THE NARCA WHITE PAPER SERIES
ON
CONSUMER DEBT

CREDIT CARD DEBT

NATIONAL ASSOCIATION OF RETAIL COLLECTION ATTORNEYS
601 PENNSYLVANIA AVENUE NW
SUITE 900 SOUTH, WASHINGTON DC 20004
Tel: 202-861-0706 Fax: 240-559-0959 NARCA.ORG

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The **National Association of Retail Collection Attorneys ("NARCA")** is a nationwide trade association of over 700 skilled debt collection law firms, creditor in-house counsel, and industry vendors. All NARCA members meet association standards to assure experience, professional liability, and professionalism.

Founded in 1993, NARCA is a not-for-profit corporation serving its members in the consumer debt collection industry. NARCA's Mission is:

- To further and promote the image and function of the legal profession engaged in the collection of consumer debt, creditor rights, creditor representation in bankruptcy and related areas of the laws pertaining to consumer credit.
- To educate the public and members of the credit and collection industry as to all aspects of the consumer collection industry.
- To provide an interchange of ideas for the members.
- To provide meetings, seminars and publications to further the purposes of the Association.
- To encourage and promote the adoption of legislation in the various states and in the United States favorable to the consumer collection industry, the attorney engaged in retail debt collection and the rights of the credit-granting public.
- To gather and disseminate information and material relative to consumer credit which may be valuable to the members of the Association and the general public.
- To elevate the standards and improve the practice and ethics of consumer collection law.
- To foster among its members a feeling of fraternity and mutual confidence.
- To encourage, foster and advance professional practices and ethical conduct among its members.

NARCA's Government Affairs Committee, Adam J. Olshan, Esq., and Dr. Eric M. Berman, Esq., Co-Chairmen, has prepared a Series of White Papers on Consumer Debt to discuss issues relevant to consumer debt and debt collection, and assist consumers, creditors, attorneys, judges, legislators and the general public to better understand the underlying legal obligations and practical realities that control a consumer credit account or loan when it becomes delinquent.

NARCA looks forward to your comments and observations which should be sent to:

Diane L. Darrow
Executive Vice President
National Association of Retail Collection Attorneys (NARCA)
601 Pennsylvania Avenue NW
Suite 900 South, Washington DC 20004

Tel: 202-861-0706 Fax: 240-559-0959 email: ddarrow@narca.org
Website: NARCA.ORG

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Credit Card Debt

Dr. Eric M. Berman, Esq., Editor[1]

1. Introduction

Credit Cards are a ubiquitous part of today's economy. They are simple to use, allow for the extension of payment, and are a means of financial survival for consumers and businesses in difficult financial times. Most people understand how to obtain and use credit cards, but they often do not realize that the use of their credit cards has serious financial and legal consequences.

NARCA has prepared this White Paper with the intent and hope that it will provide a better understanding of the legal ramifications of credit cards and the protections available to consumers under the law.

2. The Nature of Credit Card Laws and Regulations

Credit card accounts and the lending institutions that issue them are highly regulated and subject to comprehensive scrutiny by a multitude of federal agencies. The primary regulator of credit cards is the Office of the Comptroller of the Currency ("OCC"), a bureau of the U.S. Department of the Treasury, which charters, regulates, and supervises all national banks and the federal branches and agencies of foreign banks. Lenders may also be subject to regulation by the Federal Reserve Board, the Federal Deposit Insurance Corporation ("FDIC"), and if the lender is a savings association, by the National Credit Union Administration ("NCUA") or Office of Thrift Supervision ("OTS"). The OTS also oversees domestic and international activities of the holding companies and affiliates that own these thrift institutions.

These agencies establish the minimum ratios of capital to liabilities that member banks and bank holding companies must maintain.[2] Regulators have established uniform account management policies to ensure that all regulated creditors' accounting procedures are

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[1] NARCA thanks the Sub-Committee on Credit Card Debt, Brent Yarborough, Esq., Chairman, Michael Thiel Debski, Esq., Joseph M. Hall, Esq., David A. Kleber, Esq., Charles L. Litow, Esq., Committee Members, for its contributions to this White Paper.

