



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

February 1, 2013

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1801 L Street NW
Washington, DC 20036

Dear Mr. Cordray:

Thank you for your letter of December 11, 2012. As your letter mentions, the Consumer Financial Protection Bureau (CFPB) is responsible for providing annual reports to Congress concerning the federal government's efforts to implement the Fair Debt Collection Practices Act (FDCPA).¹ This letter describes the efforts the Federal Trade Commission (Commission or FTC) has taken during the past year in the debt collection arena. In the FTC's debt collection work, the CFPB has been a valuable partner, and the Commission anticipates that our partnership will become even stronger in the future. We hope that the information in this letter will assist the CFPB in preparing this year's report.

I. The Commission's Debt Collection Program

The FTC's debt collection program is a three-pronged effort: (1) vigorous law enforcement; (2) education and public outreach; and (3) research and policy initiatives.

rights and businesses about their responsibilities under the FDCPA and the FTC Act. The FTC also consulted regularly with the public as part of the agency's debt collection outreach efforts. And the Commission engaged in research and policy development activities to identify, adopt, and advocate debt collection policies and practices that advance the agency's consumer protection mission.

II. Law Enforcement Activities

The Commission is primarily a law enforcement agency, and law enforcement investigations and litigation are at the heart of the FTC's recent debt collection work. Both the FDCPA and the FTC Act authorize the Commission to investigate and take law enforcement action against debt collectors that violate those statutes.² If an FTC investigation reveals that a debt collector violated the law, the Commission may file a federal court action seeking injunctive relief under Section 13(b) of the FTC Act or refer the matter to the Department of Justice. Where a collector's violations are so egregious that a court order is necessary to halt the conduct immediately, or where consumer redress and disgorgement are more appropriate forms of monetary relief than civil penalties, the FTC generally files the action itself under Section 13(b) of the FTC Act. Where, on the other hand, preliminary injunctive relief to halt unlawful conduct is unnecessary and civil penalties are appropriate monetary relief, the FTC may refer the case to the Department of Justice.

In addition to filing and referring law enforcement actions, the FTC files amicus briefs and undertakes other law enforcement

The cases discussed below represent a concerted effort by the FTC to target inappropriate debt collection practices including false threats, harassment or abuse, and attempts to collect on phantom payday loan debts.

1. Deceptive, Unfair, and Abusive Collector Conduct

Targeting debt collectors that engage in deceptive, unfair, or abusive conduct continues to be one of the Commission's highest priorities. In the past year, the Commission has filed or resolved four such actions. In *FTC v. Forensic Case Management Services, Inc.*, after over a year of litigation, the FTC has secured substantial monetary judgments against a debt collection enterprise and a complete ban on future debt collection activity, along with other injunctive relief.⁴ The FTC's complaint alleged that the defendants violated the FTC Act and the FDCPA through such egregious conduct as threatening to physically harm consumers and desecrate the bodies of their dead relatives; threatening to kill consumers' pets; using obscene and profane language; revealing consumers' debts to third parties; and fals

Act and the FDCPA by making false statements, including falsely threatening consumers with arrest; disclosing consumers' debts to third parties; collecting unauthorized fees; engaging in harassing and abusive conduct; failing to provide required notices; and making phone calls before 8:00am and after 9:00 pm.⁷ Similarly, in *FTC v. AMG Services, Inc.*, the FTC alleged that a payday lender, collecting on its own behalf, violated the FTC Act by falsely threatening to take legal action against consumers.⁸ The parties have stipulated to a preliminary injunction that prohibits the payday lender from making misrepresentations while collecting debts.⁹ The Commission continues to litigate the *Goldman Schwartz* and *AMG Services* cases.

2. **Phantom Debt Collection**

One of the Commission's major consumer protection concerns is the rise of so-called "phantom debt collectors." Phantom debt collectors engage in unfair, deceptive, or abusive conduct by attempting to collect on debts (often rela

information consumers submitted in applying for payday loans online found its way into the defendants' hands. Even though consumers did not receive a payday loan from any lender that had retained the defendants to collect, defendants typically demanded more than \$300, and sometimes as much as \$2,000, from consumers. Many consumers believed these demands were legitimate because the defendants had their Social Security or bank account numbers from their payday loan applications.

