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## Documentation? - I Don't Have to Show You Any Stinkin' Documentation - An Evaluation of the Verification Requirement of 15 U.S.C. Sec. 1692g(b)

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DOCUMENTATION? I DON'T HAVE TO  
SHOW YOU ANY STINKIN'  
DOCUMENTATION!  
AN EVALUATION OF THE VERIFICATION  
REQUIREMENT OF 15 U.S.C. § 1692g(b)

By Michael D. Slodov \*

INTRODUCTION

In the course of ordinary consumer collections, a recurring issue presents itself when the consumer tenders a written dispute concerning a debt and makes a written request for verification of the debt, pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692g(b). This article addresses the question of Congress' intent when it required debt collectors to provide verification, and whether *verification* means "documentary evidence of the obligor's indebtedness." Many experts believe,<sup>1</sup> and many courts have held,

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<sup>1</sup> See, e.g., *Debt Validation – The Ultimate Weapon Against the Collection Agencies*, CREDITINFOCENTER.COM (Mar. 8, 2011), [http://www.creditinfocenter.com/rebuild/debt\\_validation.shtml](http://www.creditinfocenter.com/rebuild/debt_validation.shtml) ("What does a debt collector need to provide as debt validation? [1] Proof that the collection company owns the debt/or has been assigned the debt. (Bob is legally entitled to collect this particular debt from you.) This is basic contract law. It is very difficult to get a judgment without a direct contract between the collection agency and the original creditor; [2] At a minimum, some account statements from the original creditor. If you really want to get sticky, you can pin them down on the amount of the debt by requiring complete payment history, starting with the original creditor. (How the heck did Bob calculate this debt? What fees/interest Bob has tacked on to this debt

that the verification requirement constitutes an entitlement to evidentiary proof of the amount of indebtedness that is the subject of collection. Part I of this article provides an overview of the language of the FDCPA with a focus on the “validation of debts” requirement. Part II articulates the case law regarding this provision. Where the case law does not provide concrete guidance, Part III looks to the legislative history for assistance in defining what constitutes “validation of debt.” Part IV provides an analysis of this legislative history, setting forth two alternate interpretations of the “validation of debts” requirement: the “confirmation of facts” and “investigation” interpretations. Part V applies these two interpretations to the provision. Finally, Part VI provides the conclusion that the verification of the debt does not require documentary evidence of the amount of the debt, nor does it require preparation or production of any legal documents. Instead, Congress used the term “verification” in a descriptive sense, as a method to be used to confirm that the debt is in fact still owed by the consumer.<sup>2</sup> Therefore, Courts have expanded the verification requirement beyond the legislative mandate.

## I. AN OVERVIEW OF 15 U.S.C. § 1692g

The statute, 15 U.S.C. § 1692g, titled “validation of debts,” provides:

### (a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

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and how he determined these fees?) This requirement was established by the case *Fields v. Wilber Law Firm, P.C.*, 383 F.3d 562 (7th Cir. 2004); [3] Copy of the original signed loan agreement or credit card application. (Your contract with Joe establishing the debt between you.) However, account statements from the original can fulfill these requirements.”); *see also, How To Dispute A Credit Report or Debt*, ASKDOCTORDEBT.COM, <http://www.askdoctordebt.com/13611-Dispute-a-debt> (last visited Nov. 22, 2011) (“For verification of a debt, generally it is considered sufficient for the debt collector to provide you with a statement that the amount being collected is the amount owed, along with any supporting documentation or records from the creditor.”).

<sup>2</sup> *See infra*, nn. 55-132.

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a)<sup>3</sup> of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, *until the debt collector obtains verification of the debt* or a copy of a judgment, or the name and address of the original creditor, and *a copy of such verification* or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. . . .<sup>4</sup>

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<sup>3</sup> This article concerns the debt collector's response to a request for verification, as opposed to the sufficiency of the debt collector's validation notice under § 1692g(a)(4).

<sup>4</sup> Validation of Debts, 15 U.S.C. § 1692(g), Pub. L. No. 90-321, § 809, amended by Pub. L. No. 109-351, § 802, 120 Stat. 2006 (emphasis added). In 2006, Congress amended the FDCPA by, among other changes, adding two sentences to the end of subsection (b) of § 1692g. See Financial Services Regulatory Relief Act of 2006, Pub. L. No. 109-351, § 802(c), 120 Stat. 1966, 2006-07. Those new sentences provide:

Collection activities and communications that do not otherwise violate

The FDCPA contains no definition for the term verification. It provides no frame of reference as to where the debt collector is to obtain the verification.<sup>5</sup> Likewise, it does not limit the nature of dispute, elaborate on the distinction made for disputed portions of a debt, or call for a dispute-centric response.

Consulting a dictionary adds little to one's understanding of what Congress intended when it added the "verification" requirement. Indeed, verify is defined as, "[a] confirmation of the truth of a theory or fact . . . . A formal statement of such a confirmation."<sup>6</sup> Verification is defined as:

1. the act of verifying.
2. the state of being verified.
3. evidence that establishes or confirms the accuracy or truth of: *We could find no verification of his fantastic claims.*
4. a formal assertion of the truth of something, as by oath, affidavit, etc.
5. the process of research, examination, etc. required to prove or establish authenticity or validity.
6. *Law.* a short confirmatory affidavit at the end of a pleading or petition.<sup>7</sup>

Black's Law Dictionary defines verification as: "[a] formal declaration made in the presence of an authorized officer, such as a

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this subchapter [*i.e.*, the FDCPA] may continue during the 30-day period referred to in subsection (a) of this section unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

*Id.*

<sup>5</sup> See generally FTC Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. 50097, 50110 (Dec. 13, 1988). The FTC Staff Commentary on this requirement states only: "Section 809(b) requires that, if the consumer disputes the debt or requests identification of the original creditor in writing, the collector must cease collection efforts until he verifies the debt and mails a response." *Id.*

<sup>6</sup> AMERICAN HERITAGE DICTIONARY 1422 (1973); see also WEBSTER'S ENCYCLOPEDIA DICTIONARY OF THE ENGLISH LANGUAGE 932 (1971) (defining "verify" as "[T]o prove to be true; to confirm; to establish the truth, correctness, or authenticity of."); see also RANDOM HOUSE DICTIONARY 1587 (1966) (defining "verify" as "to prove the truth of, as by evidence or testimony; confirm; substantiate: *Events verified his prediction.* 2. To ascertain the truth or correctness of, as by examination, research, or comparison: *to verify a spelling.*") (emphasis added).

<sup>7</sup> RANDOM HOUSE DICTIONARY 1587 (1966).

notary public, or (in some jurisdictions) under oath but not in the presence of such an officer, whereby one swears to the truth of the statements in the document.”<sup>8</sup> The word ‘obtain’ means: “to come into possession of; get or acquire; procure, as through an effort or by request: *to obtain some information.*”<sup>9</sup>

If the dictionary definitions resolved all doubt about what the terms meant, going beyond the dictionary definitions would be unnecessary.<sup>10</sup> However, there is clearly more than one possible interpretation of these terms – connoting a confirmatory statement, acquisition of evidence, a formal legal attestation, and, conducting research or an examination, confirming or proving a fact – and thus, looking beyond the definitions to the legislative history is proper.<sup>11</sup>

## II. CASE LAW

Case law has established varying standards regarding the sufficiency of a debt collector’s verification response. Using these varying standards, the cases on this subject can be split into three groups. The first group, which includes the majority of cases, requires the debt collector to provide both confirmation in writing that the amount in demand is what the creditor is claiming is owed *plus* some documentation of the debt.<sup>12</sup> The second group, which includes a small minority of cases, requires that the documentation provided to the debtor must be responsive to the nature of the dispute raised.<sup>13</sup> A third group, which represents another minority view,

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<sup>8</sup> BLACK’S LAW DICTIONARY 1692 (9th ed. 2009).

<sup>9</sup> RANDOM HOUSE DICTIONARY 995 (1966).

<sup>10</sup> *Schindler Elevator Corp. v. United States ex rel. Kirk*, 131 S. Ct. 1885, 1891 (2011).

<sup>11</sup> *Russello v. United States*, 464 U.S. 16, 23 (1983) (“The evolution of these statutory provisions supplies further evidence that Congress intended . . .”).

<sup>12</sup> *Graziano v. Harrison*, 950 F.2d 107, 113 (3d Cir. 1991) (“The computer printouts provided to Graziano were sufficient to inform him of the amounts of his debts, the services provided, and the dates on which the debts were incurred.”); *Chaudhry v. Gallerizzo*, 174 F.3d 394, 406 (4th Cir. 1999) (Gallerizzo, after receiving assurances from NationsBank that the sums were owed, verified the debt amounts in his January 18th letter to the plaintiffs’ counsel and forwarded a copy of the bank’s computerized summary of the Chaudhrys’ loan transactions. The summary included a running account of the debt amount, a description of every transaction, and the date on which the transaction occurred.”). *See also* *Homeowners Ass’n of Victoria Woods, III, Inc. v. Incarnato*, 8 A.D.3d 983, 778 N.Y.S.2d 811 (N.Y. App. Div. 4th Dep’t 2004); *Spears v. Brennan*, 745 N.E.2d 862, 874-75 (Ind. Ct. App. 2001).

<sup>13</sup> *See Dunham v. Portfolio Recovery Assocs., LLC*, No. 4:09CV00086 JHL,

requires no documentation for verification but only written confirmation of the debt.<sup>14</sup>

### *A. Documentation View*

Debt collectors often send documents evidencing the debt from the creditor as a verification response. Courts have characterized such verification responses as sufficient, but not necessary. In *Graziano v. Harrison*,<sup>15</sup> a debt collector sent a validation notice advising the debtor that he owed \$80 to Valley Emergency Associates, P.A., for services rendered.<sup>16</sup> In turn, the debtor's counsel disputed the validity of the debt.<sup>17</sup> "Defendant obliged the . . . request by sending a statement of account prepared by Valley Emergency Associates, P.A., dated May 16, 1989, showing an outstanding balance of \$80.00."<sup>18</sup> In assessing the claimed violation of 15 U.S.C. § 1692g(b), the court found:

Plaintiff claims that he was not provided with adequate verification of the debts defendant alleged were delinquent. Defendant's affidavits, however, state that the type of computer printouts supplied by defendant to plaintiff as verifications are routinely accepted by insurers to verify claims and are accepted by them as the basis for making payments. Furthermore, defendant states in affidavits that his clients have no "hard copy" of past billing information which is kept in computer files. Thus, a computer printout in one form or another is the only printed verification available. . . . I find that the printed information provided to

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2009 WL 3784236, at \*1 (E.D. Ark. Nov. 10, 2009).

<sup>14</sup> *Rudek v. Frederick J. Hanna & Assocs., P.C.*, No. 1:08-CV-288, 2009 WL 385804, at \*2 (E.D. Tenn. Feb. 17, 2009) (collecting cases); *Thomas v. Trott & Trott, P.C.*, No. 10-13775, 2011 WL 576666, at \*7 (E.D. Mich. Feb. 9, 2011) (verification consisting of name of borrower, property address, mortgagee name, loan number, and total estimated payoff amount is sufficient to satisfy § 1692g(b)); *Mabry v. Ameriquest Mortg. Co.*, No. 09-12154, 2010 WL 1052353, at \*4 (E.D. Mich. Feb. 24, 2010) (verification consisting of name of the borrower, property address, origination date, loan amount, current mortgagee and address, and original mortgagee and address is sufficient to satisfy § 1692g(b)); *Burgi v. Messerli & Kramer PA*, No.: 08-419, 2008 WL 4181732 (D. Minn. Sept. 5, 2008).

<sup>15</sup> *Graziano v. Harrison*, 763 F. Supp. 1269, 1272 (D.N.J. 1991), *rev'd and vacated on other grounds*, 950 F.2d 107 (3d Cir. 1991).

