Federal Trade Commission Annual Report 2004: Fair Debt Collection Practices Act

number of consumer contacts by third-party collectors each year appears to be well into the millions. Thus, the number of consumer complaints received by the Commission about third-party collectors is a small percentage of the overall number of consumer contacts.

Not all consumers who complain to the Commission about collection problems have experienced law violations. In some cases, for example, consumers complain that a debt collector will not accept partial payments on the same installment terms that the original lender provided when the account was current. Although a collector's demand for accelerated payment or larger installments may, in these circumstances, be frustrating to the consumer, such a demand is not a violation of the Act. Many consumers, however, complain of conduct that, if accurately described, clearly violates the Act. Some of the allegations that we hear most frequently are the following:

Harassing the alleged debtor or others: As in 2002, this was the complaint we heard most frequently last year. We received 8,559 complaints from consumers alleging that collectors called them repeatedly or continuously, up sharply from the 4,570 complaints alleging the same conduct in 2002. (We note that infrequent contacts, such as once a week or once a month, certainly might induce stress in a consumer but would not constitute "harassment" under the FDCPA.) Another 5,650 consumers alleged that collectors used obscene, profane or otherwise abusive language, compared with 3,648 in 2002. The number of consumers alleging that collectors used or threatened to use violence if they failed to pay dropped sharply from 762 in 2002 to 249 in 2003.

Failing to send required consumer notice: The FDCPA requires that debt collectors send consumers a written notice that includes, among other things, the amount of the debt, the name of the creditor to whom the debt is owed, and a statement that, if within thirty days of receiving the notice the consumer disputes the debt in writing, the collector will obtain verification of the debt and mail it to the consumer.[6] In 2003, more than 1,900 consumers complained to the Commission that collectors who

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[5](...continued)
represented by the complaints the Commission receives. Based on our enforcement experience, we know that many consumers never complain, while others complain to the underlying creditor or to other enforcement agencies. Some consumers may not even be aware that the Commission enforces the Act or that the conduct they have experienced violates the Act.

[6] Section 809(a), 15 U.S.C. § 1692g(a). The collector need not send such a written notice if the collector's initial communication with the consumer was oral and the consumer received this information in the initial communication.

contacted them did not provide such a notice. Many consumers who do not receive the notice are unaware that they must send their dispute in writing if they wish to obtain verification of the debt.

Some collectors call consumers demanding that they make payments directly to the collector's client, the alleged creditor. According to consumer complaints the Commission has received, some of these collectors send consumers nothing in writing while at the same time refusing to reveal the name of their collection agency or collection firm. This practice prevents consumers from even complaining about the collector to law enforcement agencies or Better Business Bureaus.

Failing to verify disputed debts: The FDCPA also provides that, if a consumer does submit a dispute in writing, the collector must cease collection efforts until it has provided written verification of the debt.[7] More than 1,600 consumers complained that collectors failed to verify debts that the consumers allegedly owed. Many of these consumers told us that collectors ignored their written disputes, sent no verification, and continued their collection efforts. Other consumers told us that some collectors who did provide them with verification continued to contact them about the debts between the date the consumers submitted their dispute and the date the collectors provided the verification, a practice that also violates the FDCPA.

Impermissible calls to consumer's place of employment: A debt collector may not contact a consumer at work if the collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such contacts.[8] The number of consumers alleging such contacts, 3,101, represents an increase of 33% from 2002. Many of these consumers told us that debt collectors continued to call them at work after they or their colleagues specifically told the collectors that such calls were prohibited by the consumer's employer. By continuing to contact consumers at work in these circumstances, debt collectors may put the consumers in jeopardy of losing their jobs.

Revealing alleged debt to third parties: Third-party contacts for any purpose other than obtaining information about the consumer's location violate the Act, unless authorized by the consumer or unless they fall within one of the Act's exceptions. In 2003, we received 1,925 complaints alleging that a third-party collector revealed an alleged debt illegally. The complaints allege that third-party collectors have contacted consumers' employers, relatives, children, neighbors, and friends, and informed them

[7] Section 809(b), 15 U.S.C. § 1692g(b).

