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Receivables Management Association International White Paper

THE VALUE OF RESALE ON THE RECEIVABLES SECONDARY MARKET

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EXECUTIVE SUMMARY

The use of credit is a cornerstone of the United States financial system. Consumers, businesses and the government all rely on the availability and extension of credit to purchase goods and services. A credit-based economy is dependent on free market economic principles that support the extension of credit such as the right to contract and the right to possess and dispose of property.

An account receivable is the byproduct of an extension credit because it represents the promise to repay the creditor for the credit that was extended for the purchase of goods or services. An account receivable is an asset that can be purchased and sold just like any other asset. The free marketability of account receivables creates significant benefits to both the business and consumer communities.

For consumers, it:

- Allows credit to be widely available
- Produces greater negotiating power often resulting in favorable settlements of the accounts for less than the original balance
- Provides enhanced service and convenience by being able to work with local businesses

For businesses, it:

- Facilitates the sale and reinvestment of corporate assets
- Permits small businesses to compete
- Allows companies to change the focus of their business operations based on changing societal or corporate priorities

RMAI believes that government holds a responsibility to consider the least restrictive options in their regulatory actions that will achieve the same or greater benefit sought by the government. This White Paper has identified four specific alternatives that would have resulted in greater protections than the elimination of the free marketability of receivables. RMAI recommends that these alternatives be considered in legislative and regulatory actions:

1. Adopt standardized industry best practices
2. Require all industry contracts contain boilerplate representations and warranties
3. Require originators to implement rigorous contractual conditions for the resale of receivables
4. Be open to new technologies as they develop that enhance security



INTRODUCTION

The use of credit is a cornerstone of the United States financial system. Consumers, businesses, and the government all rely on the availability and extension of credit to purchase goods and services. In fact, the economic prosperity and standard of living enjoyed in the United States today can be largely attributed to the nation's movement to a "credit-based economy" in the 1950s. This White Paper will share the important role that "account receivables" play in a credit-based economy and the risks associated with prohibiting the marketability of title on the secondary market.

Specifically, this White Paper will cover:

- The United States' leading role in the creation of modern property rights and secondary markets
- The role of receivables in a credit-based economy
- How society benefits from the existence of secondary markets
- How consumers benefit from the existence of the receivables secondary market
- Recent and unnecessary regulatory restrictions
- Solutions which will enhance consumer protections and enable businesses to function in a robust secondary market

A BRIEF HISTORY

Attempts by other nations at duplicating the United States' credit-based economy have met with much difficulty and varying degrees of success. The reason for the difficulty can be explained in part by the important symbiotic relationship that exists between political and economic principles.

Large scale asset creation, which exists in a credit-based economy, is dependent on principles that align with the right to contract, the right to possess and dispose of property, and the establishment of laws and institutions that support those rights. In economic terms, these principles are also core tenets to a free market economy and the establishment of secondary resale markets.

While markets for the bartering of goods and services date back to antiquity, the ability to purchase, own, and sell property was not a readily accepted principle until the 18th century. The American Revolution was partly based on the radical belief that government should not be able to take property without compensation. As John Jay, a founding father, an author of the Federalist Papers, and the first Chief Justice of the Supreme Court stated "No power on earth has a right to take our property from us without our consent." One only needs to read the United States Constitution and Bill of Rights to find multiple references to prohibitions on government impairing contract and property rights; these prohibitions remain in effect today.¹

Given that at the time of the American Revolution many places in the world were evolving from a feudal system² of property ownership to a landed aristocracy, the idea of buying and selling property was a foreign concept. After the American Revolution, with ownership of property vested securely with the people rather

¹ Samuel Pearce, Constitutional Guide to Organic Farming, Property, & Contract Rights (Amazon Digital Services, Inc., 2012), 14.

² System where the monarch held all property rights and would bestow land to those he favored as tenants-in-chief, who in turn would provide portions of the land to lesser tenants in exchange for services. Under this system, real property could not be sold but would merely revert back up the chain upon termination.



than a ruling class, the concept of markets, including the sale of property to others, had to evolve. A flourishing secondary resale market became the great equalizer by providing people the ability to engage in the purchase and sale of assets and over time the possibility of accumulated wealth.