<sup>16</sup> *Graziano*, 763 F. Supp. at 1272.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 1272-73.

plaintiff was sufficient to verify the debts at issue. Therefore, no violation of the Act occurred in this respect .

<sup>19</sup>  
...

On appeal, the Third Circuit affirmed this portion of the district court's order, finding "the computer printouts provided to debtor were sufficient to inform him of the amounts of his debts, the services provided, and the dates on which the debts were incurred."<sup>20</sup>

Moreover, in *Chaudhry v. Gallerizzo*,<sup>21</sup> debtors defaulted on a construction loan, and the bank's attorney sent a written demand for payment that itemized the amount owed for principal, interest, and inspection fees, claiming the debtors were responsible for all costs, expenses, and legal fees associated with the defaulted loan.<sup>22</sup> The debtors' attorney disputed the amounts claimed due and requested verification. In reply, the bank's attorney sent two separate responses, the first confirming the amounts "owed for principal, interest and inspection fees" and the second confirming the amount that the bank would accept for attorneys' fees, containing redacted legal bills as verification of the amount owed for the attorneys' fees.<sup>23</sup> The Court went on to note that the bank's attorney, after receiving assurances from the creditor that the sums were owed, verified the debt in a letter to the debtor's attorney, which included a copy of the bank's computerized summary of the debtor's loan transactions.<sup>24</sup> "The summary included a running account of the debt amount, a description of every transaction, and the date on which the transaction occurred."<sup>25</sup> On appeal, the Fourth Circuit noted that the trial court found the verification requirement imposed "no duty on [the bank's attorney] to have assembled supporting documentation."<sup>26</sup> The Fourth Circuit affirmed the trial court's holding that the verification response requirement does not require documentation and that the documentation sent provided sufficient verification. The Fourth Circuit opined:

[V]erification of a debt involves nothing more than the debt collector confirming in writing that the amount being

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<sup>19</sup> *Id.* at 1281.

<sup>20</sup> *Graziano*, 950 F.2d at 113.

<sup>21</sup> *Chaudhry v. Gallerizzo*, 174 F.3d 394, 394 (4th Cir. 1999).

<sup>22</sup> *Id.* at 400.

<sup>23</sup> *Id.* at 400-01.

<sup>24</sup> *Id.* at 400.

<sup>25</sup> *Id.* at 401.

<sup>26</sup> *Id.* at 406.



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.<sup>27</sup>

The Fourth Circuit held that the actions of the bank’s attorney were sufficient to verify the debtor’s debt.<sup>28</sup>

In a third example of the documentation cases, *Ayers v.*

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<sup>27</sup> *Id.* (citing S. REP. NO. 95-382, at 4 (1977), reprinted in 1977 U.S.C.C.A.N. 1695, 1699).

<sup>28</sup> *Id.*; see also *Clark v. Capital Credit & Collection Servs.*, 460 F.3d 1162, 1173–74 (9th Cir. 2006) (adopting the standard of *Chaudhry* as “the minimum” for verifying the debt, and approving a verification that involved “obtain[ing] information . . . about the nature and balance of the outstanding bill and provid[ing] [plaintiffs] with documentary evidence in the form of the itemized statement.”); *Maynard v. Bryan W. Cannon, P.C.*, 401 Fed. Appx. 389, 396-97 (10th Cir. 2010) (holding that the section “is not intended to give a debtor a detailed accounting of debt to be collected,” but instead that “verification is intended to eliminate the problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid.”) (quoting *Chaudhry*, 174 F.3d 394, 406); *Worch v. Wolpoff & Abramson, L.L.P.*, 477 F. Supp. 2d 1015 (E.D. Mo. 2007) (debt collector adequately verified the debt by sending her a billing statement); *Mahon v. Credit Bureau, Inc.*, 171 F.3d 1197 (9th Cir. 1999) (debt collector contacted creditor’s office, verified nature and balance of outstanding bill, learned that monthly statements had been sent from creditor’s office to debtors for over two years, and established that balance was still unpaid; debt collector then promptly conveyed this information to debtors, along with itemized statement of account); *McCammom v. Bibler, Newman & Reynolds, P.A.*, 515 F. Supp. 2d 1220 (D. Kan. 2007) (contacting creditor to verify amount being claimed; agency did not have additional obligation to conduct independent investigation of consumer’s concerns over whether amount claimed was correct); *Madura v. Lakebridge Condo. Ass’n*, 382 Fed. Appx. 862 (11th Cir. 2010) (property manager sent verification with original notice of intent to file lien, updated the verification in later correspondence, and sent a current statement of verification contemporaneously with filing of lien); *Ducrest v. Alco Collections, Inc.*, 931 F. Supp. 459 (M.D. La. 1996) (sending the consumer’s lease and security deposit provided by the creditor sufficiently verified the debt); *Poulin v. Thomas Agency*, 760 F. Supp. 2d 151, 159-61 (D. Me. 2011) (defendant’s verification response, consisting of sending a copy of the creditor’s bill, was sufficient verification of the debt); *Kiggundu v. Mortg. Elec. Registration Sys., Inc.*, No. 4:11–1068, 2011 WL 2606359, at \*6 (S.D.Tex. June 30, 2011) (sending note, deed and payment history “more than satisfied” verification response requirement).

*Flagstar Bank*, involved a debtor who claimed the bank was obligated to send a copy of her mortgage and promissory note as verification of her debt.<sup>29</sup> In response, the bank sent a payment history that included the debtor's name, the property address, the lender's name, the loan number, the current principal balance, interest rate, payments made, escrow balances, and late charges from January 1, 2007 (the origination date of the loan) through November 16, 2009.<sup>30</sup> In rejecting the debtor's argument, the court held the payment history the bank sent to the debtor was sufficient to verify the debt.<sup>31</sup>

In each of these cases, despite the observation that no documentation was required as part of the verification response, the courts measured the sufficiency of the verification against the documentation of the debt sent by the debt collector. Thus, the documentation cases support the view that a minimally sufficient verification response may include documentation, but does not necessarily require any documentation. The cases do not establish what constitutes a minimally sufficient verification response in the absence of documentation.

### B. Responsive View

Some courts have held that responsive documents must address the issue raised by the debtor. According to this view, the sufficiency of the verification response enclosing documentation must be responsive to the nature of the dispute raised in order to satisfy the statute. In *Lamb v. M&M Assocs., Inc.*,<sup>32</sup> the court held that sending documentation from the original creditor was insufficient to verify the debt because it did not meet the substance of the debtor's dispute. The consumer received a demand for payment

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<sup>29</sup> *Ayers v. Flagstar Bank*, No. 10-12857, 2011 WL 2433394 (E.D. Mich. June 13, 2011).

<sup>30</sup> *Id.* at \*6.

<sup>31</sup> *Ayers*, 2011 WL 2433394, at \*6 (Plaintiff claimed the FDCPA was violated because the verification response did not include the note and mortgage). *See, e.g., Thomas v. Trott & Trott, P.C.*, No. 10-13775, 2011 WL 576666, at \*7 (E.D. Mich. Feb. 9, 2011) (verification consisting of name of borrower, property address, mortgagee name, loan number, and total estimated payoff amount is sufficient to satisfy § 1692g(b)); *Mabry v. Ameriquest Mortg. Co.*, No. 09-12154, 2010 WL 1052353, at \*4 (E.D. Mich. Feb. 24, 2010) (verification consisting of name of the borrower, property address, origination date, loan amount, current mortgagee and address, and original mortgagee and address is sufficient to satisfy § 1692g(b)).

<sup>32</sup> *Lamb v. M & M Assocs.*, No. C-3-96-463, 1998 WL 34288694 (S.D. Ohio Sept. 1, 1998).

of \$86.39, and in response, she sent the debt collector a request to “provide . . . proof of the exact breakdown of the above stated amount since my final bill and the amount you are demanding of me are not the same.”<sup>33</sup> In response, the debt collector sent a letter demanding \$88.91, and a copy of the consumer’s final statement, which listed the amount owed as \$63.99, plus a monthly late fee of \$4.00.<sup>34</sup> The court found that where “the amount set forth on that original bill differs from the amount the debt collector is attempting to collect, merely providing a copy of that bill does not satisfy the obligation imposed by § 1692g(b).”<sup>35</sup>

The Court’s conclusion that the bill did not suffice as verification because it did not explain the difference between the amount previously claimed and the amount subsequently shown to be due,<sup>36</sup> suggests that verification must not only be responsive to the dispute raised, but also must corroborate the exact amount claimed to be due.

Similarly, in *Sasscer v. Donnelly*,<sup>37</sup> the debt collector demanded \$3,906.51 outstanding on a \$20,000 auto loan note.<sup>38</sup> The consumer disputed the debt and requested verification, and in response the debt collector sent a copy of the original note.<sup>39</sup> When the consumer received the note, she wrote back asserting the note didn’t prove anything,<sup>40</sup> and requested “documented proof that the truck was sold and for an exact amount that has been paid toward the truck.”<sup>41</sup> The debt collector responded with a copy of the bank’s “Notice of Disposition of Collateral,” listing the amount owed at the time of sale as about \$14,000, the truck’s sale price of \$12,200, itemizing \$1,038 for repossession, storage and disposal fees, and stating the amount owed after the sale as \$2,916.19.<sup>42</sup> Shortly thereafter, the debt collector filed suit against the consumer.<sup>43</sup> The consumer disputed she ever received the second response, and wrote a third time, requesting the entire payment history, as well as “the

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<sup>33</sup> *Id.* at \*2.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at \*9.

<sup>36</sup> *Id.*

<sup>37</sup> *Sasscer v. Donnelly*, No. 3:10cv464, 2011 WL 1522320 (M.D. Pa. Apr. 20, 2011).

<sup>38</sup> *Sasscer*, 2011 WL 1522320, at \*1.

<sup>39</sup> *Id.* at \*5.

<sup>40</sup> *Id.* at \*5-6.

<sup>41</sup> *Id.* at \*5.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at \*1.

names of loan officers allegedly involved with granting the loan . . . .<sup>44</sup> The debt collector then sent the entire loan repayment history,<sup>45</sup> which the consumer contended showed that only \$1,631.41 was in fact owed.<sup>46</sup> The Court commented that the debt collector's second response "may well have been sufficient to verify the debt," but because the Court found a genuine issue of material fact in dispute over whether the second letter was received by the consumer, and whether the debt collector had initiated suit before "sufficient verification" was sent, the Court concluded summary judgment was improper.<sup>47</sup>

In a third example, in *Dunham v. Portfolio Recovery Assocs., LLC*,<sup>48</sup> Portfolio Recovery, Associates, LLC ("PRA"), sent an "Affidavit of Ownership and Sale of Claim" in response to a dispute.<sup>49</sup> The debtor, Dunham, claimed the affidavit was insufficient verification because it did not include: "(a) the original amount of Dunham's debt; (b) the date on which the debt was incurred; or (c) any evidence that PRA confirmed the debt with the original creditor."<sup>50</sup> PRA argued that "it was only obligated to confirm the debt internally; PRA contends that it was not obligated to tell Dunham when he incurred the debt, in what amount, or to what creditor."<sup>51</sup> The Court construed the complaint to state a plausible claim for violating the statute.<sup>52</sup> The Court concluded despite the affidavit, the verification response was insufficient because "Dunham had no way to know when or to whom he had incurred the debt and whether the debt was still owed . . . . Simply repeating second-or third-hand information in the debt collector's file . . . is insufficient under the statute."<sup>53</sup>

In each of these cases, the verification response was found to be insufficient because it was unresponsive or a discrepancy existed or it otherwise failed to explain the amount due. Thus, these responsive cases take the view that a minimally sufficient verification response

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<sup>44</sup> *Id.* at \*6.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at \*1.

<sup>47</sup> *Id.* at \*6.