[8] Section 805(a)(3), 15 U.S.C. § 1692c(a)(3).

about consumers' debts. Such contacts typically embarrass or intimidate the consumer and are a continuing aggravation to third parties. Contacts with consumers' employers and co-workers about consumers' alleged debts jeopardize continued employment or prospects for promotion. Relationships between consumers and their families, friends, or neighbors may also suffer from improper third-party contacts. In some cases, collectors reportedly have used misrepresentations as well as harassing and abusive tactics in their communications with third parties.

Continuing to contact consumer after receiving "cease communication" notice: The FDCPA requires debt collectors to cease all communications with a consumer about an alleged debt if the consumer communicates in writing that he wants all such communications to stop or that he refuses to pay the alleged debt.[9] This "cease communication" notice does not prevent collectors or creditors from filing suit against the consumer, but it does stop collectors from calling the consumer or sending dunning notices. More than 1,350 consumers complained that collectors ignored their "cease communication" notices and continued their aggressive collection attempts.

Threatening dire consequences if consumer fails to pay: Another source of complaints involves the use of false or misleading threats of what might happen if a debt is not paid. These include threats to institute civil suit or criminal prosecution, garnish salaries, seize property, cause job loss, have a consumer jailed, or damage or ruin a consumer's credit rating. Such threats violate the Act unless the collector has the legal authority and the intent to take the threatened action.[10] The Commission received 3,364 complaints in 2003 alleging that third-party collectors falsely threatened a lawsuit or some other action that they could not or did not intend to take, and 1,413 complaints alleging that such collectors falsely threatened arrest or seizure of property. These numbers represent increases of 41% and 47%, respectively, when compared to 2002 complaints alleging the same violations.

Demanding a larger payment than is permitted by law: The edrd

[9] Section 805(c), 15 U.S.C. § 1692c(c).

[10] Sections 807(4)-(5), 15 U.S.C. §§ 1692e(4)-(5).

[11] Section 807(2)(A), 15 U.S.C. § 1692e(2)(A).

agreement creating the debt or permitted by law."[12] In 2003, the Commission received 5,192 complaints about third-party collectors falsely representing the character, amount or status of a debt, and 1,561 complaints about collectors collecting unauthorized interest, fees or expenses.

Complaints about creditors' in-house collectors: The Commission also received 12,906 complaints in 2003 about creditors that were collecting their own debts, down from 14,705 in 2002. Because creditors are not generally covered by the FDCPA, some in-house collectors use no-holds-barred collection tactics in their dealings with consumers. While the Commission cannot pursue such creditors under the FDCPA, it has done so under the Federal Trade Commission Act in the past, and will continue to do so in the future as appropriate cases present themselves.

CONSUMER AND INDUSTRY EDUCATION: THE FIRST PRONG OF THE FDCPA PROGRAM

The Commission's consumer education initiative and industry education initiative combine to form the first prong of the Commission's FDCPA program. The other prong is the Commission's enforcement initiative, discussed below. The consumer education initiative informs consumers throughout the nation of their rights under the FDCPA and the requirements that the Act places on debt collectors. With this knowledge, consumers can identify when collectors are violating the FDCPA and exercise their rights under the statute. An informed public that enforces its rights under the FDCPA operates as a powerful, informal enforcement mechanism. The industry education initiative informs collectors of the Commission staff's positions on various FDCPA issues. With this knowledge, industry members can then take all necessary steps to comply with the Act.