An interesting side note to the development of individual property rights in America was how European nations continued to struggle with principles surrounding property rights throughout the 19th and 20th centuries, most notably with: (1) the aristocracy seeking to maintain their power and control over government and property, (2) attempts to adopt American-style democracies, (3) the introduction of the Communist Manifesto in 1848 advocating for the abolition of all property rights believing that property belonged to the whole, and (4) an evolving theory of socialism which attempted to blend ideas from various political philosophies that involved democratically elected governments but with varying concepts involving “social” ownership of property.

A CREDIT-BASED ECONOMY PRODUCES RECEIVABLES

To better understand the meaning and value of a receivable and the importance of its transferability on a secondary market, a few definitions may be useful.

What is a receivable?

The term “receivable” or “account receivable” is an accounting term used to describe a debt that is owed for goods³ or services⁴. In laymen’s terminology, a receivable is a customer’s promise to pay. An example of this would be when a person receives a “line or credit” to purchase a television. The line of credit is the “receivable” (i.e. the promise to pay) which allows the person to take possession of the TV (i.e. the good).

What is a secondary market?

The term “secondary market” (sometimes referred to as an “aftermarket” or “resale market”) is used to refer to a system or marketplace where a person or company can transfer ownership of an asset. Frequently, it is used to describe a resale transaction, rather than an originating transaction. The asset may be a “financial instrument” such as stocks or bonds, a “good” such as a television or refrigerator, a “service” such as the delivery of medical care, or “real property” such as land and buildings. The New York Stock Exchange and the NASDAQ are examples of secondary markets where investors purchase stocks and bonds from other investors.

What is the receivables secondary market?

The receivables secondary market (also referred to as the “debt buying” industry) is just one of countless secondary markets which exist to provide for the orderly transfer of ownership of property. Utilizing the definitions above, the receivables secondary market is the marketplace where ownership of performing and nonperforming receivables (i.e. the asset) are purchased by companies that were not a party to the originating trans-

³ “Goods” means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale . . . “ [UCC 2-105(1)]

⁴ “Services” means an intangible commodity in the form of human effort, such as labor, skill, or advice. Services are based on common law (unlike goods which are based on statutory law) and historically have fallen under the province of the states rather than the federal government.



action. Perhaps the most familiar example of this is when a bank sells the ownership of its defaulted credit card receivables to a debt buying company. As a result of the sale, the ownership of the receivables and all legal rights associated with that asset are now held by a company not a party to the original transaction. Common reasons prompting the sale and how the sale benefits consumers and businesses will be discussed later in this White Paper.

SOCIETY BENEFITS FROM THE EXISTENCE OF SECONDARY MARKETS

Since the right to own presupposes the right to sell, the secondary market can be viewed as a natural byproduct of an ownership society. Secondary markets are so common in modern society that most people probably are not aware of their existence or do not give their existence a second thought. For the majority of consumers and businesses, secondary markets exist to make life easier. Some examples include:

- Stock, Bond and Commodity Markets – purchase ownership shares that are resold to new investors
- Car Dealerships – purchase used cars that are resold to new owners
- Web-Based Service Providers – Amazon, eBay, Craigslist, and similar websites provide a platform for consumers to resell their goods
- Grocery Stores – purchase products from farms, suppliers, and distributors for resale to customers
- Consignment Stores – provide a physical storefront for consumers to resell used goods

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

In fact, uniform laws centered on the free sale and transfer of property have been the universal rule in the United States, not the exception. These laws, based on the Uniform Commercial Code⁵ (UCC), a joint project of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI), have been adopted in all 50 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

THE RECEIVABLES SECONDARY MARKET BENEFITS CONSUMERS

The nature of the asset will drive the benefits that come from having a secondary market for that asset class. In the case of the debt buying industry, the asset being purchased is the contractual right to receive payment for goods or services. The following is a non-comprehensive list of how the receivables secondary resale market provides direct and tangible benefits to the American consumer:

- (1) **Enables Credit to be Widely Available to U.S Consumers** – The United States' credit based economy by its very description relies on businesses extending credit for the purchase of goods and services. Businesses calculate into the price of the goods and services they offer to the public the anticipated losses that will result from nonperforming receivables and the value they will receive for the sale of those nonperforming receivables on the secondary market. If a business is unable to recuperate market value



for their nonperforming receivables, the cost of their goods and services will increase because the recuperation value will not be factored into the price. Additionally, business will begin to restrict the extension of credit if they are unable to sell their non-performing assets. Simply stated, a healthy secondary market helps to ensure that low and middle income consumers (including the silent majority who has never defaulted on a debt) have access to credit at affordable interest rates and are provided enhanced purchasing power through lower prices.