<sup>48</sup> *Dunham v. Portfolio Recovery Assocs., LLC*, No. 4:09CV00086 JHL, 2009 WL 3784236, at \*1 (E.D. Ark. Nov. 10, 2009).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at \*2 (quoting *Semper v. JBC Legal Group*, No. C04-2240L, 2005 WL 2172377, at \*4 (W.D. Wash. Sept. 6, 2005)).

must corroborate the amount claimed to be due with documentation in a manner that is responsive to a consumer's demand for information about the debt claimed to be due.<sup>54</sup>

### *C. Confirmation View*

The third view is that verification does not require any documentation at all, and is accomplished by only providing a statement confirming debt is in fact owed. In *Rudek v. Frederick J. Hanna & Assocs., P.C.*,<sup>55</sup> the debtor disputed his debt and requested verification. In response, the debt collector sent a letter stating “[y]our account was originally opened with CHASE BANK USA, N.A. on April 29, 2005, and your last payment was received on February 11, 2008. Our client has verified that the balance of \$5,192.65 to be true, correct, and still owing at this time.”<sup>56</sup> The debtor claimed that he was entitled to documentation, but the Court disagreed, holding that “[t]here is no concomitant obligation to forward copies of bills or other detailed evidence of the debt.”<sup>57</sup>

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<sup>54</sup> The existence of a discrepancy between the amount claimed and the creditor's documentation more logically points to a potential violation of the statutory prohibition against adding interest or fees which are not “expressly authorized by the agreement creating the debt or permitted by law,” 15 U.S.C. § 1692f(1); or has made a false representation as to the amount of the debt 15 U.S.C. § 1692e(2)(A), than it does to determining whether the documentation sent constitutes sufficient verification of the debt.

<sup>55</sup> *Rudek v. Frederick J. Hanna & Assocs., P.C.*, No. 1:08-CV-288, 2009 WL 385804, at \*2 (E.D. Tenn. Feb. 17, 2009).

<sup>56</sup> *Id.* at \*1.

<sup>57</sup> *Id.* at \*2-3. (quoting *Chaudhry v. Gallerizzo*, 174 F.3d 394, 406 (4th Cir. 1999)); *accord* *Mabry v. Ameriquest Mortg. Co.*, No. 09-12154, 2010 WL 1052353 (E.D. Mich. Feb. 24, 2010); *Burgi*, 2008 WL 4181732, at \*5 (holding “M & K’s verification, although providing a minimal amount of information to plaintiffs, does provide the nature, status, and balance of the debt, as well as the dates on which the account was opened and charged off, therefore providing a range of dates for when the debts were incurred. This information is sufficient to comply with the FDCPA.”); *Erickson v. Johnson*, No. Civ. 05-427 (MJD/SRN), 2006 WL 453201, at \*6-7 (D. Minn. Feb. 22, 2006) (“At a minimum, the debt collector must contact the creditor and verify the nature, status, and balance of the debt and then convey that information to the consumer . . . . Unlike the Fair Credit Reporting Act . . . which requires the creditor to ‘conduct an investigation’ upon notification of the consumer’s dispute of the debt, 15 U.S.C. § 1681s-2(b)(1), the FDCPA only requires that a debt collector ‘obtain[ ] verification of the debt.’ . . . Verification does not require that the debt collector ascertain the legality of the underlying credit agreement[.] . . . [nor does it] require the debt collector to provide evidence to the consumer that is sufficient to conclusively establish liability for the

The lack of uniformity on the sufficiency of the debt collectors' verification responses as shown in the case law are not particularly surprising in light of the absence of a definition for the term verification. However, the decisions are troubling to debt collectors because they may be found liable for providing an insufficient response and, depending on which judge and jurisdiction the case is in, there might be a different standard for sufficiency. A closer look at the legislative history points helps to clarify what constitutes a sufficient verification response and helps to resolve this discrepancy.

### III. THE LEGISLATIVE HISTORY

The legislative history of the FDCPA, most of which has rarely been cited in interpreting this section, is illuminating because it shows Congress considered and ultimately rejected various approaches to the dispute-verification process. The House of Representatives began crafting debt collection legislation in 1975.<sup>58</sup> There are indications that much of the language appearing in the FDCPA was borrowed from existing state law and model legislation.<sup>59</sup> In its first draft, the House of Representatives imposed a

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debt in a court action.”).

<sup>58</sup> See H.R. 10191, 94th Cong. (1st Sess. 1975); see also H.R. 11961, 94th Cong. (1976); *Debt Collection Practices Act of 1976: Hearings on H.R. 11969 Before the House Comm. on Banking, Currency & Housing*, 94th Cong. (March & April 1976) [hereinafter “Hearings on H.R. 11969”]; H.R. 13720, 94th Cong. (1976); H.R. REP. NO. 94-1202 (1976); H.R. 29, 95th Cong. (1977); *Debt Collection Practices Act of 1977: Hearings on H.R. 29 Before the House Comm. on Banking, Currency & Housing*, 95th Cong. (March 1977); H.R. 5294, 95th Cong. (1977); H.R. REP. NO. 95-131 (1977); S. 656, 95th Cong. (1977); S. 918, 95th Cong. (1977); S. 1130, 95th Cong. (1977); *Fair Debt Collection Practices Act: Hearings on S. 656, S. 918, S. 1130, & H.R. 5294 Before the Subcomm. on Consumer Affairs of the Comm. on Banking, Housing & Urban Affairs*, 95th Cong. (May 12-13, 1977); 123 CONG. REC. H10137-11324 (Apr. 4, 1977; Sept. 8, 1977).

<sup>59</sup> See S. COMM. ON BANKING, HOUSING & URBAN AFFAIRS, MARKUP ON DEBT COLLECTION LEGISLATION 61 (June 30, 1977) (statement of Mr. Taffer, referring to the general prohibitions in Sections 806, 807): “[The language in the Act] is lifted from the West Virginia debt collection law. It is also similar in concept to 14 other state laws which set forth general prohibitions like this.”); *id.* at 64 (statement of Senator Riegle): “[A]s was pointed out by counsel, this is patterned after what are thought to be some of the best state laws where states have moved in to deal with these problems. There are fourteen states who now have these general prohibitions. One of them is the state of New Mexico. One is my own home state of Michigan. This is not a new invention.”); William Richard Carroll, *Debt Collection Practices: The Need for Comprehensive Legislation*, 15 DUQ. L. REV. 97, 116 (1976);

substantial initial recordkeeping and disclosure requirement on debt collectors.<sup>60</sup> Section 810 of H.R. 10191, titled *Inspection*, which

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*Hearings on H.R. 11969, supra* note 58, at 144-55, 183-84 (statement of John W. Johnson, Model Legislation Exhibits B & C); *id.* at 230-34 (statement of Jay I. Ashman); *id.* at 237-41 (statement of Joel Weisberg); *id.* at 252-56 (statement of Richard Gross); *id.* at 264-65 (statement of Thomas Raleigh); *id.* at 274-75 (statement of Lewis Goldfarb).

<sup>60</sup> See H.R. 10191, §§ 806, 809, 810, 94th Cong. (1st Sess. 1975); H.R. 10191, § 806, 94th Cong. (1st Sess. 1975) provided:

A debt collector shall keep at each of his offices the following information for at least two years after the last activity with respect to the alleged debt by such debt collector:

(1) Account cards for each collection action in excess of \$100 being processed at such office. Such account card shall bear the following information:

(A) name, address, and home phone number (if the debt collector obtains the home phone number) of the consumer and all individuals contacted concerning the alleged debt including, without limitation, his employer and his relatives;

(B) dates and copies of all correspondence mailed to the consumer, his employer or his family;

(C) dates and times of each telephone call to the consumer, his employer, or his family; the name of employee who made such call and name of individual to whom such employee spoke;

(D) name and address of the original creditor, date account opened with the debt collector, and the total alleged debt on the date received;

(E) date of each collection on such account, and

(F) all additional charges, such as court costs and attorneys fees. Such charges must be documented and copies of the documents related thereto shall be kept in the original papers file.

(2) The original papers file for each collection account in excess of \$100 being processed at such office shall contain the following:

(A) copies of all correspondence concerning the alleged debt between the debt collector and the creditor received by the debt collector;

(B) copies of all correspondence concerning the alleged debt between the debt collector and the consumer, the consumer's employer, the consumer's family and the consumer's attorney;

(C) instruction letters from the consumer on disbursement of funds among multiple creditors;

appears comparable in its purpose to U.S.C. section 1692g, provides:

(a) Each debt collector shall, upon request and proper identification of any consumer:

(1) allow the consumer to inspect all papers or copies in its possession which bear the signature of the consumer; . . .

(2) allow the consumer to inspect all ledgers and similar accountings concerning the alleged debt which

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(D) copies of all documents, suits, judgments, etc., concerning the alleged debt;

(E) copies of all correspondence concerning the alleged debt between the debt collector and the debt collector's attorney.

(3) When the account is paid in full, the account card and original papers file relating thereto shall be clearly and boldly marked 'PAID' and such records shall be kept in a separate file for a period of 12 months from the date of full payment.

H.R. 10191, § 809, 94th Cong. (1st Sess. 1975) provided:

Each debt collector (at the time of the initial collection effort or upon the request of the consumer) shall disclose clearly and accurately, in accordance with the regulations of the Commission, to each consumer from whom the debt collector is attempting to collect an alleged debt, the following:

(1) the name, address and telephone number of the debt collector (and of the creditor by whom he was engaged to collect the alleged debt):

(2) The nature of the relationship between the debt collector and the creditor;

(3) A brief identification of the alleged debt;

(4) The date the alleged debt was incurred and the name of the original creditor;

(5) The number and amount of payments credited against the alleged debt;

(6) The outstanding balance of the alleged debt, including the number and amount of payments scheduled to repay the indebtedness;

(7) The default, delinquency, or similar charges payable in the event of late payments;

(8) That the consumer may request to inspect certain documents relating to the alleged debt pursuant to section 810 of this title; and

(9) Any other information which the Commission deems appropriate.



are in the possession of the debt collector;

(3) clearly and accurately disclose to the consumer the nature, substance, and sources of all information in its possession concerning the alleged debt;

(4) with respect to subsection (a), the consumer may make copies and take notes during the inspection . . .

<sup>61</sup>

H.R. 11969, a 1976 version of the legislation, similarly required the debt collector to provide at the consumer's request:

The name, address, and telephone number of such debt collector. The name, address, and telephone number of the original creditor; the dates of and parties to any sale, referral, assignment, or other transfer of such debt; and the unpaid amount of such debt on such dates; [t]he date credit was extended creating such debt, and the date and amount of any collection; [a]ny additional charge, including any court cost, attorney's fee, or late payment charge; [a] summary of any instruction from such Consumer on the disbursement of funds among creditors; Any document signed by such consumer concerning his obligation to repay such debt, and any ledger or similar accounting of such debt."<sup>62</sup>

In hearings on H.R. 11969, Mr. Spafford, President of the Associated Credit Bureaus, testified that these recordkeeping and disclosure requirements were ill-conceived, burdensome, and had the potential to be abused. In their stead, he suggested an alternative:

Mr. Chairman, an ethical collector doesn't want to pursue an improper claim, nor does he want to waste time and money chasing the wrong person. Our members do not want these kinds of accounts for collection and legitimate creditors have no desire to press for collection of these accounts.

Therefore, we suggest that in lieu of the current provisions in Sections 808 and 810 a meaningful mechanism be substituted to trigger the rights of an aggrieved consumer.

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<sup>61</sup> H.R. 10191, 94th Cong. (1st Sess. 1975).

<sup>62</sup> H.R. 11969, § 810(a)(1)(A)-(F), 94th Cong. (2d Sess. 1976).

Creditors should be required to certify to the collector in a one time contract [sic] that accounts turned over for collection are legitimate and that support data for the debt is available . . . .

