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**DEPARTMENT OF JUSTICE**

**MEMORANDUM**

DATE: March 26, 2015

TO: Honorable Shemia Fagan, Chair
House Committee on Consumer Protection and Government Effectiveness

FROM: Cheryl Hiemstra, Assistant Attorney General

SUBJECT: Debt Buyers: HB 2252, HB 3057

## BACKGROUND ON DEBT BUYING

- Debt buyers purchase charged-off debt from creditors that the creditor no longer wants to attempt to collect upon, called "charged-off" debt, or they buy from other debt buyers and then attempt to collect or resell the debt.
  - Many debts are sold "as is." This means that the seller disclaims liability about the accuracy of the information provided about the debts.
  - Some debt buyers are also debt collectors; they attempt to collect the debt they purchased. Other debt buyers hire out collection agencies.
  - Debt buyers purchase debt for pennies on the dollar.
  - Debt buyers rarely receive underlying documents about the debts. Instead, they purchase spreadsheets of information with basic information about the alleged debt and debtor. Usually, debt buyers can purchase, at additional cost, supporting documentation for a period of time after the sale. They usually do so, however, only if a debt is disputed (an alleged debtor claims he is the wrong person, does not owe the debt, or does not owe that amount).

- In 2013, the Federal Trade Commission (FTC) released a report titled *The Structure and Practices of the Debt Buying Industry*. Key findings:
  - The FTC receives more consumer complaints about debt collectors, including debt buyers, than about any other single industry.
  - Debt buyers rarely received information from sellers about disputed debts or whether a disputed debt had been verified – they are rarely checked for accuracy. Additionally, some debt buyers resold disputed debts.
  - While debt buyers usually had information about the original creditor and account, they did not disclose that information to the alleged debtors.
  - The FTC analyzed data on 5,000 portfolios, containing about 90 million consumer accounts. The accounts had a face value of $143 billion. The debt buyers spent $6.5 billion to purchase the accounts.

- Currently, some debtors are unaware they actually owe a debt to a debt buyer because:
    - The alleged debtors are contacted by a company who they have never done business with before and told that they owe a debt. The alleged debtors are not provided with sufficient information to identify the debt or the original amount owed. (For example, the consumer may know he owes $150 to ABC, Corp., but receives a collection notice stating he owes $547 to XYZ, Inc.)
    - When alleged debtors receive a collection notice or are served with a complaint from an unfamiliar company, many ignore it, thinking that the correspondence is a scam or was sent to the wrong individual.

- Allegations have been made against debt buyers that they submit "robo signed" affidavits to courts. These affidavits are drafted based on the "as is" information provided by the seller. Courts often sign default judgments that have no substantiation, other than the debt buyer's affidavit, of the amount of the debt or that the person sued was the actual debtor.

**WHY NEW LEGISLATION IS NEEDED**

- Constructive debt buyer legislation will provide alleged debtors with basic information about the debt so they can identify the source of the debt and verify the accuracy of the debt. Many consumers are currently very confused.

- Constructive debt buyer legislation will provide alleged debtors with basic information about their legal rights – for example, when collection of the debt cannot be enforced in court or that if they pay a portion of the debt, it may revive the statute of limitations.

- Constructive debt buyer legislation will provide that before obtaining a judgment, debt buyers need to be able to prove the amount of the debt, show clearly that they own the debt, and that they are entitled to additional charges and attorney's fees.

- The Oregon Unlawful Debt Collection Practices Act and the federal Fair Debt Collection Practices Act (FDCPA) are only intended to prohibit unfair debt collection practices; they are not intended to allow people to avoid their debts.

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