[2] The primary regulations controlling credit card activities are issued under Title 12 of the Code of Federal Regulations.

comparable. Each financial institution's capital adequacy regulation governs its lending practices, including the extension and maintenance of credit card accounts.

The Federal Trade Commission ("FTC") does not have direct jurisdiction over banks, but it enforces Section 5 of the Federal Trade Commission Act which prohibits unfair or deceptive business acts or practices, the Truth in Lending Act ("TILA"), the Home Ownership and Equity Protection Act ("HOPE"), the Consumer Leasing Act, the Fair Debt Collection Practices Act ("FDCPA"), the Fair Credit Billing Act ("FCBA"), the Fair Credit Reporting Act ("FCRA"), the Equal Credit Opportunity Act ("ECOA"), the Credit Repair Organizations Act ("CROA"), the Telemarketing and Consumer Fraud and Abuse Prevention Act ("TCFAPA"), and the privacy provisions of the Gramm-Leach-Bliley Act ("GLBA").

3. <u>Charge-off</u>

"Charge-off" is one of the most important and most misunderstood elements of credit card debt. In simplest terms, it is the total amount owed by the credit card account holder to the credit card issuer following the card holder's default or failure to make required payments. The charge-off amount is the principal balance which serves as the basis for post-charge-off collections. Additional interest and fees may accrue following charge-off and be added to the balance owed, but these amounts are easily separated and identified.

Credit card issuers send their account holders statements of account each month. Consumers have the right to challenge any item on each statement within sixty days following receipt of the statement.[3] If they fail to challenge or object to any charge, interest or fee within those sixty days, the issuer may presume that the statement was correct. In most cases, the account holder receives six statements following the default. If no payments or arrangements are made with the credit card issuer during this period, the account is charged-off.

Charge-offs are inherently reliable. They are are heavily regulated and issuers have no discretion regarding the date of charge-off or the calculation of the charge-off balance.

The Federal Financial Institutions Examination Council ("FFIEC") established the Uniform Retail Credit Classification and Account Management Policy which governs the re-aging of open-end accounts, which include credit card accounts. The Policy requires that open-

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[3] Fair Credit Billing Act, 15 U.S.C. § 1666(a) (2003)

end accounts be charged-off if they are 180 cumulative days past due from the contractual due date.[4]

When an account is charged-off, the credit card issuer absorbs the outstanding balance as a loss and takes the amount of the non-performing receivable as a charge against current earnings. It does not mean the debt is extinguished or forgiven and no longer owed by the account holder. Some delinquent account holders have argued that "[C]redit card holders who are unable to pay their debt need merely stop payment for 180 days, at which point . . . such debts will automatically become taxable income and be extinguished. [However, the Court held that] this theory is as ridiculous on its face as it is incoherent in its explanation."[5]

The charge-off balance consists of all sums that are due and owing as of the charge-off date. It includes the amount actually expended by the cardholder for goods and services, all un-reimbursed cash advances or transfers, and all interest, fees and charges as provided in the cardholder agreement. In essence, the charge-off balance is the total of all unpaid activity on the account as of the date of charge-off.

4. The Credit Cardholder Agreement

Credit card accounts are opened in numerous ways, some of which require signatures, most of which do not. Accounts are opened over the telephone and the internet as well as by the traditional mail application. Due to the techniques of modern communications, few credit card accounts are opened with signed applications. Credit card agreements also lack signatures. The use of the card by the cardholder, not a signature on an application or contract, signifies the cardholder's acceptance of the terms and conditions found in the credit card agreement.[6]

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[4] *See* 65 Federal Register 36,903 at 36904. The OCC adopted this policy for all national banks and their operating subsidiaries on June 20, 2000 in OCC Bulletin 2000-20 which revised the "Uniform Retail Credit Classification and Account Management Policy," originally published in the *Federal Register* on February 10, 1999.