The law should give the misidentified consumer an opportunity to challenge the account with a reasonable period of time, but not give the 'professional debtor' an additional tool to escape payment. We propose that a collector be required to send a form to a debtor who challenges an account and give him an opportunity to say – 'it isn't me.' The rights would be triggered and the creditor would have to produce evidence of the debt before proceeding.<sup>63</sup>

Evidence and testimony offered in the House of Representatives during the hearings on H.R. 11969 and H.R.29, the successive bill introduced in the 95<sup>th</sup> Congress, highlighted some of the unscrupulous practices used by certain debt collectors, as well as the varying nature of disputes.<sup>64</sup> The bulk of testimony showed that

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<sup>63</sup> *Hearings on H.R. 11969, supra* note 58; *see also id.* at 118-19 (statement by Mr. Annunzio) ("If the subcommittee were to rewrite . . . [these] sections along the lines suggested in your testimony . . . would your association support the bill?); *id.* (statement by Mr. Wylie) (discussing the FCRA & FCBA dispute "triggering" process); *id.* at 124-25 (statement by Mr. Grassley discussing the same).

<sup>64</sup> *Hearings on H.R. 11969, supra* note 58 (testimony of James Clark); *id.* at 62-91 (testimony of Larry Goldstein) (billed for a newspaper subscription not ordered); *id.* (testimony of Frank Ennis) (collection agency loses payment); *id.* (testimony of Carolyn Fox) (dunned for a debt owed by Claire E. Fox); *id.* (testimony of Tom Eichner) (intrusive calls after paying in full); *id.* (testimony of Mary Evans) (roommate agreed to handle rent); *id.* (testimony of Larry Bagley) (calls regarding unpaid promissory note); *Debt Collection Practices Act of 1977: Hearings on H.R. 29 Before the House Comm. on Banking, Currency & Housing, 95th Cong. 22-91, 69-70 (March 1977)* (testimony of William R. Mann, Hugh Wilson):

Mr. Vento: . . . [O]ne of the problems you mentioned, the nature of the accounts that you receive to collect are such that they are very often disputed. . . . [W]hat percentage of accounts are disputed?

...

Mr. Mann: With rental accounts, you are going to find 50 percent or more disputed. Animal hospital accounts, the veterinarian charged too much and so forth, and I would say they are not disputed as not owing, but they are disputed in the amount that they owe. Rental accounts many times are disputed in owing anything whatsoever, because they put up a security deposit first. . . .

Mr. Wilson: . . . I know that there were disputed accounts, but,

the problem of debt invalidity was primarily one relating to creditor disputes, as opposed to improper add-on fees.<sup>65</sup> Examples included: bills for merchandise they never ordered, interest claimed due on a non-interest bearing note lease obligations subject to an oral modification defense, billing for the wrong products that were shipped, memberships that were not ordered, and even some instances in which the consumer had no legal obligation to pay.<sup>66</sup> Testimony from Carolyn Fox regarding her experience with debt collectors demanding payment for a debt owed by Claire E. Fox<sup>67</sup> highlighted the procedures debt collectors were using at the time to verify the information they received from the creditor.<sup>68</sup> It was found that debt collectors first sent a notice of the debt to the address identified in the creditor's record. The notice contained a check box which directed the recipient to return the notice if it reached the addressee in error.<sup>69</sup> The only way for the noticed party to dispute the

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regardless of the situation involved in a disputed account, it was not within our realm to handle. Our job was to collect the money. It may have been disputed but that wasn't our problem . . . .

Mr. Vento: In your judgment, do you think it would be worthwhile or workable in cases where there is a disputed debt, for that collection agency to be barred from collection activity when there is a dispute about a debt, a legitimate dispute? . . .

Mr. Mann: You're talking about two different disputes now, sir. In one dispute the party states that they don't owe that much money. They would explain it to me, and then if I could verify the fact, that they had receipts, I would reduce the debt to that amount, to whatever it was.

The other one was a type of dispute where the debtor would say, "I don't owe it." I don't believe that a debt collection agency should be the one to determine whether the debtor owes it or not. I do believe that the courts and the customer and the debtor should resolve whether the debtor owes the money or not, and not a collection agency.

See also *id.* at 283 (statement of Joseph M. Garber); *id.* at 302 (statement of Michael M. Goldberg).

<sup>65</sup> *Hearings on H.R. 11969, supra* note 58; see also note 64 (describing witness testimony).

<sup>66</sup> *Id.*; see also *Debt Collection Practices Act of 1977: Hearings on H.R. 29 Before the House Comm. on Banking, Currency & Housing, 95th Cong. (1977).*

<sup>67</sup> *Hearings on H.R. 11969, supra* note 58, at 71.

<sup>68</sup> *Id.* at 199-210.

<sup>69</sup> *Id.* at 200-01:

Mr. Wylie. What I am getting at is how does a person who did not contract for the debt in the first instance avoid what happened to Ms. Fox?

Mr. Selbo. We do have on the letter that we send out, Mr. Wylie, a dispute or anything else wrong, to just reverse the action, send it back to us and we would reverse the action back to the client.

debt is to send that notice back with her dispute written on it. The creditor has no other initial check to determine that they have the correct debtor.

The recordkeeping and disclosure requirements of H.R. 11969 were omitted from subsequent drafts of the legislation, and in their stead, "certification" requirements emerged.<sup>70</sup> Section 808(4) of H.R. 13720 provided:

If the consumer notifies the debt collector in writing within the thirty-day period that the debt is disputed, the debt collector shall cease collection of the debt until such debt collector obtains certification of the validity of the debt from the creditor and a copy of such certification is mailed to the consumer by the debt collector.<sup>71</sup>

The report accompanying H.R. 13720 summarized the certification requirement of Section 808 as requiring four elements to achieve compliance: obtaining a statement from the creditor

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Mr. Wylie. You say you have a place on the notification that you can check?

Mr. Selbo. Right. If there's a dispute of any type, to return it to us immediately and contact us, and that is in the very first notice that goes out. We do not contact them. A notice goes first.

Mr. Wylie. You say you send out a notice in writing as your first official notice?

Mr. Selbo. Right; that so and so client has given us an amount of blank in your name, and we are sending this for address verification. If the address is correct, it stays and we assume the individual got the letter and the notice; if they return it, it comes back and says that he does not live there or they have gone, and they get information that way, and then we start looking and start searching form the individual....

Mr. Wylie. What would you think about a bill similar to the...Fair Credit Billing Act, which would require written notice initially, and then the Treasury's advice if there is an indication that there was some dispute as to the debt?

Mr. Selbo. We do this now, Mr. Wylie. We send this notice out on every account that we process.

Mr. Wylie. So you would not find that objectionable?

Mr. Selob. Not I.

Mr. Wylie. What about you, Ms. Avant?

Ms. Avant. We do the same thing. When we get an account, we send out...[a first letter] stating that we do have the account in the office and state the client that we are working for, and they have several days to contact us.

<sup>70</sup> See H.R. 13720, 94th Cong. (2d Sess. 1976).

<sup>71</sup> *Id.*

containing an itemization of the debt, the name of the consumer, that the debt has not been paid, and that the "creditor (to whom the debt was originally owed) in consideration of the consumer's debt has either delivered a merchantable product or properly rendered a service."<sup>72</sup>

The certification requirements appeared in both subsequent versions of the House Bill, H.R. 29 and H.R. 5294.<sup>73</sup> Objecting to certain aspects of the approach taken in H.R. 29, Mr. Garber, president of Credit Bureau of Cincinnati, Inc., testified that the verification response requirement was redundant in that it mirrored the consumer's rights under the Fair Credit Billing Act, and that requiring the collector to provide the name and address of the creditor "to whom the debt was originally owed as it appeared in the original sales contract or bill of sale"<sup>74</sup> was overly burdensome:

There are two specific parts of . . . section [808] that concern me. It is my understanding that the Fair Credit Billing Act<sup>75</sup> was enacted for this very purpose. That is, to allow the consumer time after receiving his statement of account from his creditor to dispute the validity of that particular debt . . . .

It seems unnecessary and certainly imposes a burden on the debt collector to go through the same exercise with the debtor once again. In the few instances where a debt

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<sup>72</sup> H.R. REP. NO. 94-1202, at 4 (1976).

<sup>73</sup> H.R. 29, 95th Cong. § 808(b) (1977) ("If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) (3) that the debt is disputed, the debt collector shall cease collection of the debt until such debt collector obtains *certification of the validity of the debt* from the creditor and a copy of such certification is mailed to the consumer by the debt collector.") (emphasis added); H.R. 5294, 95th Cong. § 808(b) (1977) ("If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) (3) that the debt is disputed, the debt collector shall cease collection of the debt until such debt collector *obtains certification of the validity of the debt* from the creditor and a copy of such certification is mailed to the consumer by the debt collector. The debt collector shall provide, along with such certification, the name and address of the creditor to whom the debt was originally owed as it appeared in the original sales contract or bill of sale and the name of the creditor to whom the debt is currently owed, or if the debt did not arise out of a transaction involving a sales contract or bill of sale, the name and address of the creditor.") (emphasis added).

<sup>74</sup> H.R. 29, 95th Cong. § 808(a)(2) (1977).

<sup>75</sup> Fair Credit Billing Act, Pub. L. No. 93-495, 306, 88 Stat. 1511 (1974) (adding 15 U.S.C. § 1666).

collector may have been provided a wrong name of a debtor, and the debtor so informs the bill collector, the collector will in turn clarify that from the creditor . . . . Therefore, I would contend that there is no need in requiring a collector to notify the debtor of the right to dispute the account, as such has already been provided the debtor under the Fair Credit Billing Act.

My next point with respect to this validation of debt section has to do with the type of information to be provided the debtor . . . .

[M]any of the bills that we handle reflect purchases made not in one location but in many locations. Consider your typical oil company bill. One such bill may contain charges for gas in one-half dozen stations in one or many cities or States . . . . Obtaining all of this information would be a very costly process and would provide no essential profit to the consumer involved.<sup>76</sup>

After the hearings on H.R. 29, additional revisions were made to Section 808 in executive session, and when the section appeared in H.R. 5294, the legislation had omitted the name and address requirement for each creditor which had been found in H.R. 29, § 808(a)(2). However, the certification requirement that emerged in H.R. 13720 provided, as both H.R. 29 and H.R. 5294 had, that "the debt collector shall cease collection of the debt until such debt collector obtains certification of the validity of the debt from the

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<sup>76</sup> *Debt Collection Practices Act: Hearings on H.R. 29 Before the H. Comm. on Banking, Fin. and Urban Affairs*, 95th Cong. 283 (1977) (statement of Mr. Garber, President, Credit Bureau of Cincinnati, Inc.); see also *id.* at 247-49 (American Collectors Association, Inc. Position Paper No. 4) (echoing these sentiments); *id.* at 146 (commentary of Associated Credit Bureaus, Inc.) (indicating their support for the approach and its improvements over H.R. 11969); see also *Hearings on S. 656, S. 918, S. 1130, and H.R. 5294 Before the Subcomm. on Consumer Affairs of the Comm. on Banking, Housing and Urban Affairs*, 95th Cong. 733 (1977) (statement of the National Consumer League) (characterizing S. 918 § 809's validation requirement as "build[ing] into the debt collection process the essential philosophy of the Fair Credit Billing Act which provides that debtors must be given full opportunity to dispute accounts on the merits . . ."); see also *id.* at 746 (statement of the Consumer Bankers Association) ("[w]e believe that a useful definition [for 'certification'] would focus on the creditor's good faith efforts to verify the disputed debt. This would be analogous to the creditor's reinvestigation role under §611 of the Fair Credit Reporting Act.").

creditor . . . .”<sup>77</sup> H.R. 5294 cleared the House by one vote.<sup>78</sup>

Next, the Senate considered H.R. 5294 along with three competing Senate versions: S. 656, S. 918 and S. 1130. Both S. 656 and S. 918 contained a nearly identical certification requirement as contained in H.R. 5294 § 808(b).<sup>79</sup> A side-by-side comparison of the subdivisions of H.R. 5294 §808(a), S. 656 §808(a) and S. 918 §809(a) reveals that the required content of the validation notice to the consumer was originally intended to mirror and work in tandem with 1692g(b)’s dispute-triggering mechanism regarding certification of the validity of a debt. H.R. 5294 §808(a)(3) and (a)(4) and S. 918 §809(a)(3) and (4) required the debt collector to send notice that included the following information:

H.R. 5294 §808 (a)(3): A statement that unless the consumer, within thirty days after receipt of the notice, disputes the *validity* of the debt, the debt will be assumed as valid by the debt collector.