- (2) **Consumers Benefit From Small Businesses** – The secondary resale market provides an opportunity for small businesses to operate in an area often dominated by large national corporations. When originators initially sell their receivable portfolios, they tend to rely on a few select national debt buyers – frequently small businesses that would like to purchase directly from originators are not even considered. In a recent DBA International poll of its debt buying members, 95% of respondents indicated that they would like to purchase credit card receivables directly from a bank but only 29% reported an actual purchase in the prior two years.

There are many reasons why originators maintain a select sales list, but the three most frequently mentioned include: (1) less work is required to onboard accounts to a small group of large national debt buying companies than it would take to work with state, regional, and specialty asset companies, (2) large national debt buying companies will readily accept receivables from all asset classes where many state, regional, and smaller national companies seek assets from a specific asset class (i.e. credit cards, auto, mortgage, judgments, etc.), and (3) large national debt buying companies will accept accounts from every state in the nation where many small and regional companies may specialize in accounts emanating from a single state or a specific geographic region.

Due to the significant volume and complexity of accounts maintained by large national debt buying companies, it is not unusual for some to resell their more complex accounts or state specific accounts on the secondary market to state, regional, or specialty asset companies who are more familiar with the customers and nuances in a particular market.

- (3) **Low Complaint Levels** – State, regional, and specialty-asset companies tend to have low complaint levels with state and federal regulatory agencies. In fact, more than 50 percent of DBA International certified companies (the vast majority being small businesses) that purchase receivables on the secondary market have not had a single complaint/inquiry on the CFPB complaint portal since the CFPB started tracking debt collection complaints/inquiries in July 2013.⁶
- (4) **More & Lower Cost Settlements** – The resale market for receivables can result in more consumers receiving lower cost settlements. The general rule of thumb for most asset classes is as they age, their value diminishes. The same principle applies to account receivables but the value reduction in receivables is much more precipitous than most asset classes. Nonperforming receivables are at their highest value at the point they first become delinquent to approximately 240 days of default. Given the mobile nature of American society (the ease of changing addresses, changing telephone numbers, changing email addresses, and jurisdictional residencies), it is often challenging to readily discern a borrower's new address and/or new contact information if the borrower chooses not to provide it. The cost of col-

⁶ To place "zero complaints" in perspective, as of March 31, 2016, there have been a total of 98,437 complaints/inquiries listed on the CFPB portal.

lection increases dramatically the longer it takes to make successful contact which explains the reduction in account value.

When large national buyers purchase a receivables portfolio it is frequently during this highly desired stage of successful recovery and thereby commands a premium market price for the originator. These debt buying companies use complex proprietary algorithms to generate a price point that will attempt to produce a return on investment (ROI) within a certain defined time period. When ROI is achieved, some buyers will resell the more challenging accounts to more specialized buyers (i) to increase their ROI, (ii) in recognition that continued efforts will have diminishing returns and potentially begin to reverse their ROI, (iii) to dispose of aging accounts while they still have value, or (iv) to obtain capital to finance future purchases. When these accounts are purchased by state, regional, or specialty asset buyers, these second tier buyers will have purchased at a much lower value than the first tier and their ROI will look much different.

This dynamic is what creates a highly beneficial outcome for consumers in their ability to negotiate significantly lower payments to settle accounts with much higher face values. To better understand the influence of ROI, consider the following hypothetical: If Jane owes ABC Bank \$15,000, ABC Bank is unlikely to consider a settlement for much less than face value, whereas a first tier buyer's settlement threshold may be \$10,000 and a second tier buyer's threshold may be \$6,000.

By eliminating the resale market for receivables, it prevents the natural diminishment of account value that would occur in a free market to the detriment of consumers. Instead of having a lower threshold than a second or third tier buyer would provide, the consumer would be forever stuck with the first tier buyer's ROI . . . and that first tier buyer's ROI will inevitably have a longer time horizon due to the additional cost of protracted collection efforts on challenging accounts which will create higher settlement thresholds. Jane may now have to pay the first-tier buyer \$13,000 to settle her account. Any way you look at it the consumer will be harmed.

