



Therefore, it is not unusual under current practice for consumers to receive 1099-cs from debt buyers. If, however, OSD was deemed uncollectible, literally millions of consumers would abruptly receive 1099-cs with, in most cases, resulting tax liability.

Furthermore, consumers who owe money to the Internal Revenue Service (IRS) frequently find that the IRS is a harsh creditor. The IRS charges very high interest rates. The IRS does not have to comply with the FDCPA; there is a long statute of limitations on taxes owed to the IRS; and the IRS has the ability to place tax liens on property. Plus, unpaid taxes are not dischargeable in bankruptcy.

APPROPRIATE OSD REFORMS

First, we should be clear about what is not needed. The law is explicit and comprehensive that out-of-statute debt cannot be sued upon. Both the CFPB and the FTC (not to mention various State Attorneys General) conclude that attempting to sue on OSD is a violation of the FDCPA and of UDAAP. The CFPB and the FTC have demonstrated a willingness and a capacity to vigorously enforce this prohibition.³³ RMAI's self-regulatory certification standards prohibit suing on out-of-statute debt. Custom and usage throughout the debt industry establishes that suing on OSD has all but disappeared.

Providing a notice to consumers when OSD is being collected is also an increasingly established practice. Indeed, both the CFPB and the FTC have taken the position that, in many cases, it may be a violation of the FDCPA and an unfair and deceptive practice to fail to provide consumers with an appropriate notice.

Some consumer groups have argued that, regardless of how clear or conspicuous a notice may be, it is impossible to craft a notice regarding a debt's OSD status that can provide consumers with effective information.³⁴ Putting aside the paternalistic aspects of this argument, there is simply no empirical support for this argument. Consumers are accustomed to receiving notices with respect to all manner of purchases and services, as well as legal communications. There is no reason, whatsoever, to believe that a clear, conspicuous and brief notice would not work effectively to put consumers on notice that a debt is OSD.³⁵

Another OSD reform that is rapidly becoming established prohibits retolling a consumer debt based upon a consumer's partial payment of an existing OSD debt. Here, too, a clear, conspicuous and brief notice should work effectively.

RMAI supports appropriate and reasonable CFPB reforms to implement both an effective OSD notice regime and a prohibition on retolling OSD. RMAI supports a policy that once a consumer debt is OSD, it is always OSD.

Finally, some groups have argued that debt buyers and collectors should be required to disclose to a consumer that their payment of an out-of-statute debt will not improve their credit score. The great majority of debt

³³ See, CFPB's Amicus Brief, March 2014, in Buchanan v. Northland and August 14, 2013 in Delgado v. Capital Management Services. See, the FTC's August 7, 2014 complaint against CreditSmart, LLC.

³⁴ NCLC Paper at pp. 9-10.

³⁵ The FTC's Consent Decree in Asset Acceptance prescribes just such a notice: "The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, we may continue to report it to the credit reporting agencies as unpaid." Consent Decree at p.13. Or, as RMAI discusses in RMAI's ANPR response, the CFPB could prescribe an OSD notice and post the notice online.



buyers do not, in fact, report to the national credit reporting systems. For those that do, a disclosure that the payment of a debt that is OSD will not improve their credit score may well be, in and of itself, misleading and deceptive. As discussed, the effect that payment on out-of-statute debt may have on a credit score is complex and variable, and depends upon the type of score that is at issue; on the consumer's credit profile; and on numerous other factors. Requiring a disclosure regarding the credit reporting effect of paying off out-of-statute debt may well do more harm than good.

CONCLUSION

Not since 1977 (the year in which the Fair Debt Collection Practices Act was enacted) has our nation had such an important opportunity to rewrite the rules for debt buying and debt collection. Preserving the non-adjudicative collection of OSD, with appropriate protections (reasonable notices and a ban on revitalization and retolling), will improve the consumer credit economy and enhance protections for consumers.

- This approach will assist consumers in paying off their debts and doing so for an amount that is affordable and attractive.
- This approach will help creditors recoup losses on charged-off debt, thereby promoting the availability of consumer credit.
- This approach will encourage the pricing of consumer credit at attractive rates that will help to support the consumer credit economy.
- This approach will encourage the availability of credit to all segments of consumers, including those who are most in need of credit.³⁶

Simply stated, the approach discussed in this paper, for all of the reasons discussed in this paper, would be a smart, balanced and responsible way for the CFPB to rewrite the rules for the collection of out-of-statute debt.

ABOUT RMAI

Receivables Management Association International (RMAI) is the nonprofit trade association that represents the interests of more than 575 companies that purchase performing and nonperforming receivables on the secondary market. RMAI's Receivables Management Certification Program and its Code of Ethics set the "gold standard" within the receivables industry due to its rigorous uniform industry standards of best practice which focus on the protection of the consumer. RMAI provides its members with extensive networking, educational, and business development opportunities in as-set classes that span numerous industries. RMAI continually sets the standard in the receivables management industry through its highly effective grassroots advocacy, conferences, committees, taskforces, publications, webinars, teleconfer-ences, and breaking news alerts. Founded in 1997, RMAI is headquartered in Sacramento, California.

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³⁶ Of course, with the exception of a few states, non-adjudicative collection of OSD is currently the norm. However, as discussed earlier, adjudicative collections before a debt has reached OSD status may be growing. Perhaps this growth, if any, is a result of concerns that non-adjudicative collection of OSD could be banned or sharply limited. Establishing that non-adjudicative collection of OSD will not be restricted may not only avoid a rush to court and preserve current market practices, but may encourage greater reliance on non-adjudicative collections with all of the resulting consumer benefits.