S. 918 §809(a)(3): A statement that unless the consumer, within thirty days after receipt of the notice, disputes the *validity* of the debt, *or any portion thereof*, the debt will be assumed as valid by the debt collector.

H.R. 5294 §808 (a)(4): A statement that if the consumer notifies the debt collector in writing within the thirty-day

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<sup>77</sup> H.R. 5294, 95th Cong. § 808(b) (1977); H.R. 29, 95th Cong. § 808(b) (1977).

<sup>78</sup> 123 CONG. REC. H10137-11324, 10255 (daily ed. Apr. 4, 1977); 123 CONG. REC. H28109, H28112 (daily ed. Sept. 8, 1977) (statement of Mr. Bauman). The primary objection to H.R. 5294 was the inclusion of criminal penalties for FDCPA violations. 123 CONG. REC. H28109, H28111 (daily ed. Sept. 8, 1977) (statement of Mr. Annunzio).

<sup>79</sup> *Hearings on S. 656, S. 918, S. 1130, and H.R. 5294 Before the Subcomm. on Consumer Affairs of the Comm. on Banking, Housing and Urban Affairs, 95th Cong. 625, 637, 645, 658-59 (1977), reprinting S. 656, 95th Cong. § 808(b) (1977) (“If the consumer notifies the debt collector in writing within the thirty-day period that the debt is disputed, the debt collector shall cease collection of the debt until such debt collector obtains certification of the validity of the disputed portion of the debt or a copy of a judgment from the creditor and a copy of such certification is mailed to the consumer by the debt collector.”); S. 918, 95th Cong. § 809(b) (1977) (“If the consumer notifies the debt collector in writing within the thirty-day period that the debt is disputed, the debt collector shall cease collection of the debt until such debt collector obtains certification of the validity of the disputed portion of the debt or a copy of a judgment from the creditor and a copy of such certification is mailed to the consumer by the debt collector.”).*

period that the debt is disputed, the debt collector shall cease collection of the debt until such debt collector obtains *certification of the validity of the debt from the creditor* and a copy of such *certification* is mailed to the consumer by the debt collector, and a statement that, along with such *certification*, the debt collector shall provide the name and address of the creditor.

S. 918 §809(a)(4): A statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt is disputed, the debt collector shall cease collection of the debt until such debt collector obtains *certification of the validity of the debt* or a copy of a judgment from the creditor and a copy of such *certification* or judgment is mailed to the consumer by the debt collector.<sup>80</sup>

Congressman Chalmers Wylie, ranking minority member of the House Consumer Affairs Committee, remarked that the legislation before the Senate involved a delicate balance of competing interests:

H.R. 5294 defines the limit to which collectors may press for the collection of an overdue account. Any legislation of this kind calls for a balancing of competing interests, and so it is with the debt collection business.

I think a fair compromise has been struck between the concepts of privacy, which was my concern at the outset, and the reason for part of my skepticism, the right to be left alone, and the sanctity of a contract, and the subsequent breach of that contract by a failure to pay.

In balancing those interests, I think our legislation does not attempt to insulate the consumer debtor against the unpleasantness of a reminder that he has not lived up to his word to pay a just debt. We must be mindful that collection of an overdue account is not a diplomatic exchange

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<sup>80</sup> *Hearings on S. 656, S. 918, S. 1130, and H.R. 5294 Before the Subcomm. on Consumer Affairs of the Comm. on Banking, Housing and Urban Affairs, 95th Cong. at 658-59, 702-03 (emphasis added). It did not escape the attention of the drafters that "or any portion thereof" did not appear in § 809(a)(4), and it was subsequently added prior to consideration on the floor of the Senate. 123 CONG. REC. S27833, S27834 (daily ed. Aug. 5, 1977).*



overflowing with the trimmings of protocol.

But in the broad sense, this bill gives full recognition to the important role, I think, that an ethical debt collector plays in our credit-oriented society.

It gives the collector the absolute right, for example, to an initial contact with the debtor. It gives the collector the absolute right to skip trace. It gives the collector the absolute right to demand a written notice from the debtor in the case of a disputed debt. And finally, the collector has the right to continue to communicate with the debtor until the debtor notifies him in writing to cease communications.<sup>81</sup>

The bulk of the Senate Hearing consisted of statements made by stakeholders, without much in the way of anecdotal storytelling or discussion of specific provisions of the bill. In the markup session, the certification requirement was addressed, and it was changed to refer instead to verification as part of what was referred to as several technical, non-controversial amendments.<sup>82</sup>

When the bill was read on the floor of the Senate, Section 809(b) provided “the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt, or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment or name and address of the original creditor, is mailed to the consumer by the debt collector.”<sup>83</sup> The Senate Report explained

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<sup>81</sup> *Hearings on S. 656, S. 918, S. 1130, and H.R. 5294 Before the Subcomm. on Consumer Affairs of the Comm. on Banking, Housing and Urban Affairs, 95th Cong. 45 (1977); see also id. at 96-97 (statement of Robert J. Hobbs, Staff Attorney, National Consumer Law Center) (characterizing the dispute mechanism as facilitating the ability of a consumer to “voicing consumer dissatisfaction” claims for goods or services purchased); id. at 252-566, 441-47 (statement of Allen Finkel, General Counsel, Office of Consumer Affairs, Dep’t of Health, Education & Welfare) (providing a National Survey of the Complaint-Handling Procedures used by Consumers and describing parts of the response function to consumer complaints, including investigations and formulation of a response).*

<sup>82</sup> S. COMM. ON BANKING, HOUSING & URBAN AFFAIRS, MARKUP ON DEBT COLLECTION LEGISLATION 72-74 (July 26, 1977) (“Mr. Taffer: ...With regard to certification of debts under that section, we substitute the word ‘verification’ for ‘certification,’ so there is no confusion as to whether any sort of legal document is involved.)

<sup>83</sup> 123 CONG. REC. S27383, S27384 (Aug. 5, 1977).

the purpose of the verification requirement:

Another significant feature of this legislation is its provision requiring the validation of debts. After initially contacting a consumer, a debt collector must send him or her written notice stating the name of the creditor and the amount owed. If the consumer disputes the validity of the debt within 30 days, the debt collector must cease collection until he sends the consumer verification.

This provision will eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid. Since the current practice of most debt collectors is to send similar information to consumers, this provision will not result in additional expense or paperwork.<sup>84</sup>

Courts have found that in the face of a dispute, the debt collector has the option to either not verify the debt at all and cease collection or to provide verification of the debt and resume collection:

Section 1692g(b) thus gives debt collectors two options when they receive requests for validation. They may provide the requested validations and continue their debt collecting activities, or they may cease all collection activities . . . . The statute wisely anticipates that not all debts can or will be verified. After all, in the real world, creditors and debt collectors make mistakes, and sometimes initiate collection activities against persons who do not owe a debt. When a collection agency cannot verify a debt, the statute allows the debt collector to cease all collection activities at that point without incurring any liability for the mistake.<sup>85</sup>

The foregoing demonstrates that Congress considered and ultimately rejected the notion that the verification process required debt collectors to obtain and produce volumes of paper itemizing the debt, and obtain a certification of validity from the creditor.<sup>86</sup>

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<sup>84</sup> S. REP. NO. 95-382 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1699.

<sup>85</sup> *Jang v. A.M. Miller and Assocs.*, 122 F.3d 480, 483 (7th Cir. 1997).

<sup>86</sup> H.R. 10191, § 809, 94th Cong. (1st Sess. 1975); H.R. 11969, §810(a)(1)(A)-(F), 94th Cong. (2d Sess. 1976); H.R. 5294, 95th Cong. § 808(b).

## IV. ANALYSIS OF THE LEGISLATIVE HISTORY

What is striking about the revision made in the markup session to section 809(b) is that the substitution of verification instead of certification went well beyond one word; rather, instead of requiring a debt collector to “obtain[ ] certification of the validity of the debt from the creditor,” the revision merely required a debt collector to “obtain[ ] verification of the debt.”<sup>87</sup> Taffer’s reference to the change as clarifying that the statute does not require “any sort of legal document”<sup>88</sup> could be read as meaning several things. To the extent “certification” could have been interpreted as a legal attestation, likewise “verification” connotes a legal attestation but also potentially connotes evidence, proof, and other “legal” documents.

If the Senate viewed the verification requirement as equivalent to the House’s interpretation of the certification requirement, the expectation is that the Senate Report would have reiterated the House Report’s sentiment concerning what constituted certification. Yet when the markup transcript and the Senate Report are read in light of the House Report’s suggestion regarding how to comply with the “certification” requirement, it appears that the Senate intended to omit any implication that the verification requirement necessitated the debt collector to obtain any evidence, proof, and other “legal” documents from the creditor.<sup>89</sup>

Specific language of the Fair Credit Billing Act (“FCBA”) supports the conclusion that verification does not promote an investigatory or evidence-gathering mandate.<sup>90</sup> Comparing the verification requirement of section 809 with the error resolution provision of the FCBA, 15 U.S.C. § 1666, which was enacted in

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<sup>87</sup> *Hearings on S. 656, S. 918, S. 1130, and H.R. 5294 Before the Subcomm. on Consumer Affairs of the Comm. on Banking, Housing and Urban Affairs, 95th Cong. at 658-59, 702-03; 123 CONG. REC. S27383, S27384 (Aug. 5, 1977).*

<sup>88</sup> S. COMM. ON BANKING, HOUSING & URBAN AFFAIRS, MARKUP ON DEBT COLLECTION LEGISLATION 72-74 (July 26, 1977)

<sup>89</sup> *Compare* S. COMM. ON BANKING, HOUSING & URBAN AFFAIRS, MARKUP ON DEBT COLLECTION LEGISLATION 72-74 (July 26, 1977) (statement of Mr. Taffer) *and id.* at 33-34 (Statement of Senator Schmitt) (“[T]he Fair Credit Billing Act now protects consumers against such concerns as erroneous identification of a debtor in a disputed account. The disputed resolution procedure now in effect under that federal statute and the attendant penalty for violation greatly reduces the possibility that a consumer debtor will be erroneously done by a creditor collecting his own account.”), *with* H.R. REP. NO. 94-1202, at 4 (1976) *and* S. REP. NO. 95-382 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695.

<sup>90</sup> 15 U.S.C. § 1666, Pub. L. 93-495, Title III, § 306, Oct. 28, 1974 (1974).

1974, shows both similarities and differences. Under 15 U.S.C. § 1666, when the creditor received a billing error notice, the creditor was required to cease “taking any action to collect the amount, or any part thereof” within thirty days, and to either:

(i) make appropriate corrections in the account of the obligor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the obligor a notification of such corrections and the creditor’s explanation of any change in the amount indicated by the obligor under paragraph (2) and, if any such change is made and the obligor so requests, *copies of documentary evidence of the obligor’s indebtedness*; or

(ii) send a written explanation or clarification to the obligor, *after having conducted an investigation*, setting forth to the extent applicable the reasons why the creditor believes the account of the obligor was correctly shown in the statement, and, upon request of the obligor, provide *copies of documentary evidence of the obligor’s indebtedness*. In the case of a billing error where the obligor alleges that the creditor’s billing statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless he determines that such goods were actually delivered, mailed, or otherwise sent to the obligor and provides the obligor with a statement of such determination.<sup>91</sup>

Through this provision, Congress imposed a duty on creditors to address errors, to conduct an investigation, and to provide, on request, “documentary evidence of the obligor’s indebtedness.”<sup>92</sup> In light of the statutory construction maxim, *expressio unius est exclusio alterius*, the absence of such a requirement from section 809 supports the inference that Congress did not intend to impose such an obligation on debt collectors.<sup>93</sup>

Further, when section 809 is read in light of the Senate Report, the verification requirement was clearly intended to protect only the person who had already paid a debt and “the wrong

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<sup>91</sup> 15 U.S.C. §1666(a)(3)(B)(i), (ii) (emphasis added).

