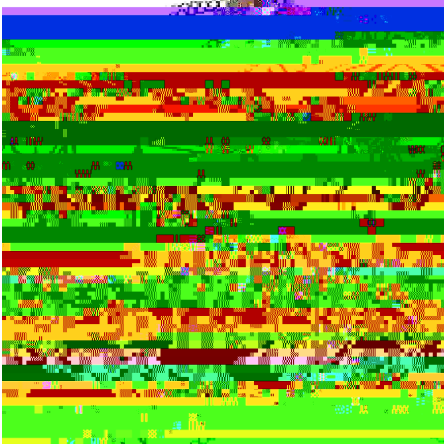


FEDERAL TRADE COMMISSION
ANNUAL REPORT 2011:
FAIR DEBT COLLECTION
PRACTICES ACT



INTRODUCTION

The Federal Trade Commission (“FTC” or “Commission”) is pleased to submit to Congress this thirty-third annual report summarizing its activities to administer the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692-1692p, during the past year.¹ These activities are part of the FTC’s ongoing effort to curtail deceptive, unfair, and abusive debt collection practices in the marketplace. Such practices cause substantial consumer injury, including payment of amounts not owed, unintended waivers of rights, invasions of privacy, and emotional distress. In some circumstances, illegal collection practices can place consumers deeper in debt.

¹ Section 815 of the FDCPA, 15 U.S.C. § 1692m, requires the FTC to report annually to Congress concerning the administration of its functions under the FDCPA. As discussed *infra*, this requirement will soon pass to the nascent Consumer Financial Protection Bureau (“CFPB”) under the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010) (“Dodd-Frank Act”), at § 1089.

² See p. 19, *infra*, for a discussion of anticipated changes in law enforcement authority in light of the Dodd-Frank Act.

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creditor or to enforcement agencies other than the FTC. Some consumers may not be aware that the conduct they have experienced violates the FDCPA or that the FTC enforces the FDCPA. For these reasons, the total number of consumer complaints the FTC receives may understate the extent to which the practices of debt collectors violate the law.

On the other hand, the FTC acknowledges that not all of the debt collection practices about which consumers complain are necessarily law violations. Many consumers complain of conduct that, if accurately described, would indeed violate the FDCPA, or Section 5 of the FTC Act, 15 U.S.C. § 45. The FTC, however, does not verify whether the information consumers provide is accurate unless the agency undertakes such an inquiry in connection with its law enforcement activities.

Moreover, even if accurately described, some conduct about which consumers complain does not violate the FDCPA. For example, a consumer may complain that a debt collector will not accept partial payments on the same installment terms that the original lender permitted when the account was current. Although a collector's demand for accelerated payment or larger installments may be frustrating to the consumer, such a demand generally does not violate the FDCPA. To the extent that consumers complain about conduct that may

⁶ Section 807(5) prohibits debt collectors from threatening "to take any action that cannot legally be taken or that is not intended to be taken," 15 U.S.C. § 1692e(5), a prohibition that includes false threats of suit.

⁷ In general, consumer complaints concern the alleged behavior of specific actors, whereas consumer inquiries ask for information about their legal rights or other topics.

^{8r inquiry} In contrast, the Commission's Annual Report includes in the complaint numbers the ^{s ask for inf}

and in-house collectors in 2010 together totaled 140,036 complaints¹¹ and accounted for 27% of all complaints the FTC received.¹² This represents an increase in absolute terms and as a percentage of total complaints over 2009, when the agency received 119,609 debt collection complaints, accounting for 22.8% of all complaints to the FTC.¹³

THIRD-PARTY DEBT COLLECTORS: In 2010, consumer complaints to the FTC about third-party debt collectors (“FDCPA complaints”) increased in absolute terms and as a percentage of all complaints that consumers filed directly with the FTC.¹⁴ The FTC received 108,997 FDCPA complaints in 2010, representing 21% of all complaints it received directly from consumers. By comparison, in 2009, the FTC received 88,326 FDCPA complaints, representing 16.8% of the complaints it received directly from consumers.

IN-HOUSE DEBT COLLECTORS: Last year, the number of complaints the FTC received about creditors’ in-house collectors decreased slightly in absolute terms, but remained relatively constant as a percentage of total complaints. In 2010, the FTC received 31,952 complaints about in-house collectors, representing 6.2% of all complaints received. In 2009, the FTC received 32,200 complaints about in-house collectors, representing 6.1% of all complaints received.

