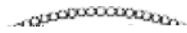


FEDERAL TRADE COMMISSION  
ANNUAL REPORT 2008:  
FAIR DEBT COLLECTION  
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<sup>1</sup> Section 815 of the FDICPA, 15 U.S.C. § 1692m, provides for the Commission to report to Congress annually concerning the administration of its functions under the Act.

<sup>2</sup> Section 814 of the FDICPA, 15 U.S.C. § 1692 , places enforcement obligations upon seven other federal agencies for the organizations they regulate. These agencies are the Office of the

As in past years, the Commission took significant steps in 2007 to curtail illegal debt collection practices. This report presents an overview of the types of consumer complaints the FTC received in 2007, a summary of recent developments in Commission law enforcement related to debt collection, and a summary of the FTC's 2007 consumer and industry education initiatives.

Last year, the Commission also commenced a comprehensive assessment of the debt collection industry and its practices. The debt collection industry has grown and changed significantly since the FDCPA was enacted 30 years ago. The Commission staff held a two-day public workshop in October 2007 to examine the industry and a number of current issues. The staff invited consumer advocates, industry representatives, state and federal regulators, and other experts to provide information and their views on the collection industry and related policy issues. The Commission is evaluating the information submitted in connection with the workshop, and it expects to issue a report detailing the workshop discussions.

## **CONSUMER COMPLAINTS**

### **BACKGROUND**

The Commission receives much of its information about the conduct of debt collectors directly from consumers through complaints they file with the FTC<sup>3</sup> and through its enforcement work.<sup>4</sup> The Commission uses complaints for general monitoring of the industry, target selection, and preliminary information which might, with further factual development, reveal or help prove a law violation.

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<sup>3</sup> The Commission receives both consumer inquiries and complaints about debt collectors; the FTC's Consumer Response Center makes every effort to distinguish the two categories. The data presented herein, therefore, refers to consumer contacts that the Consumer Response Center has identified as complaints.

<sup>4</sup> Consumers file complaints with the Commission via our toll-free hotline (1-877-FTC-HELP), online complaint forms, or physical mail. State attorneys general and other sources also refer complaints to the Commission and, occasionally, the Commission hears from debt collectors who are concerned that competitors' allegedly violative practices may cause them to lose business. When this report refers to "complaints," the term refers solely to complaints that consumers have filed directly with the Commission.

The FDCPA mandates that the Commission report on the level of industry compliance with the law. Based on our experience, we know that many consumers never file a complaint with any organization other than the debt collector itself. Others complain only to the underlying creditor or to other enforcement agencies. Some consumers may not be aware that the conduct they have experienced violates the FDCPA or that the Commission enforces the Act. The total number of consumer complaints the FTC receives therefore may understate the extent to which consumers have concerns about the practices of debt collectors.

On the other hand, the Commission acknowledges that not all of the debt collection practices about which consumers complain are law violations. Certainly, many consumers do complain of conduct that, if accurately described, violates the Act.<sup>5</sup> The FTC, however, does not verify that the information consumers provide is accurate unless it 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 Act. For example, consumers sometimes complain that a debt collector will not accept partial payments on the same installment terms that the original lender provided when the ac0tdT0 63ae

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<sup>5</sup> Much of the conduct, as alleged, also would violate Section 5 of the FTC Act as an unfair or deceptive practice in or affecting commerce.

<sup>6</sup> 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,” a prohibition that includes false threats of suit. 15 U.S.C. § 1692e(5).

## **QUAL NUMBER OF COMPLAINTS**

Last year, consumer complaints to the FTC about third-party debt collectors (“FDCPA complaints”) increased both in absolute terms and as a percentage of all complaints that consumers filed directly with the Commission during the course of the year.<sup>7</sup> The FTC received 70,951 FDCPA complaints in 2007.<sup>8</sup> The FDCPA complaints represented 20.8% of the complaints the Commission received directly from consumers in 2007. By comparison, in 2006,<sup>9</sup> the FTC received 69,249 FDCPA complaints, representing 19.9% of the complaints received directly from consumers that year.

The Commission recognizes that third-party collectors contact millions of consumers each year. The number of consumer complaints the FTC receives about such collectors is therefore but a small percentage of the overall number of consumer contacts. Nevertheless, the Commission receives more complaints about the debt collection industry<sup>10</sup> than any other specific industry.<sup>11</sup>

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<sup>7</sup> Hundreds of thousands of consumers contact the Commission every year, reflecting, in part, the FTC’s ongoing consumer outreach and education initiatives, and its efforts to promote the FTC website and toll-free consumer complaint number. Last year, the Commission received 341,080 complaints directly from consumers about all industries, down slightly from the 348,180 complaints received in 2006. These numbers do not include complaints about identity theft or violations of the Commission’s Do Not Call Registry. Because absolute numbers of complaints fluctuate from year to year, this report analyzes collection industry trends by comparing the number of complaints that the Commission’s Consumer Response Center has coded under each of fourteen debt collection “violation codes” to the number of all FDCPA complaints the Commission has received. Each code corresponds to a specific collection practice prohibited by the FDCPA. The percentage figures this analysis produces portray industry trends more accurately than would reliance on absolute numbers of complaints.

<sup>8</sup> Note that because consumers frequently complain about more than one debt collection practice, the CRC assigns many complaints more than one code. Thus, if one adds together all the complaints for each of the fourteen debt collection codes, the total exceeds the number of FDCPA complaints the FTC actually received.

<sup>9</sup> The 2006 complaint numbers identified in this year’s report differ slightly from those identified in last year’s report because, in connection with a continuous quality assurance review, the Commission staff re-coded some complaints after the Commission issued the 2007 report.

<sup>10</sup> The FTC does not count identity theft and Do Not Call Registry complaints in determining the total number of debt collection complaints. However, based on the staff’s law enforcement

Last year, the number of complaints the Commission received about creditors' in-house collectors decreased somewhat, both in absolute terms and as a percentage of total complaints. In 2007, we received 20,068 complaints about in-house collectors, representing 5.9% of all complaints the Commission received. In 2006, we received 21,457 complaints about in-house collectors, representing 6.2% of all complaints received.

Combined, complaints about third-party debt collectors and in-house collectors in

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experience, some identity theft and Do Not Call Registry complaints arise out of deceptive, unfair, or abusive debt collection practices. For example, a consumer may complain about identity theft when a debt collector is contacting her about a debt she does not owe. To that extent, the FDCPA complaint data may under-report possible deceptive, unfair, or abusive debt collection practices.

<sup>11</sup> The FTC does not consider identity theft complaints and Do Not Call Registry complaints to be reports about any specific industry. Identity theft complaints are excluded because such complaints relate to a variety of actors, rather than a single industry. Do Not Call Registry complaints similarly are excluded because the complaints capture the actions of a variety of industries that use telemarketing as a tool to contact consumers.

<sup>12</sup> Section 807(2), 15 U.S.C. § 1692e(2).

The FDCPA also prohibits debt collectors from collecting any amount unless it is “expressly authorized by the agreement creating the debt or permitted by law.”<sup>13</sup> In 2007, 2.3% of the FDCPA complaints, or 1,637 consumers, alleged that collectors demanded interest, fees, or expenses that were not owed (such as collection fees, late fees, and court costs) down from 3.4% in 2006.

**HARASSING THE ALLEGED DEBTOR :** Under the FDCPA, debt collectors may not harass consumers to try to collect on a debt.<sup>14</sup> In 2007, 19.7% of FDCPA complaints the Commission received, or 13,989 consumers, alleged that collectors harassed them by calling repeatedly or continuously. Six thousand five hundred and thirty-six consumers, or 9.2% of FDCPA complaints, claimed that a collector had used obscene, profane or otherwise abusive language. One thousand four hundred and two consumers, or 2% of FDCPA complaints, alleged that collectors called them before 8:00 a.m., after 9:00 p.m., or at other times that the collectors knew or should have known were inconvenient to the consumer. Two hundred nineteen consumers, or 0.3% of FDCPA complaints, alleged that collectors used or threatened to use violence if consumers failed to pay. As a proportion of total FDCPA complaints, the complaint levels declined slightly from 2006 levels for repeated or continuous calling, obscene, profane or otherwise abusive language; and calling before 8:00 a.m. or after 9:00 p.m. Threatening the use of violence for failure to pay stayed at the same level as 2006.

**THREATENING ECONOMIC FAILURE IF CONSUMER FAILS TO PAY :** The FDCPA bars debt collectors from making threats as to what might happen unless the collector has the legal authority and the intent to take the threatened action.<sup>15</sup> Among other things, collectors threaten to initiate 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. In 2007, 6.5% of FDCPA complaints, or 4,592 consumers, alleged that third-party

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<sup>13</sup> Section 808(1), 15 U.S.C. § 1692f(1).

<sup>14</sup> Section 806, 15 U.S.C. § 1692d.

<sup>15</sup> Sections 807(4)-(5), 15 U.S.C. §§ 1692e(4)-(5).

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<sup>16</sup> Section 805(a)(3), 15 U.S.C. § 1692c(a)(3).

<sup>17</sup> Section 804(2), 15 U.S.C. § 1692b(2).

<sup>18</sup> Section 804(3) prohibits a debt collector contacting a third party for location information from communicating with the person more than once, unless the person requests it or the collector reasonably believes the person's earlier response was erroneous or incomplete and that the person now has correct or complete location information.



**FAILING TO SEND REQUIRED 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.<sup>19</sup> 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. Last year, 3.1% of the FDCPA complaints to the Commission, or 2,182 consumers, alleged that collectors did not provide the required notice, down somewhat from 3.9% in 2006.

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<sup>19</sup> Section 809(a), 15 U.S.C. § 1692g(a).

<sup>20</sup> Section 809(b), 15 U.S.C. § 1692g(b).

<sup>21</sup> Section 805(c), 15 U.S.C. § 1692c(c).

