DEALING IN DEBT: THE HIGH-STAKES WORLD OF DEBT COLLECTION AFTER FDCPA

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I. INTRODUCTION

Judi Norwood graduated from Arizona State University in the late 1990s. Due to the downturn in the economy, Judi was unable to find a job and consequently defaulted on the relatively small amount of money due on her MBNA credit card, about $2000. After pursuing Judi for months, the credit card company abandoned its efforts. Believing the bad situation was behind her, Judi moved to Florida, married a surveyor, had a son, and began her current job as a waitress. In the subsequent years, the small family saved $5000 to put toward a down payment on a home. Less than a week before the deal was set to close, Judi was targeted by an attorney at Asset Acceptance, a consumer small-debt-buying company, hoping to collect her old MBNA debt. Without presenting adequate information about the debt's validity, the attorney threatened suit in small-claims court unless Judi immediately paid her debt, which Asset Acceptance claimed had risen to nearly $7000. This amount far exceeded the original debt and was equivalent to nearly twice the credit limit on the card. Because Judi was unaware that she was not legally obligated to pay an arguably time-

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barred debt, she felt cornered and settled the suit for significantly more money than she originally owed to MBNA.[1]

Judi Norwood is one of many debtors complaining of unfair treatment from companies in the debt-collection industry. Throughout the country, consumers are citing more incidents of abuse or harassment from collection agents than ever before.[2] In fact, the number of complaints that consumers have submitted to the Federal Trade Commission ("FTC"), the federal entity responsible for regulating the debt-collection industry, has quadrupled in the past five years.[3] Finally, officials have begun to take notice of the problem. In 2004, the FTC shut down CAMCO, a leading debt-collection company, after the company failed to alter its collection methods despite federal orders to stop abusive tactics.[4] CAMCO's practices included threatening debtors with illegitimate lawsuits, failing to provide adequate information, lying about the legitimacy of the debt, and even seeking out innocent people with the same name as a supposed debtor and attempting to collect the debt from them.[5] In another groundbreaking incident, the FTC fined NCO, one of the nation's largest consumer debt buying firms, $1.5 million for reporting inaccurate information about consumer accounts.[6] The authorities discovered that NCO intentionally changed the delinquency dates on accounts to bypass the statute of

1. *See* Suein Hwang, *Once-ignored Consumer Debts Are Focus of Booming Industry*, WALL ST. J., Oct. 25, 2004, at A1. For similar cases, see, for example, Rip-off Report.com, Collection Agencies, http://ripoffreport.com/view.asp?id=110806&view=printer (last visited Apr. 22, 2006).

2. *See, e.g.*, David L. Beck, *Collectors Rile Residents: Agency Cited for Abusive Tactics in Trying to Recover Old Debt*, MERCURY NEWS (San Jose, Cal.), June 7, 2004, at 1B (stating that "[a]busive debt collectors are a growing problem in California"); Russ Wiles, *Cashing in on Debt Collection: Debtors' Pain Is Valley's Gain as Industry Booms Locally*, ARIZ. REPUBLIC, June 24, 2004, *available at* http://www.azcentral.com/specials/special37/articles/0624Collections24.html ("The collection industry accounts for the fourth-highest tally of consumer complaints received so far this year by the Arizona Attorney General's Office.").

3. Scambusters.org, A Scary New Breed of Debt Collectors and Debt Collection Scams, http://www.scambusters.org/debt.html (last visited Apr. 22, 2006). Moreover, each complaint averages six violations, while some showed upwards of fourteen to sixteen violations. Albert B. Crenshaw, *Bill Collectors' Abusive Tactics Under Scrutiny; House Panel Holds Hearing on Increasing Complaints*, WASH. POST, Sept. 13, 1992, at H3.

4. Candace Heckman, *Seattle Office of FTC Helps Shut Down Debt Collector*, SEATTLE POST-INTELLIGENCER, Dec. 21, 2004, at B1.

5. Heckman, *supra* note 4 (stating that this practice resulted in almost eighty percent of collected money coming from people who never owned the original debt); Sarah Roberts, *Tale of an Outlaw Company*, ROCKFORD REG. STAR (Rockford, Ill.), Dec. 12, 2004, at 5G (citing an example in which the collector typed the debtor's name, Victor, into the computer and Victoria popped up, so the company changed the name on the bill and pursued Victoria instead).

6. Press Release, FTC, NCO Group to Pay Largest FCRA Civil Penalty to Date (May 13, 2004), *available at* http://www.ftc.gov/opa/2004/05/ncogroup.htm.

limitations so that it could collect debt in court.[7] These two FTC actions, combined with the increasing amount of consumer complaints, show that corruption is running rampant in the collection industry and federal collection law is ill-equipped to stop it.

CAMCO and NCO employed illegal and abusive tactics to collect debt. But the lawyer who contacted Judi Norwood did not violate any collection laws. The modern debt-collection industry has found new ways around consumer protection laws that allow it to continue squeezing money out of debtors' pockets. Unfair but legal collection methods include outsourcing early collection services overseas to bypass U.S. laws, using sophisticated databases to target individuals who are statistically likely to pay debts, taking advantage of the liberal procedure requirements in small-claims courts to obtain judgments against unsophisticated debtors, and collecting debts well after the expiry of the statute of limitations.[8]

This Note addresses the state of debt-collection practices and offers possible remedies to increase debtor protection. Part II describes the evolution of the debt-collection industry—namely, the rise of debt-buying companies. It also highlights the historical abuses that led to the enactment of the current law designed to regulate the debt-collection industry, the Fair Debt Collection Practices Act ("FDCPA").[9] Part III examines FDCPA in detail, setting forth the limitations it imposes on the collection methods available to debt-collection agents and pinpointing significant problems with the legislation. Part IV illustrates how the debt-buying industry has adapted to FDCPA and discusses the new, and potentially abusive, methods collectors are now using against consumers. Part IV also proposes changes to help prevent unfair treatment of debtors. Finally, Part V concludes that new legislation is needed to address FDCPA's shortcomings so that collection agents can no longer use abusive tactics to obtain unfair payments without ever violating the law.

7. *Id.*

8. *See infra* Part IV.

9. Fair Debt Collection Practices Act, Pub. L. No. 95-109, 91 Stat. 874 (1977) (codified as amended at 15 U.S.C. §§ 1692–1692o (2000)). FDCPA supplements the older Fair Credit Reporting Act ("FCRA"), Pub. L. No. 90-321, 84 Stat. 1128 (1968) (codified as amended at 15 U.S.C. §§ 1681–1681x (2000)).

II. NO-LIMIT GAMING: THE LEGISLATURE GIVES DEBT COLLECTORS FREE REIGN

Because encounters with debt-collection agents are generally unpleasant, many consumers view the industry with disdain and disgust.[10] In recent years, consumers have created numerous websites where they describe their experiences and publicly condemn the collection industry's disreputable practices.[11] These complaints may be valid, but, unfortunately for Judi Norwood and other complaining consumers, the debt collectors are not usually violating any laws. The legislature has simply failed to outlaw many unfair collection tactics. The collection industry's history reveals that it has evolved to comply with collection laws while still treating delinquent debtors unfairly.

Beginning with the first American settlements and continuing throughout American history, merchants have extended credit to consumers for the purchase of goods, in exchange for interest. Inevitably, some consumers defaulted and created the need for debt collectors. Eighteenth and nineteenth century American debt-collection laws heavily favored merchants.[12] The laws allowed collectors to employ virtually any tactic to recover debt.[13] Harassment, embarrassment, and threats all became common practice.[14] Further, creditors could easily force a debtor into involuntary bankruptcy proceedings and ask the court to impose strict punishments, such as seizing the debtor's property, garnishing the debtor's wages, and even sending the debtor to prison.[15] Since debt recovery was easy, merchants prospered, and collectors became feared and hated.[16]

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10. Many consumer advocates have created websites where wronged debtors can voice their displeasure with the industry. *See, e.g.*, Rip-off Report.com, *supra* note 1; Scambusters.org, *supra* note 3. Moreover, many states have cited a rise in consumer complaints against the industry. *See* Beck, *supra* note 2; Wiles, *supra* note 2.

11. *See, e.g.*, Rip-off Report.com, *supra* note 1; Scambusters.org, *supra* note 3.

12. Bradley Hansen, *Bankruptcy Law in the United States*, EH.NET ENCYCLOPEDIA, Aug. 15, 2001, http://www.eh.net/encyclopedia/?article=hansen.bankruptcy.law.us; Steve Rhode, Myvesta Foundation, The History of Credit & Debt: Bankruptcy, http://www.myvesta.org/history/history_bankruptcy.htm (last visited Apr. 22, 2006).

13. *See infra* text accompanying notes 36–37, 42–50.

14. Hansen, *supra* note 12.

15. *Id.*; Bankruptcy History Overview, http://www.bankruptcylawfirms.com/History-Bankruptcy.cfm (last visited Apr. 22, 2006).

16. *See* S. REP. NO. 95-382, at 2–3 (1977) (describing the substantial "suffering and anguish" that unscrupulous collectors inflict on consumers, and noting that "independent collectors are likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them"). *See also* 15 U.S.C. § 1692d (2000) (listing abusive collection practices that FDCPA is intended to prevent).

Finally in 1893, a "national economic panic" forced Congress to reexamine its harsh antidebtor policy.[17]

In 1898, Congress finally enacted a new law that gave debtors some protection from creditors. The Bankruptcy Act of 1898 allowed debtors to file for voluntary bankruptcy, rather than leaving the power exclusively to creditors.[18] Debtors could now declare bankruptcy when confronted with creditors' collection pursuits and thereby discharge all of their debts.[19] Merchants feared consumer bankruptcy because it made recovering small debts difficult and costly, so the Bankruptcy Act of 1898 spurred them to turn to the unconventional recovery methods that collection agents offered.[20]

Large merchants initially began employing debt-collection professionals as an extension of their primary businesses.[21] Business owners quickly discovered that it was inefficient to pursue a consumer for more than 180 days.[22] Given, however, that over eight percent of all consumer debts generally fall delinquent each year,[23] the merchants were losing a significant amount of money.[24] These small businesses were forced to raise prices or lay off key employees to offset the delinquent debts.[25] Consequently, merchants became willing to outsource their collection efforts in exchange for a percentage of the debt.[26]

Collectors immediately saw a niche market developing. Not only were merchants beginning to outsource their collection efforts, but also, consumers started shifting their spending habits—they began buying more

17. Rhode, *supra* note 12.

18. Bankruptcy Act of 1898, ch. 541, 30 Stat. 544. *See* FindLaw: Bankruptcy's History, http://cobrands.business.findlaw.com/bankruptcy/nolo/ency/AC2120E1-EF35-4F59-B0BE3F47887A22DB.html (last visited Apr. 22, 2006) [hereinafter Bankruptcy's History]; Rhode, *supra* note 12.

19. *See* Hansen, *supra* note 12; Rhode, *supra* note 12.

20. *See* Lynn A.S. Araki, *Rx for Abusive Debt Collection Practices: Amend FDCPA*, 17 U. HAW. L. REV. 69, 70–73 (1995) (finding that merchants and creditors started to assign accounts to debt-collection professionals earlier, in an effort to collect from consumers who will likely eventually file for bankruptcy).

21. *See* ACA International, Collection Industry Overview, http://www.acainternational.org/about.aspx?cid=320 (last visited Apr. 22, 2006) [hereinafter Industry Overview].

22. Wiles, *supra* note 2.

23. *Id.*

24. *See* Araki, *supra* note 20, at 72 n.18 (explaining that if a "business operates with a profit margin of two percent, and one-half of one percent of that business' gross sales end up in past-due accounts that have been referred to a professional collection service," then it follows that "25% of that business' profit is lost unless a debt collection specialist can make some recovery").

25. Wiles, *supra* note 2.

26. *See id.*; Industry Overview, *supra* note 21 (stating that "collectors help hundreds of thousands of U.S. businesses, small and large, keep unpaid debt costs manageable").

items on credit.[27] The amount of delinquent accounts was skyrocketing. Moreover, agents were able to recover a higher percentage of the delinquent accounts than the businesses themselves could recover because debtors are more likely to pay overdue debts when they have been turned over to a collection agency.[28] As more small businesses issued consumer credit,[29] the industry expanded, and in the early twentieth century, the individual agents banded together to form the first collection companies.[30] The collection industry now returns over a billion dollars a year to the U.S. economy.[31]

Newly formed collection companies contracted with small businesses to perform debt-collection services. The third-party collectors completely controlled the collection efforts and received a certain percentage of the total recovery amount. The agents traveled door-to-door tracking down debtors and recovering delinquent accounts.[32] Generally, collection agents were fair. They offered debt counseling and worked with consumers to create simple payment arrangements.[33] During the Great Depression, however, some merchants became desperate to collect old debt. Consequently, otherwise reputable merchants were willing to hire a disreputable collection company and "look the other way."[34] Moreover, given that the collectors only made money if the debt was recovered, they had an incentive to squeeze every possible dollar out of the debtor.[35] These collectors harassed the debtors by knocking on their doors in the middle of the night, making incessant phone calls to their homes and places of employment during inappropriate hours, and threatening to take their

27. *See* ACA International, Defining the Basics of the Collection Industry (Mar. 16, 2006), http://www.acainternational.org/about.aspx?cid=5432 [hereinafter Defining the Basics].

28. David A. Schulman, *The Effectiveness of the Federal Fair Debt Collection Practices Act (FDCPA)*, 2 BANK. DEV. J. 171, 177 (1985) (noting that collection agencies, credit issuers, and consumers acknowledge that debtors are more likely to pay collection agents than the original creditor).

29. Eventually, the list of businesses extending credit to consumers expanded beyond goods merchants. Now a creditor can be almost any kind of company that extends credit or offers payment installment plans: credit card issuers, banks, car dealers, retail stores, or even health clubs. *See* Defining the Basics, *supra* note 27.

30. *See* Bud Reitzel, *Preface* to ASSET ACCEPTANCE CAPITAL CORP., 2003 ANNUAL REPORT (2004) (explaining that Asset Acceptance was started by door-to-door collectors).

31. *See* Araki, *supra* note 20, at 72 & n.21. Estimates are based on the assumption that each person in the United States pays $230 more for goods and services per year because of bad debt, but this estimate decreases each time debt is returned to a creditor. *Id.* at 72 n.21.

32. *See* ACA International, Separating Fact from Fiction (June 29, 2005), http://www.acainternational.org/about.aspx?cid=5436 [hereinafter Separating Fact from Fiction].

33. Araki, *supra* note 20, at 73.

34. Crenshaw, *supra* note 3.

35. Suzanne Woolley, *Beware, Bully-boy Bill Collectors*, BUS. WK., Nov. 16, 1992, at 98 (quoting Robert A. Sherman).

property.[36] Vicious tactics were so effective that reputable companies found it difficult to compete with "rogue agencies."[37] During this time, however, debtors had no recourse against unscrupulous tactics because Congress still had not enacted any laws prohibiting them. Disreputable collection agents acted with impunity, and the industry quickly became overrun with fraud and corruption that continued for many decades.

III. LAYING OUT THE RULES: DEBT-COLLECTION REGULATION

Debtor-creditor laws are important to our country's economic development because they influence almost every facet of our economy, including consumers' lifestyles, by controlling the supply and demand for credit.[38] Accordingly, lawmakers face the difficult task of striking a delicate balance between consumer protection and creditor recovery to ensure that our economy continues to prosper.[39] Strict laws, such as those that impose imprisonment for debtors, tend to discourage entrepreneurs from experimenting.[40] On the other hand, laws that allow debtors to easily discharge their debt increase risk for creditors and thereby reduce the

36. *See* 15 U.S.C. § 1692d (2000) (listing abusive practices that FDCPA intended to prevent); S. REP. NO. 95-382, at 2–3 (1977) (detailing the need for legislation to address abusive collection practices).

37. Crenshaw, *supra* note 3.

38. *See* Hansen, *supra* note 12.

39. A review of early debtor-creditor laws best illustrates the necessity for balance between consumer protection and creditor recovery. Early English laws imposed strict punishments on delinquent debtors, including the death penalty, under the guise that harsh punishments would prevent consumers from defaulting on their debts and creditors would lend money more freely. Hansen, *supra* note 12; Rhode, *supra* note 12 (estimating that at least five debtors were executed under a 1570 English law). Accordingly, the sole purpose of these laws was to prevent fraud on creditors. *See* Bankruptcy's History, *supra* note 18; Rhode, *supra* note 12. England eventually repealed these laws after realizing that strict punishments harmed the economy and did not cure debtor default. Alternatively, various nineteenth-century American bankruptcy laws, spurred by the economic depression of 1837, allowed debtors to voluntarily discharge their obligations but were later repealed because too many debtors took advantage of the liberal filing requirements and creditors were receiving very little payment. Bankruptcy's History, *supra* note 18. For a more detailed discussion of early American creditor-debtor laws, see *id.*; Hansen, *supra* note 12; Rhode, *supra* note 12.

On the other hand, the Bankruptcy Act of 1898 struck a balance between debtor protection and creditor repayment by creating stricter requirements for debtors to have their debts discharged and granting creditors more recourse against a defaulting debtor. *See* Hansen, *supra* note 12. *But see* Rhode, *supra* note 12 (quoting some critics who believe that the Bankruptcy Act of 1898 favored debtors too much). This balance is important, as the Bankruptcy Act of 1898 has been in existence for over one hundred years and is the foundation of all current debtor-creditor laws still in existence. *See* Bankruptcylawfirms.com, The Bankruptcy Act of 1898, http://www.bankruptcylawfirms.com/Bankruptcy-Act.cfm (last visited Apr. 22, 2006).

40. Hansen, *supra* note 12.

supply of credit.[41] As the rampant abuse in the debt-collection industry illustrates, Congress has failed to strike this balance throughout the history of the United States.

In fact, Congress failed even to address the collection-abuse problems discussed in Part II until 1977, when it passed FDCPA.[42] The Act outlawed many abusive collection behaviors meant to embarrass or harass the debtor and also allowed a debtor to sue agents who engage in unlawful collection tactics.[43] While FDCPA initially provided necessary relief to debtors and strived to balance the inequalities between creditors and debtors, it quickly became static legislation. As the following discussion explains, with FDCPA, Congress created a law intended only to remedy previous abusive behavior and not to prospectively adapt to a changing industry.

A. EARLY COLLECTION LAWS

Historically, Congress has regulated bankruptcy proceedings closely; however, Congress has been remarkably absent from the domain of collection regulation.[44] Until the enactment of FDCPA, state legislatures individually regulated the collection practices occurring in their respective states.[45] Early state laws addressing collection abuse were derived from English common law.[46] Some states allowed various legal procedures for collection, such as the garnishment of wages and the seizure of property.[47] Some states also allowed debtors to employ tort theories to prevent debt

41. *Id.*

42. Fair Debt Collection Practices Act, Pub. L. No. 95-109, 91 Stat. 874 (1977) (codified as amended at 15 U.S.C. §§ 1692–1692o (2000)).

43. *See id.*

44. When reflecting on the history of the debt-collection industry, this Note often cites bankruptcy laws. It is important to note, however, that bankruptcy laws are not binding on debt-collection practices occurring outside of bankruptcy. Bankruptcy laws supersede, rather than replace, collection laws. *See* Hansen, *supra* note 12 (noting that creditors can use collection procedures until the debtor or another creditor files for bankruptcy, at which point collection efforts must be stopped). The two areas of law overlap in many instances, though. *See id.* (stating that bankruptcy laws and collection laws offer similar remedies, such as obtaining a judgment to seize property or garnish wages, but noting that a debtor could be put in debtors' prison regardless of whether a bankruptcy proceeding was filed). Consequently, even when bankruptcy legislation was repealed, state collection laws remained in place, although they have received very little attention from Congress.

45. *See* S. REP. NO. 95-382, at 2–3 (1977) (discussing the thirty-seven states plus the District of Columbia that had debt collection laws before FDCPA and listing the thirteen states that did not); Schulman, *supra* note 28, at 177 n.7 (describing the various tort theories states implemented to curb collection abuse); Bankruptcy's History, *supra* note 18 (discussing the state legal procedures for collecting debts); Hansen, *supra* note 12 (same).

46. *See* Bankruptcy's History, *supra* note 18; Hansen, *supra* note 12.

47. Bankruptcy's History, *supra* note 18; Hansen, *supra* note 12.

collectors from embarrassing or harassing debtors.[48] While state tort remedies helped curb abuses from single collection agents, the laws proved ineffective against the growing national debt-collection industry.[49] Collection companies had the size and power to exert substantial influence over debtors, who were easily intimidated, ignorant about their rights, and without resources to fight back. The debt-collection industry's unethical, and often illegal, practices posed a serious threat to consumers and probably had negative consequences on consumer spending and the supply and demand for credit.[50]

B. CURRENT FEDERAL LEGISLATION: THE FAIR DEBT COLLECTION PRACTICES ACT

In 1977, Congress finally acknowledged that rampant abuse, deception, and unfair practices in the debt-collection industry were contributing to marital instabilities, loss of jobs, invasion of individual privacy, and the high number of personal bankruptcies.[51] In response, Congress enacted the first comprehensive federal debt-collection statute, FDCPA.[52] The Act, which provides minimum restrictions on debt-collection activities and creates new rights for consumers, supplements inadequate state laws.[53] FDCPA only applies to debt collectors when they are attempting to collect debts from consumers and specifically excludes collection of debt from businesses or other commercial entities.[54]

48. Schulman, *supra* note 28, at 177 n.7 (finding that the major tort theories on which recovery may be premised are invasion of privacy, infliction of emotional distress, interference with contractual relations, battery, false imprisonment, fraud, and extortion). *See also* California Unfair Business Practices Act, CAL. BUS. & PROF. CODE § 17200 (West 1997).

49. *See* S. REP. NO. 95-382, at 2–3 (1977) ("[C]ollection abuse has grown from a State problem to a national problem.").

50. *See* Crenshaw, *supra* note 3 (quoting Representative Esteban Torres).

51. *See* 15 U.S.C. § 1692(a) (2000).

52. *Id.* §§ 1692–1692o (2000).

53. It is important to note that FDCPA does not annul, alter, or affect any state laws dealing with abusive and coercive collection practices, or exempt any person from complying with the state laws, except to the extent that the laws are inconsistent with FDCPA. *See* § 1692n. Further, a state law is not inconsistent with FDCPA if such law affords the consumer greater protection than FDCPA provides. § 1692o.

54. "A 'debt collector' is any person whose principal business is collecting debts, including: any person who regularly collects debts owed to another; creditors using a different name; creditors collecting for another person; attorneys; and any person a court decides fits the definition." § 1692a(6); Mike Voorhees, *Definitional Issues for Debt Collectors Under FDCPA*, 58 CONSUMER FIN. L.Q. REP. 83, 83 (2004). "A 'debt' is any obligation or alleged obligation of a consumer to pay money arising out of a transaction for personal, family, or household purposes." Voorhees, *supra*, at 84. "A 'consumer' is a natural person obligated to pay a debt, and includes any person allegedly obligated to pay a debt."

1. The Purpose of FDCPA

FDCPA is not intended to enable consumers to avoid paying their legitimate debts.[55] Congress, most legal scholars, and the author of this Note all recognize the importance of contractual obligations and the repercussions of debtors defaulting on their valid and legitimate debts. At the same time, however, most commentators acknowledge that a debtor should be free from harassment and abuse. Accordingly, Congress stated that the purpose of FDCPA is "to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses."[56] Furthermore, the Act's underlying objectives are just as important as the stated purpose. One objective is to "ensure that 'every individual, whether or not he owes a debt, has the right to be treated in a reasonable and civil manner.'"[57] Another objective is "to prevent the loss of jobs and the debtors' embarrassment which can arise during the collection process."[58]

2. Key FDCPA Provisions

To fulfill its objectives, FDCPA prohibits a wide array of collection practices, including "the use of false or deceptive means to collect a debt, communications with third parties concerning a debt, harassment, threats of violence, the use of obscene or profane language, and threats of any action that the debt collector does not intend to take."[59]

Specifically, FDCPA places severe limitations on the debt collector's allowed communications, both with the consumer-debtor and with third parties, such as the debtor's neighbors, employers, and family members.[60] For example, in order to protect the debtor's job, a debt collector is only allowed to contact a debtor's employer to get information related to the

§ 1692a(3); Voorhees, *supra*, at 83–84. An artificial entity, such as a corporation, cannot be a consumer. Voorhees, *supra*, at 84.

55. Araki, *supra* note 20, at 77.

56. 15 U.S.C. § 1692(e) (2000).

57. Schulman, *supra* note 28, at 172 (quoting the congressional testimony of Congressman Chalmers Wylie). *See* Jeter v. Credit Bureau, Inc., 760 F.2d 1168, 1178 (11th Cir. 1985).

58. Schulman, *supra* note 28, at 174.

59. Araki, *supra* note 20, at 75–76.

60. "FDCPA defines 'communication' as the conveying of information regarding a debt directly or indirectly to any person through any medium." Mike Voorhees & Sharon Voorhees, *The Fair Debt Collection Practices Act, Communications, and Privacy Issues*, 58 CONSUMER FIN. L.Q. REP. 78, 78 (2004).

debtor's whereabouts.[61] The collector is not allowed to disclose the fact that the debtor owes a debt[62] or the identity of the collector's employer.[63] Additionally, the debt collector may not contact the third party more than once.[64] These limitations are intended to protect a debtor's right to privacy by preventing a debt collector from disclosing embarrassing information to employers, friends, or family.

FDCPA also restricts when and where a debt collector can contact the debtor. The statute specifically states, "A debt collector may not communicate with the consumer at any unusual or inconvenient time and place."[65] Additionally, the collector may only contact the debtor between eight o'clock in the morning and nine o'clock at night.[66] And the collector generally may not contact the debtor at work.[67] This provision is intended to prevent debt collectors from calling debtors in the middle of the night, appearing at their places of employment, or surprising them in strange locations.