<sup>92</sup> *Id.*

<sup>93</sup> *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 188 (1978).

person,”<sup>94</sup> that is, a misidentified debtor. Whatever “verification” might potentially mean, it is at least apparent that the Senate understood that verification would not exist for either person; it was only in the absence of verification that collection efforts would necessarily cease.<sup>95</sup>

Despite the statement appearing in the Senate Report and the foregoing arguments against a documentary evidence requirement, there are indications in the text of section 1692g(a) that the verification requirement under section 1692g(b) was intended to protect against more than collection efforts directed only at persons who already paid or the wrong person. There are no limits for consumer disputes and no qualifications of the duty to provide verification of the debt in section 1692g(b). Both sections 1692g(a)(3) and (a)(4) state that the debt collector must notify the consumer that he has the right to “dispute[ ] the *validity* of the debt, or any portion thereof . . .” and to provide notice that “that the debt, or any portion thereof, is *disputed* . . .” A “dispute” is defined as “to argue against; call into question: *to dispute a proposal*.”<sup>96</sup> “Valid” is defined as “1. Well-grounded; sound; supportable: *a valid objection* . . . 3. Legally sound and effective; incontestable; binding: *a valid title*.”<sup>97</sup> When the change was made to subdivisions (a) and (b) in the markup, and the word *verification* was substituted for the word *certification*, the Senate left other references in the statute to the (in)validity of a debt intact.<sup>98</sup> Comparing section 1692g(a) with section 1692g(a)(4), it is only in connection with the latter subdivision that Congress expressly provided that a debt collector was obligated to obtain verification, and there is no mention of any obligation to obtain verification relating to a debt with disputed validity in section 1692g(a)(3).<sup>99</sup>

Further, neither section 1692g(a)(4) nor section 1692g(b) mentions *validity* of the debt. Instead, they refer to *disputed* debts.<sup>100</sup> Courts have struggled to reconcile this illogical disparity, primarily focusing on the issue of whether a dispute under section 1692g(a)(3)

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<sup>94</sup> S. REP. NO. 95-382 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1699.

<sup>95</sup> Section 1692g(b) provides that collection efforts are to cease “until the debt collector obtains verification . . . and a copy of such verification . . . is mailed to the consumer by the debt collector.”

<sup>96</sup> RANDOM HOUSE DICTIONARY 415 (1966).

<sup>97</sup> AMERICAN HERITAGE DICTIONARY 1414 (1973); RANDOM HOUSE DICTIONARY 1578 (1966).

<sup>98</sup> 15 U.S.C. §1692g(a)(3) and (c).

<sup>99</sup> *In re Sanchez*, 173 F. Supp. 2d 1029, 1034 (N.D. Cal. 2001).

<sup>100</sup> *Id.* at 1032 (“ . . . the debt, or any portion thereof, is disputed . . .”).

must be made in writing.<sup>101</sup> The courts have consistently found that an oral dispute under section 1692g(a)(3) does not trigger a verification response<sup>102</sup> because subsection (b) clearly provides that verification is required only regarding disputes made in writing.<sup>103</sup> The provisions of section 1692g(a)(3), (4), and (5), when read in light of subsection 1692g(b), suggest that Congress intended to provide a mechanism for consumers to voice a wide variety of disputes, including, but not limited to, oral disputes and those directed at the validity of a debt.<sup>104</sup> While the prevailing view is that oral disputes

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<sup>101</sup> *Compare* *Graziano v. Harrison*, 950 F.2d 107, 112 (3d Cir. 1991) (“Adopting *Graziano’s* reading of the statute would thus create a situation in which, upon the debtor’s non-written dispute, the debt collector would be without any statutory ground for assuming that the debt was valid, but nevertheless would not be required to verify the debt or to advise the debtor of the identity of the original creditor and would be permitted to continue debt collection efforts. We see no reason to attribute to Congress an intent to create so incoherent a system.”), *with* *Camacho v. Bridgeport Fin. Inc.*, 430 F.3d 1078, 1081-82 (9th Cir. 2005) (“the plain meaning of subsection (a)(3) does not lead to absurd results because an oral dispute triggers multiple statutory protections. We thus disagree with the Third Circuit in *Graziano*, which found it absurd that an oral dispute could rebut the presumption of validity but not trigger the verification requirement under § 1692g(a)(4), or the identification requirement under § 1692g(a)(5).”).

<sup>102</sup> *Camacho*, 430 F.3d at 1081-82 (finding “an oral dispute triggers multiple statutory protections . . . . Oral dispute of a debt precludes the debt collector from communicating the debtor’s credit information to others without including the fact that the debt is in dispute.”); *see also* 15 U.S.C. § 1692e(8) (requiring a debt collector “to communicate that a disputed debt is disputed”); *Brady v. Credit Recovery Co.*, 160 F.3d 64, 67 (1st Cir. 1998) (Congress did not impose a writing requirement under section 1692e(8), as it did under section 1692g(b), rejecting the argument that a dispute must be made in writing to trigger the duty to report a debt as disputed under 1692e(8)); 15 U.S.C. § 1692h (stating if a consumer owes multiple debts and makes a payment, the debt collector is prohibited from applying such payment to a debt which is in dispute). Moreover, a debtor’s oral notification to a debt collector entitles a debtor to relief under § 1692c(a)(1), which bars communication with a debtor at “a time or place known or which should be known to be inconvenient to the consumer.” 15 U.S.C. § 1692c(a)(1).

<sup>103</sup> *In re Sanchez*, 173 F.Supp.2d at 1034.

<sup>104</sup> *See* 15 U.S.C. § 1692g. By requiring the debt collector to provide the debtor a verification of a judgment, this statute implicates that a judgment for a given debt may already be in place. By allowing a debtor to obtain a copy of a judgment from court records, the statute supports the implication arising from the omission of “from the creditor” language in that verification can be obtained from any source. *Id.* Section 1692g(a)(5) allows for a change in ownership of the obligation by requiring the debt collector to notify the consumer that they have the right, upon written request, to “the name and address of the original creditor, if different from the current creditor.” *Id.* 1692g(b) provides that when a consumer makes a written

serve a different purpose,<sup>105</sup> under 15 U.S.C. § 1692e(8) and § 1692h scant attention has been paid to the fact that a dispute under section 1692g(a)(3) must be concerning “the validity” of a debt, “or any portion thereof,” while sections 1692g(a)(4), 1692e(8), and 1692h do not mention disputed validity, instead referring to disputed debts.<sup>106</sup>

Ultimately, the object of this exercise is to divine legislative intent. What becomes apparent from the foregoing textual analysis is that verification of the debt is not a legal “certification of the validity of the debt” or “documentary evidence of the obligor’s indebtedness.” Furthermore, verification does not have to be obtained from the creditor. Thus, having ruled out verification as connoting a legal attestation or evidence, it must be understood to require either a “confirmation of the truth of a theory or fact” or “the process of research, examination, etc. required to prove or establish authenticity or validity.” These two theories, the “confirmation of the facts” and “investigation” interpretations, will be discussed in detail below.

## V. APPLICATION OF THE “CONFIRMATION OF FACTS” AND THE “INVESTIGATION” INTERPRETATIONS.

In deciding between these two interpretations, it would make

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request for the name and address of the original creditor, collection must cease “until the debt collector obtains . . . the name and address of the original creditor, and a copy of such . . . name and address of the original creditor, is mailed to the consumer by the debt collector.” *Id.* The statute again does not specify from where that information is obtained.

<sup>105</sup> *Camacho*, 430 F.3d at 1081-82.

<sup>106</sup> The simplest explanation for this disparity would be that the use of “disputed” in § 1692g(b) instead of “disputed validity” does not signal anything but a shorthand reference to the same concept, as a dispute going to validity is a subclass of general classification of disputes. If that were correct, then the reference in subsection (b), as well as in § 1692e(8) and § 1692h, to a disputed debt would include disputed validity under § 1692g(a)(3), a disputed portion, and all other disputes under § 1692g(a)(4). If, however, “disputed validity” was intended to connote a distinct species of disputes, the logic for explaining the differences in § 1692g(a)(3) and (4), and the significance of an oral dispute for purposes of § 1692e(8) and § 1692h, falls flat. Indeed, the progressive revisions made to the language of section 809 described above, substituting verification for “*certification of the validity of the debt*” shows that section 809(a)(3), (4), and (b) were originally drafted as a coherent whole, all turning on the significance of a dispute going to the validity of a debt made in writing. By substituting the word verification for “*certification of the validity of the debt*,” the intent and meaning of the statute became obscured. Compare 15 U.S.C. § 1692g, 15 U.S.C. § 1692e, and 15 U.S.C. § 1692h, with 15 U.S.C. § 1692p (“[T]he alleged offender may dispute the validity of any alleged bad check violation. . .”).

sense to measure each type of verification response against the two problems identified by the Senate Report those which section 1692g(b) was designed to eliminate – “dunning the wrong person or attempting to collect debts which the consumer has already paid.”<sup>107</sup>

If either interpretation eliminates both of these problems, then that interpretation should be preferred above the other. If both interpretations are plausible, the one that best serves the broader aims of the legislation – eliminating “abusive debt collection practices” and insuring “that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged,”<sup>108</sup> – should be favored. Lastly, the two interpretations should be assessed against the Senate Report’s conclusion that debt collectors were already sending “*similar information to consumers*,” and verification would “*not result in additional expense or paperwork*.”<sup>109</sup>

It would also make sense to consider the myriad reasons a consumer might have to dispute (or dispute the “validity”) of a given debt, in that the obligation to provide verification only follows after a written dispute is sent. Examples of legal disputes include any of the reasons appearing as affirmative defenses in Fed. R. Civ. P. 8(c),<sup>110</sup> or any of the grounds for excusing an obligation to pay for goods identified in Article 2 of the UCC.<sup>111</sup> If disputed validity is also taken to mean that a debt may be attacked for not being well-grounded and supported by sufficient evidence, the breadth of “disputes” a consumer might raise would be boundless, including objections for hearsay, improper foundation, and best evidence. Beyond these evidentiary contentions, disputed validity can be directed at a portion of a given debt. Section 1692f(1) provides as a possible basis for a dispute, “[t]he collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or

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<sup>107</sup> S. REP. NO. 95-382, at 4 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1699.

<sup>108</sup> 15 U.S.C. § 1692(e)

<sup>109</sup> S. REP. NO. 95-382, at 4 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1699 (emphasis added).

<sup>110</sup> See FED. R. CIV. P. 8 (listing the following affirmative defenses: accord and satisfaction; arbitration and award; assumption of risk; contributory negligence; duress; estoppel; failure of consideration; fraud; illegality; injury by fellow servant; laches; license; payment; release; res judicata; statute of frauds; statute of limitations; and waiver).

<sup>111</sup> U.C.C. § 2-711 (2003).



permitted by law.”<sup>112</sup> A petty dispute over the validity of a penny or a nickel of accrued interest is within the scope of potential disputes going to a portion of the debt, just as much as a dispute over documentation of an assignment of the debt or assumption of liability by a former spouse.