Although the Commission received over one hundred thousand consumer complaints about third-party collectors in 2010, it recognizes that collectors contact millions of consumers each year. The number of complaints the FTC receives about debt collectors, therefore, corresponds to only a small fraction of the overall number of consumers contacted.

another, as well as debt buyers collecting on debts they purchased in default.

¹¹ Some complaints are directed toward both third-party debt collectors and in-house creditor collectors. Thus, the total number of complaints against all debt collectors is slightly less than the sum of all third-party complaints and all in-house creditor complaints.

¹² See Appendix A for a chart showing the number of third-party collector complaints, in-house collector complaints, and total debt collector complaints in 2010 and 2009.

¹³ The 2009 complaint numbers identified in this year’s report differ slightly from those identified in last year’s report because, in connection with a quality assurance review, the FTC staff reviewed and re-coded some complaints after the 2010 Annual Report was issued.

¹⁴ Last year, the FTC received 518,743 complaints about all industries directly from consumers, down from 524,534 in 2009.

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collectors from misrepresenting the character, amount, or legal status of a debt.¹⁸ The types of complaints that fall into this category include, for example, reports that a collector is attempting to collect either a debt the consumer does not owe at all or a debt larger than what the consumer actually owes. Other complaints in this category state that collectors are seeking to collect on debts that have been discharged in bankruptcy. For the third consecutive year, this was the second most common category of FDCPA complaint. In 2010, there were 33,122 complaints describing this conduct, representing 30.4% of FDCPA complaints. In 2009, 31.1% of FDCPA complaints, or 27,483 complaints, were of this type.

Second, the FDCPA prohibits debt collectors from collecting any amount unless it is “expressly authorized by the agreement creating the debt or permitted by law.”¹⁹ In 2010, 9.7% of FDCPA complaints, or 10,614 complaints, asserted that collectors demanded interest, fees, or expenses that were not owed (such as unauthorized collection fees, late fees, and court costs). In 2009, 10.9% of FDCPA complaints, or 9,634 complaints, made these assertions.

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.²⁰ Many consumers who do not receive this notice are unaware that they must dispute their debts in writing if they wish to obtain verification of the debts. In 2010, 29.8% of the FDCPA complaints, or 32,477 complaints, reported that collectors did not provide the required notice, up from 25.7% of all FDCPA complaints, or 22,712 complaints, in 2009.

THREATENING DIRE CONSEQUENCES IF CONSUMER FAILS TO PAY: The FDCPA bars debt collectors from making threats as to what might happen if the consumer fails to pay the debt, unless the collector has the legal authority and the intent to take the threatened action.²¹ Among other things, collectors might threaten to initiate civil suit or criminal prosecution, garnish wages, seize property, cause job loss, have a consumer jailed, or damage or ruin a consumer’s credit rating. In 2010, 25.3% of FDCPA complaints, or 27,554 complaints, reported that third-party collectors falsely threatened a lawsuit or

¹⁸ Section 807(2), 15 U.S.C. § 1692e(2).

¹⁹ Section 808(1), 15 U.S.C. § 1692f(1).

²⁰ Section 809(a), 15 U.S.C. § 1692g(a).

²¹ Sections 807(4)-(5), 15 U.S.C. §§ 1692e(4)-(5).

²² Section 807(11), 15 U.S.C. § 1692e(11). This requirement does not apply if the communication at issue is a formal pleading made in connection with a legal action. *Id.* Section 806(6) of the Act also provides that it is generally an abusive practice to place telephone calls without meaningful disclosure of the ca

United States v. West Asset Mgmt., Inc., No. 1-11-CV-0746 (N.D. Ga. Mar. 14, 2011). The

³¹ *FTC v. LoanPointe, LLC*, No. 2:10 CV 00225 DAK (C.D. Utah 2010). See Press Release, Federal Trade Commission, *FTC Charges Payday Lender with Deceiving Employers in Scheme to Collect Debts* (Apr. 7, 2010), available at www.ftc.gov/opa/2010/04/getecash.shtm.

³² 16 C.F.R. § 444.