[5] *Kelly v. Wolpoff & Abramson, L.L.P.*, 2008 U.S. Dist. LEXIS 45345, 45360 (D.Colo. 2008)

[6] *Anastas v. American Sav. Bank (In re Anastas)***,** 94 F.3d 1280, 1285 (9th Cir. 1996) (each card use forms a unilateral contract: the holder "promises to repay the debt . . . and the . . . issuer performs by reimbursing the merchant who . . . accepted the . . . card in payment."; *Goldman v. First Nat'l Bank of Chicago***,** 532 F.2d 10, 18 n.13 (7th Cir. 1976) cert. denied, 429 U.S. 870 (1976) There is no extension of credit until the card is used under the Consumer Credit Protection Act.; *Bank of America v. Jarczyk***,** 268

Credit card issuers are required to send cardholders copies of the credit card agreements setting forth the terms and conditions of the uses of the credit card.[7] Issuers may unilaterally amend terms by giving notice to the cardholder.[8] "Whenever any term required to be disclosed under Section 226.6 is changed or the required minimum periodic payment is increased, the creditor shall mail or deliver written notice of the change to each consumer who may be affected. The notice shall be mailed or delivered at least 15 days prior to the effective date of the change." 12 C.F.R. Section 226.9(c).

Consumers can refuse to agree with the changes by returning the credit card to the issuer.

The relationship between the issuer and the cardholder is clearly set out in the cardholder agreement which has been subject to strict scrutiny by the courts. The use of the credit card signifies that the cardholder has agreed to the terms and conditions of the cardholder agreement. "Use of a credit card indicates the user's assent to be bound by the terms of the cardmember agreement, regardless of whether the agreement is provided to him before he chooses to use it. In contracts, as in life, we must look before we leap." *Jefferson v. HSBC Bank, Nevada, N.A.*, 2008 WL 2559395 (M.D. Ala. June 23, 2008).[9]

The use of the credit card controls the relationship between the issuer and cardholder. If the cardholder uses the card, she or he is bound by the terms and conditions of the cardholder

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B.R. 17, 22 (W.D.N.Y 2001) "Acceptance or use of the card by the offeree makes a contract between the parties according to the terms. . . Because it is the use of the credit card, and not the issuance, that creates an enforceable contract, each time a cardholder uses his credit card, he accepts the offer by tendering his promise to perform (i.e. to repay the debt upon the terms set forth in the credit card agreement)."; *See also* Restatement (Second) of Contracts, Section 31 Comment b. (1979).

[7] Provisions are found in The Federal Consumer Protection Act 15 USC § 1601 *et seq.* ("CCPA") and the Truth In Lending Act ("TILA") (a subsection of the CCPA).

[8] Examples:

5 Del. C. § 952 (Delaware)
SDCL § 54-11-10 (South Dakota)
N.R.S. 97A.140 (Nevada)

[9] *See also In re Feld*, 203 B.R. 360 Bankr. E.D. Pa. (1996). "If we view each individual credit card transaction as the formation of a unilateral contract between the card holder and card issuer consisting of the following promise in exchange for performance: the card holder promises to repay the debt plus to periodically make partial payments along with accrued interest and the card issuer performs by reimbursing the merchant who has accepted the credit card in payment . . ."

agreement. If the cardholder does not agree with these terms and conditions, she or he can simply return the credit card.

5. Federal Preemption of State Law

Federal law preempts State law in regard to the individual terms and conditions found in credit cardholder agreements.[10] Federal law provides that the substantive terms of the agreement which include charges, fees and interest are governed by the law of the State in which the lender is chartered or incorporated.

