With Thousands of Ohioans Affected by Errors in Their Credit Reports, Brown Urges Feds to Take Action Against “Zombie Debts” That are No Longer Owed But Linger on Credit Reports

Brown Has Introduced Legislation that Would Require Banks and Debt Buyers to Notify Credit Reporting Agencies When a Consumer’s Debt Has Been Extinguished Through Bankruptcy. One in Five American Consumers’ Credit Reports Have an Error.

Wednesday, August 5, 2015

WASHINGTON, D.C. – With thousands of Ohioans impacted by errors on their credit reports, U.S. Sen. Sherrod Brown (D-OH) today urged federal regulators to better monitor financial institutions that sell debt to debt collectors, particularly “zombie debt.” This is debt that the consumer may have already paid, debt discharged in bankruptcy, or debt that was erroneously incurred through identity theft or fraud. Debt collection and credit reporting are two of the most frequent consumer finance complaints reported to the Consumer Financial Protection Bureau (CFPB), and reports have shown one in five Americans’ credit reports has an error that may impact ability to obtain credit.

“Everyone should have an accurate credit score and no one should be haunted by debts they don’t owe,” said Brown, ranking member of the U.S. Senate Committee on Banking, Housing, and Urban Affairs. “But too many Americans are haunted by zombie debts – debts they’ve already paid but still appear on their credit reports. Credit scores are often used for non-credit purposes, like job decisions and rental housing, compounding the problem. That’s why I’m urging federal regulators to do their part to ensure accurate and timely reporting of consumer debt information. These agencies can and must do more to ensure that buyers and sellers of debt aren't engaging in behavior that exploits consumers.”

Last month, the nation’s largest bank agreed to settle claims regarding allegations that it sold credit card debt that was inaccurate to debt collectors – who then illegally attempted to collect on the debt. These actions impacted half a million consumers, including 14,000 Ohioans. Since the Consumer Financial Protection Bureau (CFPB) opened its doors four years ago, 20,000 Ohio consumers have filed complaints with the CFPB – and roughly 8,000 of those involved debt collection and credit reporting.

In response, Brown sent a letter today to Federal Reserve Chair Janet Yellen, Comptroller of the Currency Thomas Curry, Federal Deposit Insurance Corporation Chairman Martin Gruenberg, and National Credit Union Administration Chairman Debbie Matz. The letter urges specific action by the regulators to strengthen oversight of debt-sale arrangements, including considering what information the financial institutions send to debt buyers and consumers, how that information is verified for accuracy, and whether there are prohibitions on financial institutions selling zombie debt to debt collectors. The letter is below.

“Credit history is critical to home buying and asset building,” said David Rothstein of Neighborhood Housing Services of Greater Cleveland. “Far too many families come to us with dings on their credit that are not real or were taken care of years ago. Without this bill, families are inadvertently being denied access to homeownership.”

Brown also outlined legislation he has introduced that would require banks and debt buyers to notify credit reporting agencies when a consumer’s debt has been extinguished through bankruptcy. In Ohio alone, there were more than 40,000 bankruptcies last year. Introduced last month, Brown’s Consumer Reporting Fairness Act would amend bankruptcy law to require creditors to ensure that a debt discharged in bankruptcy shows a zero balance on the consumer’s credit report in an accurate and timely manner. The bill also would permit consumers to take legal action against creditors that fail to report a discharged debt that is no longer owed.

The Consumer Reporting Fairness Act is supported by Americans for Financial Reform, Center for Responsible Lending, Consumer Action, Consumer Federation of America, Consumers Union, Demos, Leadership Conference on Civil and Human Rights, National Association of Consumer Advocates, National Association of Consumer Bankruptcy Attorneys, National Coalition for Asian Pacific American

Community Development, National Community Reinvestment Coalition, National Consumer Law Center (on behalf of its low-income clients), National Council of La Raza, Public Interest Research Group, and Public Citizen.
Full text of the letter to regulators is here and below.

August 5, 2015

The Honorable Janet Yellen
Chair
Board of Governors
The Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20429
The Honorable Marty Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

The Honorable Thomas Curry
Comptroller
Office of the Comptroller of the Currency
250 E Street, S.W.
Washington, D.C. 20219

The Honorable Debbie Matz
Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Dear Chair Yellen, Comptroller Curry, Chairman Gruenberg, and Chairman Matz:

Financial institutions are required to ensure that the information they report to consumer reporting agencies is accurate under the Fair Credit Reporting Act. However, financial institutions have too often claimed that their obligation to ensure accuracy ends when they sell the debt. I am writing to urge your agencies to take a more proactive role in requiring the financial institutions that you supervise to responsibly sell debt.