³³ The Commission voluntarily agreed to dismiss two defendants, Benjamin J. Lonsdale and James C. Endicott, who were named in the FTC's complaint. See Press Release, Federal Trade Commission, *Payday Loan Defendant Settles FTC Charges; Illegally Tried to Garnish Borrowers' Wages* (Sept. 2, 2010), available at www.ftc.gov/opa/2010/09/getecash.shtm.

³⁴ *United States v. Allied Interstate, Inc.*, No. 10-cv-04295-PJS-AJB (D. Minn. 2010). See Press Release, Federal Trade Commission, *Debt Collector Will Pay \$1.75 Million to Settle FTC Charges: Ignored Consumers' Disputes Without Checking Its Information for Accuracy* (Oct. 21, 2010), available at www.ftc.gov/opa/2010/10/101010.

and agreed to stop collection efforts on disputed debts in the future unless and until it conducts a reasonable investigation and verifies the debt. In addition, the agreement bars Allied from violating the FDCPA or from engaging in the types of conduct the complaint alleged violated the FTC Act.

CONSUMER AND INDUSTRY EDUCATION

The FTC's consumer and industry education efforts are the second prong of its FDCPA program. Consumer education informs consumers of their rights under the FDCPA and what the law requires of debt collectors. With this knowledge, consumers can determine whether 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 mechanism for deterring law violations. Industry education informs collectors on various FDCPA issues.³⁵ With this knowledge, industry members can take all necessary steps to comply with the FDCPA.

TOOLS FOR CONSUMERS: The FTC informs consumers about their rights and responsibilities under the FDCPA by means of written materials, one-to-one guidance, and speeches and presentations.

First, the FTC provides written materials for consumers, including the 2009 Fair Debt Collection Practices Act

³⁵ The Commission does not license, certify, or register debt collectors, and it does not approve or endorse the practices of specific debt collectors other than through issuing advisory opinions, as discussed below.

³⁶ The FTC's "Debt Collection FAQs: A Guide for Consumers" brochure is accessible at www.ftc.gov/bcp/edu/pubs/consumer/credit/cre18.shtm.

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Finally, the FTC extends the reach of its consumer education initiatives through public speaking engagements to groups across the country. In all types of venues, the FTC informs c

⁴⁰ This video, “Debt Collection,” is located at business.ftc.gov/multimedia/videos/debt-collection as well as on the FTC’s YouTube page, www.youtube.com/user/FTCvideos.

⁴¹ The FTC issues advisory opinions pursuant to Sections 1.1-1.4 of the FTC’s Rules of Practice, 16 C.F.R. §§ 1.1-1.4.

⁴² FTC, REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION (Jul. 2010), *available at*

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COLLECTION OF DECEDENTS' DEBTS: In October 2010, in response to concerns about possible unfair, deceptive, or abusive practices by certain debt collectors, the FTC issued a proposed statement of enforcement policy regarding the collection of the debts of deceased persons.⁴⁴ In general, debts survive the death of the debtor, and a debt collector may seek payment of the debt from the estate of the deceased. Pursuant to Section 805 of the FDCPA, however, debt collectors in this situation may only communicate with the deceased's spouse, parent (if the deceased was a minor), guardian, executor, or administrator.⁴⁵

State probate laws have evolved considerably since the passage of the FDCPA and now, in many cases, confer authority on individuals other than those set forth in Section 805 to pay the debts of decedents on behalf of the estate.⁴⁶ If collectors cannot communicate with those individuals to resolve the decedents' outstanding debts, collectors may force estates into probate, thereby imposing costs and delays in the resolution of estates in order to collect the debt. The Commission's proposed policy statement sought public comment on whether the Commission should decide not to take law enforcement action against debt collectors who communicate with any person who has authority to pay a decedent's debts from the assets of the estate, even if that person does not explicitly fall within the specific categories listed in Section 805(d). The proposed policy statement also provided guidance to collectors, consistent with the FDCPA,⁴⁷ on how to "locate" or identify the person with such authority, and how to communicate with that person without engaging in unfair, deceptive, or abusive acts and practices by, among other things, disclosing that the person with authority is not personally obligated to pay the debt.

The FTC called for public comments on its proposed statement of enforcement policy. One hundred forty-five comments were submitted, and the issue remains under review.

⁴⁴ Statement of Policy Regarding Communications in Connection With Collection of a Decedent's Debt, 75 Fed. Reg. 62,389 (Oct. 8, 2010). *See also* Press Release, Federal Trade Commission, *FTC Proposes Policy Statement Clarifying How to Collect Decedents' Debts* (Oct. 4, 2010), available at www.ftc.gov/opa/2010/10/debtcollect.shtm.

