

United States Senate

WASHINGTON, DC 20510

August 5, 2014

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street Northwest
Washington, D.C. 20552

The Honorable Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue Northwest
Washington, D.C. 20580

Dear Director Cordray and Chairwoman Ramirez:

We write to express grave concern about a loophole in the Fair Debt Collection Practices Act (FDCPA) that has made servicemembers vulnerable to abusive loan contracts, and urge you to use your authority to close this loophole and take any enforcement actions consistent with the law.

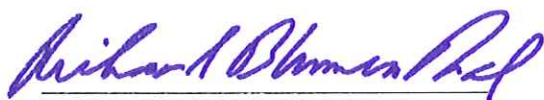
Last week, ProPublica reported on a business that appears to be using an FDCPA loophole to sue thousands of servicemembers in a venue where they often cannot adequately defend themselves. In their contracts, the business has required borrowers to agree that any resulting legal action against the borrowers could be brought in a single court in the same location as the company headquarters, regardless of where the transaction takes place or where the servicemember lives, even if he or she is deployed. The business has reportedly obtained thousands of default judgments against servicemembers who cannot be present and have no meaningful legal representation.

Courts ought not to be issuing or enforcing judgments in cases that are brought through the use of such unfair practices, and your agencies have a role in ensuring that they do not do so. For third-party debt collectors, forcing consumers into such venues would be unequivocally illegal, as the FDCPA already contains strict requirements that legal action against consumers be undertaken either in a jurisdiction where the consumer signed the contract or where the consumer resides when the action is initiated. As the business brings these actions itself, rather than using an attorney, the FDCPA does not apply. But suing consumers in places far away from where they live is clearly an unfair practice (UDAP) that your agencies have the power to explicitly prohibit for original creditors, as well.

As the National Consumer Law Center makes clear in its UDAP manual, there is ample precedent for this decision in numerous legal cases that have established such venue rigging as unfair under both state laws and in federal circuits. We therefore urge your agencies to issue regulations that expressly forbid such suits against consumers – and the binding clauses that purport to allow this litigation – by original creditors. Courts need to know, unambiguously, that they cannot allow such suits to proceed. We also strongly encourage you to use your enforcement powers to stop such predatory schemes where they exist.

More broadly, we urge the Bureau to review the broad range of unfair, abusive, and deceptive practices by original creditors that the Bureau may capture in its upcoming rulemaking. As a group of Senators noted in a comment letter five months ago regarding the Bureau's Advance Notice of Proposed Rulemaking on debt collection practices, original creditors often get away with the sorts of harassment and intimidation that are already illegal for third-party collectors under the FDCPA. This is wrong, and the Bureau has the power to stop it. The ProPublica story is a wake up call that where loopholes in the laws and regulations on debt collection exist, predatory collectors can and will use them. We look forward to working with you over the coming months to make sure the updated regulations put stronger, more effective protections in place.

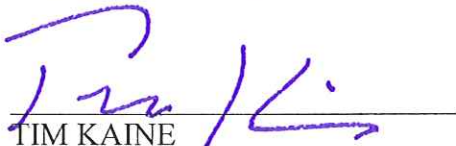
Sincerely,



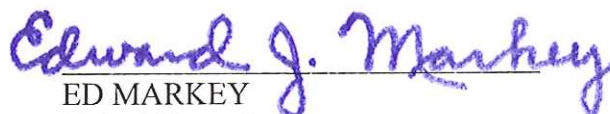
RICHARD BLUMENTHAL
United States Senate



TOM UDALL
United States Senate



TIM KAINE
United States Senate



ED MARKEY
United States Senate



MAZIE HIRONO
United States Senate



MARK R. WARNER
United States Senate