
¹ Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. 11-203, § 1089, 124 Stat. 1376, 2092-93 (2010) (amending the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p).

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I. FTC Authority

The Commission has the authority to investigate and take law enforcement action against debt collectors who engage in unfair, deceptive, abusive, or other practices that violate the FDCPA.³ The FTC also has the power to investigate and take law enforcement action against entities that, in connection with collecting on debts, engage in unfair or deceptive acts and that violate the

³ Section 814 of the FDCPA, 15 U.S.C. § 1692*l*.

⁴ Section 5 of the FTC Act, 15 U.S.C. § 45.

furnishing inaccurate information to credit reporting agencies, failing to provide consumers with written notice within thirty days of furnishing negative information to credit reporting agencies, and failing to reasonably investigate notices of consumer disputes received from credit reporting agency

payday loans.⁹ The consumers, however, either had not taken out a payday loan at all or had taken out a payday loan that the defendants were not authorized to collect. The Commission's complaint alleged that the defendants violated the FDCPA and Section 5 of the FTC Act. The FTC obtained an ex parte temporary restraining order with an asset freeze, immediate access to the premises, and the appointment of a receiver.¹⁰ The FTC continues to litigate this matter.

The Commission also litigated two other Section 13(b) actions against debt collectors seeking to recover on payday loans. In the first case, *FTC v. LoanPointe, LLC*, the FTC challenged the wage garnishment practices, among other things, of a payday loan operation.¹¹ The FTC alleged that the operation attempted to garnish wages to collect on payday loans, without first obtaining a state court order. Although federal law allows federal agencies to require employers to garnish employees' wages without a state court order if the employees owe money to the federal government, private parties, such as the payday lenders in this case, must obtain a court order to garnish wages. Nevertheless, the defendants allegedly sent documents to the employers of consumers that mimicked the documents that the federal government sends in collecting on its own debts, thereby falsely representing that the defendants (like the federal government) were entitled to garnish wages without obtaining a state court order. The Commission alleged that this conduct violated the FDCPA and the FTC Act, and a federal court ordered temporary and preliminary injunctive relief against the defendants. After the Commission settled against an individual defendant who was an owner of the operation,¹² in July 2011 the court granted summary judgment against the remaining defendants, entered a permanent injunction against them, and ordered that they pay \$294,436 in monetary relief.¹³

⁹ Complaint, *FTC v. American Credit Crunchers, LLC*, No.12cv1028 (N.D. Ill. Feb. 13, 2012); *see also* Press Release, Court Halts Alleged Fake Debt Collector Calls from India, Grants FTC Request to Stop Defendants Who Often Posed as Law Enforcement (Feb. 21, 2012), www.ftc.gov/opa/2012/02/acc.shtm.

¹⁰ *FTC v. American Credit Crunchers, LLC*, No.12cv1028 (N.D. Ill. Feb. 14, 2012) (temporary restraining order).

¹¹ Complaint, *FTC v. LoanPointe, LLC*, No. 2:10 CV 00225 DAK (D. Utah, Mar. 15, 2010); *see also* Press Release, FTC Charges Payday Lender with Deceiving Employers in Scheme to Collect Debts (April 7, 2010), www.ftc.gov/opa/2010/04/getecash.shtm.

¹² In August 2010, the FTC settled with Mark S. Lofgren, one of the owners of the payday loan and debt collection scheme. *See FTC v. LoanPointe, LLC*, No. 2:10 CV 00225 DAK (D. Utah, Aug. 26, 2010) (final order as to defendant Mark Lofgren); Press Release, Payday Loan Defendant Settles FTC Charges; Illegally Tried to Garnish Borrowers' Wages (Sept. 2, 2010), www.ftc.gov/opa/2010/09/getecash.shtm.

¹³ *FTC v. LoanPointe, LLC*, No: 2:10 CV 00225 DAK (D. Utah Dec. 9, 2011) (final order); *see also* Press Release, Court Rules in Favor of FTC; Orders Defendants in Payday

Lending Case to Pay More Than \$294,000 for Illegal Garnishment of Consumers' Paychecks
(Dec. 19, 2011), [www.](#)

¹⁸ *FTC v. Forensic Case Mgmt. Servs., Inc.*, No. LACV11-7484 (C.D. Cal. Sept. 13, 2011) (ex parte temporary restraining order).