- (5) **Sensitivity to Local Circumstances** – Small businesses that purchase debt on the resale market generally operate in a specific state or region. This tends to provide a personal and approachable experience from the consumer's perspective because the consumer has a representative from a small local operation from within their state as the main contact. A number of examples exist, including Hurricane Sandy (2012), the Northeast blizzards (2014), and the Western Wildfires (2015), where state and regional debt buying companies voluntarily ceased collection activity and waived payments in affected communities because of their first-hand knowledge of the challenges facing the residents. Other examples of how consumers benefit from working with local companies include a heightened level of sensitivity that exists during economic challenges such as when local employers lay off large numbers of employees or the respect displayed to local communities that celebrate particular religious or cultural holidays and observances.
- (6) **Convenience** – Small state and regional businesses offer the benefit of convenience to consumers of the accounts they own. For example, the hours of operation of state and regional companies reflect the local time zone of the consumers that are reaching out to them as well as those they are trying to contact. Consequently, there is no need for a consumer located in Hawaii to plan her schedule based on the hours maintained by an east coast business. State and regional companies are also able to hire collectors who speak a similar dialect or common language (e.g., they may hire Russian speaking collec-

tors if there is a large Russian immigrant population in the state) which can be of great benefit to both the consumer and the company. Local companies can also offer consumers the flexibility of being able to make last minute payments to a local address without the additional expense and hassle associated with overnight or express postal delivery.

- (7) **Expertise Within an Asset Class** – Specialized companies that purchase a single asset class (e.g., medical, judgments, student loans, bankruptcies, etc.) on the resale market often have employees who are well equipped to assist consumers and answer their questions due to their specialized knowledge and training. Some large national debt buying companies rely on the resale market to sell specialty asset classes which might not fit into their business model or their area of expertise.
- (8) **State & Local Law Expertise** – Many small state and regional debt buying companies do not compete with the large national debt buying companies because they want to maintain a niche expertise in a particular state or regional market. These small companies develop an intimate understanding of state and local laws and regulations, judicial rulings, rules of the court, and state licensing requirements. The executives and professionals within these companies often interact directly and in-person with their regulators. This has immense benefits to both the consumer and the local company.
- (9) **Customer Service** – A robust resale market with more market participants produces greater competition and greater competition produces better consumer services. As in any industry, competition forces companies to innovate in order to maintain or grow market share. This truism is the same for the receivables secondary market. When multiple bids come in with comparable prices, the seller is more apt to choose the purchaser who has the more compelling services, knowledge base, technological innovations, and reputation. Richard Cordray, Director of the CFPB, has spoken about the challenges associated with the collection industry from the consumer’s perspective because the consumer cannot “vote with their feet”⁷ when dissatisfied with the quality of service provided by the debt collector. If the resale market is curtailed or eliminated in the United States, the number of providers will shrink. Fewer market participants will inevitably lead to less innovation.
- (10) **Allows Consumers to Repair their Credit Rating** – The receivables secondary market provides consumers who have defaulted on a debt the single most expedient, efficient, and cost effective way to improve their credit rating. It may seem counter-intuitive to some that the company or service provider that extended the credit would have the least amount of settlement flexibility; however, originators are subject to a number of countervailing forces, including return on investment, constraints contained in the originator’s financing arrangements, insurance policies, and bonding requirements to name a few. Improving a credit rating is absolutely essential for consumers looking to purchase a house, automobile, receive a new extension of credit, for a security check, or in some states even when applying for a job. The resale market provides consumers the most affordable resolution to clean up their credit report and get their lives headed in a more positive direction.
- (11) **Consumers’ Rights** – A number of state and federal consumer protection laws, including the FDCPA and state level counterparts, only apply to third party debt collection and to purchased debt, notably exempting originating creditors. Consequently, any prohibition on secondary market resale could result in

⁷ Prepared Remarks of Richard Cordray, Director of the Consumer Financial Protection Bureau , Consumer Advisory Board Meeting, Washington, DC, February 19, 2015.

consumers having their more expansive consumer protections reversed if the portfolio is repurchased by the originating creditor.