Tools for both consumers and industry: Two of the Commission's educational tools are useful in both the consumer education initiative and the industry education initiative. The Commission's staff issued a Commentary on the Fair Debt Collection Practices Act ("Commentary")[13] in 1988 that provides the staff's detailed analysis of every section of the Act. The comments serve as valuable guidance for consumers, their attorneys, courts, and members of the collection industry. The Commentary superseded staff opinions issued prior to its publication, but staff members issued many additional opinion letters after that date. Like the Commentary, these letters provide consumers, attorneys, courts and the collection industry with the Commission staff's views on knotty statutory interpretations. Both of these educational tools -- the

[12] Section 808(1), 15 U.S.C. § 1692f(1).

[13] 53 Fed. Reg. 50,097 (1988).

Commentary and the staff opinion letters -- are available on the Commission's FDCPA web page, located at *www.ftc.gov/os/statutes/fdcpajump.htm*. The web page was accessed 118,418 times in 2003.

Tools specifically for consumers: The Commission's "Facts for Consumers" brochure entitled "Fair Debt Collection" explains the FDCPA in the language of a layperson. In 2003, the Commission distributed 91,800 of these brochures to consumers through non-profit consumer groups, state consumer protection agencies, Better Business Bureaus, and other sources of consumer assistance, including copies sent directly to consumers in response to inquiries to the Commission. Like the Commentary and the staff opinions, the brochure is available from the Commission's website. Online users accessed the brochure 155,280 times in 2003 – an increase of fully 55 percent over the previous year. The Commission also publishes Spanish-language versions of the "Fair Debt Collection" brochure and two related consumer brochures: "Credit and Your Consumer Rights" and "Knee Deep in Debt." All three of these brochures are available on the Commission's website and in paper form. The Commission distributed nearly 11,700 copies of the Spanish version of "Fair Debt Collection" in 2003, and online users accessed the brochure 7,660 times, a 90% increase from the previous year.

Another extremely valuable component of the Commission's consumer education initiative is the Consumer Response Center ("CRC"), whose highly trained contact representatives respond to telephone calls and correspondence (in both paper and electronic form) each day from consumers concerning a wide array of issues. A toll-free number, 1-877-FTC-HELP, makes it very easy for consumers to contact the CRC. As noted above, a large percentage of consumer contacts with the Commission relate to debt collection. For those consumers who contact the CRC seeking only information about the FDCPA, the contact representatives answer any urgent questions and then mail out the Facts for Consumers or refer the consumer to the web page to find it there. As also indicated above, however, many consumers who contact the CRC complain about specific debt collectors, both third-party collectors and creditor collectors. For those consumers who complain about the actions of third-party collectors, the CRC contact representatives provide essential information about the FDCPA's self-help remedies, such as the right to demand that the collector cease all communications about the debt and the right to obtain written verification of the debt. The contact representatives also record information about debt collectors who are the subjects of complaints, enabling the Commission to track patterns of complaints for use in its enforcement initiative described below. A third component of the consumer education initiative stems from the public speaking that Commission staff members do to groups of consumers across the country. From local talk shows, to military bases, to county fairs, staff members inform consumers of their rights under a number of consumer-finance statutes. Almost invariably, these presentations include a discussion of the FDCPA.

consumers, rather than civil penalties, the Commission can, and has, filed federal court complaints against debt collectors under the authority vested in it by the FDCPA and the Federal Trade Commission Act.

The Commission staff is currently conducting a number of non-public investigations of debt collectors to determine whether they are or have engaged in serious violations of the Act. As discussed below, in 2003, the Commission also filed a new action against a nationwide debt collector, reached a $40 million settlement with a subprime mortgage servicer that it charged with violating the FDCPA and numerous other consumer protection laws, and prepared for trial against a subprime mortgage lender that it similarly charged with violating the FDCPA and other consumer protection laws.

In May 2003, the Commission sued and obtained a temporary restraining order against ***Check Investors, Inc.***, two of the corporation's predecessors, its owner, his wife, and the corporation's attorney. The restraining order, and a subsequent preliminary injunction, halted what the Commission alleged was a nationwide scheme to extract millions of dollars from consumers by falsely threatening them with arrest and proseorporat,kwrnlors65 TD[yers by fiyh ay0005 Tcmiomla4nts a6ainst as a natiaction agaiporatioade C

authorized by the agreement or permitted by law; and (5) failed to validate debts. In addition to the payment of consumer redress, the settlements enjoined the defendants from future law violations and imposed new restrictions on their business practices.

In addition, discovery in anticipation of trial proceeded in the Commission's action against ***Capital City Mortgage Corp.*** ("Capital City"). In 1998, the Commission filed a complaint alleging that Capital City and its owner, Thomas K. Nash, violated the FTC Act, the Truth in Lending Act, the FDCPA, and the Equal Credit Opportunity Act, both in its origination and servicing of subprime mortgage loans. The FDCPA charges alleged that the defendants falsely represented that letters from the company's in-house attorney were from a third-party collector, made false and misleading representations when collecting loan payments, and engaged in unfair debt collection practices. In March 1999, the Commission added Capital City's in-house attorney, Eric J. Sanne, as a defendant, based on its discovery during litigation of hundreds of additional letters that Sanne sent. The trial, originally set for April 2002, was postponed due to Mr. Nash's death. The Commission was seeking a combination of civil penalties and injunctive and equitable monetary relief.

LEGISLATIVE ENACTMENTS AND RECOMMENDATIONS:

Congress approved and the President signed in 2003 the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"), which made sweeping changes to the Fair Credit Reporting Act ("FCRA"), including the addition of new provisions that provide consumers with added protections against collection actions wrongly targeted against them due to identity theft. We describe these provisions below, as well as recommend four amendments, or clarifications of, the FDCPA, as permitted by Section 815 of the Act. These recommendations have been proposed in annual reports in prior years.

New Provisions of the FCRA

The FACT Act expands Section 615 of the FCRA to specifically prohibit the sale or transfer of debt caused by identity theft. Amended Section 615 also provides that if a debt collector receives notice that any information relating to a debt may be the result of identity theft, the collector must notify the third party on whose behalf it is collecting the debt of the allegedly fraudulent nature of the debt. The collector also must, at the consumer's request, provide the consumer with 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.

In addition, the FACT Act expands Section 623 of the FCRA, which sets forth the obligations of all those who furnish information to consumer reporting agencies, including debt collectors. It amends Section 623(a) to provide that, if a consumer submits an identity theft report to a furnisher stating that information the furnisher

[15] *Miller v. Payco-General American Credits, Inc.*, 943 F.2d 482 (4th Cir. 1991); *Swanson v. Southern Oregon Credit Serv.*, 869 F.2d 1222 (9th Cir. 1988). *See also United States v. National Fin. Serv.*, 98 F.3d 131, 139 (4th Cir. 1996) ("bold commanding type of the dunning text overshadowed the smaller, less visible, validation notice printed on the back in small type and light grey ink"); *Macarz v. Transworld Sys.*, 26 F. Supp. 2d 368, 373 (D. Conn. 1998) (collection

809(a), disputes a debt in writing or requests verification of the debt, the collector must cease all collection efforts until verification is obtained and mailed to the consumer. The Commission and its staff have consistently read Section 809(b) to permit a debt collector to continue to make demands for payment or take legal action within the thirty-day period unless the consumer disputes the debt or requests verification during that time. Nothing within the language of the statute indicates that Congress intended an absolute bar to appropriate collection activity or legal action within the thirty-day period where the consumer has not disputed the debt or requested verification. The Commission articulated this position in an April 2000 advisory opinion. The Commission's staff has taken the same position in staff opinion letters and the Staff Commentary on the FDCPA.[18]

Federal circuit courts that have addressed this issue have arrived at the same conclusion. In a 1997 opinion, the Seventh Circuit stated that "[t]he debt collector is perfectly free to sue within the thirty days; he just must cease his efforts at collection during the interval between being asked for verification of the debt and mailing the verification to the debtor."[19] More recently, the Sixth Circuit stated that "[a] debt collector does not have to stop its collection efforts [during the thirty-day period] to comply with the Act. Instead, it must ensure that its efforts do not threaten a consumer's right to dispute the validity of his debt."[20]

Although these courts have been consistent with the position taken by the Commission and its staff, some continue to argue that the thirty-day time frame set forth in Section 809 is a *grace* period within which collection efforts are prohibited, rather than a *dispute* period within which the consumer may insist that the collector verify the debt. The Commission therefore recommends that Congress clarify the law by adding a provision expressly permitting appropriate collection activity within the thirty-day period, if the debt collector has not received a letter from the consumer disputing the debt or requesting verification. The clarification should include a caveat that the collection activity should not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt specified by Section 809(a).

Section 803(6)–Litigation Attorney as "Debt Collector": The Supreme Court has resolved the conflict in the federal courts concerning whether attorneys in litigation to collect a debt are covered by the Act. In *Heintz v. Jenkins*, 514 U.S. 291 (1995), the Court held that they are, in fact, covered like any other debt

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[18] 53 Fed. Reg. at 50,109, comment 809(b)-1. The Commentary, the Commission's advisory opinion, and staff opinion letters are available at *www.ftc.gov/os/statutes/fdcpajump.htm.*

[19] *Bartlett v. Heibl*, 128 F.3d 497, 501 (7th Cir. 1997) (Posner, J.).

[20] *Smith v. Computer Credit, Inc.*, 167 F.3d 1052, 1054 (6th Cir. 1999).

statute in some way -- and a judge who may agree. These collectors have suggested that the FDCPA be amended to contain model collection letters that, if adhered to precisely, would insulate them from liability for the form of their letters. The Commission believes that model letters would benefit both collectors and consumers. Collectors would benefit from having specific guidance regarding the form of their collection letters. Because the creation of such model letters would reduce the number of illegal collection letters sent by debt collectors, consumers would benefit in that they would be less likely to receive an illegal letter and, therefore, less likely to be deceived or intimidated by a debt collector.

While we agree that model collection letters would be highly beneficial, we do not think such models should be included in the FDCPA itself. Model letters might have to be altered, or a new model added to or deleted from the existing set, from time to time. We believe that specifically giving the Commission the limited authority to issue model letters or forms would provide the best solution. Model forms in Regulation Z, which implements the Truth in Lending Act, and Regulation B, which implements the Equal Credit Opportunity Act, provide valuable guidance for the nation's creditors. As the Federal Reserve System's Board of Governors does with the Regulation Z and Regulation B models, the Commission could alter existing models, add new ones, or delete models that are no longer appropriate.

The Commission therefore recommends a slight amendment to the FDCPA to allow the Commission to issue model collection letters. Section 814(d) currently provides, in pertinent part, that the Commission may not promulgate "trade regulation rules or other regulations with respect to the collection of debts by debt collectors."[24] The following language could be added to the end of Section 814(d):
". . . except that the Commission shall be authorized to promulgate by regulation, under Section 553 of Title 5, United States Code, model collection letters or forms for those debt collectors who choose to use them. If a debt collector adheres precisely to one of these models in creating a collection letter, the collection letter shall be deemed to be in compliance with [the FDCPA]."[25]

CONCLUSION

Although most debt collectors covered by the FDCPA already comply with the statute, the Commission continues to receive a significant number of complaints about those who do not. Through its balanced FDCPA program of education and enforcement,

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[24] 15 U.S.C. § 1692*l*(d).

[25] Section 553, 5 U.S.C. § 553, is the section of the Administrative Procedures Act that prescribes procedures for notice and comment rulemaking.

the Commission encourages collectors who comply with the law to continue to do so, and provides strong incentives for those who are not complying to conform their future practices with the dictates of the law.