FDCPA also outlines specific guidelines that the debt collector must follow when the debtor disputes the debt's validity or the validity of any interest and collection charges. Within five days of the initial communication with the debtor, a collector must provide "a written notice stating the amount of the debt, the name of the creditor to whom it is owed and a statement notifying the consumer that unless he disputes the debt in writing within thirty (30) days, the debt collector will consider the debt valid."[68] This provision is intended to provide the debtor with ample opportunity to investigate the collector's claims and confirm whether the debt allegations are valid.

61. 15 U.S.C. § 1692b (2000).

62. Schulman, *supra* note 28, at 174.

63. *Id.*; 15 U.S.C. § 1692b(1). Collectors may disclose that they work for collection agencies if the debtors' employers request such information. Consequently, this provision will likely protect the debtor's privacy for only a short time, as third parties are unlikely to disclose the debtor's personal information without knowing whom they are speaking to. *See* Schulman, *supra* note 28, at 174.

64. This is known as the "one-contact" rule. *See* John Tavormina, *FDCPA—The Consumer's Answer to Abusive Collection Practices*, 52 TUL. L. REV. 584 (1978). The debt collector is permitted to contact the third party more than once upon the third party's request or if the collector "reasonably believes that the earlier response of such person is erroneous or incomplete and that correct or complete information is now available." Schulman, *supra* note 28, at 174.

65. Schulman, *supra* note 28, at 175–76. Some commentators have argued that actual knowledge of the debtor's inconvenience is not required. Instead, the collectors must use common sense and experience to avoid confusion. *See* Tavormina, *supra* note 64, at 587.

66. 15 U.S.C. § 1692c(a)(1) (2000). A collector may only contact a debtor outside of these hours with the debtor's consent. *Id.*

67. Schulman, *supra* note 28, at 176.

68. *Id.* at 177.

Most importantly, FDCPA contains provisions that limit a debt collector's acceptable methods of recovering a debt. A debt collector may not harass or abuse a consumer in an attempt to collect a debt. Nor may a collector "use any false, deceptive or misleading representations in connection with the collection of any debt," or "use unfair or unconscionable means to collect or attempt to collect a debt."[69] The legislature intentionally wrote these provisions in extremely broad language to avoid any misunderstanding and to encompass any unconventional collection methods that may cause distress to the debtor. Moreover, any violator of these provisions will be strictly liable.[70]

If a debt collector violates any FDCPA provisions, the consumer can sue, within one year of the violation, for actual damages, court costs, and attorney's fees.[71] The generous award of attorney's fees is intended "to encourage consumer enforcement of the act."[72] Additionally, the consumer can file a complaint with the FTC to encourage the commission to pursue an action against the violator, although the grievances must be fairly extreme and numerous for the FTC to further investigate the alleged violation.[73]

3. Fundamental Flaws in FDCPA

Some commentators applaud FDCPA for the positive effect it has had on the debt-collection industry. They cite a decrease in complaints in recent years as evidence that debt collectors have conformed to the federal guidelines.[74] Other commentators, citing contradictory statistics that indicate that complaints are on the rise,[75] acknowledge Congress's good intentions but describe FDCPA as "a misdirected and poorly drafted

69. *Id.* at 176. *See also* 15 U.S.C. § 1692(c) (2000) (noting that "means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts").

70. Bentley v. Great Lakes Collection Bureau, 6 F.3d 60, 63 (2d Cir. 1993). The courts will consider the degree of the defendant's culpability when computing damages, however. *Id.*; 15 U.S.C. § 1692k(b) (2000).

71. § 1692k.

72. Schulman, *supra* note 28, at 177. Note that FDCPA does not require consumers to admit that they are innocent or free from debt and they need not show actual damages. Instead, Congress only wants to ensure that consumers are free from harassment. *See* Araki, *supra* note 20, at 77.

73. 15 U.S.C. § 1692 (2000).

74. *See* Araki, *supra* note 20, at 77–78 (stating that "FTC reports to Congress have shown that the number of complaints has decreased from more than 4,000 per year in the late 1970's to approximately 2,000 in 1992."). This interpretation of the statistic may not be entirely accurate. Fewer debtors understanding their rights under the Act could have caused the decrease in complaints. Or, perhaps the collectors are becoming more creative with their targeting and harassment tactics.

75. *See* Scambusters.org, *supra* note 3.

statute."[76] They specifically highlight the statute's many ambiguities, which are illustrated by the fact that courts have been unsuccessful in interpreting the statute in a predictable manner.[77] Critics claim that FDCPA causes honest and diligent debt collectors to have difficulty reconciling debt collection with the spirit of the law.[78] Critics also argue that even if FDCPA is effective, most consumers are unaware of their rights under it. Debt collectors are not required to furnish a debtor with information regarding their rights, and, consequently, a great amount of consumer ignorance exists.[79] The statute is of little use if consumers do not invoke its protection.

Moreover, critics believe that even when debtors are aware of the statute, they are unlikely to bring a lawsuit under FDCPA for many reasons.[80] First, it will likely be less costly and time-consuming to pay the small debt than to litigate.[81] Second, if a debtor's suit is brought in bad faith, the court may award attorney's fees to the debt collector.[82] Finally, the debt collector can easily escape liability for violating FDCPA by showing that the violation was either unintentional or not easily preventable.[83]

But perhaps FDCPA's biggest flaw is that it is static legislation. Its sole purpose is to correct the harassment problems that haunted the country's debt-collection industry before its enactment. The most successful legislative regimes are open-ended and worded to anticipate future behavior.[84] By contrast, FDCPA is written to correct only specific

76. Voorhees, *supra* note 54, at 83.

77. *Id.*

78. *Id.*

79. *See* Thomas v. Law Firm of Simpson & Cybak, 354 F.3d 696, 699 (7th Cir. 2004) (finding nothing in FDCPA suggesting that Congress intended creditors' unilateral actions to obligate debt collectors to inform debtors of their rights); Crenshaw, *supra* note 3. Many consumer protection companies have responded to this problem by creating websites and pamphlets that are available to inform consumers of their rights. *See, e.g.*, ACA INT'L, YOUR RIGHTS UNDER FDCPA (2006), *available at* http://www.acainternational.org/images/328/yourrightsfdcpa.pdf.

80. Schulman, *supra* note 28, at 177.

81. *Id.*

82. 15 U.S.C. § 1692k(a)(3) (2000).

83. *Id.* § 1692k(c).

84. Early debtor-creditor laws illustrate Congress's propensity to enact remedial, rather than proactive, laws. For example, the Bankruptcy Act of 1843 was intended to remedy problems that arose during the economic depression of 1837 but proved ineffective in dealing with debt problems that arose later. Debtors were able to discharge their debts too easily and creditors received too little. *See* Bankruptcy's History, *supra* note 18. Consequently, the Act was repealed after only two years. Hansen, *supra* note 12. Congress tried again with the Bankruptcy Act of 1867, which was prompted by financial problems that occurred during the panic of 1857 and the Civil War. *Id.* This Act was also quickly repealed because it led to too much corruption and too little creditor repayment. Rhode, *supra* note 12

problems and it fails to adapt to changing trends. While FDCPA encompasses a broad range of explicit abuses, it fails to address many categories of subtler new forms of debtor mistreatment, discussed below in Part IV.B. Moreover, FDCPA is not even strict enough to remedy the problems it was designed to address. In fact, most of the state statutes that existed when FDCPA was enacted were more stringent than the federal law.[85] The following part describes how the debt-collection industry quickly adapted to FDCPA restrictions and discovered new unfair methods for squeezing pennies from debtors. These manipulations have rendered FDCPA incapable of protecting debtors from unscrupulous collectors.[86]

IV. NOT PLAYING BY THE RULES: THE RISE OF THE MODERN DEBT-BUYING INDUSTRY GIANTS AND THEIR NEW ABUSIVE DEBT-COLLECTION PRACTICES

Regardless of its many flaws, FDCPA likely made great strides in curbing some of the abuse and harassment stemming from collection companies. To maintain the high profits previously provided by the newly illegal tactics, debt-collection companies quickly realized the need for new and innovative methods of collecting debts. Part IV.A shows how the industry adapted and started to implement new technology-based strategies. Part IV.B shows that the new methods are unfair to the average consumer, but remain legal. Additionally, each subsection describes FDCPA's powerlessness to rectify specific debt-collection problems and suggests changes Congress should implement.

(stating that the act was "too unwieldy, too expensive, created long delays, and resulted in little repayment to creditors"). After remedying the designated problems, these laws failed to adapt to the changing economic landscape. On the other hand, the enduring Bankruptcy Act of 1898 anticipated future needs and still lays the foundation for all current creditor-debtor legislation. Bankruptcy History Overview, *supra* note 15.

85. Woolley, *supra* note 35.

86. It is important to note that virtually all of the state legislatures followed Congress's lead and enacted state statutes comparable to FDCPA to regulate collection practices in their respective jurisdictions. *See, e.g.*, CAL. CIV. CODE § 1788 (West 1998); FLA. STAT. § 559.55 (West 2002); LA. REV. STAT. ANN. § 9:3562 (1997); MD. CODE ANN., COM. LAW § 14-201 (West 2002). These state statutes essentially mirror FDCPA and are thus susceptible to the same criticisms and pitfalls as FDCPA. Accordingly, these state statutes likely do not provide greater protection to consumers than FDCPA. Moreover, FDCPA is more applicable to the problems discussed in Part IV than are state laws, given that many of the new unconventional methods are performed on a national scale.

A. WHY COLLECT ONE ACCOUNT WHEN YOU COULD COLLECT HUNDREDS?: THE NEW DEBT-BUYING INDUSTRY

When FDCPA increased debtor protection, it also reduced the acceptable tactics collectors could employ to recover debts.[87] In order to maintain profits, the collection companies quickly realized that they needed to adapt to the changing economic landscape FDCPA created, or else face strict penalties.[88]

1. Debt Collectors Find a New Niche in the Market

Two key transactions stimulated a revolution of the debt-collection industry and shaped its evolution in response to FDCPA. First, in the late 1980s, amidst an economic downturn, the Federal Deposit Insurance Corporation began selling off the debts of banks that had failed or were faltering.[89] Second, "Bank of America sold a large amount of old credit card debt."[90] These two actions signaled to the debt-collection industry that selling old debt was an acceptable practice and would likely be the wave of the future.[91]

In 1989, the debt-collection industry quickly responded to the changing tides and began buying credit issuers' written-off debt in large portfolios, thereby creating the debt-buying industry.[92] A merchant or creditor would sell an entire group of delinquent debts to a collector and only receive pennies on the dollar for the bundle.[93] The debt-buyer would

87. *See supra* text accompanying notes 60–67.

88. *See* Jane Adler, *A Matter of Size: Small Collections Law Firms Are Under Pressure, but Nimble Players Compete by Employing New Strategies and Serving Specialty Niches*, COLLECTIONS & CREDIT RISK, May 2, 2005, at 38, 38 (finding that many firms facing industry challenges turn to debt purchasing as a viable way to stay busy—and profitable—when work slows); Laurie A. Lucas & Alvin C. Harrell, *1994 Update on the Federal Fair Debt Collection Practices Act*, 49 BUS. LAW. 1385, 1385 (1994) (stating that the credit industry discovered new ways to make better profits in lending after the enactment of FDCPA); Roland P. Reynolds, *Danger from the Fair Debt Collection Practices Act*, CTA NEWSLETTER (Cal. Trustees Ass'n, Irvine, Cal.), Summer 1995, *available at* http://www.wolffirm.com/publications/41.htm (discussing the burden FDCPA imposed on the collection industry, and encouraging various changes to avoid monetary penalties).

89. Dan Heaton, *Debt Collectors Build Warren Headquarters to Keep Pace with Boom*, MACOMB DAILY, Mar. 24, 2004, *available at* http://204.176.34.196/macombdaily/article.asp?ID=11171093.

90. *Id.*

91. *See id.*

92. *See* Marilyn Alva, *As Consumer Debt Piles Up, So Does the Business at This Company*, INVESTOR'S BUS. DAILY, Dec. 4, 2002, at 1.

93. *See id.* The portfolios typically range in size from $3 million to $200 million, while each individual account remains relatively small—between $1000 and $6000. Clients, Questions—Portfolio Recovery Associates, http://www.portfoliorecovery.com/clients_quest.asp (last visited Apr. 22, 2006).

then own all of the debt and keep any profits it could recover. While initially merchants, both large and small, used this practice, eventually institutional lenders also began taking advantage of portfolio sales. Lenders and merchants realized that the system provided a manageable substitute for either maintaining a large and costly in-house recovery staff or supervising a complex agency-management program.[94]

This new practice of buying large portfolios of debt allowed companies to take advantage of economies of scale. Economies of scale are said to be achieved when more units of a good or service can be produced on a larger scale, yet with less input costs on average.[95] Debt collectors previously pursued only a few accounts to collect the highest amount available from each debtor, thereby incurring high costs with small returns. The companies learned, however, that they could buy large portfolios of debt for relatively small fixed costs and then fully exploit their technology and personnel to reach thousands of debtors each day and accept lower recovery amounts. This process reduced costs while producing higher returns. Accordingly, economies of scale provided debt-buying companies with increased profits and the opportunity for extended growth.