- (12) **Prevents Consumer Black Holes** – A “consumer black hole” is used to describe a scenario where the consumer seeks to resolve a matter but external forces prevent the resolution. As it relates to the secondary receivables market, a consumer black hole could hypothetically be created in several ways. We use the term “hypothetically” because it would require the elimination of the secondary market (i.e. the inability to sell an asset), something until recently the federal regulatory community has not attempted in the United States. The following examples will presuppose a contractual, legislative, or regulatory prohibition on the resale of receivables with a forced or voluntary option for originator repurchase:

a. Originator No Longer Exists

If the originating creditor ceases business operations and the debt buying company wishes to dispose of the asset, there would be no legal entity to transfer ownership title. This would presumably mean the purchasing company would have to maintain ownership of the accounts regardless of their desire otherwise. Under this scenario, the best outcome would be where the debt buying company remains in operation and continues to handle all inquiries, complaints, transactions, and liability for the asset. However, the worst outcome would result if the debt buying company ceases operations and having no place to sell the portfolio upstream or downstream, simply abandons the portfolio, including all of the personally identifiable information (PII) associated with the accounts. This outcome would leave the consumer with no solution to resolve the contractual obligation on the account, make payments, repair their credit rating, dispute the debt, bring legal action, or even to protect their confidential information from falling into the wrong hands.

b. Originator No Longer in Asset Category

If the originating creditor no longer engages in the line of business and the debt buying company wishes to dispose of the asset, it would presumably force the originator to repurchase an asset that it may no longer be equipped to handle. What does the originator do with a receivables portfolio if the division and expertise that handled the asset no longer exists (i.e. no collections operations, no data storage capabilities commensurate with the requirements of law, or no regulatory compliance personnel with familiarity in the asset class)? Most likely the originator will not want to repurchase the asset due to the liability associated with the asset class and the end result will be protracted litigation over the terms of the sales contract, all the while leaving the consumer in limbo.

c. Originator Refuses to Repurchase

If the debt buying company wishes to dispose of the asset by selling the debt to the originating creditor because of a resale prohibition but the originator refuses to repurchase the portfolio or the parties cannot agree to the terms of the repurchase, it would leave the assets without a place for its disposition. In the case of the Chase Bank Consent Order dated July 8, 2015 (discussed below), Chase agreed to include “no resale” prohibitions in future sales contracts of its receivables but nowhere did Chase obligate itself to repurchase the accounts.



- (13) **Small Businesses Produce Jobs** – Protecting the right to resell one’s property protects American small businesses; protecting American small businesses protects American jobs in rural and urban communities alike. The collections industry accounts for more than 230,000 jobs⁸ nationwide, the majority of which are with small businesses. Without a viable secondary market, many of these jobs might be eliminated.
- (14) **Prevents Corporate Monopolies** – A healthy resale market prevents the creation of a monopoly, where a handful of large companies control all purchased receivables in the United States. Unfortunately, many times in the regulatory community’s haste to reign in the conduct of a few corporations, they create new regulatory controls that drive the smaller conforming market participants out of the industry to the benefit of large corporations. In a December 2015 publication,⁹ the Federal Reserve Bank of Dallas, recognized that a “one size fits all” regulatory approach does not always work for small market participants. The Dallas Federal Reserve opined that the regulatory community might consider matching “the level of risk an institution poses” to the degree and scope of the regulatory requirement or the benefits that come from small market participants may cease because they “may become too small to succeed.”
- (15) **Data Security** – The vast majority of all debt buying companies are based in the United States and fall under the expansive state and federal data protection laws and regulations adopted to protect personally identifiable information (PII). Some recent federal consent orders have suggested that multiple sales of receivables produce degradation in data and documents and the reason why resales should be prohibited. However, according to the recent Chase Consent Order [discussed below], the failure in the data and documentation controls were all related to the originator’s internal operations. It is not clear how limiting the sale of receivables to first tier buyers will prevent a future failure within an originator’s operations. It is important to note that the failures in Chase’s controls were not systemic to the entire financial services industry.

A CHANGE IN DIRECTION – CONCERNS ABOUT CHASE CONSENT ORDER’S PROHIBITION ON RESALE

On June 26, 2015, Chase Bank, USA N.A. and its subsidiary Chase BankCard Services, Inc. (“Chase”) entered into a “Stipulation and Consent to the Issuance of a Consent Order” (“Consent Order”) with the U.S. Consumer Financial Protection Bureau concerning “unfair” and “deceptive” acts or practices pursuant to 12 U.S.C. 5536(a). According to the Consent Decree, the unfair and deceptive acts/practices arose from failures within Chase’s internal policies, processes, and procedures which resulted in various inaccuracies in the database (including account balances) Chase maintained on some of its credit card accounts.