## ENFO CEMEN

The first prong of the Commission's FDCPA program is vigorous law enforcement. The FTC's FDCPA enforcement actions begin with investigations of debt collectors identified through complaints and other sources. If an investigation reveals FDCPA violations, the Commission proceeds in one of two ways. Through its own attorneys, the FTC can file suit in federal court seeking preliminary and permanent injunctive relief, restitution for consumers, disgorgement of ill-gotten gains, and other ancillary relief under Section 13(b) of the FTC Act.<sup>22</sup> Alternatively, the Commission may request that the Department of Justice file suit in federal court on behalf of the FTC, seeking a civil penalty, monetary relief, and injunctive relief that would prohibit the collector from continuing to violate the Act.

The Commission currently is conducting a number of non-public investigations of debt collectors to determine whether they have engaged in violations of the FDCPA or the FTC Act. In addition, between March 2007 and March 2008, the Commission filed two new law enforcement actions alleging FDCPA violations, and announced a settlement in a previously filed case. The FTC also negotiated a modified consent decree from a prior FTC Act and FDCPA action to enhance its consumer protections. The Commission further received a favorable ruling, affirming a \$10.2 million judgment, from a federal appellate court in an enforcement action against yet another debt collector.

In a recent settlement, the Commission obtained the largest amount of civil penalties ever in an FDCPA case. In November 2007, LTD Financial Services, L.P. ("LTD") agreed to pay \$1.375 million in civil penalties to settle FTC charges that it misled, threatened, and harassed consumers, in violation of the FDCPA and Section 5 of the FTC Act.<sup>23</sup> The federal district court complaint, filed by the Department of Justice on the FTC's behalf, alleged that LTD and its owners and top managers, among other things, (1) falsely threatened or implied that the company would garnish consumers' wages, seize or attach their property, or initiate lawsuits or criminal actions against the consumers if

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<sup>22</sup> Section 13(b), 15 U.S.C. § 53(b), authorizes the Commission to sue in federal district court to obtain a preliminary injunction against entities that the Commission has reason to believe are violating any law enforced by the Commission. The court may grant the preliminary injunction or a temporary restraining order if the Commission shows that, weighing the equities and considering the Commission's likelihood of ultimate success, the action would be in the public interest. Section 13(b) also permits federal district courts to issue a permanent injunction if the Commission seeks that remedy. Section 13(b)(2), 15 U.S.C. § 53(b)(2).

<sup>23</sup> *United States v. LTD Financial Services, L.P.*, Civ. No. H-07-3741 (S.D. Tex. Nov. 5, 2007).

they failed to pay; and (2) disclosed the existence of debts to family members, employers, co-workers, and neighbors. In addition to requiring LTD to pay the civil penalty, the

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<sup>24</sup> *Fede a T ade . TF Rec d* , CV-07-3786 (C.D. Calif. June 12, 2007).

<sup>25</sup> *U ed Sa e . Fa ba Ca a .* , No. 03-12219 (D. Mass. 2003).

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<sup>26</sup> *Fede a T ade <sup>F</sup> <sup>F</sup> . Ra & R e a, I c.*, No. 6:07-cv-146-Orl-18-KRS (M.D. Fla. Jan. 14, 2008).

*Fede a T ade <sup>F</sup> <sup>F</sup> . C ec I e <sup>F</sup> , I c.*



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<sup>30</sup> The Spanish-language version of “Fair Debt Collection” (“Cobranza Imparcial de Deudas”) is accessible at [://www.fca.gov/bc/ea/ced/-fdc](http://www.fca.gov/bc/ea/ced/-fdc); “Credit and Your Consumer Rights” (“El Crédito y Sus Derechos como Consumidor”) is accessible at [://www.fca.gov/bc/ea/ced/-cd](http://www.fca.gov/bc/ea/ced/-cd); and “Knee Deep in Debt”

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 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 obtain written verification of the debt and the right to demand that the collector cease all communications about the debt.<sup>34</sup>

Third, the Commission extends the reach of its consumer education initiative

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<sup>34</sup> For those consumers who contact the CRC seeking only information about the FDCPA, the contact representatives answer any urgent questions and then either mail out the "Fair Debt Collection" brochure, and any other responsive consumer education materials, or refer the consumer to the appropriate web pages within the Commission's website, located at [:// www.ftc.gov](http://www.ftc.gov). The CRC representatives also record information about debt collectors, both third-party and in-house, who are the subjects of complaints, enabling the Commission to track patterns of complaints for use in its enforcement initiative.

<sup>35</sup> The FTC issues advisory opinions pursuant to Sections 1.1-1.4 of the Commission's Rules of Practice, 16 C.F.R. §§ 1.1-1.4.

<sup>36</sup> The text of the advisory opinion can be accessed at [:// www.ftc.gov/affairs/P064803fa\\_deb\\_df](http://www.ftc.gov/affairs/P064803fa_deb_df).

information and ideas and discuss problems as they arise. The Commission also provides interviews to general media and trade publications. These interviews serve as yet another vehicle to make positions known to the nation's debt collectors.

## **CONCLUSION**

Through its FDCPA program of enforcement and education, 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. Vigorous federal and state law enforcement in this area is essential to stop those debt collectors who fail to follow the FDCPA.