2. Successful Economies of Scale: The Debt-buying Industry Explodes

Under the theory of economies of scale, economic growth may be achieved when economies of scale are realized.[96] Since it implemented this theory in the arena of debt collection, the debt-buying industry has grown

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Each portfolio generally contains a mixture of new and old debt. "Fresh paper," or new debt, is a delinquency that has occurred in the last eighteen months, while old debt has been uncollectible for over two years. Alva, *supra* note 92. While old debt is more difficult to collect, it is also less expensive and can often be more profitable. *See id.* The collection companies keep costs low and recovery high by negotiating to pay on average about two cents on every dollar of debt for the accounts. Hwang, *supra* note 1. Then the debt collectors project a return of three to five times their investment over a five-year span. *See* Reitzel, *supra* note 30.

94. *See* Services—Portfolio Recovery Associates, http://www.portfoliorecovery.com/about_services.asp (last visited Apr. 22, 2006). Portfolio Recovery Associates explains,

> For a lender, the numerous benefits of selling bad debt . . . include: [(1)] Dramatically reduced staff when compared to either an in-house or collection agency recovery strategy. [(2)] Immediate cash flow at levels equal to or higher than the net proceeds of a traditional recovery operation, be it in-house or agency. [(3)] Reduce[ing] the liabilities of FDCPA and FCRA violations by your own staff or by a collection agency. [(4)] The ability to effectively manage a temporary inventory build up in times of increasing delinquencies, without increasing staff. [(5)] Generate income on accounts for which recovery efforts have otherwise ceased. [(6)] Supplement a traditional agency program by selling recalled accounts.

Id.

95. *See* Reem Haekel, *What Are Economies of Scale?*, INVESTOPEDIA.COM, Jan. 27, 2003, http://www.investopedia.com/articles/03/012703.asp.

96. *See id.*

at a breathtaking pace.[97] As of February 2006, 6500 collection agencies operate in the United States. This number grew by almost 25% in only three years.[98] The Bureau of Labor and Statistics estimates that the collection industry will continue its growth and increase by 21%–35% between 2002 and 2012.[99] As the chairman of Asset Acceptance recounted, "When I started in the 1960s, the consumer charged-off debt industry was in its infancy. In 2003 it stood at $75 billion and growing. By 2010, industry reports project it will top $86 billion."[100] Even more remarkably, U.S. debt-buying agencies' income has nearly tripled in the last ten years.[101]

For a variety of reasons, new companies are starting, old companies are expanding, and more debt is trading. First, consumer spending has shot up in the last two decades, causing a corresponding increase in consumer debt.[102] Thus, while the abundant expansion of the debt-collection business is impressive from a market-growth perspective, the flipside is an astronomical increase in consumer debt.[103] Between 1997 and 2002, consumer debt climbed 37%, to $1.7 trillion, according to the Federal Reserve.[104] The sharp increase in consumer debt is due in large part to increased credit card accessibility, which, in turn, has created a need for more debt collectors.[105] In 1993, businesses sold collection agencies about $660 million in charged-off credit card debt.[106] In 2003, that number reached $57.3 billion.[107] As these figures show, more consumer spending means more consumer debt, which means more debt collection and more profits for collectors.

97. For example, in 1976, small businesses turned over $3.9 billion in debts to companies associated with the Association of Credit and Collection Professionals ("ACA"). In 1980, the number rose to $14.5 billion. And in 1990, businesses referred $66.5 billion in debts to collection agencies. Araki, *supra* note 20, at 71 n.17.

98. *See* ACA International, Collections Information (Mar. 16, 2006), http://www.acainternational.org/about.aspx?cid=5431 [hereinafter Collections Information].

99. *Id.*

100. Reitzel, *supra* note 30.

101. Collections Information, *supra* note 98.

102. Marilyn Much, *Finding a Gold Mine in Someone Else's Debt*, INVESTOR'S BUS. DAILY, June 16, 2003, at A7.

103. Reitzel, *supra* note 30.

104. Much, *supra* note 102.

105. Heaton, *supra* note 89. As one debt-buying executive put it, "The expansion of consumer credit in the past 10 years is amazing . . . . When I was in college, I couldn't get a credit card. Now kids are graduating college with thousands of dollars in credit card debt. You hear the advertisements on the radio, 'Bad credit—we don't care.' Well, someone has to collect all that debt." *Id.*

106. Hwang, *supra* note 1.

107. *Id.*

The collection industry is also expanding quickly because small businesses are increasingly eager to wipe their hands of debt-collection practices. Merchants do not want to waste time or energy outsourcing collection and are willing to accept complete losses from delinquent accounts. Accordingly, they are eager to receive any revenues from otherwise worthless assets. Most importantly, though, small businesses do not want to risk alienating potential repeat customers by aggressively pursuing them for repayment.[108]

The astronomical growth of debt buying in recent years has also created many pitfalls for foolhardy companies.[109] The increase of profits and consumer debts has attracted more companies into the business. This competition forces some companies to pay higher premiums for bad debt.[110] Higher-paying companies become eager to show that they play a major role in the industry and encounter trouble when they are unable to collect on their high-priced debt.[111] Other companies confront problems when they buy too much recent debt, as opposed to older, written-off debt, hoping to create quicker turnover. Such companies often become desperate to collect the expensive, recent debt and resort to unconventional recovery methods. During the mid-1990s, many new, greedy companies that did not understand how to run successful debt-collection businesses ended up in these situations.[112]

Other problems can occur when debt-collection companies perform initial public offerings ("IPOs"). When a company goes public, it is forced to issue a registration statement that discloses all material information about the company. The registration statement is filed with the Securities and Exchange Commission ("SEC") and disseminated to the public.[113]

108. *See* Tavormina, *supra* note 64, at 589 (stating, "Creditors seeking to promote ongoing business relationships will continue to employ debt collectors in order to save time, effort, and possible bad reputation associated with collecting long term delinquent accounts."). *See* Hwang, *supra* note 1 (noting that "consumer lenders . . . traditionally didn't tail debtors for more than a few months [because] [t]hese companies have feared bad publicity and have wanted to avoid the costs of pursuing what often are relatively small debts.").

109. *See generally* Darren Waggoner, *Debt Buying Industry: Giants Set the Pace*, CREDIT & COLLECTIONS WORLD, Jan. 2005, *available at* http://www.creditcollectionsworld.com/cgi-bin/readstory2.pl?story=20050103CCRU694.xml ("It's a hot business and some bumps along the way have always been part of it. For now, the economy is turning around and people are paying off debts so there's a rush to get into the market.").

110. Gregory Zuckerman, *Debt Collectors Reap Rewards as Consumers Rack Up Bills*, WALL ST. J., Nov. 2, 2004, at C1.

111. *See* Waggoner, *supra* note 109.

112. *See id.*

113. The Securities Exchange Act of 1933 requires a corporation to file a registration statement with the SEC before going public. 15 U.S.C. §§ 77a–k (2000). The registration statement must fully

When faced with stockholder and market scrutiny stemming from disclosure requirements, companies become more conservative in their purchase selections, purchasing debts that are easier to collect but are less profitable.[114] But timidity will likely backfire, because the debt-collection industry's business model depends on reaping big profits from high-risk debt. Cutthroat competition will undercut a conservative player.[115]

B. CHEATING THE PUBLIC: BYPASSING FDCPA WITH NEW AND UNFAIR COLLECTION METHODS

Rather than forcing debt-collection companies to refrain from harassing consumers, FDCPA simply made collectors implement a new business model tailored to the new law. In order to carry out the new model, the debt-collection industry has resorted to many abusive strategies that have allowed companies to disregard the spirit of FDCPA, while still complying with the letter of the law. Four of the most insidious tactics are (1) evading U.S. laws by outsourcing debt collection overseas, (2) using technology to target the most vulnerable debtors for aggressive collection, (3) exploiting small-claims courts to obtain judgments that would not be granted in normal litigation, and (4) pursuing old debts after the statute of limitations has expired.

The new business model depends on companies benefiting from the efficiency of economies of scale as they increase their portfolio sizes.[116] New technology makes it inefficient to collect delinquent debts door-to-door, as was done historically. Instead, debt-collection companies train thousands of employees[117] to use specialized phone systems and computer

disclose all material information to the SEC, including a description of the corporation, detailed financial statements, biographical information on insiders, and the number of shares owned by each insider. § 77g.

114. *See* Waggoner, *supra* note 109.

115. It is important to note that more debt-buying companies are eager to go public, but IPO issuers fear that the companies may become bogged down in class action liability suits should they ever be found to have violated FDCPA. *Id.*

116. *See supra* notes 95–97 and accompanying text.

117. Reitzel, *supra* note 30 (stating that Asset Acceptance employs over 1500 employees in eight states). *See* Alva, *supra* note 92 (noting that Portfolio Recovery Associates, one of the largest debt collection companies, employs nearly six hundred employees per call center and is looking to expand to a third call center). Further, debt-buying companies claim the secret to success is to train the agents to "understand what motivates a variety of people, . . . determine quickly what will motivate a particular person and . . . communicate well with others." Separating Fact from Fiction, *supra* note 32. Accordingly, some industry leaders send their employees to training programs lasting as long as six weeks. Alva, *supra* note 92.

software in order to make hundreds of contacts each day.[118] Whereas debt-collectors previously had to collect the full amount of each debt in order to profit, the new model functions efficiently even when agents collect only a portion of each recovered debt. When an account is bought for only pennies on the dollar, any amount of recovery can be profitable. Nevertheless, companies still place a tremendous amount of pressure on agents to recover the highest percentage possible.[119]

As part of their economies of scale business model, debt-buying companies purportedly adhere to two important guidelines to enhance their collection efforts. First, collectors do not want to force debtors into bankruptcy.[120] When consumers file for bankruptcy, many of their debts are wiped clean.[121] Accordingly, most agents state that the best collectors work *with* debtors to get their accounts paid, rather than engaging in adversarial transactions.[122] To do this, companies attempt to create long-term repayment plans tailored to each debtor's ability to pay.[123]

Second, debt-buying companies claim to seek legal remedies against debtors only as a last resort, when all other collection efforts have failed.[124] This policy is based on the theory that the legal system alienates unsophisticated debtors and may cause debtors to be uncooperative.[125] In practice, however, the industry's actions do not always follow this stated policy. Rather, the most successful companies employ an army of in-house and consulting lawyers who are ready to file complaints at a company's request.[126] Moreover, ample evidence suggests that collection companies strongly encourage their agents to refer cases to lawyers to collect debts.[127]

118. Collections Information, *supra* note 98 (finding that "ACA member agencies make nearly 87 million consumer contacts a month, which equates to more than 1 billion contacts per year"); Separating Fact from Fiction, *supra* note 32.

119. Portfolio's president notes, "A good collector will squeeze out the balance in full[,] . . . [b]ut callers will often work out payment arrangements or partial settlements." Alva, *supra* note 92.

120. Separating Fact from Fiction, *supra* note 32.

121. *Id.*

122. *Id.*

123. Reitzel, *supra* note 30.

124. *See* Hwang, *supra* note 1 (stating that legal actions are not Asset Acceptance's primary objectives and that the company has assisted millions of consumers in resolving past debts through settlement agreements). *See also* Alva, *supra* note 92 (claiming that Portfolio's primary method for recovering debts is the telephone).

125. *See* Note, *The Persecution and Intimidation of the Low-income Litigant as Performed by the Small Claims Court in California*, 21 STAN. L. REV. 1657, 1663–64 (1969) (explaining that the courtroom atmosphere is intimidating to inexperienced litigants).

126. Hwang, *supra* note 1. For further discussion about the companies using the legal system as a collection remedy, see *infra* Part IV.B.3.

127. *See infra* text accompanying notes 192–200.

The rest of this section discusses the four new collection strategies debt-buying companies use to squeeze the most profit out of their new business model. It also proposes legislative reforms that would help curb debt-collectors' abusive behavior—behavior which currently results in gross injustice for debtors.

1. Debtors' Information Floating Adrift: Outsourcing Debt Collection Overseas

Many large companies have begun outsourcing routine services to third-party providers, so the companies can concentrate on their core competencies.[128] The debt-buying industry has evolved to exploit this trend and has moved many call centers to India, Mexico, and the Philippines, countries that can perform early debt-collection services for relatively low costs.[129] Foreign call centers handle early stage collections, so that the American companies can focus on pursuing older debts.[130] Dennis Scholl, CEO of a debt-collection firm, claims that only five percent of his company's debt-collection activities are recovered from overseas operations, but predicts that as much as forty percent of all debt collection will move overseas in future years.[131]

There are many reasons to outsource early debt collection, including "improved returns on capital, lowered risk, greater flexibility, and better responsiveness to customer needs at lower cost."[132] The debt-collection industry is extremely labor-intensive, so companies strive to acquire the cheapest labor available, without compromising quality of service.[133] The

128. *See* ROBERT KLEPPER & WENDELL O. JONES, OUTSOURCING INFORMATION TECHNOLOGY, SYSTEMS & SERVICES 5 (1998) (noting that outsourcing is a trend that has exploded in the last ten years).