For instance, if a bank is chartered in South Dakota, South Dakota's substantive law applies. South Dakota's permissible rate of interest is higher than the interest rate allowed by most other states, and consumers in those states with lower rates of interest often challenge the higher interest rate being applied to their accounts. They lose because lenders are given the authority to "export" these charges, fees and interest from their chartering states to their customers nationwide by the National Bank Act ("NBA") in the case of nationally chartered banks and the Depository Institution Deregulation and Monetary Control Act of 1980 ("DIDA") for state-chartered banks.

The United States Supreme Court held that the National Bank Act, upon which DIDA was modeled, completely preempts claims challenging the "interest" assessed by a national bank, reasoning that:

> Because §§ 85 and 86 [of the National Bank Act] provide the exclusive cause of action for [claims challenging the "interest" assessed by national banks], there is, in short, no such thing as a state-law claim of usury against a national bank. Even though the complaint makes no mention of federal law, it unquestionably and unambiguously claims that petitioners violated usury laws. This cause of action against national banks only arises under federal law and could, therefore, be removed under § 1441.

[10] "The question of preemption is one of federal law, arising under the supremacy clause of the United States Constitution. . . . Determining whether Congress has exercised its power to preempt state law is a question of legislative intent. . . . *Dowling v. Slotnik*, 244 Conn. 781, 791, 712 A.2d 396, cert. denied, 525 U.S. 1017, 119 S. Ct. 542, 142 L. Ed. 2d 451 (1998). If federal laws control in the state forum, to succeed, a claim must be cognizable as federal, rather than state, causes of action. *United Steelworkers of America, AFL-CIO-CLC* v. *Rawson,* 495 U.S. 362, 368, 110 S. Ct. 1904, 109 L. Ed. 2d 362 (1990).

Beneficial National Bank v. Anderson, 539 U.S. 1 (2003); see also, *Ansley*, 2003 WL 2196471539 U.S. at 11.

DIDA eliminates state law claims challenging the rate of interest charged by state-chartered banks, 12 U.S.C. §1831d(a). It was enacted to level the playing field and create parity between national and state banks. The statute does this in two ways. First, it expressly preempts any state law purporting to regulate the "interest rates" that a foreign, *i.e.*, out-of-state, bank may charge by authorizing state-chartered banks to charge "interest at a rate . . . allowed by the laws of the State . . . where the bank is located." *See* 12 U.S.C. §1831d(a). Second, the statute creates an express federal cause of action in the event a state-chartered bank charges interest at a rate that exceeds the amount permitted by the statute. *See* 12 U.S.C. §1831d(b).[11]

The reason that state-chartered banks are permitted to export not only traditional "interest," but also other fees, such as late and annual membership fees, is due to the expansive definition courts have given "interest" under DIDA and the National Bank Act. *See Smiley v. Citibank (S.D.), N.A.*, 517 U.S. 735, 116 S. Ct. 1780, 135 L. Ed. 2d 25 (1996).

In *Smiley,* the Supreme Court considered whether a national bank could charge late payment fees that were lawful in the bank's home state, but prohibited in the credit cardholder's state. The Supreme Court concluded that it could, citing with approval the following provision adopted by the Comptroller of the Currency:

> The term "interest" as used [in the National Bank Act] includes any payment compensating a creditor . . . for . . . any default or breach by a borrower of a condition upon which credit was extended. It includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates, late fees, not sufficient funds (NSF) fees, overlimit fees, annual fees, cash advance fees, and membership fees.

Smiley v. Citibank (S.D.), N.A., 517 U.S. 735 at 740 (citing 61 Fed. Reg. 4869 (Feb. 9, 1996) (now codified as amended at 12 C.F.R. §7.4001(a) (2003)).

The term "interest" must be construed in the same manner regardless of whether found in DIDA or the NBA. The language of the two statutes is "substantially identical," and for good

[11] The result of this statute is that state-chartered banks are allowed to "export late payment and other fees if lawful in the bank's home state." *Aronson v. Capital One Fin. Corp.*, 125 F. Supp. 2d 142, 145 (W.D. Penn. 2000).

reason: the language was borrowed from the NBA and incorporated into DIDA. *See Greenwood Trust Co. v. Massachusetts*, 971 F.2d 818, 826-27 & n.7 (1st Cir. 1992). Accordingly, the analysis of the term "interest" under the NBA and under DIDA must be the same.