¹⁹ *FTC v. Forensic Case Mgmt. Servs., Inc.*, No. LACV11-7484 (C.D. Cal. Sept. 27, 2011) (preliminary injunction); *see also* Press Release, At FTC's Request, Court Orders Debt

B. Other Law Enforcement Related Activities

1. Policy Statement Regarding Decedent's Debts

In July 2011, the Commission issued a policy statement regarding communications made in connection with collecting on deceased consumers' accounts.²³ The statement clarifies that the FTC will not take enforcement action under the FDCPA or the FTC Act against companies that are attempting to collect the debts of deceased consumers, if the companies communicate only with someone who has the authority to pay debts from the estate of the deceased. The policy statement also emphasizes that debt collectors may not mislead relatives to believe that they are personally liable for a deceased consumer's debts, or use other deceptive or abusive tactics.

The policy statement reconciles Section 805(b) of the FDCPA's requirements concerning with whom collectors may communicate in collecting on a deceased consumer's debts and current trends in state probate law. When a debtor has died, under the FDCPA debt collectors may only contact the decedent's spouse, as well as the executor or administrator of the deceased person's estate. Since the FDCPA was enacted in 1977, however, state probate law has changed so that in many instances there is no executor or administrator of the decedent's estate. If debt collectors are not permitted to contact those who state law now authorizes to pay the debts of the decedent out of the decedent's assets, collectors' recourse is to commence probate proceedings, thereby imposing costs and delays on the resolution of estates.

To avoid harm to consumers from these costs and delays, the policy statement provides that the Commission will not take law enforcement action under the FDCPA if a debt collector communicates about a decedent's estate with anyone who is authorized to pay the decedent's debts from assets in his or her estate. The policy statement also provides guidance to collectors concerning how they may locate a person with such authority.²⁴ In addition, the policy statement underscores that in communicating with a person who is authorized to pay the decedent's debts from assets in the decedent's estate, collectors must comply with the FDCPA's prohibition on unfair, deceptive, or abusive collection practices. Specifically, collectors must not contact the decedent's spouse, executor, administrator, or a person with the authority to pay the decedent's debt out of the decedent's estate at unusual or inconvenient times or places. Collectors also must

²³ Statement of Policy Regarding Communications in Connection With the Collection of Decedents' Debts, 76 Fed. Reg. 44,915 (July 27, 2011); *see also* Press Release, FTC Issues Final Policy Statement on Collecting Debts of the Deceased (July 20, 2011), www.ftc.gov/opa/2011/07/fdcpa.shtm.

²⁴ Section 804 of the FDCPA expressly permits debt collectors in certain circumstances to communicate with persons other than the consumer for the purpose of acquiring location information (i.e., home address and telephone number, or place of employment) about the consumer. 15 U.S.C. § 1692b; *see also* 15 U.S.C. § 1692a(7) (definition of "location information").

²⁵ Brief for the FTC as Amicus Curiae, *Vassalle v. Midland Funding, LLC*, No: 3:11-CV-00096 (N.D. Ohio June 21, 2011), available at www.ftc.gov/os/2011/06/110621midlandfunding.pdf.

²⁶ See Complaint at pp. 3-8, *Vassalle v. Midland Funding, LLC*, No. 3:11-cv-00096 (N.D. Ohio Jan. 17, 2011); see also *Midland Funding, LLC v. Brent*, 644 F.Supp.2d 961, 966-69 (N.D. Ohio 2009) (describing the challenged affidavit production practice).

²⁷ Following the FTC's amicus brief, Midland stipulated that none of the information collected

served to highlight - for the

²⁸ *Id.* The court found that the release was not overly broad, in part because consumers are still free to raise legal challenges based on evidentiary deficiencies in the proof offered by Midland, as long as the deficiencies do not relate to the affidavit. *Id.* at 21-23. The court also found the \$10 amount offered to class members who file a timely claim to be adequate, partly due to the difficulty that consumers would have bringing individual litigation and the ability for consumers to opt-out of the settlement agreement. *Id.* at 27-28.

²⁹ Brief for the United States as Amicus Curiae, *Fein, Such, Kahn & Shepard, PC v. Allen*, No. 10-1417 (U.S. Dec. 23, 2011), available at www.justice.gov/osg/briefs/2011/2pet/6invt/2010-1417.pet.ami.inv.pdf. The Commission vote to authorize the filing of the brief was 3-1, with Commissioner J. Thomas Rosch dissenting.

³⁰ *Allen ex rel. Martin v. LaSalle Bank*, 629 F.3d 364 (3rd Cir. 2011).

³¹ 15 U.S.C. § 1692f(1).

³² *See LaSalle Bank*, 629 F.3d at 367-68.