A significant portion of the order was focused on Chase’s future transactional requirements when selling charged-off receivables on the secondary market to debt buying companies (AKA “debt buyers”). The reason for the inclusion of secondary market transactions stemmed from the fact that Chase had sold defaulted credit card accounts to debt buyers that reflected the aforementioned inaccuracies in Chase’s database.

RMAI has reviewed the terms and conditions contained in the Chase Consent Decree for its potential impact on the secondary market. While most of the Chase Consent Decree’s provisions are highly consistent with the

⁸ “The Impact of Third-Party Debt Collection on the U.S. National and State Economies in 2013.” ACA International. July 2014, pages 10-12.

⁹ Federal Reserve Bank of Dallas, Financial Insights, vol. 4, issue 4, Dec. 2015.

best practice requirements contained in RMAI's Receivables Management Certification Program, RMAI is very concerned by the prohibition on resale contained in Section VI, Paragraph 73(c) and referenced in Section VI, Paragraph 70(a)(vii).

The merits of punishing businesses that purchase a legal product for the failings of the business selling the product seems at best to be contrary to public policy but at worst to be punishing the victim of the transaction. To accept this line of reasoning would be to accept that a purchaser of a "lemon" automobile should take full responsibility for their failure to not discover the car's true condition at the time of purchase.

No argument can be made to support the proposition that the elimination of a resale market will guarantee that a bank (or any business for that matter) will be free from errors in their product or service offerings. In the case of Chase, had a prohibition on resale been in place it would not have changed the outcome as the act of transferring legal title of the receivable from a first tier debt buyer to a subsequent purchaser had nothing to do with the originator's error.

ELIMINATION OF THE SECONDARY RESALE MARKET HARMS THE BUSINESS COMMUNITY

The elimination of the secondary market will have some very real effects on banks and other originating creditors in how they perform their cost-benefit analysis when extending credit. The following are examples of how the receivables secondary resale market provides direct and tangible benefits to the business community:

- (1) **A Place to Monetize Receivables** – The secondary market provides a place for originators to monetize performing and nonperforming receivables (i.e. the asset). Companies that purchase receivables on the secondary market allow originating creditors to obtain present day market value on assets compared to the potential future value of those assets over time through cumulated payments. The reasons why a creditor may choose to monetize their portfolio are many; some reasons include diversification, shareholder value, capital for other business ventures or priorities, the extension of new consumer credit, minimize loss, and/or capital requirements mandated by the regulatory community.
- (2) **Debt Collection is Not Core to an Originator's Business Model** – The business model of an originating creditor is to extend credit for goods and/or services with the expectation of future payment by the consumer. While the type of asset within the business model may differ (e.g., banks provide credit cards, doctors provide medical services, local hardware stores extend store credit, manufacturers provide products to distributors on credit, etc.), what is consistent is that the business model involves the extension of credit and the receipt of on-time payment. Debt collection is generally not considered a core element or competency of an originator's business model (e.g., doctors are not in business to collect debts).

While some originating creditors may successfully obtain payment on an overdue account through the initial efforts of its employees, by the time an account is in default for more than 180 days, the likelihood that the originating creditor will receive payment has greatly diminished. This helps to explain why the federal government requires banks to "charge-off" nonperforming receivables at 180 days. Because the originating creditor still owns an asset with value, many creditors at this point choose to sell the receivable on the secondary market to a company whose business is the collection of nonperforming assets.



- (3) **Leaving Asset Class** – The secondary market provides originating creditors wishing to close operations (e.g., doctor decides to retire) or to change the focus of their business (e.g., bank decides to stop issuing credit cards) to wind down operations in an expedient and efficient manner through the transfer of ownership. It would clearly be contrary to public policy to force an individual or company to do something in perpetuity if they no longer wish to perform such activities. Other than incarceration, it would be hard to point to a job or an activity in American society that does not allow one to exercise their free will to change direction.