129. India is currently the largest and fastest-growing operation outside of the United States for early-stage debt collection, but the Philippines and Mexico are also developing large industries. Jay Solomon, *India Becomes Collection Hub*, ASIAN WALL ST. J., Dec. 3, 2004, at A1.

130. *See id.*

131. David Lazarus, *Collecting Debt Going Overseas*, S.F. CHRON., Mar. 10, 2004, at B1.

132. Ann H. Spiotto & James E. Spiotto, *The Ultimate Downside of Outsourcing: Bankruptcy of the Service Provider*, 11 AM. BANKR. INST. L. REV. 47, 48 (2003). *See also* James B. Quinn & Frederick G. Hilmer, *Strategic Outsourcing*, 1 MCKINSEY Q. 48, 69 (1995).

133. *See* ebs, Offshore Outsourcing: Definition, Benefits, and Concerns, http://www.ebstrategy.com/outsourcing/basics/definition.htm (last visited Apr. 22, 2006) (estimating that offshore outsourcing could save a company as much as fifty percent in costs). *But see* Thomas M. Stockwell, *Are Outsourcing Cost-savings Estimates Misleading?*, MC PRESS ONLINE, Jan. 2004, http://www.mcpressonline.com/mc?printarticle@47.6wlQcZ2IQHj.0@.6ae8fdef (estimating that cost savings from outsourcing more likely range from 15%–20%). It is also important to note that debt-buying companies are under tremendous pressure from stockholders and clients to return the highest

cost of recovery using Indian labor, for example, is almost forty percent lower than using American labor.[134] Furthermore, in India, companies have access to higher-educated English- and Spanish-speaking labor pools, and the turnover rate is significantly lower than in the United States.[135] Additionally, Indian firms offer twenty-four hour service, which can improve debt-recovery time drastically.[136] Under these conditions, debt-buying companies are able to hire more agents for the same costs, recover more debts, and maximize economies of scale. Companies can then attempt to collect even smaller accounts, while maintaining high profits.[137]

a. Problems with Outsourcing Early Debt Collection

The outsourcing of early debt-collection poses two main problems.[138] First, sending extensive databases of debtor information to other countries compromises debtors' privacy rights.[139] Overseas workers have access to the names, addresses, social security numbers, and, in some cases, complete credit histories of the American consumers included in the databases.[140] This is problematic because many overseas countries, such as India, do not have laws protecting a debtor's personal information as strictly as FDCPA does.[141] Consequently, when early collection is outsourced to countries without strict privacy laws, debt-buying companies are able to bypass the privacy protection FDCPA imposes.[142] This outsourcing loophole leaves the U.S. government powerless to remedy

profits and greatest savings. Thus, debt-buying companies believe outsourcing will continue to expand in their industry in an effort to keep clients and stockholders satisfied. *See* Lazarus, *supra* note 131.

134. Solomon, *supra* note 129.

135. ebs, *supra* note 133 (stating that call centers in the United States have a turnover rate of 40%–70% annually, while Indian call centers only have a 5% turnover rate).

136. *Debt Collection Outsourced to India*, ECON. TIMES, Dec. 7, 2004, *available at* http://economictimes.indiatimes.com/articleshow/949178.cms.

137. *See* Solomon, *supra* note 129 (finding that lower costs allow the company MphasiS BFL to collect debts that U.S. firms previously did not expect to collect).

138. *See generally* KLEPPER & JONES, *supra* note 128, at 55–70 (providing a thorough overview of outsourcing risks); John Funk, David Sloan & Scott Zaret, *Understanding Law: Beware the Dangers of Outsourcing*, OPTIMIZE MAG., Apr. 1, 2003, at 68 (discussing the various operational risks a company must consider when deciding whether to outsource its labor services).

139. Lazarus, *supra* note 131 (quoting California State Senator Liz Figueroa as stating, "When information is outsourced, the risk is higher that our identities are in danger.").

140. *Id.*

141. *See supra* text accompanying notes 60–64 (discussing FDCPA provisions that are intended to protect the debtor's right to privacy).

142. 15 U.S.C. § 1692(d)–(e) (2000) (finding that abusive debt-collection practices contribute to invasions of individual privacy, and stating that FDCPA's purpose is to make such abuses illegal).

abusive situations[143] and worries thousands of debtors, who believe worldwide access to personal information may lead to more corruption and abuse.[144] As one outsourcing critic stated, "Of the many good reasons not to go into debt, invasion of privacy probably would not figure highly in most people's minds. It should now."[145]

The second main problem posed by outsourcing early collection services to foreign operators is the debt-buying companies' loss of control over the third-party operators. Critics and proponents agree that it is very difficult for a company to monitor a separate and independent third party that operates across the world.[146] Thus, many debt-buying companies are contracting with foreign operators on the blind faith that they will act appropriately—a flawed assumption. Consumer advocates claim that foreign debt collectors are violating many laws, including FDCPA.[147] Moreover, experts believe that abusive practices are likely to increase as the wage gap between overseas and U.S. labor narrows, because this causes foreign operators to search for new ways to increase profits and retain outsourcing jobs.[148] The tightening of the industry may push these collectors toward a "more focused and persistent pursuit of even smaller accounts of money," in a desperate attempt to recover debt.[149]

American debt-buying company executives are slow to acknowledge that outsourcing may lead to invasion of debtors' privacy or other harassment of debtors. In fact, a recent study found that many executives failed even to consider the fate of customer data once it enters an offshore environment and the realistic possibility that unregulated call centers may

143. Lazarus, *supra* note 131 (citing one example in which the U.S. government was completely powerless to punish a Pakistani operator who threatened to release medical information if a hospital did not follow her requests).

144. *See* Roberts, *supra* note 5 (quoting one consumer as saying, "I feel like I'm not protected enough [by existing laws] that a company like this can get my personal information and use it to ruin my peace of mind." (alteration in original)).

145. Lazarus, *supra* note 131.

146. *Id.*

147. *See id.* It is important to note, however, that these consumer advocacy groups were unable to pinpoint specific examples of abuse from foreign collectors, as opposed to domestic agents.

148. One commentator notes,

> Pay scales are rising fast in India and China for college-educated, English speaking professionals. . . . Honest corporate managers will tell you that to make offshoring work, you need at least a 300% to 400% wage spread between American . . . call center employees and their Indian . . . counterparts. . . . The era of cheap educated labor overseas may be nearing an end, and with it, the fat margins that made offshoring so profitable as a business.

Bruce Nussbaum, *Is Outsourcing Becoming Outmoded?*, BUS. WK., Sept. 20, 2004, *available at* http://www.businessweek.com/bwdaily/dnflash/sep2004/nf20040920_0654.htm?campaign_id=search.

149. *See Debt Collection Outsourced to India*, *supra* note 136.

exploit or sell the information.[150] Executives who understand the troubling aspects of outsourcing argue that data can just as easily be compromised in American call centers.[151] While this may be true, FDCPA gives debtors recourse against collectors who disclose personal information or commit other abuses in the United States, but debtors may not have any recourse against foreign collectors.[152] FDCPA only allows a debtor to file an action against the collector's company.[153] Thus, an American company can probably escape liability by outsourcing its collections to an independently owned foreign operator.[154] Additionally, the jurisdictional problems and exorbitant costs will likely dissuade most unsophisticated debtors from suing foreign companies.[155] Consequently, outsourcing early debt collections to foreign operators enables the same abuse and harassment that FDCPA was designed to prevent.

b. A Possible Solution to Outsourcing Problems

The growing trend of outsourcing early collection services to foreign operators has sparked strong opposition but few viable solutions. Some commentators have proposed a training program designed to educate foreign operations about FDCPA. But this solution does not adequately address the problem, because most overseas collectors are already knowledgeable about U.S. collection laws,[156] and collector education does nothing to provide debtors with recourse against abuse by overseas operators.

Some states have attempted to address outsourcing by passing state laws in areas where FDCPA is inadequate.[157] Some state legislatures have proposed laws that seek to curb the processing of sensitive information

150. *See* Press Release, Detica Info. Intelligence, Companies Reject Notion That Customer Insight Can Be Outsourced (Nov. 5, 2003), *available at* http://www.detica.com/indexed/Opinion_CustomerInsightOutsourceRejected.htm (discussing a study done by an information technology consulting firm that found that respondents failed to view customer insight (the management and exploitation of customer data) as a business capability that can eventually be sold).

151. Lazarus, *supra* note 131.

152. Solomon, *supra* note 129 (acknowledging that experts are unable to see how Indian companies can be held accountable under U.S. law).

153. 15 U.S.C. § 1692k (2000).

154. *See* Solomon, *supra* note 129.

155. *See* Note, *supra* note 125, at 1663–64. *See also infra* text accompanying notes 207–14.

156. *See* Solomon, *supra* note 129.

157. FDCPA does not "annul, alter, or affect, or exempt" any state laws dealing with abusive and coercive collection practices or exempt any person from complying with the state laws, except to the extent the laws are inconsistent with FDCPA. 15 U.S.C. § 1692n (2000). Further, a state law is not inconsistent with FDCPA if such law affords the consumer greater protection than FDCPA provides. *Id.* § 1692o.

overseas.[158] These proposals may either completely prevent U.S. companies from outsourcing any services that require sensitive information, or limit the transactions to operators in countries with reciprocal privacy laws. Other states have amended their fair debt-collection laws by extending the definition of "debt collector" to include foreign agents.[159] While these statutes make the unfair abuses unlawful, they still fail to correct the current FDCPA flaw—weak jurisdiction over foreign operators. Moreover, state remedies may actually increase problems and misunderstandings from overseas operators, who will be forced to comply with many different state statutes rather than one federal statute regulating collection behavior.

To date, the federal government has failed to punish American companies for overseas misconduct. Instead, the federal government merely advises that while American companies must "oversee and manage third-party relationships and . . . adopt risk management processes," companies may determine how best to manage those relationships.[160] American debt-buying companies are not adequately overseeing overseas contractors. If American companies and overseas operators are to be held accountable for inappropriate collection practices, Congress must create uniform legislation that addresses outsourcing.

Many proposals have been suggested for Congress to remedy overseas outsourcing problems, but none of them appears adequate. One plan prohibits the overseas outsourcing of any sensitive information. But this option is likely too strict, as it would greatly reduce outsourcing opportunities and increase labor costs for many American companies. Under another plan, Congress could amend FDCPA to include foreign operators as liable parties. But debtors are unlikely to bring suit in a foreign jurisdiction to recover a small amount of money.

This Note proposes a simpler and more effective solution that would protect the debtor's right to privacy, prevent abuse from foreign collectors, and, most importantly, provide the debtor with jurisdiction to sue for overseas operators' unlawful practices. Congress should prohibit debt-buying companies from selling complete copies of their databases to overseas operators, which is their current practice. Instead, a new law should require American debt-collection companies to retain ownership

158. Solomon, *supra* note 129.

159. *See id.*

160. Spiotto & Spiotto, *supra* note 132, at 54 (citing a bulletin on third-party relationships issued by the Office of the Comptroller of the Currency, a bureau of the U.S. Department of the Treasury).

and complete control over their databases. Rather than selling their databases, American companies wishing to take advantage of outsourcing opportunities would lease the information to foreign operators.

This solution would result in foreign collectors acting as subcontractors and would force American companies to bear liability for any unlawful actions taken by overseas operators. Debtors would thus have adequate recourse against American companies and could sue them under FDCPA for any invasion of privacy or illegal harassment resulting from outsourcing. To ensure that American companies are unable to sidestep their responsibility for abuse committed by overseas operators, they should be strictly liable, through fines, for all misconduct connected with the distribution and use of private information. Given that this law could primarily be enforced through civil action by the debtors, thus requiring little federal supervision, it would be easy and cost-effective to implement.

This proposed law would likely have many positive effects on the outsourcing practices in the debt-collection industry. Most importantly, the ownership requirement would provide debtors with an available party to sue in the United States, in the event of an unlawful invasion of privacy or other abuse. This would force American companies to be more cautious when outsourcing information and ideally would cause them to choose the most reputable foreign operators. Moreover, this law would not unfairly disadvantage American companies, who would likely include indemnity clauses in the lease agreements to limit their liability and ensure reimbursement for liability stemming from the foreign operators' actions.

2. Hoping to Be Picked Last: Using New Technology to Target Vulnerable Debtors for Collection

When debt-buying companies realized that they needed to increase the amount of debt they collected, they implemented new technology intended to target individuals most likely to pay. When acquiring new accounts, the companies gather each debtor's information,[161] and during collection, they create more complete profiles that detail the debtor's payment history, credit history, current employment, and income. The employees then enter this detailed information into sophisticated databases, which analyze the information to signal which debtors are most likely to pay.[162]

161. With each new delinquent account, the debt-buying companies hope to be given the person's date of birth, phone number, social security number, and three most recent addresses. Roberts, *supra* note 5.