A series of decisions have "expand[ed] the scope of [the National Bank Act] preemption — and, by implication, the scope of [the DIDA] preemption — well beyond periodic percentage rates." *Greenwood*, 971 F.2d at 829-30. The Supreme Court's conclusion that the NBA completely preempts claims challenging the "interest" assessed by a national bank compels the conclusion that DIDA likewise completely preempts challenges to the "interest" assessed by a state-chartered bank because "[g]iven the similarity of the language and the clearly expressed intent of Congress to create parity between state and national banks [DIDA] should be interpreted consistently with sections 85 and 86 [of the National Bank Act]." *Hill*, 799 F. Supp. at 952; *Greenwood*, 971 F.2d at 826-30 ("DIDA . . . should be interpreted *in pari materia* with its direct lineal ancestor, section 85 of the [National] Bank Act . . ."). Federal law, including DIDA and the NBA, displaces any state law claim that fees are excessive, unfair, "troubling" or invalid as a means of recovery. *United Steelworkers ofAmerica* v. *Rawson, supra,* 495 U.S. 368.

Therefore, any state law challenge to the interest, late fees, overlimit fees, or other fees, charged by a state or nationally chartered bank must fail.

6. Truth in Lending Act Disclosures and Retention

Disclosures and their form are highly regulated. They must be written clearly and noticeably presented in a form that consumers may keep. Finance Charges and Annual Percentage Rate disclosures must be more conspicuous than other disclosures. Certain disclosures for credit card applications and solicitations must be in a tabular format or in a prominent location. If provided in an electronic format, disclosures must comply with Global and National Commerce Act ("E-Sign Act") § 226.5.

Initial disclosures must be given before the first transaction is made. Credit and charge card application and solicitation disclosures must be furnished within the timing requirements of

§ 226.5a.[12] Periodic Statements must be mailed or delivered each billing cycle that the debit or credit balance is more than one dollar or a finance charge is imposed. Periodic Statements are prohibited for accounts that are deemed uncollectible; delinquency collection proceedings have been instituted; or if such statements would otherwise violate federal law. Disclosures must be made at least fourteen days prior to any date or the end of any time period required to be disclosed under § 226.7(j) in order for consumer to avoid finance or any other charge.[13] If a creditor fails to comply with this provision, the creditor shall not collect finance or other charges.

7. Consumer Protection

Federal law and regulation provide consumers with numerous protections. Various Truth in Lending statutes provide protection to consumers from the initiation of a credit transaction to its payment and satisfaction. Financial institutions are required to maintain and report accurate information, and insure the data's integrity and security.[14] If a mistake is made, consumers have been given the means to correct the mistake prior to the consumer's account being referred for collection. If an item on a billing statement is incorrect, a consumer has the right to dispute that item.[15] If an item on a credit report is incorrect, the consumer has the right to challenge that item and have it corrected.[16] If an electronic transfer is incorrect, it too may be challenged.[17] If an item is not disputed, it is presumed to be correct.[18]

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[12] Credit and charge card applications and solicitations. § 226.5a.

[13] *See* Credit Cardholders Bill of Rights Act of 2009 , Public Law No: 111-024 (5/22/2009). Promulgated rules which are to take effect on February 22, 2010, will change disclosure requirements.

[14] Fair Credit Billing Act, 15 U.S.C. § 1666(a) (2003); Fair Credit Reporting Act, 15 U.S.C. § 1681(s)(2) (2003).

[15] 15 U.S.C. § 1666.

[16] 15 U.S.C. § 1666(a); 15 U.S.C. § 1681(i)(1)(A) (2003).

[17] Electronic Funds Transfer Act, 15 U.S.C. § 1693f(a) (2003); Regulation E, 12 C.F.R. § 205.11 (2003).