LESS ONEROUS OPTIONS EXIST THAT WILL PROVIDE GREATER CONSUMER PROTECTIONS

RMAI believes that government holds a responsibility to consider the least onerous options in their regulatory actions that will achieve the same or greater benefit sought. Ensuring the safe and accurate transfer of data and documents can be accomplished in a manner that does not place unnecessary limitations or prohibitions on the transferability of contract and property rights.

RMAI proffers that each of the following options would preserve data and document integrity during secondary market sales transactions equal to or greater than the recent CFPB consent decrees but in a manner less onerous and disruptive to the American consumer, American small businesses, and American founding principles:

- (1) **Adopt Standardized Industry Best Practices** – Government regulators and the financial services industry could adopt the best practices of the debt buying industry to ensure data and document integrity on consumer accounts are preserved by requiring the following items be provided at the point of the sales transaction:
- (i) The consumer's first and last name;
 - (ii) The consumer's Social Security number or other government issued identification number, if obtained by the creditor;
 - (iii) The consumer's address at charge-off¹⁰;
 - (iv) The creditor's name at charge-off;
 - (v) The creditor's address at charge-off;
 - (vi) A copy of the signed contract or other account level document(s) that were transmitted to the consumer while the account was active that provides evidence of the relevant consumer's liability for the debt in question. Other documents may include, but are not limited to, a copy of the most recent terms and conditions or a copy of the last activity statement showing a purchase transaction, service billed, payment, or balance transfer;
 - (vii) The account number at charge-off;
 - (viii) The unpaid balance due on the account, with a breakdown of the post-charge-off balance, interest, fees, payments, and creditor/owner authorized credits;
 - (ix) The date and amount of the consumer's last payment, provided a payment was made;
 - (x) Sufficient information to calculate the dates of account delinquency and default;
 - (xi) The charge-off date;
 - (xii) The charge-off balance; and
 - (xiii) A copy of each bill of sale or other document evidencing the transfer of ownership of the

¹⁰ In context to the use of the term "charge-off", those asset classes that are not subject to governmental requirements for charge-off should use the date of default.

debt from the initial sale by the charge-off creditor to each successive owner that when reviewed in its totality provides a complete and unbroken chain of title documenting the name, address, and dates of ownership of the creditor and each subsequent owner up to and including the Certified Company.

- (2) **Require All Industry Contracts to Contain Boilerplate Representations & Warranties** – Bolster data and document integrity by requiring the following representations and warranties to be included in the contracts of all future sales transactions:
- (i) Seller is lawful holder of the accounts;
 - (ii) Accounts are valid, binding, and enforceable obligations;
 - (iii) Accounts were originated¹¹ and serviced in accordance with law;
 - (iv) Account data is materially accurate and complete; and
 - (v) Any account that was the subject of a consumer dispute while owned by the seller has been responded to or validated.
- (3) **Require Originators to Implement Rigorous Contractual Conditions for the Resale of Receivables** – Bolster data and document integrity by requiring originators to implement rigorous contractual conditions for the resale of receivables whereby the purchasing company must:
- (i) Be a “Certified Professional Receivables Company”,
 - (ii) Be on the originator’s current approved buyer list, and/or
 - (iii) Meet specific requirements outlined in the contract.
- (4) **Be Open to New Technologies** – Bolster data and document integrity by being open to new technologies as they develop that enhance security such as, by way of example, document and data repositories/registries. Such technologies should be reasonably priced and widely available.

SUMMARY

Federal and state regulatory agencies and legislative bodies should resist pressure from outside special interest groups to upend over two centuries of free market transferability of property rights. Specifically, the government should reject any attempt to prohibit the resale of an entire asset class (i.e. accounts receivables) and should adopt fair, reasonable, and rigorous market protections, similar to those advocated by RMAI, designed to equally benefit both the consumer and business communities.

ABOUT RMAI

Receivables Management Association International (RMAI) is the nonprofit trade association that represents the interests of more than 550 companies that purchase or support the purchase of performing and nonper-forming receivables on the secondary market. RMAI’s Receivables Management Certification Program and its Code of Ethics set the global standard within the receivables industry due to its rigorous

¹¹ Warranty on “originated . . . in accordance with law” is only applicable to sales transactions involving originating creditors.



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 asset 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, teleconferences, and breaking news alerts. Founded in 1997, RMAI is headquartered in Sacramento, California.

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