

**Testimony of April Kuehnhoff, Staff Attorney at the  
National Consumer Law Center at the Invitation of the  
Vermont House Committee on Commerce and Economic Development**

**Regarding H.482, An act relating to consumer protection  
February 22, 2018**

**I. Millions of Americans Have Debts in Collection**

Contact with a debt collector is a common experience for Americans. In 2017, the Consumer Financial Protection Bureau (CFPB) released a nationally-representative survey of consumer experiences with debt collection, finding that more than 70 million Americans - about one third of consumers - were contacted by a creditor or debt collector about a debt in collection during the prior 12 months.<sup>1</sup>

Further highlighting the pervasive nature of consumer debt collection, the collection industry estimates that debt collectors contact Americans more than a billion times a year.<sup>2</sup> The debt buyer Encore Capital Group, Inc. claims that twenty percent of American consumers either owe it money currently or have owed it money in the past.<sup>3</sup>

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<sup>1</sup> Consumer Financial Protection Bureau, CFPB Survey Finds Over One-In-Four Consumers Contacted By Debt Collectors Feel Threatened (Jan. 12, 2017), available at: [consumerfinance.gov/about-us/newsroom/cfpb-survey-finds-over-one-four-consumers-contacted-debt-collectors-feel-threatened/](http://consumerfinance.gov/about-us/newsroom/cfpb-survey-finds-over-one-four-consumers-contacted-debt-collectors-feel-threatened/). See also Caroline Ratcliffe, Urban Institute, Delinquent Debt in America (July 2014), available at: [urban.org/research/publication/delinquent-debt-america](http://urban.org/research/publication/delinquent-debt-america) (77 million American consumers had non-mortgage debts in collections reported in their credit files).

<sup>2</sup> Josh Adams, ACA International, Methodological and Analytical Limitations of the CFPB Consumer Complaint Database (May 2016), available at: [acainternational.org/assets/research-statistics/aca-wp-methodological.pdf](http://acainternational.org/assets/research-statistics/aca-wp-methodological.pdf).

<sup>3</sup> Chris Albin-Lackey, Rubber Stamp Justice: US Courts, Debt Buying Corporations, and the Poor (Human Rights Watch, Jan. 2016), available at: [hrw.org/report/2016/01/20/rubber-stamp-justice/us-courts-debt-buying-corporations-and-poor](http://hrw.org/report/2016/01/20/rubber-stamp-justice/us-courts-debt-buying-corporations-and-poor).

In Vermont, the Urban Institute reports that in 2016 more than 1 in 5 residents with a credit report (22%) have a debt in collection and the median amount in collection is \$1,336.<sup>4</sup> In six counties (Bennington, Caledonia, Essex, Lamoille, Orleans, and Rutland), a quarter or more of all residents with a credit report had a debt in collection.<sup>5</sup> The data from the Urban Institute likely undercounts the actual percentage of the population with debts in collection because not all debts are reported on credit reports. Debts to utilities or for rental arrears, for example, are typically unreported. Additionally, not all adults have credit reports. The CFPB estimates that 11% of adults are “credit invisible,” and those with lower incomes were more likely to lack a scored credit record.<sup>6</sup> Lower-income consumers are also more likely to have one or more debts in collection.<sup>7</sup>

## II. Many Consumers Experience Abusive Debt Collection Practices

In 2016, debt collection was the leading source of consumer complaints to the Federal Trade Commission (FTC)<sup>8</sup> and the CFPB.<sup>9</sup> According to the CFPB, the top three categories of complaints were:

- continued attempts to collect a debt that is not owed (41%);

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<sup>4</sup> Urban Institute, Debt in America: An Interactive Map (Dec. 6, 2017), available at: [apps.urban.org/features/debt-interactive-map/](https://apps.urban.org/features/debt-interactive-map/).

<sup>5</sup> See Appendix A for county-level data.

<sup>6</sup> Kenneth P. Brevoort, et al, Consumer Financial Protection Bureau, Data Point: Credit Invisibles (May 2015), available at: [files.consumerfinance.gov/f/201505\\_cfpb\\_data-point-credit-invisibles.pdf](https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf).

<sup>7</sup> See Consumer Financial Protection Bureau, Consumer Experiences with Debt Collection: Findings from the CFPB’s Survey of Consumer Views on Debt, at 15 (Jan. 2017), available at: [s3.amazonaws.com/files.consumerfinance.gov/f/documents/201701\\_cfpb\\_Debt-Collection-Survey-Report.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf) (52% of respondents with annual household incomes of less than \$20,000 were contacted about a debt in collection in the past year compared to 16% of respondents with household incomes over \$70,000); Breno Braga, et al., Local Conditions and Debt in Collection, at 14, 23 (Urban Institute, June 2016), available at: [urban.org/research/publication/local-conditions-and-debt-collections](https://urban.org/research/publication/local-conditions-and-debt-collections) (reporting that median household income for consumers without debt in collection was \$63,938, compared to median household income of \$51,438 for someone with debt in collection; noting that “[p]eople living in more economically disadvantaged census tracts—defined by higher unemployment rate and lower per capita income—have more debt in collections”).