⁴⁵ 15 U.S.C. §§ 1692c(b) and 1692c(d).

⁴⁶ Typically, persons with authority to pay decedents' debts out of the assets of the estate are not obligated *personally* to pay those debts.

⁴⁷ Section 804, 15 U.S.C. § 1692b.

DEBT BUYING STUDY: Also in 2010, the FTC continued an empirical study of the debt buying industry. In December 2009, the agency issued orders to nine of the nation's largest debt buying companies, requiring them to produce extensive and detailed information about their practices in buying and selling consumer debt. Debt buying has become a significant part of the debt collection system over the past decade, and many debts are purchased and resold several times over a period of years before all collection efforts finally cease. Some parties have suggested that the age, amount, and quality of debt-related information transferred when debt is sold results in an increase in efforts by debt buyers to collect from the wrong party and/or in the wrong amount. To investigate empirically these information flow and other issues, the Commission undertook this investigation of the industry. The FTC anticipates issuing a report with its findings and recommendations, if appropriate, regarding the debt buying industry.

DEBT COLLECTION TECHNOLOGY WORKSHOP: In April 2011, the FTC will convene industry representatives, consumer advocates, regulators, researchers, and others to discuss debt collection technologies at a public workshop, *Debt Collection 2.0: Protecting Consumers as Technologies Change*.⁴⁸ Over the thirty-three years since the FDCPA was enacted, technologies for collecting and transmitting data, communicating, and making payments have advanced. (actions for the FTC. 8800-0-0000 TD0000 0.0000 TD(a)Tj5.2800 0t'0

⁴⁸ See Press Release, Federal Trade Commission, *FTC To Host Consumer Debt Collection Technology Workshop* (Mar. 10, 2011), available at www.ftc.gov/opa/2011/03/debtcollection.shtm.

CONSUMER FINANCIAL PROTECTION BUREAU

Under the Dodd-Frank Act, the CFPB will have the authority to enforce the FDCPA concurrently with the FTC.⁴⁹ In addition, the CFPB will have authority to prescribe rules with respect to debt collection; issue guidance concerning compliance with the law; collect complaint data; educate consumers and collectors; and undertake research and policy initiatives related to consumer debt collection. The CFPB also will become responsible for issuing future annual reports to Congress concerning federal government activities to implement the FDCPA.⁵⁰

CONCLUSION

Through its debt collection program of enforcement, education, and policy initiatives, including the annual reports it has issued every year since the FDCPA was enacted in 1977,⁵¹ the FTC has actively worked to protect consumers from the unfair, deceptive, and abusive conduct of debt collectors. In the future, the FTC intends to continue this work in cooperation with the CFPB.

⁴⁹ Dodd-Frank Act § 1089. The banking agencies and the CFPB will share authority to enforce the FDCPA for depository institutions subject to their jurisdiction, depending on the size of the institution. Dodd-Frank Act §§ 1025, 1026, 1061(c), and 1089(3)(b). For depository institutions with assets greater than \$10 billion, the CFPB has primary enforcement authority, and the banking agencies may refer potential enforcement actions to the CFPB and enforce them directly if the CFPB does not initiate enforcement within 120 days. Dodd-Frank Act §§ 1025, 1061(c). For smaller depository institutions, the banking agency with jurisdiction over the institution has primary enforcement authority, and the CFPB may refer potential enforcement actions to that agency. Dodd-Frank Act §§ 1026, 1061(c).

⁵⁰ Dodd-Frank Act § 1089.

⁵¹ The FTC staff who have worked on these reports during the past thirty-three years include, but are not limited to: Gil Bosque, Clarke Brinckerhoff, Connie Brown, Rachelle Brown, Kathleen Buffon, Julie Bush, Beverly Childs, Reilly Dolan, Roger Fitzpatrick, Lauren France, Kathy French, Seena Gressin, Nicholas Herrera, Karen Hickey, Ronald Isaac, Thomas Kane, Christopher Keller, Christopher Koegel, Cynthia Lamb, John LeFevre, Cindy Liebes, Thomas Pahl, Alan Reffkin, Alberto Rivera-Fournier, Mary Rushen, David Torok, Peggy Twohig, and Joel Winston.