162. *See id.*

a. The Problem of Targeting Based on Sex, Age, and Income

Debt-buying companies have many ways of exploiting their extensive databases to increase debt recovery and improve the return on their debt investments. Commonly, the databases flag certain delinquent accounts for collection based on the sex of the debtor. Veterans in the debt-buying industry admit that women are more likely than men to repay debts without legal action when all other aspects of the account are equal.[163] Moreover, women generally accrue less savings and more expenses than men and are consequently more worried about losing assets when a collection agent comes calling.[164] Accordingly, some debt-collection companies' computer systems automatically flag accounts on which a woman is the primary debtor,[165] signaling to the collectors that they should pursue those accounts more aggressively, betting that the women will quickly concede to the debt collector's demands.[166] Yet debt-buying industry officials strongly deny that they target women. Asset Acceptance's representatives claim that they are unaware of the statistics that women repay more readily than men.[167] But the debt-buying industry's ignorance of such targeting seems suspicious when their managers anonymously admit to targeting women.[168]

Debt-collection companies also target elderly individuals for specialized collection attention.[169] Collectors target older debtors based on assumptions that these debtors are easily confused about whether the debt existed, that they fear a collector garnishing their social security income, and that they are hesitant to engage in legal skirmishes.[170] As one callous collector remarked,

> When you're dealing with older people, especially older people who have a deceased spouse, their memory doesn't work too well with what they had in the past. They get something in the mail and call about it . . . . They hear someone saying their social security benefits are being looked into, their home is being looked into . . . [and] when you've got all this thrown at you and there's someone talking sly on the phone, you're forced to pay.[171]

163. Hwang, *supra* note 1.
164. Marilyn Gardner, *Bankruptcy Reform Hits Women Hard*, CHRISTIAN SCI. MONITOR, Apr. 4, 2005, *available at* http://www.csmonitor.com/2005/0404/p13s01-wmgn.html.
165. Hwang, *supra* note 1 (referring to the admission of a former employee of Asset Acceptance that female debtors are targeted and explaining how it is done).
166. *Id.*
167. *Id.*
168. *Id.*
169. *See* Roberts, *supra* note 5.
170. *Id.*
171. *Id.*

Debt-buying companies also target individuals based on their income and financial history.[172] The companies use credit scoring and other measures based on a debtor's credit history and current income to determine which debtors are most likely to pay.[173] One would instinctively assume that debt collectors target individuals with the highest incomes and account balances, but that is not the case. Instead, debt-buying companies use a debtor's income to predict whether the debtor is likely to create a legal skirmish. When collecting a debt, the company hopes for the quickest and easiest recovery, so as to create the highest return on the debt investment. Thus, agents want to limit the possibility of the debtor hiring a lawyer.[174] Studies have shown that poorer and less-sophisticated individuals are more likely to be intimidated by legal proceedings and are less likely to hire attorneys,[175] while wealthier individuals are more adept at using the legal system to contest lawsuits and advance their own interests.[176] As a result, the databases flag relatively poor and unsophisticated debtors,[177] including "those who don't understand the

172. Liz Pulliam Weston, *Zombie Debt Collectors Dig Up Your Old Mistakes*, MSN MONEY, http://moneycentral.msn.com/content/Savinganddebt/Managedebt/P74812.asp (last visited Apr. 14, 2006).

173. *Id.* While many people would argue that income is an important consideration, given that it directly correlates with a debtor's likelihood of defaulting in the first place, it is important to remember that these accounts are relatively small and generally have little relationship to the debtor's overall financial status at the time of collection. *See supra* note 1. *See also* S. REP. NO. 95-382, at 3 (1977) (discussing studies showing that "only four percent of all defaulting debtors fit the description of 'deadbeat'").

174. *See infra* Part IV.B.3. Not only does a court battle slow down a collection, but also, once the account is challenged, an agent is unlikely to recover any money. Consequently, legal battles are the last resort in a debt collection.

175. Mauro Cappelletti & Bryant Garth, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective*, 27 BUFFALO L. REV. 181, 186–96 (1978) (stating that the poor, in particular, face obstacles created by the legal system).

176. *Id.* at 195.

177. Hwang, *supra* note 1. It is important to note, however, that indigent people are not the main source of debt in the United States. One would easily believe that the least wealthy people are in the most debt, but this is not the reality of the debt situation. Citizens in lower socioeconomic classes tend to live day-to-day, paying expenses in cash and money order. The indigent are much less likely to receive credit, and without credit, they are unable to build significant debt. In the event of catastrophic expenses, poorer people do not have as many assets for creditors to seize, and bankruptcy is not an attractive option for the creditors. Instead, middle-class citizens are the most common bankruptcy filers in the United States. *See* Christine Dugas, *Middle Class Barely Treads Water*, USA TODAY, Sept. 15, 2003, *available at* http://www.usatoday.com/money/perfi/general/2003-09-14-middle-cover_x.htm (stating that ninety percent of the record 1.6 million bankruptcy filers in 2003 were middle class). Middle-class bankruptcies are generally caused by a catastrophic event, such as illness or death, which brings excessive costs. David U. Himmelstein et al., *Illness and Injury as Contributors to Bankruptcy*, HEALTH AFFAIRS, Feb. 2, 2005, *available at* http://content.healthaffairs.org/cgi/content/full/hlthaff.w5.63/DC1. *See also* Collections Information, *supra* note 98 (stating that the healthcare industry is the

advantages of paying their bills . . . and those who simply do not understand the complexities of buying on credit."[178]

Industry officials deny that they target unsophisticated debtors.[179] They simply state that debtors come from all walks of life[180] and that "if a person has the resources to pay their past obligations, [collectors] pursue the matter to the fullest extent."[181] Rather than denying that they target individuals based on income, debt-collection companies could argue that it is not an unfair method of collection. Flagging individuals based on likelihood of paying is analogous to picking a target audience when creating an advertising campaign. In both cases, the companies target groups most likely to provide the highest returns on their investment. Additionally, debt collection is an income-based industry, so it makes sense for companies to skew their practices in accordance with debtors' income, a tangible indication of whether the debtors can repay their debts.

Targeting women and elderly individuals, on the other hand, is more difficult for the debt-buying industry to justify. Given that all delinquent debtors are equally culpable, targeting individuals based on an immutable trait is unfair. Moreover, although FDCPA does not expressly prohibit sex or age discrimination, the Association of Credit and Collection Professionals ("ACA") Code of Ethics and Professional Responsibility states that debt-buying companies are engaging in professional misconduct if they harass a person on the basis of various inherent traits, including sex and age, during the practice of debt collection.[182] Unfortunately, the ACA Code of Ethics is relatively ineffective at preventing discrimination.

largest source of collection agency business in the United States). Middle-class citizens usually must still pay mortgages, car payments, and their other bills when these additional expenses are incurred. Consequently, their debts become unmanageable and trouble occurs. For these reasons, it is strange that the debt-collection industry targets poor people, who make up a very low percentage of collection companies' total accounts. For a detailed discussion on the reasons for the rise of middle-class bankruptcy, see Elizabeth Warren & Amelia Warren Tyagi, *What's Hurting the Middle Class: The Myth of Overspending Obscures the Real Problem*, BOSTON REV., Sept.–Oct. 2005, *available at* http://bostonreview.net/ BR30.5/warrentyagi.html.

178. Separating Fact from Fiction, *supra* note 32.

179. Hwang, *supra* note 1.

180. Defining the Basics, *supra* note 27.

181. Hwang, *supra* note 1.

182. ACA INT'L, CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITY R. 2.05 (2004), *available at* http://www.acainternational.org/images/2344/CodeofEthics.pdf. The ACA Code of Ethics and Professional Responsibility was created by ACA International, an association of credit and collection professionals that sets uniform industry standards of acceptable practices and behaviors. Most of the major players in the industry are members of this group and agree to have their behavior regulated by ACA. Members are subject to substantial fines when found to be in violation of the Code. ACA International's home page describes the association in detail. *See* ACA International Homepage, http://www.acainternational.org (last visited Apr. 22, 2006).

b. A Possible Solution to Unfair Discrimination

One simple recommendation to combat this discrimination would urge Congress to incorporate the ACA Code of Ethics provision into FDCPA and prohibit any discrimination based on inherent characteristics, such as age and sex, in connection with collection practices. But the discrimination provision alone would likely prove useless. FDCPA allows consumers to bring actions against debt-buying companies,[183] but debtors are unlikely to sue for discrimination violations, because consumers have no way of knowing that they are victims of a database targeting scheme when they are contacted by collectors. Moreover, debtors are unlikely to pursue an intuitive feeling that they were targeted, because they run the risk of having to pay attorney's fees if their suits are deemed frivolous. Accordingly, while prohibiting discriminatory targeting is a good starting point, this measure alone is unlikely to remedy the discrimination.

A more effective, but also more costly recommendation would urge Congress to enact a new law preventing discrimination against debtors in connection with collection practices. The law would have two primary enforcement methods. First, it would allow debtors to file complaints with the FTC if they felt that collectors unfairly targeted them based on sex or age. Second, the law would require debt-buying companies to disclose raw statistics regarding the debtors they contact. This provision would need to be in compliance with the Fair Credit Reporting Act ("FCRA"), a federal statute regulating the fair and reasonable dissemination of consumer credit information.[184]

183. 15 U.S.C. § 1692k (2000).

184. 15 U.S.C. § 1681 (2000). Congress adopted FCRA in 1970 to require consumer reporting agencies to follow reasonable and established procedures when preparing and releasing credit reports, in order to ensure accuracy and protect debtor privacy. *See id.* § 1681(b). This reporting requirement intends to ensure that unfair credit reporting methods do not undermine public confidence in the banking and collection industries. *Id.* § 1681(a). In sum:

> If a consumer contacts the reporting agency, the agency must disclose to the consumer the nature and substance of the information in his file, reinvestigate any information the consumer finds false or incomplete, and, in the event of a dispute after reinvestigation, allow a statement to be placed in the file that will be included in all subsequent reports.

Bonnie G. Camden, Comment, *Fair Credit Reporting Act: What You Don't Know May Hurt You*, 57 U. CIN. L. REV. 267, 269 (1988). *See also* 15 U.S.C. §§ 1681g–i (2000). Moreover, to protect a consumer's privacy, the statute limits a company's ability to disseminate consumer information to specific enumerated instances and requires notice to be given to the consumer. Camden, *supra*, at 270. FCRA contains three types of enforcement mechanisms for any violation of a consumer's privacy. First, any person who knowingly obtains credit information under false pretenses or makes an unauthorized disclosure can be subject to criminal sanctions. 15 U.S.C. § 1681r (2000). Second, the FTC has authority to perform compliance checks on credit organizations and sanction any violations of FCRA with fines. 15 U.S.C. § 1681s(a) (2000). Finally, a consumer may bring a civil action for defamation or

Forcing the debt-buying companies to disclose relevant statistical information about the debtors they contact, such as sex, age, income, and race, would expose discriminatory patterns. Thus, if FTC officials noticed that reports showed a discriminatory trend, or if numerous complaints were filed about the same company, the FTC could investigate further and assert an action against the offending company, if necessary. If a violation were found, monetary penalties would be assessed.

This proposal would benefit both consumers and the debt-buying industry. The FTC complaint system would bypass the judicial system for consumer complaints, while still providing recourse to debtors who felt unfairly treated. Only the FTC, not consumers themselves, would be able to file suit against debt-collection companies for discrimination. Consequently, the debt-buying companies would not become bogged down in groundless discrimination suits brought by spiteful consumers. Moreover, requiring companies to disclose collection statistics would expose and discourage discriminatory practices, and protect consumers from abuse, while nondiscriminatory statistics would help companies prove that complaints against them were unfounded.

While implementing this program would be somewhat costly,[185] the benefits to consumers and the debt-collection industry, as well as the added judicial efficiency, would likely justify the costs. Furthermore, while it is impossible to prevent discrimination entirely, in part because unscrupulous companies could manipulate their data, added transparency would almost certainly improve the system. Additionally, the mere threat of FTC action would likely force the debt-buying industry to reconsider its unfair targeting practices.

3. Legal-ease: Exploiting Small-claims Courts

One of the most problematic new strategies debt-buying companies are using to increase debt collections involves taking advantage of loopholes in the legal system to obtain unfair judgments against debtors. Small-claims courts have less onerous pleading requirements, which the collection lawyers exploit by filing complaints without sufficient debt

invasion of privacy against a consumer reporting agency in the event that the agency furnished information with malice or negligently failed to comply with FCRA. 15 U.S.C. § 1681h (2000).

185. The FTC would need employees to process the many complaints consumers would be likely to file each year. Employees would also be needed to analyze collection companies' statistical data. If a discriminatory trend were to appear, the FTC would have to invest resources in investigating the problem and possibly even taking legal action.

information.[186] When claims are uncontested, lawyers can obtain quick judgments against debtors, even when their claims do not have legal merit.[187] Collection lawyers are using small-claims courts to obtain unfair judgments in situations in which they would otherwise be precluded from relief.[188]

a. The Rising Use of Courts in the Debt-buying Industry

The ideal debt collection would be quick and easy—just one phone call resulting in the debtor's immediate repayment. But this rarely occurs in the debt-buying industry. Typically, before the debt-buying company even acquires the account, two or three agents have already attempted to recover the debt.[189] Consequently, in response to increased competition and rising portfolio prices, debt-buying companies are increasingly turning to the judicial system to facilitate debt recovery. As soon as a collection agent realizes that no agreement with the debtor will be reached, the agent generally turns the debt over to a team of lawyers who commence legal action.[190]

Most industry executives still claim that legal remedies are the last resort in a collection proceeding, but ample evidence contradicts their assertions.[191] Statistics show that debt-buying companies are using legal actions more often than in previous years.[192] In fact, one company admits that more than twenty-nine percent of one quarter's revenues were generated by legal collections, up from twenty-five percent the year before.[193] Moreover, some debt-buying companies have actually molded their business practices to support a preference for judicial proceedings.[194] Asset Acceptance, one of the most successful debt-buying and recovery

186. Suzanne E. Elwell & Christopher D. Carlson, *The Iowa Small Claims Court: An Empirical Analysis*, 75 IOWA L. REV. 433, 434 (1990).