[18] In *Am. Express Travel Related Servs. v. Silverman*, 2006 Ohio App. LEXIS 6327 (Ohio Ct. App., Franklin Cnty. 2006), the consumer tried to raise a number of dilatory attacks on the creditor's summary judgment proof. In rejecting those arguments, the Court of Appeals noted that the cardholder agreement provided that any dispute of a bill or a transaction on a bill had to be submitted in writing, no later than 60 days after the date of the first bill on which the error or problem appeared.

The Gramm-Leach-Bliley Act[19] ("GLBA"), through the enforcement procedures assigned to the Federal Trade Commission, protects the privacy of consumer non-public personal information ("NPI") maintained by financial institutions. Financial institutions are required to "insure the security and a confidentiality of customer records and information;"[20] "protect against any anticipated threats or hazards to the security or integrity of such records;"[21] and "protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer."[22]

The Fair Credit Reporting Act ("FCRA") as amended by the Fair and Accurate Credit Transaction Act of 2003 ("FACTA"),[23] regulates the transmission and use of consumer data by consumer credit reporting agencies ("CCRAS") such as, Equifax, Experian, and TransUnion. All data delivered by financial institutions to the CCRAS is submitted via disk, computer tape or electronic transmission. The reported data does not consist of a list of every transaction on a consumer's account. It includes the current status of each account, essentially a summary of the consumer's NPI.[24] The data maintained by the CCRAS is made available to their subscribers via the internet and on-line systems. CCRAS are required "to maintain 'reasonable procedures' to avoid improper disclosures of consumer credit information."[25]

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[19] 15 U.S.C. §§ 6801-6809 (2003).

[20] 15 U.S.C. § 6801(b)(1); Standards for Safeguarding Customer Information, 16 C.F.R. § 314.1(a) (2003). *See also* Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003, 72 Fed. Reg. 63,718 (Nov. 9, 2007) (the "Final Red Flags Rule").

[21] 15 U.S.C. § 6801(b)(2).

[22] 15 U.S.C. § 6801(b)(3).

[23] 15 U.S.C. §§ 1681-1681v (2003).

[24] NPI is the information that financial institutions transmit to their collection agencies or attorneys when an account is referred for collection.

[25] *TRW, Inc. v. Andrews*, 534 U.S. 19, 19 (2001) (citing 15 U.S.C. § 1681e(a)).

Consumers have the right to dispute reported line items on their credit reports.[26] A written dispute will cause the credit reporting agency and the furnisher of the credit information to investigate the dispute and report the results of the investigation in writing to the consumer.[27]

8. Validation of the Debt

Once a credit card account is opened, The Fair Credit Billing Act, 15 U.S.C. § 1666 *et seq.* (2003) provides that a consumer has the right to review his monthly statements and ask the issuer to investigate any perceived discrepancies in the statement. Each line item on each account statement that is not disputed within sixty days following the receipt of the statement is presumed proper and accepted by the consumer. If it is disputed, the creditor must investigate the item and inform the consumer of its decision concerning the dispute.

The debtor's acceptance of the charges can also be inferred from the fact that the debtor continued to use the credit card, made partial payments, and never attempted to cancel the agreement during the period despite having received the statements for several months. Acquiescence to the contract by the party to be charged may be implied from his affirmative actions, such as when he continues to order and accept goods with the knowledge that a service charge is being imposed and pays the charge without timely objection. *Tubelite v. Risica & Sons, Inc.*, 819 S.W.2d 801, 805. Consent may be implied from acceptance of payments. *Western State Bank v. Grumman Credit Corporation*, 564 F.Supp. 9, 14 (D. Montana 1982). "If the defendants fail to object in writing pursuant to their rights to dispute the bill, the debtor has waived the right to dispute the balance."[28]

In *Minskoff v. American Express Travel Related Servs. Co.*, 98 F.3d 703 (2d Cir. 1996), the Court held that:

> Once a cardholder has established a credit card account, and provided that the card issuer is in compliance with the billing statement disclosure requirements of

[26] Fair Credit Reporting Act, 15 U.S.C. § 1681, *et. seq*.

