understand.

Debt collection affects millions of people across Texas and the US. It is an important part of the credit ecosystem and it must be grounded in lawful practices that protect against consumer harms. Data and personal stories included in this comment letter reflect a debt collection market that continues to struggle with bad actors and abuses. We hope you will consider adopting the

²⁴ Proposed Debt Collection Rule, 84 Fed. Reg. 23351 (May 21, 2019).

²⁵ See, for example, Tex. Fin. Code §341.502(a-1) and San Antonio Credit Access Business Ordinance, available at: <https://www.sanantonio.gov/Finance/consumerprotection/cablenders>.

changes recommended in this letter to require debt collection practices that protect consumers and support a fair and lawful debt collection market.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann Baddour".

Ann Baddour
Director, Fair Financial Services Project