187. Hwang, *supra* note 1.

188. *Id.*

189. *See* Eric Pope, *Thriving Debt Buyer Takes Business Public*, DETROIT NEWS, Mar. 11, 2004, (noting that a bank may have three different collection agencies try to collect an unpaid credit card bill before finally giving up and selling the debt to Asset Acceptance or another debt-buying company).

190. Solomon, *supra* note 129. When companies outsourced their collections to third-party collection agencies, the agents transferred the debts back to the creditors who commenced the lawsuits. Now that debt-buying companies own the debts, they can immediately commence legal actions when desired.

191. *See* Hwang, *supra* note 1 (quoting one executive who claims legal remedies are not the company's primary objective).

192. *See id.*

193. *Id.*

194. For example, the managing partner of one law firm that collects purchased debt admits that these lawyers are "bottom feeders." He explains that the firm only buys debt for which a lawsuit has not yet been filed so that his clients can be the first to sue the debtors. *See* Adler, *supra* note 88.

companies, prides itself on creating one of the best legal strategies in the industry. Its chairman, Rufus H. Reitzel, explains his company's rationale: "These debts have already been through an arduous process—they've had the kitchen sink thrown at them—so we need to go beyond our predecessors to be successful."[195] Asset Acceptance is one of several companies that employ an army of in-house lawyers, who earn a percentage of every debt that they collect.[196] In addition to its in-house staff, Asset Acceptance also hires outside lawyers to file thousands of small claims each year.[197] One critic believes that Asset Acceptance's strategy of attacking consumers in small-claims courts has become so prominent that it has affected tens of thousands of people around the country.[198]

In further support of the claim that debt-buying industries have begun using the legal system more frequently in recent years, former employees have begun to speak out about Asset Acceptance's practice of requiring agents to turn accounts over to lawyers, even when the debt could be collected by other means. Companies impose demanding internal quotas for debt collection that cannot be met unless agents refer many accounts to in-house lawyers, who use more aggressive tactics to collect debt and thus recover more money than agents can.[199] Asset Acceptance and other industry players know that consumers are more likely to pay their debts if threatened with legal action, so they actively exploit this perceived vulnerability.[200]

b. Small-claims Courts Provide Unfair Advantages to Collectors

Debt-buying companies have begun to use small-claims courts as a means to get a competitive edge in the collection industry for two main reasons. First, the minimal procedural formalities, relaxed rules of evidence, and less onerous pleading requirements of small-claims courts offer collection lawyers a swift sword of judgment against debtors and give

195. *Id.*

196. Debt-buying companies are also more likely to employ lawyers because they may use more aggressive collection methods than general agents. A lawyer may legally threaten lawsuits, obtain a lien on properties, or take other aggressive steps. *See id.* On the other hand, general agents may not threaten lawsuits, because they are unable to follow through on their threats without a law degree, and FDCPA outlaws making threats that the agent cannot legally act on. *See* Freyermuth v. Credit Bureau Servs., Inc., 248 F.3d 767 (8th Cir. 2001).

197. Hwang, *supra* note 1.

198. *Id.*

199. *Id.* It is important to note that Asset Acceptance denies these allegations and claims that its internal quotas are only intended to prevent a debt collector from inefficiently pursuing an account for too long. *Id.*

200. *See* Crazy Bull v. G.C. Kessler & Assocs., Ltd., No. 78-3034 (D.S.D. Dec. 19, 1978), *in* 12 CLEARINGHOUSE REV. 495, 495, 832 (1978); Schulman, *supra* note 28.

lawyers leeway to file cases that would not survive in general civil court.[201] Small-claims courts were practically designed for small-debt-collection cases, as they were created for the easy, quick, and cheap adjudication of civil disputes involving small amounts of money.[202] Given that small-claims judges are presented with "dozens of cases a day—far more than conventional judges,"[203] some critics think that small-claims court judges are less likely than civil court judges to carefully inspect each suit's merits.[204] Despite the relaxed requirements in small-claims courts, collection lawyers are able to access the full array of remedies offered in higher courts, but for much less cost.[205] Thus, the favorable procedural aspects of small-claims courts encourage debt-buying companies to use small-claims courts whenever possible to obtain quick and easy judgments against debtors.[206]

Second, history and empirical studies show that debt-buying companies gain a tremendous advantage over individual debtors when they use small-claims courts during collection proceedings. Collection lawyers file thousands of suits each year and are intimately familiar with small-claims courts.[207] Most critics agree that repeat players, like the debt-buying companies, have the upper hand over first-time users of the legal system,[208]

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201. Elwell & Carlson, *supra* note 186, at 434.

202. *See* Roscoe Pound, *The Administration of Justice in the Modern City*, 26 HARV. L. REV. 302, 315 (1913).

203. *See* Hwang, *supra* note 1.

204. A 1983 U.S. Department of Justice report found that many judges do not savor small-claims duty and view the work as stressful, trivial, and tiresome. *See* Elwell & Carlson, *supra* note 186, at 447 n.91 (citing WILLIAM DEJONG, NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, THE USE OF MEDIATION AND ARBITRATION IN SMALL CLAIMS DISPUTES 2 (1983)). *But see* Roodhouse, *Small Claims Court—What Should It Provide and How Well Does It Do So?*, 51 CAL. ST. B.J. 127, 166 n.22 (1976) (finding that judges are not actually disposed toward business plaintiffs and may sometimes convey a level of contempt for business plaintiffs, as compared to individuals).

205. Hwang, *supra* note 1. In debt-collection cases, the judgments include the full amount of debt, plus the highest interest rate legally allowed and attorney's fees. Interestingly, these judgments can amount to over 300% of the original debt. For example, one woman defaulted on $1500. Asset Acceptance obtained a judgment for over $7000. Another woman defaulted on $3000 and Asset Acceptance was awarded a judgment of $9500, including legal fees. *Id.*

206. It is important to note that some states do not allow attorneys to argue in small-claims court, in which case debt-buying companies are forced to file suits in municipal courts. *See infra* note 231 (discussing the state laws regulating attorney behavior in small-claims court).

207. Hwang, *supra* note 1.

208. Note, *supra* note 125, at 1662 (noting that frequent use of a small-claims court leads to familiarity with relevant law and small-claims procedures, thus giving frequent users advantage over occasional or first-time users). *See also* Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95, 97–104 (1974) (noting that "repeat players" have certain advantages that allow them to "play the litigation game" differently and with greater chance of success than "one-shotters"); Leslie G. Kosmin, *The Small Claims Court*

and consequently, have a greater chance of success.[209] Lawsuits are foreign and intimidating for inexperienced debtors.[210] Defendants often default, rather than appear in court, because "they fail to understand the complaint or because they concede defeat, unaware of possible defenses."[211] As discussed above, debt-buying companies intentionally target poor and unsophisticated debtors for the very reason that they are unlikely to understand the legal process or know what their rights are.[212] Other debtors fail to contest suits because they believe that small-claims courts are simply not worth the effort.[213] In short, when filing suits in small-claims courts, debt-collection lawyers hope debtors will fail to contest, allowing the companies easy judgments, unsupported by adequate documentation. The judgments then give the collectors leverage in work-out agreements.[214]

The typical outcome when a debtor does contest a suit filed in small-claims court demonstrates that debt-collection companies are abusing the legal system. Frequently, the company will simply drop the suit to avoid the expense of engaging in a skirmish for a relatively small debt.[215] Most commonly, however, when a debtor contests a suit, the judge ends up dismissing the case for lack of evidence.[216] One former debt-collection attorney admits that the companies usually do not have the documentation required to support their suits.[217] An attorney who has faced Asset Acceptance seven times in recent years says that the company settled every time and has never been able to prove its cases.[218] The company dropped a

Dilemma, 13 HOUS. L. REV. 934, 942 (1976) (finding that inexperienced parties often have "an incomplete or distorted knowledge of their legal rights and obligations").

209. Empirical studies show that in small-claims courts where corporate attorneys are permitted, the attorneys tend to dominate individual defendants. *See* Barbara Yngvesson & Patricia Hennessey, *Small Claims, Complex Disputes: A Review of Small Claims Literature*, 9 LAW & SOC'Y REV. 219, 236 (1975). *See also* Elwell & Carlson, *supra* note 186, at 440 n.54 (citing numerous studies that show that creditor-plaintiffs win most often in suits against individual debtors).

210. *See* Note, *supra* note 125, at 1663–64 (noting that the courtroom atmosphere is intimidating to inexperienced litigants).

211. *See* Elwell & Carlson, *supra* note 186, at 443.

212. *See supra* text accompanying notes 172–78.

213. *See* Elwell & Carlson, *supra* note 186, at 445 n.74.

214. Note that in most of these cases, the full debt is never collected. Rather, the debt collectors use the judgment as leverage during settlement negotiations with debtors. Even after obtaining a judgment, Asset Acceptance is still likely to settle the debt for less than the judgment because the debtor will be unable to pay the entire inflated debt. *See* Hwang, *supra* note 1.

215. *Id.*

216. *See* Cook v. Hamrick, 278 F. Supp. 2d 1202, 1204 (D. Colo. 2003) (holding that if no debt exists within the meaning of FDCPA, then the action should be dismissed for lack of subject matter jurisdiction).

217. Hwang, *supra* note 1.

218. *Id.*

suit against another man after he questioned the accuracy of the amount of his debt.[219] A third victim appealed a judgment in favor of Asset Acceptance and won when the court found that the company violated FDCPA and the corresponding Florida Consumer Collection Practices Act[220] by failing to adequately allege the required information in the pleadings.[221]

Debt-collection industry leaders firmly deny that they have engaged in any misconduct and claim that all of their suits are backed by the necessary documentation.[222] But examples of frivolous lawsuits seem to be endless.[223] Lending further support to the claim that most debt-recovery suits are nonmeritorious, Asset Acceptance admits that when it buys a pool of debt, it only receives a "bare-bones list of debtors' names, their social security numbers, the amounts creditors were owed and the date of last activity."[224] Moreover, the information on many accounts is inaccurate or extremely outdated.[225] Additional information is simply not available because the debt has changed hands many times and obtaining documentation would require expensive research, which is not a cost-effective option for collecting small consumer debts.[226] Debtors are quickly learning that they can balance the scales of justice by simply contesting the suits.

c. Evening the Playing Field in Small-claims Courts

FDCPA does not provide recourse for debtors who fall victim to an unfair judgment entered against them based on insufficient evidence. In some circumstances, a debtor may be able to sue a debt-collection company under a state's unfair business practices act[227] or the Federal Fair Credit

219. *Id.*

220. FLA. STAT. § 559.72 (West 2002).

221. Townsend v. Asset Acceptance Corp., No. 03-1921CI-88A (Fla. Cir. Ct. Aug. 6, 2004).

222. *See* Hwang, *supra* note 1.

223. *See* Rip-off Report.com, *supra* note 1 (reviewing various consumer complaints about Asset Acceptance encounters and the company's failure to provide adequate documentation during suits). *See also* Hwang, *supra* note 1 (citing various examples of the company filing flawed lawsuits, and claiming that Asset Acceptance concedes that "it is often hard to prove old debts and that consumers are challenging its documentation more often"); Scambusters.org, *supra* note 3.

224. Rip-off Report.com, *supra* note 1.

225. *See id.* (discussing one man's complaint that a debt-buying company was unable to produce any paperwork validating its allegation that he owed a debt to a health club he had never been in).

226. *See* Hwang, *supra* note 1.

227. *See, e.g.*, California Unfair Business Practices Act, CAL. BUS. & PROF. CODE § 17200 (West 1997).

Reporting Act.[228] But these situations generally require the debtor to prove that the lawyer intentionally altered information to obtain a judgment.[229] Consequently, Congress should amend FDCPA to prevent the continued abuse of small-claims court so that debt-collection companies cannot continue to profit from gambling that debtors will not contest illegitimate suits.

Consumer advocates recommend amending FDCPA to require each debt-collection lawyer, upon filing suit, to furnish debtors with information booklets explaining small-claims court procedures and outlining debtors' rights.[230] While these information packets might help familiarize unsophisticated debtors with the court system and increase the chances that a debtor would contest the suit, this solution would likely fail to curb the debt-buying industry's exploitation of the courts.