As our country continues to recover from the 2008 financial crisis, it is more important than ever to focus on consumer finance is− sues. Not only are people's credit scores depressed in the aftermath of the crisis, but consumer reports are more often being used for non-credit purposes, including employment and rental housing. At the height of the crisis, in 2008-09, approximately 50 million consumers saw their credit scores plunge more than 20 points – with 21 million of those declining more than 50 points.[1] The Federal Trade Commission (FTC) has reported that an alarming one in five consumers has an error on his or her credit report, and that many of these errors lead to these consumers being given less favorable interest rates or no credit at all.[2]

The Consumer Financial Protection Bureau (CFPB) has done great work to shine a light on the consumer reporting and debt collection markets – from supervising the largest participants to publishing reports and taking enforcement actions. More than 650,000 consumers filed complaints with the CFPB since it opened its doors, with debt collection and credit reporting making up the majority of the complaints consumers filed over the past year. For example, 20,000 Ohio consumers have filed complaints with the CFPB – and roughly 8,000 of those were about debt collection and credit reporting.

Millions of consumers are dealing with so-called "zombie debt" on their credit reports or in collections – debt that is already paid, discharged in bankruptcy, did not belong to the consumer, or resulted from fraud or identity theft. Nearly 8 in 10 consumers that filed a complaint with the CFPB about credit reports over the past year had incorrect information on their credit report,[3] and nearly 40 percent of debt collection complaints were about continued attempts by debt collectors to collect debt not owed.[4]

On July 8, the CFPB, 47 states, and the District of Columbia took action against the nation's largest bank for selling bad credit card debt and robo-signing court documents.[5] The debt included debts discharged in bankruptcy, as well as other zombie debt, and affected more than half a million consumers across the country. Separately, but on the same day, the Office of the Comptroller of the Currency (OCC) fined the bank $30 million for unsafe or unsound practices related to the bank's debt collection practices and Servicemembers Civil Relief Act compliance.[6] As a result of the enforcement action, the bank is required *to undertake a number of steps, including prohibiting debt buyers from reselling accounts; confirming debt before selling to debt buyers; notifying consumers that their debt has been sold and making their account information available; not selling zombie debts; and verifying debts when filing a lawsuit.[7]*

The OCC has previously raised safety and soundness concerns related to the sale of debt by financial institutions. In testimony for the record at a hearing that I chaired in 2013, the OCC stated "[i]n seeking to recover their losses, banks should exercise particular care when they choose to sell that debt to third party debt collectors. Selling debt to third party debt collectors carries particular compliance, reputational, and operational risks....it is evident that these risks are gaining increasing prominence."[8] The OCC followed this testimony with guidance in August 2014 on the application of consumer protection requirements and safe and sound banking practices to consumer debt-sale arrangements with third parties.[9]

Though the CFPB has primary authority over the Fair Debt Collection Practices Act, and has announced its intentions to issue regulations, I believe that the prudential regulators can do more to supervise debt sales by financial institutions they regulate both for safety and soundness as well as to better protect consumers. To that end, please answer the following questions:

- *What expectations do you have of financial institutions for structuring debt-sale arrangements in a manner that is safe, sound, and promotes fair treatment of consumers?*
- *How does your agency examine for compliance with any guidance, including the OCC's August 2014 consumer debt sales guidance, regarding debt sales?*
- *The CFPB has stated there is a need for national documentation standards to maintain the accuracy of information used to collect debts.[10] Do you agree with this need and what is your agency doing to advance this goal?*
  • What are you doing to ensure that financial institutions provide accurate and comprehensive information to debt buyers? Have you considered requiring substantiating account-level documentation as well as a record of consumer disputes?
- *What supervision do you have over debt buyers? What due diligence would you expect a financial institution to perform when selecting a debt buyer? Do you have authority to supervise debt buyers that are owned by a financial institution? If so, how frequently do you conduct examinations?*
- *The OCC guidance recommends that banks conduct look-backs to determine whether debt buyers the bank contracts with has engaged in practices that hurt consumers. Have any of your agencies required a financial institution to conduct such a look- back?*
- *What information is provided to consumers at and after debt sale? Have you considered requiring supervised institutions to provide consumers notice of the sale, including a breakdown of the charged-off balance and the name of the debt buyer?*
- *Have you considered restrictions on types of accounts that can be sold, such as those discharged in bankruptcy, in dispute, settled, owned by a deceased consumer, or where there is unclear ownership of the account? The OCC has designated certain types of debt as not being appropriate for sale, including zombie debt. What oversight is performed to ensure that these debts are not sold?*
- *How do you coordinate with the CFPB, the FTC, state regulators, and each other to resolve issues related to debt sales and debt collection?*

Collecting on legitimate debts in a safe and sound way can help our nation's credit system function more efficiently. However, debt collection that is unfair or based on errors undermines the public's confidence in the financial system. There are presently over 4,000 debt collection and debt purchasers in the country, many of whom still have no direct federal supervisor.[11] As a result Federal financial regulators are the first line of defense, monitoring shortcomings in debt sales before they become problems in the largely unregulated debt collection market. I urge you consider your current practices in these areas, work with the CFPB, FTC, and state regulators, and take all possible steps to ensure that the reputations of both consumers and financial institutions are not permanently scarred by zombie debt.

Sincerely,

Sherrod Brown
United States Senator

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https://www.brown.senate.gov/newsroom/press/release/with-thousands-of-ohioans-affected-by-errors-in-their-credit-reports-brown-urges-feds-to-take-action-against-zombie-debts-that-are-no-longer-owed-but-linger-on-credit-reports