<sup>8</sup> Federal Trade Commission, Consumer Sentinel Network Data Book for January–December 2016, available at: [ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2016/csn\\_cy-2016\\_data\\_book.pdf](https://ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2016/csn_cy-2016_data_book.pdf) (859,090 complaints, or 28% of all complaints).

<sup>9</sup> Consumer Financial Protection Bureau, Annual Report 2017: Fair Debt Collection Practices Act (Mar. 2017), available at: [s3.amazonaws.com/files.consumerfinance.gov/f/documents/201703\\_cfpb\\_Fair-Debt-Collection-Practices-Act-Annual-Report.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201703_cfpb_Fair-Debt-Collection-Practices-Act-Annual-Report.pdf) (approximately 88,000 complaints).

- disclosure/verification of debts (20%); and
- communication tactics (15%).<sup>10</sup>

In the CFPB’s 2017 survey of consumer experiences with debt collection by both debt collectors and original creditors, respondents indicated that they had experienced a variety of debt collection problems.<sup>11</sup> For example, of respondents who had been contacted about a debt:

- 53% “indicated that the debt was not theirs, was owed by a family member, or was for the wrong amount”;
- 63% “said they were contacted too often;”
- 36% were called after 9 p.m. or before 8 a.m.; and
- 27% were threatened.<sup>12</sup>

### III. Millions of Americans Are Ultimately Sued on Debts

In the CFPB’s survey of consumer experiences with debt collection, 15% of survey respondents who reported being contacted about a debt said that they had been sued by a creditor or debt collector in the previous year.<sup>13</sup> Since the CFPB estimated that more than seventy million Americans were contacted by a creditor or debt collector about a debt in collection in the prior year,<sup>14</sup> this would mean that more than ten million Americans were sued on a debt during that one year period.<sup>15</sup> Respondents who were over age 50 or had annual household incomes of less

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<sup>10</sup> Id.

<sup>11</sup> Consumer Financial Protection Bureau, Consumer Experiences with Debt Collection: Findings from the CFPB’s Survey of Consumer Views on Debt (Jan. 2017), available at: [s3.amazonaws.com/files.consumerfinance.gov/f/documents/201701\\_cfpb\\_Debt-Collection-Survey-Report.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf).

<sup>12</sup> Id. at 5, 46.

<sup>13</sup> Id. at 27.

<sup>14</sup> Consumer Financial Protection Bureau, CFPB Survey Finds Over One-In-Four Consumers Contacted By Debt Collectors Feel Threatened (Jan. 12, 2017), available at: [consumerfinance.gov/about-us/newsroom/cfpb-survey-finds-over-one-four-consumers-contacted-debt-collectors-feel-threatened/](https://consumerfinance.gov/about-us/newsroom/cfpb-survey-finds-over-one-four-consumers-contacted-debt-collectors-feel-threatened/).

<sup>15</sup>  $70 * 0.15 * 100 = 10.5$ .

than \$20,000 were even more likely to be sued.<sup>16</sup> In both of these sub-groups 20% of consumers contacted about a debt reported being sued in the past year.<sup>17</sup>

The National Center for State Courts has written of the pervasive nature of debt collection lawsuits in state courts, stating that:

The vast majority of civil cases that remain in state courts are debt collection, landlord/tenant, foreclosure, and small claims cases. State courts are the preferred forum for plaintiffs in these cases for the simple reason that in most jurisdictions state courts hold a monopoly on procedures to enforce judgments. Securing a judgment from a court of competent jurisdiction is the mandatory first step to being able to initiate garnishment or asset seizure proceedings.<sup>18</sup>

Some credit card issuers have filed hundreds of thousands of collection actions per year.<sup>19</sup> In a report about credit card issuer practices in 2015 and 2016, the CFPB found that approximately 12% of charged-off balances are placed for litigation by the credit card issuer.<sup>20</sup>

Lawsuits by debt buyers are also a significant driver of the number of debt collection actions in state courts.<sup>21</sup> Government consent orders refer to hundreds of thousands of lawsuits

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<sup>16</sup> Consumer Financial Protection Bureau, Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt, at 28 (Jan. 2017), available at: [s3.amazonaws.com/files.consumerfinance.gov/f/documents/201701\\_cfpb\\_Debt-Collection-Survey-Report.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf).

<sup>17</sup> Id.