The states present another possible solution to the inequities perpetrated when debt-buying companies use small-claims courts to collect debts. Led by a charge from consumer advocates, many states force collection companies to file their suits in conventional courts. They do this either by prohibiting attorneys from practicing in small-claims courts or by limiting attorneys' participation in small-claims proceedings.[231] States justify these statutes by acknowledging that small-claims courts were never intended for this kind of abusive litigation by big corporations.[232] Moreover, commentators argue that allowing lawyers to appear in small-

228. 15 U.S.C. § 1681 (2000). For further discussion of FCRA, see *supra* note 184. Given that FCRA is intended to prevent the dissemination of false or misleading credit information, many debtors complaining of inaccurate or incomplete debt details may also have a cause of action under FCRA.

229. A judge is usually reluctant to sanction a credit-reporting agency unless the debtor can prove that the agent willfully altered account information. Debt-buying companies are often collecting very old debts and consequently neither the agent nor the debtor has credible information regarding the initial status of the debt. Further, few documents are likely to exist that can prove that an agent maliciously changed the account information to allow for debt collection in small-claims court. Accordingly, FCRA will rarely provide adequate recourse in small-claims court to a debtor who is complaining of inadequate or inaccurate account information.

230. *See* Elwell & Carlson, *supra* note 186, at 482.

231. *See* ARIZ. REV. STAT. ANN. § 22-512(A) (2002) (stating that an assignee may not bring an action); COLO. REV. STAT. ANN. § 13-6-407(1) (2002) (stating that only a personal representative may bring an action on behalf of the plaintiff); KAN. STAT. ANN. § 61-2703(a)(1) (1983 & Supp. 1987) (stating that an assignee may not bring suit); MO. ANN. STAT. § 482.310(1) (West 2004) (stating that corporations or unincorporated associations must be represented by an employee or officer); N.D. CENT. CODE § 27-08.1-01 (1991); WASH. REV. CODE § 12.40.010 (Supp. 1988) (stating that corporations may only bring suit in small-claims courts through nonattorney representatives).

232. Hwang, *supra* note 1.

claims courts defeats the goals and purposes of having a simplified court system.[233]

While it is fine for states to choose to prohibit lawyers from appearing in small-claims courts, imposing a wholesale federal prohibition of lawyers in small-claims courts, or even a more limited ban disallowing lawyers in small-claims courts only for debt-collection cases, would be far too drastic a measure. It would unduly infringe on the autonomy of states that want to allow lawyers to appear in small-claims courts for suits with small amounts in controversy.

Rather, Congress should implement strict and specific pleading requirements for stating a cause of action to recover debt in small-claims courts. Lawyers should be required to assert detailed information about debtors and debt agreements. Additionally, they should be required to adequately allege the existence and validity of the debt by pleading the chain of ownership, supported with the original debt agreement between the consumer and the creditor. Finally, to ensure that small-claims courts are truly a last resort and are not abused to gain bargaining leverage, lawyers should be required to inform the court of all prior communications with the debtor and any extrajudicial collection efforts. If the collection attorney is unable to satisfy these requirements, the judge should be required to dismiss the suit automatically.

These guidelines would not only result in fewer unsubstantiated claims receiving favorable judgments, but would also affect the entire debt-collection chain. The debt-buying industry would be forced to fill holes in its data by performing costly account research before filing suit. As a result, companies would likely prefer to buy accounts containing more substantial debtor information. This preference would cause the original creditors to maintain better records on each account, or face the possibility of being unable to sell the debt account at the optimal price. Thus, the heightened pleading requirement would actually lead to additional safeguards against abuse throughout the industry.

This proposal balances federal reform and state autonomy. Small-claims courts are designed for suits with small amounts in controversy, so it seems unfair to the state judicial system to implement federal reform that

233. *See* Note, *Small Claims Courts: An Overview and Recommendation*, 9 U. MICH. J.L. REFORM 590, 604 (1976) (arguing that lawyers should not be allowed in small-claims court); Special Project, *Judicial Reform at the Lowest Level: A Model Statute for Small Claims Courts*, 28 VAND. L. REV. 711, 791 (1975) (setting forth a model small-claims statute that prohibits attorneys from taking part in the "filing, prosecution, or defense of litigation" in small-claims court).

forces collection suits into general civil courts. Imposing federal pleading guidelines would allow Congress to respond to abusive litigation without infringing on states' rights to regulate their courts. Additionally, the pleading requirements would not be costly for the states to implement and, in fact, may even result in lowering costs, given that fewer cases would likely be filed and more cases would be dismissed for inadequate information. Finally, this proposed reform would not preempt the more restrictive reforms that some states already have in place or prevent other states from implementing similar ones.

One possible weakness of the proposed federal reform is that it may result in more aggressive extrajudicial collection pursuits and consequently more violations of FDCPA. Nevertheless, heightened pleading requirements would be a step forward, and the gross abuse in this arena illustrates the need for Congress to take such a step.

4. Time's Up: Collecting Debts After the Statute of Limitations Expires

The rapid growth in the debt-buying industry has brought about another abusive practice involving the statute of limitations on debt-collection claims. Before the rise of the debt-buying industry, consumers "who reneged on debts could rest easy" after a few years passed without contact from the collector.[234] The debt-buying industry has thwarted this sense of security, however, by purchasing old debts and pursuing recovery efforts. Consumers who are haunted by fifteen- or twenty-year-old obligations are outraged by the possibility that their old debts will resurface.[235]

a. Problems Arising from Collection of Old Debts

When confronted with old debt-collection efforts, numerous well-informed consumers file complaints against debt-buying companies for FDCPA violations. For example, in *Johnson v. Capital One Bank*, a defendant debt-buying company, NCO, attempted to collect from Shawn Johnson a Beall's Department Store credit card debt that was nearly twenty years old.[236] In another case, a woman admitted to never paying a $300 credit card bill in 1987, but was still shocked when a debt-buying company

234. *See* Weston, *supra* note 172.

235. *See* Lazarus, *supra* note 131 (quoting consumer advocates who complain that they hear from many consumers worried about old debts coming back to life).

236. *See* Johnson v. Capital One Bank, No. SA-00-CA-315-EP, 2000 U.S. Dist. LEXIS 13311, at *1 (W.D. Tex. May 19, 2000).

contacted her in 2004, hoping to collect the seventeen-year-old debt.[237] Outdated debt triggers the most grievances amongst debtors against the debt-collection industry,[238] and these are just two examples of the numerous complaints consumers have filed.[239]

Debtors' frustrations increase when they realize that they do not have recourse against the debt-buying industry for pursuing old debts. FDCPA bars debt collectors from threatening litigation, or actually using litigation, after the statute of limitations for suing to recover the debt has passed.[240] But FDCPA does permit debt collectors to pursue time-barred debts that are still otherwise valid[241] using out-of-court collection methods.[242] Thus, when contacted about old debts, debtors are left without recourse unless the collection agents threaten litigation or actually file suit.[243]

Each state imposes a statute of limitations, typically ranging from three to six years, after which a debtor is no longer legally obligated to pay the debt and can have a judgment dismissed in court.[244] Consequently, when contacted by a collection agency to pay time-barred debts, a debtor can simply hang up the phone and escape liability.[245] Given that most debtors are unaware of their rights in these situations, however, they are still likely to encounter some unfair consequences during the recovery process for old debts. In some states, acknowledgement that a time-barred debt is valid may cause the statute of limitations on legal remedies to restart from that day.[246] Thus, in these circumstances, the collection lawyer may

237. *See* Weston, *supra* note 172.

238. Wiles, *supra* note 2.

239. For more examples of complaints, see Rip-off Report.com, *supra* note 1.

240. *See* 15 U.S.C. § 1692e(2)(A), (10) (2000).

241. *See* Freyermuth v. Credit Bureau Servs., Inc., 248 F.3d 767, 771 (8th Cir. 2001); Shorty v. Capital One Bank, 90 F. Supp. 2d 1330, 1332 (D.N.M. 2000) (concluding that in the absence of an express threat of litigation, the defendant did not violate FDCPA by attempting to collect a debt on which litigation would be time-barred); Beattie v. D.M. Collections, Inc., 754 F. Supp. 383, 393 (D. Del. 1991) (noting that it is an FDCPA violation for a debt collector to threaten a lawsuit if the collector knows or should know that such a suit is time-barred).

242. The courts allow sizable leeway to debt collectors when they are trying to collect older debts. *See* Johnson v. Capital One Bank, No. SA-00-CA-315-EP, 2000 U.S. Dist. LEXIS 13311, at *5 (W.D. Tex. May 19, 2000) (finding that threats of "further collection efforts" when collecting an otherwise time-barred debt did not imply legal actions and thus did not violate FDCPA).

243. If a collector threatens litigation or actually files suit, a debtor can have the suit dismissed by informing the judge that the debt is indeed time-barred. *See* What Are Time Barred Debts?, http://www.bcsalliance.com/y_debt_timebarred.html (last visited Apr. 22, 2006).

244. *See* Debt Problems: Statutes of Limitation on Debt Collections, http://www.bcsalliance.com/y_debt_sol.html (last visited Apr. 22, 2006).

245. Weston, *supra* note 172 (noting that "the smallest [re]payment can revive the statute of limitations in some states").

246. *Id.*

be allowed to pursue previously time-barred debts through litigation. Additionally, acknowledgement or any repayment may cause the debt to reappear on the consumer's credit report, causing even more significant problems.[247] Finally, if the debtor does succumb to a moral obligation to repay old debts, most debt-buying companies will flag them in the system as easy targets and attempt to collect more money from them in the future.[248]

b. Possible Reform to the Collection of Time-barred Debt

The most obvious way to prevent the perceived unfair collection of time-barred debt would be to amend FDCPA to completely bar all collection efforts, not just judicial remedies, once the debt is seven years old. Consumers argue that this would prevent the reemergence of extremely old debts and allow a debtor to relax after seven years.[249] But this proposal is grossly flawed. First, a complete bar would likely obliterate the debt-buying industry, given that debt-buying firms often buy huge portfolios of debts that are over seven years old.[250] Such a result could gravely damage the economy and hurt consumers around the country.

The drafters of FDCPA offer another convincing argument for not extending the statute of limitations to prevent all collection efforts. The purpose of FDCPA is not to erase a debtor's obligations but rather to protect consumers against unscrupulous collection tactics.[251] Given that the judicial system provides significant recourse for the debt-buying industry, the statute of limitations is intended to limit their options but not to completely prevent any recovery efforts. Most states have reiterated this interpretation of FDCPA. For example, in *Walker v. Cash Flow Consultants, Inc.*, an Illinois judge explained that a state law that only bars a specific remedy, rather than extinguishing the entire debt, is consistent with FDCPA.[252] While some states have narrowed the statute of limitations for recovering through judicial remedies,[253] no state has completely obliterated the debts. Both the states and the federal government realize that a statute of limitations barring all recovery efforts after a certain date

247. *Id.* (finding that "repayment can update a delinquency so that it looks more recent and takes a heavier toll on a credit score").

248. *Id.* (finding that a repayment may "lead to more aggressive collections and lawsuits").

249. *See* 15 U.S.C. § 1692k (2000); Rip-off Report.com, *supra* note 1.

250. *See* Alva, *supra* note 92.

251. *See* 15 U.S.C. § 1692(e) (2000).

252. *See* Walker v. Cash Flow Consultants, Inc., 200 F.R.D. 613, 616 (N.D. Ill. 2001).

253. Both California and Texas only allow four years for a collection agent to pursue litigation. *See* Wiles, *supra* note 2.

would cause many debtors to exploit this provision by stalling payment on debt until it became time-barred.

While a complete bar may not be the ideal solution, some reform may help debtors better understand their legal obligations when confronted with debts that are more than seven years old. The easiest proposal would require the debt-buying industry to furnish debtors with a document explaining their rights when collecting any debts past the statute of limitations. This solution would help debtors understand that they are under no legal obligation to pay the debt and would also explain that the collectors have a legal right to pursue the old debts. Most importantly, this solution would prevent honest debtors from being blindsided with the legal repercussions of acknowledging an old debt—restarting the statute of limitations and reappearance of the debt on their credit report.

Additionally, Congress could provide incentives to people who pay older debts, given that these individuals are under no legal obligation to do so. The incentives could include written assurances that the debt would not reappear on their credit reports or affect the debt-collection company's further collection efforts. Or, more drastically, Congress could enact a provision requiring that repayment of an old debt would improve a debtor's credit score, interpreting the payment as a sign of more stable finances. These incentives would reconcile the debt-buying industry's interest in recovering profits on debt portfolios with the interest of protecting consumers from unfair repercussions of repaying old debts.

V. CONCLUSION

The debt-buying industry has exploited the freedom of its market niche by implementing collection strategies that result in grave harm to consumers. These companies evade U.S. laws, target vulnerable debtors, abuse the courts, and unfairly ignore statutes of limitations. Reform is needed to protect consumers against predatory debt collectors who evade the intent of FDCPA, which is entirely powerless to stop these abuses. Congress should prevent debt-collection companies from selling databases to overseas entities, require companies to file demographic statistics about targeted debtors, impose strict debt-recovery pleading requirements, and oblige companies to disclose debtors' rights when collecting old debts. In order to respond to the evolution of the debt-buying industry, Congress must amend FDCPA to protect innocent consumers like Judi Norwood from harassment, abuse, and invasion of privacy.