In *FTC v. Pro Credit Group, LLC*, the FTC charged that several of the defendants, working closely with overseas call centers, engaged in a scheme to defraud consumers by processing payments for debts, including payday loans, that the consumers did not owe, or were never applied to the consumers' actual debts.¹² As in *American Credit Crunchers*, callers often claimed that they were law enforcement personnel and threatened consumers with arrest or other legal action. The United States District Court for the Middle District of Florida entered a preliminary injunction against the defendants and the litigation is ongoing.

Finally, in *FTC v. Broadway Global Master, Inc.*, the FTC charged the defendants with making more than 2.7 million phantom debt collection calls to at least 600,000 different phone numbers nationwide.¹³ The FTC asserted that the defendants fraudulently collected more than \$5.2 million in less than two years from consumers, many of whom were strapped for cash and thought the money they were paying would be applied to loans they owed. The court granted a preliminary injunction with an asset freeze. The litigation is ongoing. In August 2012, in a parallel criminal proceeding, a federal grand jury charged the owner of Broadway Global with 21 criminal counts of wire and mail fraud for his phantom debt collection scheme.¹⁴

Request to Stop Defendants Who Often Posed as Law Enforcement (Feb. 21, 2012), *available at* <http://www.ftc.gov/opa/2012/02/acc.shtm>.

¹² Complaint, *FTC v. Pro Credit Group, LLC, et al.*, No. 12-CV-00586 (M.D. Flo 5yjn(r) , 2012).

B. Other Law Enforcement Activities

1. Private Plaintiffs' Rights: Marx Amicus Brief

In August 2012, the Commission joined the CFPB and the Department of Justice in filing an amicus brief in the Supreme Court urging the Court to rule that private plaintiffs who file good-faith lawsuits against debt collectors for alleged violations of the FDCPA are not required to pay prevailing defendants' litigation costs.¹⁵ In the underlying case, a consumer, Olivea Marx, sued a debt collector that had contacted her employer to obtain information about her employment status. Marx believed that the debt collector's conduct had violated the FDCPA, but she lost the case. The United States Court of Appeals for the Tenth Circuit ruled that Marx was responsible for paying more than \$4,500 to cover the debt collector's litigation costs, even though she had brought the case in good faith.

The federal government's amicus brief argues that the Tenth Circuit's decision was inconsistent with the FDCPA, which states that if a court finds that an FDCPA action "was brought in bad faith and for the purpose of harassment, [it] may award to the defendant attorney's fees reasonable in relation to the work expended and costs." The federal government also argues that limiting the imposition of litigation costs to consumers acting in bad faith or for harassment advances Congress' intent to deter unlawful debt collection practices through good faith private FDCPA actions. In contrast, the Tenth Circuit's ruling would create a disincentive to the prosecution of private enforcement actions.

The Supreme Court heard oral argument on the matter on November 7, 2012.

2. Time-Barred Debt: RJM Acquisitions Closing Letter

An ongoing issue in the debt collection industry is what debt collectors must tell consumers in connection with collecting on debt that are beyond the statute of limitations. The FDICIA, TCF, and FDCPA require debt collectors to disclose to consumers the amount of debt that is beyond the statute of limitations and the fact that the debt is time-barred.

Asset's failure to disclose to consumers that it could not legally sue consumers if they did not pay was a deceptive practice violating Section 5 of the FTC Act. To remedy the alleged violation, Asset agreed to a settlement requiring among other things that, for any debt that Asset knows or should know is time-barred, Asset disclose that it will not sue to collect on it.

In August 2012, the Commission's staff closed its investigation of RJM Acquisitions LLC ("RJM") for possible FDCPA violations concerning time-barred debt.¹⁸ RJM is a debt buyer that attempts to collect on debts it purchases from original creditors, some of which are time-barred. The staff's closing letter explained that, even in the absence of any affirmative representations that consumers will be sued to collect time-barred debt, merely attempting to collect on such debt may lead consumers to believe that such suits may occur. Misleading consumers in this way would violate Section 5 of the FTC Act and Section 807 of the FDCPA. In its closing letter to RJM, FTC staff noted that RJM had added a disclosure to its collection letters to avoid consumers taking away the impression that they can be sued to collect on time-barred debt.