[27] *Id*. 15 U.S.C. § 1681s-2(6).

[28] 15 U.S.C. § 1666 and Regulation Z Subsection 226-13(b)(1)-1.

> 15 U.S.C. 1637, the cardholder is in a superior position to determine whether the charges reflected on his regular billing statements are legitimate. A cardholder's failure to examine credit card statements that would reveal fraudulent use of the card, constitutes a negligent omission that creates apparent authority for charges that would otherwise be considered unauthorized under TILA. (*See TransAmerica* 325 N.W. 2nd at 215.)

A consumer's right to verify that the debt being alleged is truly his, is found in the FDCPA validation requirements. § 1692g requires that the initial dunning letter to a consumer contain a "validation" notice stating:

> This firm serves as a debt collector for our client. The purpose of this communication is to collect a debt and any information obtained will be used for that purpose. Unless you notify us within thirty (30) days after receiving this notice that you dispute the validity of the debt or any portion thereof, we will assume this debt to be valid. If you notify us in writing within thirty (30) days of receiving this notice, we will obtain and forward to you verification of the debt, or if the debt is founded upon a judgment, a copy of the judgment, and we will mail you a copy of such verification or judgment. If the original creditor is different from the creditor named above, then upon your written request within thirty (30) days of the receipt of this notice, we will provide you with the name and address of the original creditor if different from the current creditor.

Neither the FDCPA nor caselaw require that the exact language be used. Debt validation will be provided upon the debtor's request or the account must be closed in the debt collection agency's files. The process by which a debt collector verifies a debt was intended "to eliminate the . . . problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer had already paid."[29] The verification process is simple and straightforward.

> [V]erification of a debt involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed; the debt collector is not required to keep detailed files of the alleged debt. Consistent with the legislative history, verification is only intended to eliminate the . . . problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid. . . There is no concomitant obligation to forward copies of bills or other detailed evidence of the debt.

Chaudhry v. Gallerizzo, 174 F.3d 394, 406 (4th Cir. 1998)

[29] S. Rep. No. 95-382, at 4 (1977), reprinted in 1977 U.S.C.C.A.N. 1695, 1699.

> At a minimum, verification of a debt involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed.

Clark v. Capital Credit and Collection Services, Inc., 460 F.3d 1162, 1173 (9th Cir. 2006) (adopting holding in *Chaudhry*) (internal citations omitted).

All these protections are available any time a consumer believes that a mistake has been made. Numerous challenges to the identification and accuracy of a debt are available throughout the use of the credit card and prior to the account being placed for collection or a law suit filed. Unless challenged and found to be incorrect, proof of the charge-off balance and post-charge-off additions have been and should continue to be accepted as *prima facia* proof of the debt.

9. Conclusion

Credit cards are heavily regulated. The use of the card creates the contract and the balance due at charge-off is a sum that can be taken "to the bank." Consumers are provided a plethora of laws protecting them in every aspect of the credit process from obtaining a credit card to using it to defaulting on it. At this point in time, the law governing credit and credit card accounts is in a state of flux. The "Financial Reform Plan" released by the Federal Government on June 17, 2009, contains sweeping changes that would fundamentally reshape consumer protection regulation of many financial products and services. The Federal Reserve Board and other responsible agencies have issued wide reaching regulations which will take effect on February 22, 2010, pursuant to the requirements of Credit Cardholders Bill of Rights Act of 2009. The Consumer Financial Protection Agency Act will create an independent federal agency to regulate the provision of financial products and services to consumers. More changes are on the horizon.

NARCA will continue to monitor these and other changes as well as caselaw affecting credit card debt, and will update this White Paper to reflect such changes as they occur. For additional information or to comment on this White Paper, please contact NARCA at narca.org.

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