<sup>18</sup> Paula Hannaford-Agor, et al., National Center for State Courts, The Landscape of Civil Litigation in State Courts, at v (2015), available at: [ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx](https://ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx).

<sup>19</sup> Paul Kiel, At Capital One, Easy Credit and Abundant Lawsuits, ProPublica (Dec. 28, 2015), available at: [propublica.org/article/at-capital-one-easy-credit-and-abundant-lawsuits](https://propublica.org/article/at-capital-one-easy-credit-and-abundant-lawsuits) (estimating that Capital One filed more than 500,000 lawsuits per year nationally between 2008 and 2010).

<sup>20</sup> Consumer Financial Protection Bureau, The Consumer Credit Card Market, at 321 (Dec. 2017), available at: [files.consumerfinance.gov/f/documents/cfpb\\_consumer-credit-card-market-report\\_2017.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2017.pdf).

<sup>21</sup> See, e.g., Testimony of April Kuehnhoff, National Consumer Law Center, Before the Massachusetts Joint Financial Services Committee In support of S.120/H.2811, An act relative to fairness in debt collection (Sept. 25, 2017), available at: [nclc.org/images/pdf/debt\\_collection/testimony-s120-h2811.pdf](https://nclc.org/images/pdf/debt_collection/testimony-s120-h2811.pdf) (in 2015 in Massachusetts, lawsuits by nine debt buyers made up 43 percent of civil, small claims, and supplementary process filings); Paul Kiel, So Sue Them: What We've Learned About the Debt Collection Lawsuit Machine, ProPublica (May 5, 2016), available at: [propublica.org/article/so-sue-them-what-weve-learned-about-the-debt-collection-lawsuit-machine](https://propublica.org/article/so-sue-them-what-weve-learned-about-the-debt-collection-lawsuit-machine) (in three counties in Missouri in 2013, debt buyer filings accounted for 42% of lawsuits in 2013); Chris Albin-Lackey, Rubber Stamp Justice: US Courts, Debt Buying Corporations, and the Poor 15 (Human Rights Watch, Jan. 2016), available at: [hrw.org/report/2016/01/20/rubber-stamp-justice/us-courts-debt-buying-corporations-and-poor](https://hrw.org/report/2016/01/20/rubber-stamp-justice/us-courts-debt-buying-corporations-and-poor) (in New

filed by certain debt buyers,<sup>22</sup> and an analysis of 10-K filings by Encore Capital Group, Portfolio Recover Associates, and Square Two Financial concluded that “together [they] collected over one billion dollars annually in revenues from litigation” in 2013, 2014, and 2015.<sup>23</sup>

When consumers do not appear in court for their collection lawsuits, the creditors that filed the lawsuits may be able to obtain default judgments<sup>24</sup>—often without presenting any evidence and despite the fact that consumers may have legitimate defenses. Consumers who do appear in court are rarely represented by an attorney, making it very difficult for them to effectively present any defenses.<sup>25</sup>

#### **IV. Importance of State Debt Collection Laws**

State laws provide critical legal protections for consumers with debts in collection. For example, the federal Fair Debt Collection Practices Act (FDCPA) does not cover original creditors who are collecting their own debts in their own name.<sup>26</sup> State protections thus fill a critical gap by providing a private right of action against abusive collection practices by original creditors. Data on FDCPA lawsuit filings<sup>27</sup> demonstrate that consumers make use of private rights of action against debt collectors when they are available.

State laws may also lengthen the statute of limitations for claims for abusive debt collection practices beyond the one year limitation period on FDCPA claims, allow for more

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York state, debt buyers were four of the top ten filers in 2014; of these four, Midland Funding was the highest volume filer in the state with 22,731 lawsuits, followed by Portfolio Recovery with 21,356).

<sup>22</sup> In re Encore Capital Group, No. 2015-CFPB-0022 (C.F.P.B. Sept. 9, 2015) (consent order), available at: [files.consumerfinance.gov/f/201509\\_cfpb\\_consent-order-encore-capital-group.pdf](https://files.consumerfinance.gov/f/201509_cfpb_consent-order-encore-capital-group.pdf) (“Encore has filed hundreds of thousands of lawsuits to collect Consumer Debt.”); In re Portfolio Recovery Assoc., No. 2015-CFPB-0023 (C.F.P.B. Sept. 9, 2015) (consent order), available at: [files.consumerfinance.gov/f/201509\\_cfpb\\_consent-order-portfolio-recovery-associates-llc.pdf](https://files.consumerfinance.gov/f/201509_cfpb_consent-order-portfolio-recovery-associates-llc.pdf) (“In 2012 alone, PRA’s internal and external counsel filed over 160,000 Debt Collection Lawsuits in state and local courts.”).