If disputes can be related to any of these possibilities, as well as all generic ‘disputes,’ would it be fair to presume that Congress intended to create a one-size-fits-all meaning for the obligation to provide verification? If Congress so intended to create such a meaning for the obligation to provide verification, it begs the question: why would Congress mandate a singular or uniform response from debt collectors that essentially ignores the substance of consumer disputes directed to affirmative defenses, evidence, and incidental parts of a debt? Conversely, would it make sense to require a debt collector to affirmatively rebut an asserted affirmative defense, proof deficiencies, and arguments going to incidental parts of a debt before allowing collection to resume? Would it have been more rational for Congress to insist that the sufficiency of a debt collector’s verification response must or should be measured in light of the substance of the dispute raised? For example, if the consumer disputes a portion of the debt, the addition of \$1 to a \$1,000 debt, does section 1692g(b) limit the verification response requirement to that portion of the disputed debt? If a consumer disputes the applicable interest rate or the imposition of late fees on a defaulted debt, should the verification response be read as requiring proof of the validity of the applicable interest rate or late fees? Recalling the purpose of verification was to eliminate only two recurring problems and would not result in a certification of the validity of the debt from the creditor, suggests that verification was not designed to address the substance of any dispute.

Logically, it would seem that verification *should* involve an investigation into whether there is either a valid basis for the amount claimed by the debt collector to be due or a valid basis for the consumer’s specified dispute. Reading the verification requirement as triggering a duty on the part of the debt collector to perform an investigation and obtain and produce something going to the validity of the debt or underlying facts in dispute before collection activity resumes,<sup>113</sup> would be consistent with reading verification as “the

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<sup>112</sup> 15 U.S.C. § 1692f.

<sup>113</sup> 15 U.S.C. § 1692g(a)(3) creates an assumption of validity, which is overcome by the assertion of a dispute. A statutory assumption “does not require the party invoking it to prove any fact, it operates against the party who normally has the burden of proof, and if affects the burden of persuasion rather than the

process of research, examination, etc. required to prove or establish authenticity or validity.”<sup>114</sup> However, numerous courts have rejected the contention that the FDCPA imposes any obligation to conduct an investigation concerning amounts placed for collection.<sup>115</sup> At the same time, courts have found that pursuing collection for amounts that were not validly owed subjects the debt collector to strict liability.<sup>116</sup>

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burden of production.” 21B Charles A. Wright, Kenneth W. Graham, Victor J. Gold, Michael H. Graham, *Federal Practice & Procedure* § 5124 (2d ed.) (construed as a “presumption,” the assertion of a dispute would shift the burden of production onto the debt collector). *See, e.g., Nelson v. Select Financial Services, Inc.*, 430 F.Supp.2d 455, 457 (E.D. Pa. 2006) (observing the failure to dispute a debt within thirty days “merely allows the debt collector to proceed under . . . a ‘temporary fiction’ that the debt stated in the validation notice is true.”); *Smith v. Hecker*, No. Civ. A. 04-5820, 2005 WL 894812, at \*4-5 (E.D. Pa. Apr. 18, 2005) (holding debt collector’s statement that the debt will be ‘assessed’ as valid, violated section 1692g). The notion that the legislation was intended to operate as a burden-shifting mechanism is bolstered by H.R. 5294 § 804(e), titled “pleading and proof,” which provided that:

In any action brought by a consumer against a debt collector under this section, it shall be the duty of the consumer to plead both the existence of a communication from the debt collector and the lack of consent of the consumer thereto, and to make a prima facie showing that the communication took place and that there was no such consent. . . . Upon such a prima facie showing, the burden of going forward shall be with the debt collector.

<sup>114</sup> RANDOM HOUSE DICTIONARY 1587 (1966).

<sup>115</sup> *Owen v. I.C. Sys., Inc.*, 629 F.3d 1263, 1276 (11th Cir. 2011); *Clark v. Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1173-74 (9th Cir. 2006) (debt collector did not have duty to independently investigate validity of debt and was entitled to rely on creditor’s statements to verify debt); *Jenkins v. Heintz*, 124 F.3d 824, 834-35 (7th Cir. 1997) (collector qualified for “bona fide error” defense where it had in place procedures to prevent violations of the FDCPA, and the collector was not required to independently investigate and evaluate the validity of forced placed insurance charges); *Smith v. Transworld Sys., Inc.*, 953 F.2d 1025, 1032 (6th Cir. 1992) (concluding that the “bona fide error” defense does not require a collector to conduct an independent investigation of the debt referred for collection); *McNall v. Credit Bureau of Josephine Cnty.*, 689 F. Supp. 2d 1265, 1276 (D. Or. 2010); *Sanchez v. United Collection Bureau, Inc.*, 649 F. Supp. 2d 1374, 1381 (N.D. Ga. 2009); *McCammon v. Bibler, Newman & Reynolds, P.A.*, 515 F. Supp. 2d 1220, 1225 (D. Kan. 2007); *Hulse v. Ocwen Fed. Bank, FSB*, 195 F. Supp. 2d 1188, 1210 (D. Or. 2002); *Ducrest v. Alco Collections, Inc.*, 931 F. Supp. 459, 462 (M.D. La. 1996); *Hubbard v. Nat’l Bond and Collection Assocs., Inc.*, 126 B.R. 422, 428 (D. Del. 1991).

<sup>116</sup> *Compare Owen*, 629 F.3d at 1270, with *Turner v. J.V.D.B. & Assocs., Inc.*, 211 F. Supp. 2d 1108 (N.D. Ill. 2002), *aff’d. in part, rev’d in part*, 330 F.3d 991 (7th Cir. 2003). What emerges from these competing cases is at best a practical

More to the point, an investigative reading of “verification” does not make any practical sense because verification does not “prove or establish authenticity or validity,”<sup>117</sup> except perhaps in the mind of the debt collector. Therefore, the core of a consumer dispute in this context, made in response to a demand for payment for an unpaid debt, would logically involve an assertion by the consumer that the demand for payment in a given amount set forth on the validation notice was invalid for any number of reasons. However, the FDCPA does not require a consumer to support a dispute with any information, let alone require a quantum of evidence or documentation to substantiate the dispute. The FDCPA is silent as to whether a debt collector can communicate with the consumer to obtain further information about the dispute and as to what effect verification has on the debt or the dispute itself. Congress could have provided that once verification is sent, it is entitled to some deference, weight, or significance. Under section 1692g(c), however, Congress provided that *the failure to dispute* is not to be construed by courts as an admission of liability. It could also have provided that once a dispute is raised and verification is provided, that determination is entitled to some effect, estoppel, or weight by courts. Further, Congress could have provided that once verification is provided, a reciprocal burden of production is triggered on the part of the consumer, or that the dispute must be resolved by a court of law or arbitrator before further collection efforts are undertaken. Again, the absence of any mention of the effects that stem from a debt’s verification supports the inference that verification proves and establishes nothing and leaves disputes unresolved.

The verification requirement could also potentially be interpreted as meaning that a “confirmation of the truth of a theory or fact” would have no bearing on the consumer’s dispute, except in the case of an error, either in the amount of the debt or the identity of the consumer.<sup>118</sup> Since the only effect of providing verification set forth in the statute is that once provided, collection efforts can resume, it might be sensible to read the verification requirement as having its primary intended effect on a double-checking mechanism to

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suggestion that to avoid liability, it would behoove the debt collector to look before it leaps. In other words, while Congress may not have mandated any sort of investigation to occur, if a dispute has been raised and no investigation has occurred regarding a valid defense to repayment or address the subject of the consumer’s dispute, the debt collector proceeding with collection without conducting a responsive investigation proceeds at its peril.

<sup>117</sup> RANDOM HOUSE DICTIONARY 1587 (1966).

<sup>118</sup> See, e.g., 12 C.F.R. § 226.10.

eliminate persistent collection efforts that occurred as a result of an error. The debt collector would only be required to confirm that the amount sought from the consumer, and the identity of the consumer, were correct.

As the testimony offered in the House Hearing showed, debt collectors in the 1970s sent a first letter at the outset, which included instruction to the consumer to notify the debt collector in the case of a mistaken address or other error. Therefore, a confirmation of facts interpretation has more underlying support than the investigation interpretation.

As to a debt alleged to have already been paid, the amount outstanding and the amount of payments are verifiable facts; the information necessary to determine whether any given debt had already been paid would require an assessment of an amount owed and an amount paid, along with the relevant dates.<sup>119</sup> The possible sources of information containing a record relating to amounts owed and amounts paid, along with relevant dates, could derive from any one of five sources: the creditor's account (or a subsequent owner of the account) record, the debtor's (or the payee's) records, the debtor's or creditor's bank's records, the credit reporting agency record, or the debt collector's record.

Consider, for instance, Debt Collector C, tasked to recover a \$1,000 debt on behalf of Creditor A, alleged to be owed as of January 1, 2011, from Debtor B. A and C agree that they will remain in daily electronic communication concerning balance updates to reflect any payments made directly to either A or C after placement of debts for collection. On February 1, C sends a validation notice to B setting forth the information required by 15 U.S.C. § 1692g(a), asserting that B owes \$1,000 to A. On February 15, A sends C a record of payment made by B relating to the debt and recording a \$1,000 payment made on January 25. On March 1, B sends a written dispute to C asserting that on January 25, 2011, \$1,000 was paid to A regarding this debt.

If verification is read as requiring the debt collector to obtain "confirmation of the truth of [the amount allegedly owed]" from the available sources of information concerning this payment, C could substantiate the fact of payment and the current amount owed from its own records, B's records, A's records, bank records, or credit reporting agency records. In any case, C will be unable to obtain

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<sup>119</sup> See generally *Litton Loan Servicing, LP, v. Garvida*, 347 B.R. 697, 705 (B.A.P. 9th Cir. 2006) (holding that payors have a burden to show that they paid, and creditors have a burden to show that the payment was not complete).

confirmation, evidence, or records that show A is still owed \$1,000; the verification process will show that B's assertion is true, and therefore, C will not be capable of obtaining verification of the debt, and C's collection effort will cease. A wide-ranging investigation in this context would serve no purpose.

Consider the same fact pattern, but assume that there was no payment actually sent by B, received by A, or any information communicated to C, any bank or credit reporting agency reflecting a post-placement payment. On receipt of B's dispute, asserting "I already paid," there are no records of payment in A, B, or C's records, nor anywhere else. If verification is understood as a requirement to confirm the truth or falsity of B's assertion of payment, as opposed to the amount alleged to be owed, C would be required to prove the negative of B's assertion, such as by an exhaustive review of all records of payment. At the conclusion of such an investigation, C would have found no record substantiating B's assertion and could only prove the absence of payment as provided in the Federal Rules of Evidence section 803(7).<sup>120</sup>

Courts routinely allow proof of the absence of a record that would ordinarily be recorded to give rise to a legitimate negative inference that the event did not occur.<sup>121</sup> In that B has not in fact already paid the debt, the investigation reading would not allow for "verification" to be obtained and collection to resume unless C sends records of confirmation that the payment did not occur as alleged. If all available sources of information have to be consulted to research or investigate the claim of payment, sending C all records of payment on the account does little to further the purposes of the statute and, contrary to the Senate Report, would "result in additional expense . . . [and] paperwork." Interpreting verification to require confirmation, on the other hand, would permit the debt collector to send "confirmation" of the amount owed, thereby implicitly rejecting the contention of payment, without requiring C to perform an exhaustive search of the records, production of records showing the date and amount of last payment was X, and a concluding attestation that no record of the purported payment was found. Thus, this confirmation of facts interpretation is consistent with the notion that verification is

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<sup>120</sup> FED. R. EVID. 803(7).

<sup>121</sup> U.S. v. Harris, 557 F.3d 938, 941 (8th Cir. 2009); United States v. Robinson, 544 F.2d 110, 114 (2d Cir. 1976); United States v. Zeidman, 540 F.2d 314, 319 (7th Cir. 1976) (testimony regarding record search made by corporation's accounts manager and as to the finding of certain checks from defendants but the failure to find specific check allegedly sent from defendants was admissible in mail fraud prosecution.).

not synonymous with documentation.