³³ *Fein, Such, Kahn & Shepard, PC v. Allen*, No. 10-1417, 2012 WL 171347 (U.S. Jan. 23, 2012) (mem.) (order denying cert.).

4. Risk to Effective Law Enforcement: Gag Clauses

The FTC extensively uses consumer complaints in its law enforcement work to identify targets for investigation, identify consumer witnesses, and for other purposes. Commission staff, however, recently have become aware that many collectors appear to be routinely including provisions in settlement agreements with consumers that prohibit the consumers from cooperating with or sharing information with the FTC and other law enforcement agencies.

Courts generally have determined that gag clauses in settlement agreements that prevent or limit the ability of consumers to complain to law enforcement agencies are not enforceable because they are against public policy.³⁴ Nevertheless, the mere presence of these clauses in private FDCPA settlement agreements may deter injured consumers from providing critical information to the FTC and other law enforcement officials about possible unlawful debt collector conduct. The Commission thus believes that gag clauses should not be included in private FDCPA settlements.

III. Consumer and Business Education Materials

The second prong of the FTC's FDCPA program is consumer and industry education. Consumer education informs consumers of their rights under the FDCPA and what the law requires of debt collectors. The Commission provides this information through English and Spanish written materials, one-to-one guidance, and speeches and presentations. The three main forms of consumer education in the area of debt collection are: brochures that are distributed in paper and online; an online informative video;³⁵ and discussions between consumers and the FTC's Consumer Response Center staff.³⁶

³⁴ See, e.g., *EEOC v. Astra USA, Inc.*, 94 F.3d 738, 744 (1st Cir.1996) (observing that in light of the EEOC's duty to prevent employment discrimination, "any agreement that materially interferes with communication between an employee and the Commission sows the seeds of harm to the public interest"); Carol M. Bast, *At What Price Silence: Are Confidentiality Agreements Enforceable?* 25 WM. MITCHELL L. REV. 627, 655-62 (1999) (collecting cases and observing that a "common thread" running through decisions reviewing the enforceability of non-disclosure agreements involving a federal statute "is that it is contrary to public policy to block communication needed to carry out the purpose of a federal act"); see also *Gen. Steel Domestic Sales, LLC v. Steelwise, LLC*, No. 07cv01145, 2009 WL 185614 (D. Colo. Jan. 23, 2009) (concluding that covenants preventing consumers and investigators from truthfully testifying about facts related to a pre-fabricated building manufacturer's alleged violations of consumer protection laws were void as against public policy).

³⁵ The FTC offers an animated video that explains consumer rights regarding debt collection. The video can be found at www.ftc.gov/debtcollection.

³⁶ The highly trained contact representatives in the FTC's Consumer Response Center respond to thousands of telephone calls and written communications (in both paper and

electronic form) from consumers each weekday.

included: debt collection litigation and arbitration, debt buyers, and debt collectors' use of new technologies.

A. Debt Collection Litigation and Arbitration Outreach

In July 2010, the FTC issued a report derived from a series of natio

⁴⁰ FTC, REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION, July 2010, *available at* www.ftc.gov/os/2010/07/debtcollectionreport.pdf.

time-barred debt revives the entire debt for a new statute of limitations period. The FTC said that, in many circumstances, to avoid deception collectors seeking to recover in these states on debts beyond the statute of limitations should disclose to consumers that making a payment will revive such debt.

- ! Banks sometimes freeze funds in the bank accounts of indigent debtors even though the funds are exempt from garnishment by law. The FTC therefore recommended that federal

⁴¹ See, e.g., 171ST REPORT OF THE STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE 6-7 (July 1, 2011) (noting that the FTC's report was among the sources consulted in developing changes in Maryland court rules), *available at* <http://mdcourts.gov/rules/ruleschanges.html>; Response of Creditors' Counsel Identified to

B. Debt Buyer Study

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 collection efforts finally cease. Some have suggested tha

Delaware Court of Common Pleas Administrative Directive 2011-1 – Consumer Debt Collection Actions 1, May 2011 (noting that the Delaware Court of Common Pleas stated that the FTC reports were among the sources consulted in drafting an Administrative Directive setting forth pleading and practice requirements in debt collection cases), *available at* <http://courts.delaware.gov/commonpleas/docs/comment2n.pdf>.

⁴² The final transcript of the workshop is available at www.ftc.gov/bcp/workshops/debtcollectiontech/docs/transcript.pdf.

⁴⁸ These numbers reflect the access of materials from the FTC’s website and other official sources. It does not include access to materials that are downloaded from FTC channels and re-posted on outside websites.

⁴⁹ No available data due to recent release date.