<sup>23</sup> Lisa Stifler, Debt in the Courts: The Scourge of Abusive Debt Collection Litigation and Possible Policy Solutions, Harvard Law and Policy Review Vol. 11-1, at 98 (2017), available at: [harvardlpr.com/wp-content/uploads/2017/02/HLP106.pdf](http://harvardlpr.com/wp-content/uploads/2017/02/HLP106.pdf).

<sup>24</sup> See National Consumer Law Center, Consumer Debt Collection Facts (Feb. 2018), available at: [nclc.org/issues/consumer-debt-collection-facts.html](http://nclc.org/issues/consumer-debt-collection-facts.html) (collecting reports about default judgments at footnote 4).

<sup>25</sup> See Id. (collecting statistics about representation by attorneys at footnote 5).

<sup>26</sup> 15 U.S.C. § 1692a(6).

<sup>27</sup> WebRecon, LLC, 2016 Year in Review: FDCPA Down, FCRA & TCPA Up, available at: [webrecon.com/2016-year-in-review-fdcpa-down-fcra-tcpa-up/](http://webrecon.com/2016-year-in-review-fdcpa-down-fcra-tcpa-up/) (reporting more than 10,000 FDCPA filings in 2016).

generous remedies above the \$1,000 cap on statutory damages under the FDCPA, or specify additional conduct that violates the state law but is not expressly prohibited by the FDCPA.

State laws are also critical because they outline how collection lawsuits are litigated. They address fundamental matters ranging from the procedural rules, to the rate of prejudgment or postjudgment interest, to the length of the statute of limitations on state contract claims. These laws directly influence consumer experiences with collection lawsuits and even the number of lawsuits that ultimately get filed.

State debt collection reforms may also decrease the number of debt collection filings. For example, research conducted by the North Carolina Justice Center shows a significant decrease in filings in Wake County, North Carolina by two debt buyers after passage of debt buyer reforms in 2009 as reflected in this table.

**Annual Filings by Three Debt Buyers in Wake County, North Carolina from 2008-2013<sup>28</sup>**

	2008	2009	2010	2011	2012	2013
<b>Debt Buyer 1</b>	137	729	32	38	124	26
<b>Debt Buyer 3</b>	195	54	13	11	28	32

In Massachusetts, small claims filings have generally trended downward since reforms intended to address debt collection abuses went into effect on October 1, 2009, despite the fact that the maximum value of value of small claims increased from \$2000 to \$7000 on August 1, 2010.<sup>29</sup>

**Annual Filings in Massachusetts Small Claims Sessions from 2008 to 2017<sup>30</sup>**

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Total Small Claims Filings</b>	121,841	135,967	99,202	93,128	99,908	97,735	101,438	104,578	83,314	96,868

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<sup>28</sup> North Carolina Justice Center, Comments on the Advance Notice of Proposed Rulemaking Debt Collection (Regulation F): 12 CFR Part 1006, Docket No. CFPB-2-13-0033, RIN 3170-AA41 (Feb. 28, 2014) (copy of comments on file with author). The debt buyers were not identified by name in the comments. Note that one of the three debt buyers is believed to have gone out of business. As such, the data from Debt Buyer 2 is excluded.

<sup>29</sup> 2010 Mass. Legis. Serv. Ch. 240.

<sup>30</sup> Data compiled by NCLC from Massachusetts Trial Court Case Statistics, available at: [mass.gov/service-details/trial-court-case-statistics](http://mass.gov/service-details/trial-court-case-statistics) (data includes both district court and Boston municipal court small claims filings).

## Appendix A: County-Level Urban Institute Data for Vermont<sup>31</sup>

County	Share with debt in collections <sup>32</sup>	Median debt in collections
Addison County	21%	\$1,284
Bennington County	26%	\$1,863
Caledonia County	26%	\$1,487
Chittenden County	17%	\$1,252
Essex County	25%	n/a*
Franklin County	22%	\$1,296
Grand Isle County	23%	n/a*
Lamoille County	26%	\$1,276
Orange County	20%	\$1,645
Orleans County	25%	\$951
Rutland County	27%	\$1,473
Washington County	19%	\$1,429
Windham County	24%	\$1,117
Windsor County	23%	\$1,301

\* Not available due to insufficient sample size.

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<sup>31</sup> Urban Institute, Debt in America: An Interactive Map (Dec. 6, 2017), available at: [apps.urban.org/features/debt-interactive-map/](https://apps.urban.org/features/debt-interactive-map/).

<sup>32</sup> “Debt in collections includes past-due credit lines that have been closed and charged-off on their books as well as unpaid bills reported to the credit bureaus that the creditor is attempting to collect. For example, credit card accounts enter collections status once they are 180 days past due.” Id.