Again, consider the same fact pattern, but assume that there was a payment actually sent by B, received by A, but unwittingly misapplied to another account by A in error, or sent with a "paid in full" notation that went unnoticed<sup>122</sup> months before placement for collection, and no information communicated to C reflecting the payment. In the absence of a copy of the canceled check, the assertion "I already paid" would not lead to a different outcome than the prior scenario, under either the confirmation or investigation reading. An investigation would yield nothing because there are no facts suggesting an error occurred; and a confirmatory statement will not result in a cessation of collection. However, if we assume B sends C a copy of the payment showing A received and deposited the payment, both the confirmation of facts and investigation reading could each lead to a cessation of collection, so long as C understands the significance of the "paid in full" notation or C observes a discrepancy in the date and amount of last payment. Assuming that A corroborates B's payment, no verification would be forthcoming, and collection efforts would thereby cease.

As to whether the debt collector has targeted the "wrong person," the identity of the person obligated on a debt is likewise a verifiable fact,<sup>123</sup> such that there is no real difference between the confirmation and investigation interpretations of the word *verification*. In all extensions of credit, the indentifying information acquired by a creditor concerning a debtor would include, at a minimum, the debtor's full name, social security number, date of birth, address, and driver's license number.<sup>124</sup> A comparison between

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<sup>122</sup> See, e.g., *Citibank (S.D.), N.A. v. Perz*, 947 N.E.2d 191, 193 (Ohio Ct. App. 2010).

<sup>123</sup> Numerous federal regulations refer to "verification" as a process used to confirm the identity of a person by comparing an asserted fact against other sources, or as method for determining whether a given fact is true or false. See, e.g., 6 C.F.R. § 37.13 (2011) (real ID driver's licenses and identification cards; document verification requirements); 7 C.F.R. § 245.6a (2011) (child nutrition programs); 7 C.F.R. § 272.8 (2011) (food stamps); 8 C.F.R. § 274a.2 (2011) (immigration); 10 C.F.R. § 9.54 (2011) (nuclear regulatory commission); 21 C.F.R. § 21.44 (2011) (FDA); 21 C.F.R. § 1314.105 (2011) (DEA); 24 C.F.R. § 5.216 (HUD); 42 C.F.R. §§ 435.910, 435.920 (2011) (Medicaid); 47 C.F.R. § 64.1120 (2011) (FCC); 48 C.F.R. 52.204-9 (2011) (acquisitions); 49 C.F.R. § 802.7 (2011) (NTSB).

<sup>124</sup> 31 C.F.R. § 1020.220(a)(2)(i)(A) (2011) (originally 31 C.F.R. § 103.121). As part of the customer verification process, the bank is required to obtain verification of the identity of the customer either by examination of an "unexpired government-issued identification evidencing nationality or residence and bearing a

the data of the creditor and the data of the debtor would yield information that would permit the debt collector to confirm the identity of the right person as distinguished from the wrong person. If the debtor asserts that she is the wrong person, the debt collector would have to obtain her full name, social security number, date of birth, and address, so as to permit a comparison of the same data in the creditor's records, or at a minimum, provide the debtor with the data in its files which identifies the right person, so as to permit the debtor to corroborate that she is the right person. Whether the data was originally collected as part of a written credit application, online/electronic application, phone application, or interview, the debt collector must presume the data in the creditor's file, which it assumedly has been provided, is an accurate measure of comparison against the debtor's data. Should the debtor supply the debt collector with information establishing that she is the wrong person, verification of the identity of the consumer would not be available, and collection efforts would cease. Conversely, should the data supplied to the debt collector by the debtor establish that she is the right person, verification of the identity of the consumer would be available and, once obtained and mailed to the consumer, collection efforts could resume.<sup>125</sup>

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photograph or similar safeguard, such as a driver's license or passport," or "comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement." 31 C.F.R. § 1020.220(a)(2)(ii) (2011).

<sup>125</sup> In instances where the debtor's identity was stolen and used to open the account, as it pertains to disputes of fraud or identity theft, 15 U.S.C. § 1681m(g), part of the Fair and Accurate Credit Transactions Act of 2003, provides in relevant part:

If a person acting as a debt collector . . . on behalf of a third party that is a creditor or other user of a consumer report is notified that any information relating to a debt that the person is attempting to collect may be fraudulent or may be the result of identity theft, that person shall—

- (1) notify the third party that the information may be fraudulent or may be the result of identity theft; and
- (2) upon request of the consumer to whom the debt purportedly relates, provide to the consumer all information to which the consumer would otherwise be entitled if the consumer were not a victim of identity theft, but wished to dispute the debt under provisions of law applicable to that person.

15 U.S.C. § 1681m (2011). Thus, where the "dispute" relates to a claim of fraud or identity theft, the verification response requirement under the FCRA is no greater than under the FDCPA.

In the context of other disputes, the confirmation of facts reading would limit the scope of the debt collector's obligation to meet the dispute with a broad investigatory duty. Consider the debtor that ordered a brown coat from a web merchant and paid with his credit card. When the coat arrived in the mail, the shade of brown is lighter than depicted on the website; rather than being the burnt umber shape of brown that the debtor desired, the coat appeared to be bronze. Instead of returning the coat, the consumer keeps it, but when the credit card bill comes, the consumer decides he does not have to pay because he believes that he has been the subject of a bait and switch. When the debt collector contacts him, he responds to the validation notice by sending a written dispute of the debt and demanding verification, all the while wearing his brown coat. Assuming the consumer explains the basis for the dispute,<sup>126</sup> it would be absurd to impose a duty to investigate what shade of brown was depicted on the merchant's website and compare that to the shade of brown of the coat sent, collecting information relating to the date, time and manner of purchase, confirmation of shipping and receipt of the merchandise, along with a copy of the payment record. The consumer has offered no basis for contesting the demand for payment nor identified a valid defense. In such a case, the confirmation of facts reading supports the conclusion that "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 . . . . There is no concomitant obligation to forward copies of bills or other detailed evidence of the debt."<sup>127</sup>

Consider the same hypothetical, but assume the coat never arrived and the consumer made a good faith attempt to resolve the issue with the merchant, but when the bill arrived, the consumer neglected to dispute it in a timely fashion with the card issuer.<sup>128</sup> In a

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<sup>126</sup> Under the FCBA, a consumer is required to "set[ ] forth the *reasons* for the obligor's belief (to the extent applicable) that the statement contains a billing error." 15 U.S.C. § 1666 (emphasis added). Failure to set forth those reasons relieves the creditor from the need to respond with an investigation. *Millan v. Chase Bank USA, N.A.*, 533 F. Supp. 2d 1061, 1066 (C.D. Cal. 2008). But even if the reasons advanced amount to nit-picking or are not made in good faith, the creditor's failure to follow the statutory procedures still gives rise to a violation. *Kurz v. Chase Manhattan Bank*, 273 F. Supp. 2d 474, 479 (S.D.N.Y. 2003).

<sup>127</sup> *Chaudhry v. Gallerizzo*, 174 F.3d 394, 406 (4th Cir. 1999).

<sup>128</sup> See 15 U.S.C. §1666(a) (providing 60 days to dispute for nondelivery); 15 U.S.C. 1666(a)(3)(B)(ii) ("[A] creditor may not construe such amount to be correctly shown unless he determines that such goods were actually delivered, mailed, or otherwise sent to the obligor and provides the obligor with a statement of such determination."); see also *Dawkins v. Sears Roebuck & Co.*, 109 F.3d 241,



court of law, this set of facts would defeat the creditor's right of recovery because it goes to the core of the demand for payment and casts the validity of the debt in doubt.<sup>129</sup> If the verification response imposes an obligation to investigate the facts of delivery of the merchandise from the original creditor to the consumer, it would involve a "determin[ation] that such goods were actually delivered, mailed, or otherwise sent to the obligor and provid[ing] the obligor with a statement of such determination."<sup>130</sup> A duty of investigation would impose an obligation on the credit card lender to make the delivery determination, essentially giving the consumer an opportunity to raise a FCBA dispute with creditors until the debt is repaid or the statute of limitation on the debt expires. Aside from the obvious temporal disruption such a reading would cause under the FCBA,<sup>131</sup> the FDCPA prohibits the debt collector from communicating with the merchant seller,<sup>132</sup> thereby undermining, if not dooming, the investigation reading.

Consider further a dispute concerning services rendered. The creditor rendering the services claims it is owed X. The consumer disputes the validity of the debt and requests verification because she believes the reasonable value of services rendered is not X, but Y. If verification was intended to require the debt collector to conduct an investigation into the value of services rendered, as opposed to obtaining confirmation of the amount the creditor is claiming as due, what would such an investigation consist of and to what end? Suppose that the debt collector was permitted to and retained an expert in the field who formed the opinion that the reasonable value of the services was in fact X, not Y. Would the consumer not do the same? Whatever verification entails, it would resolve nothing. The consumer still believes Y is owed, not X, and the creditor still believes X is owed, not Y; the debt is still in dispute. If the debt collector confirms "in writing that the amount being demanded is what the creditor is claiming is owed," and then continues collection efforts, the debt collector, the creditor, and the consumer are each left in their respective corners, leaving their dispute intact and unresolved

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243 (5th Cir. 1997) (failure to timely dispute does not impose a duty to investigate).

<sup>129</sup> See generally 15 U.S.C. §1666(b)(3); *Citibank (S.D.), N.A. v. Mincks*, 135 S.W.3d 545, 557 (Mo. Ct. App. 2004).

<sup>130</sup> 15 U.S.C. §1666(a)(3)(B)(ii).

<sup>131</sup> See *Millan*, 533 F. Supp. 2d at 1066; *Am. Express Co. v. Koerner*, 452 U.S. 233, 236-37 (1981); see also 12 C.F.R. § 226.13(h) (2011) (holding that a creditor's resolution of a prior billing dispute relieves the creditor of any obligation to reinvestigate substantially the same billing error).

<sup>132</sup> 15 U.S.C. § 1692c(b).

for another day and for resolution in another forum. That is ultimately how Congress expected the verification response requirement to function – that the verification requirement would only eliminate inadvertent errors in billing the wrong person or the wrong amount.

## VI. CONCLUSION

The legislative history of the FDCPA shows that verification was substituted for obtaining a certification of validity from the creditor so as to omit any implication that the statute required the debt collector to obtain evidence, documentation, or an attestation from the creditor. Between the two arguable interpretations, interpreting verification as requiring a written confirmation of the amount owed and the identity of the consumer alone is consistent with the Senate Report, the practices in use by debt collectors in the mid-1970s, the framework established under the FCBA, restrictions on communications under the FDCPA, as well as the confirmation view espoused in *Rudek*. Interpreting verification to require an investigation into the dispute serves no purpose, is inconsistent with the Senate Report, and imposes additional expense and paperwork. It is also inconsistent with restrictions on communications under the FDCPA and undermines the dispute resolution framework established under the FCBA.

Reduced to its essence, verification was intended only to serve as a double-checking mechanism. It was meant to ensure that collection efforts were promptly terminated when resulting from inadvertent errors. The verification response must consist of a written statement sent to the consumer confirming the correct amount owed and identifying who owes it. In this way, the legislation “does not attempt to insulate the consumer debtor against the unpleasantness of a reminder that he has not lived up to his word to pay a just debt[,] . . . and gives full recognition to the important role . . . an ethical debt collector plays in our credit-oriented society.”<sup>133</sup>

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<sup>133</sup> *Hearings on S. 656, S. 918, S. 1130, and H.R. 5294 Before the Subcomm. on Consumer Affairs of the Comm. on Banking, Housing and Urban Affairs, 95th Cong. at 44.*