III. Education and Public Outreach

The second prong of the FTC's FDCPA program is education and public outreach. Consumer education informs consumers of their rights under the FDCPA and what the statute requires of debt collectors. Business education informs debt collectors what they must do to comply with the law. The FTC also engages in public outreach to enhance legal service providers' understanding of debt collection issues.

The Commission educates consumers through English and Spanish written materials, one-on-one guidance, and speeches and presentations. In 2012, the Commission supplemented its distribution of this information by launching two consumer-oriented websites: consumer.ftc.gov and consumer.gov. consumer.ftc.gov, which launched in December 2012, offers straightforward articles about a variety of consumer protection topics, as well as videos, educational games, and a blog that invites consumer comments.¹⁹ The site addresses debt collection topics ranging from phantom debt collection²⁰ to time-barred debts.²¹ [Consumer.gov](http://consumer.gov), which launched in October 2012, is the product of extensive work in coordination with the Center for Applied Linguistics to write and design the site for audiences with low literacy levels. Features include short videos, infographics, and read-along audio. The site includes basic

¹⁸ See <http://www.ftc.gov/os/closings/staff/120827rjmclosingletter.pdf>.

¹⁹ *Welcome to the FTC's Home for Consumer Information* (Dec. 2012), available at www.consumer.ftc.gov/blog/welcome-ftcs-home-consumer-information.

²⁰ FTC, *Fake Debt Collectors* (Feb. 2012),

collect. As the Commission has noted previously,²² the limited information that debt buyers receive may make it more likely that they will attempt to collect from the wrong consumer or the wrong amount.

The FTC study also estimated that consumers disputed 3.2% of the debts that debt buyers said they owed—at least one million disputed debts per year in the debt buyer industry. The Commission concluded that “the proper handling of this large number of disputed debts is a significant consumer protection concern.” In addition, the study revealed that debt buyers verified only half of the debts consumers disputed, and they were less likely to verify debts if they were older. The report cites the need for further research into issues relating to debt buying.

B. Debt Collection 2.0 Workshop

In April 2011, the FTC convened 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*.²³ Since the FDCPA was enacted in 1977, technologies for collecting and transmitting data, communicating, and making payments have advanced. Today’s collectors, for example, increasingly communicate with consumers via electronic mail, mobile phones, text messaging, and social media. In connection with these developments, workshop participants discussed the following topics: how debt collection technologies have evolved in recent years; whether such technologies can increase the likelihood collectors will contact the right consumer seeking the right amount; how to weigh the costs and benefits to consumers and collectors of employing newer technologies for information collection and storage, communication, and payment; and whether any legal or policy reforms might enhance consumer protection.

The insights gained through the workshop have been and will continue to be valuable in the FTC’s law enforcement investigations and litigation in the debt collection area. Further, over the past year, FTC staff has discussed its findings with CFPB staff working on debt collection issues. The Commission anticipates that these consultations will be instrumental in the CFPB’s ongoing and future efforts to administer and enforce the FDCPA and other laws implicated by debt collection technologies.

²² *Federal Trade Commission Annual Report 2010: Fair Debt Collection Practices Act* at 17, available at <http://www.ftc.gov/os/2010/04/P104802fdcpa2010annrpt.pdf>; FTC, *Collecting Consumer Debts: The Challenges of Change* at iv-v; 21-24 (Feb. 2009), available at <http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf>.

²³ The final transcript of the workshop is available at www.ftc.gov/bcp/workshops/debtcollectiontech/docs/transcript.pdf.

V. Conclusion

The Commission hopes that the information contained in this letter will assist the CFPB in its annual report to Congress about its administration of the FDCPA. The FTC looks forward to continuing to cooperate and coordinate with the CFPB on consumer protection issues relating to debt collection. If any other information would be useful or if you wish to request additional assistance, please contact Jessica Rich, Associate Director, Division of Financial Practices, at (202) 326-3224.

By direction of the Commission.

Donald S. Clark
Secretary

APPENDIX A: