

FEDERAL TRADE COMMISSION ANNUAL REPORT 2010



INTRODUCTION

The Federal Trade Commission (“FTC”) is pleased to submit to Congress this annual report summarizing the administrative and enforcement actions it has taken under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692-1692p, during the past year.¹ These actions 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.

The FDCPA prohibits deceptive, unfair, and abusive practices by third-party collectors. For the most part, creditors are exempt when they are collecting their own debts. The FDCPA permits reasonable collection efforts that promote repayment of legitimate debts, and the FTC tries to ensure compliance without unreasonably impeding the collection process. The FTC recognizes that the timely payment of debts is important to creditors and that the debt collection industry assists creditors in collecting what they are owed. The FTC also appreciates the need to protect consumers from those debt collectors who engage in deceptive, unfair, and abusive collection practices.

The FDCPA vests the FTC with primary enforcement responsibility. It shares overall enforcement responsibility, however, with other federal agencies.² In addition, consumers who believe they have been victims of FDCPA violations may seek relief in state or federal court.

As in past years, the FTC took significant steps in 2009 to curtail illegal debt collection practices. This report summarizes: (1) the types of consumer complaints the FTC received in 2009; (2) recent developments in FTC law enforcement; and (3) the FTC’s 2009 consumer and industry education and policy initiatives.

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.

² Section 814 of the FDCPA, 15 U.S.C. § 1692p, places enforcement obligations upon several other federal agencies for the organizations they regulate. These agencies are the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Department of Transportation, and the Department of Agriculture. Almost all of the collectors these agencies regulate are creditors collecting on their own debts, and, as such, largely fall outside the FDCPA’s coverage. If these agencies receive complaints about debt collection firms that are not under their jurisdiction, they generally forward the complaints to the FTC or suggest that the consumer contact the FTC directly.

FTC cannot determine whether such conduct violates the FDCPA without investigating whether the debt collector had the requisite intention to file suit.⁵

Despite their limitations, the FTC believes that consumer complaint data provide useful insight into the acts and practices of debt collectors. The FTC describes below the trends it has observed in the overall number of debt collection complaints it has received as well as the types of practices about which consumers most frequently complain.

TOTAL NUMBER OF COMPLAINTS

Hundreds of thousands of consumers contact the FTC every year about all kinds of consumer protection issues. With respect to debt collection, the FTC receives both consumer inquiries and complaints. The FTC's Consumer Response Center ("CRC") makes every effort to distinguish between these two categories of contacts. The data presented here include only consumer contacts that the CRC has identified as complaints. When this report refers to "complaints," the term refers solely to complaints that consumers have filed directly with the FTC.

In 2009, consumer complaints to the FTC about third-party debt collectors⁶ ("FDCPA complaints") increased in absolute terms, but decreased as a percentage of all complaints that consumers filed directly with the FTC. The FTC received 88,190 FDCPA complaints about third-party debt collectors in 2009. This represents 16.8% of

⁵ 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)

⁶ "Third-party debt collectors" include contingency fee collectors and attorneys who regularly collect or attempt to collect, directly or indirectly, debts asserted to be owed or due another, as well as debt buyers collecting on debts they purchased in default.

⁷ Last year, the FTC received 524,509 complaints directly from consumers about all industries, up from the 416,284 complaints received in 2008. As in past years, complaint numbers in this report do not include complaints about identity theft or violations of the FTC's Do Not Call Registry.

Combined, complaints about third-party debt collectors and in-house collectors in 2009 totaled 119,364 complaints and accounted for 22.8% of all complaints the FTC received. This represents an increase in absolute terms from the 2008 figure, and a decrease as a percentage of total complaints: in 2008, the agency received 104,766 debt collection complaints, accounting for 25.2% of all complaints to the FTC.

In evaluating the complaints the FTC received in 2009 relative to those received in 2008, it is important to recognize that in June 2008 the agency substantially changed the way it processes complaints it receives over the Internet. The agency changed from a form-based web complaint system to an interactive, question-based web complaint system. Although both systems permit a single complaint to be coded for multiple law violations, this change in the FTC's web-based complaint system appears to have resulted in an increase in the number of law violations reported per complaint.¹² To evaluate possible changes in underlying debt collector behavior, it is useful to compare complaint information during periods in 2008 and 2009 in which the FTC was using the same complaint system. Accordingly, the FTC has supplemented its annual complaint comparisons by comparing complaints received from July through December 2009 with complaints received from July through December 2008.

For the July through December period, total FDCPA complaints increased slightly from 56,160 (or 24.2% of FTC complaints) in 2008 to 57,926 (or 23.5% of FTC complaints) in 2009. For each category of complaints below, a similar comparison of the July through December data will appear in footnotes.

COMPLAINTS BY CATEGORY

In addition to evaluating the total number of complaints about third-party debt collectors, it also is instructive to consider the specific types of debt collection practices about which consumers complain. Because consumers frequently complain about more than one debt collection practice, the CRC historically has assigned many complaints

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 can be less than the sum of all third-party complaints and all in-house creditor complaints.

¹² For example, among all complaints received directly by the FTC on the web, the average number of law violations per complaint increased from 0.93 in early 2008 to 1.97 after the FTC switched to the new web complaint system in June 2008. This increase was even greater for FDCPA complaints: the average number of law violations per web complaint rose from approximately 0.98 under the old system to 3.5 under the new web complaint system.

more than one code. Thus, if one adds together all the complaints for each of the fifteen debt collection codes each year, the total exceeds the number of FDCPA complaints the FTC actually received in that year.

HARASSING THE ALLEGED DEBTOR OR OTHERS: This complaint category encompasses four distinct violation codes. Under the FDCPA, debt collectors may not harass consumers to try to collect on a debt.¹³ In 2009, 46.5% of FDCPA complaints the FTC received, or 41,028 complaints, claimed that collectors harassed the complainants by calling repeatedly or continuously. This was the most frequent law violation about which consumers complained during 2009, as it was in 2008, when 27,413 complaints, representing 34.7% of FDCPA complaints, stated that collectors harassed them by calling repeatedly or continuously. Also in 2009, 14,321 complaints, or 16.2% of FDCPA complaints, claimed that a collector had used obscene, profane, or otherwise abusive language. Nine thousand, six hundred eighty-four complaints (9,684), or 11% of 2009 FDCPA complaints, said that collectors called before 8:00 a.m., after 9:00 p.m., or at other times that the collector knew or should have known were inconvenient to the consumer. Two thousand, five hundred seventeen (2,517) complaints, or 2.9% of 2009 FDCPA complaints, reported that collectors used or threatened to use violence if consumers failed to pay.¹⁴

DEMANDING A LARGER PAYMENT THAN IS PERMITTED BY LAW: This category includes two different FDCPA law violation codes. First, the FDCPA prohibits debt collectors from misrepresenting the character, amount, or legal status of a debt.¹⁵ 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 have sought to collect on debts that have been discharged in bankruptcy. For the second consecutive year, this was the second most common category of FDCPA complaint. In

¹³ Section 806, 15 U.S.C. § 1692d.

¹⁴ For the July through December period, 47.8% of FDCPA complaints (20,603 total) in 2009 claimed repeated or continual harassing calls, up from 43.7% (18,018 total) in 2008; 16.3% of FDCPA complaints in 2009 (7,021 total) reported use of obscene, profane, or otherwise abusive language, down slightly from 16.7% (6,863 total) in 2008; 11.5% of complaints in 2009 (4,940 total) reported that collectors called before 8:00 a.m., after 9:00 p.m., or at other inconvenient times, up from 10.5% (4,317 total) in 2008; and percentage of complaints reporting that collectors used or threatened to use violence increased from 2.4% (971 complaints) in 2008 to 3.2% (1,394 complaints) in 2009.

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

2009, however, there was an increase in the number but a decrease in the percentage of complaints of this law violation compared to 2008. In 2009, 31.1%, or 27,420 FDCPA complaints, described this conduct; in 2008, 32.5% of FDCPA complaints, or 25,684 complaints, reported that collectors engaged in these practices.¹⁶

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.”¹⁷ In 2009, 10.9% of FDCPA complaints, or 9,632 complaints, asserted that collectors demanded interest, fees, or expenses that were not owed (such as collection fees, late fees, and court costs), up from 7.5% of FDCPA complaints (5,948 total) in 2008.

THREATENING DIRE CONSEQUENCES

¹⁶ For the July through December period, there was a small decrease in the number and the percentage of complaints received about misrepresenting the character, amount, or legal status of a debt in 2009 compared to the same period in 2008. During those months in 2009, the FTC received 12,701 such complaints, amounting to 29.5% of FDCPA complaints, while during the same months in 2008, the FTC received 12,787 complaints, or 31% of FDCPA complaints.

¹⁷ Section 808(1), 15 U.S.C. § 1692f(1)

¹⁸ For the July through December period, the number and percentage of consumer complaints concerning collecting unauthorized amounts held relatively steady: 4,555 complaints, or 11.1% of FDCPA complaints, in 2008 to 4,571 complaints, or 10.6% of FDCPA complaints, in 2009.

¹⁹ Sections 807(4)(5), 15 U.S.C. §§ 1692e(4)(5).

²⁰ For the July through December period, the percentage of FDCPA complaints for false threats of lawsuits or other unintended actions rose slightly: it constituted 21.9% of FDCPA complaints in 2009 (9,434 complaints), up from 20.4% of FDCPA complaints in 2008 (8,387

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IMPERMISSIBLE CALLS TO CONSUMER'S PLACE OF EMPLOYMENT: Under the FDCPA, 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 such contacts.²¹ By continuing to contact consumers at work under these circumstances, debt collectors may put them in jeopardy of losing their jobs. In 2009, 13.6% of FDCPA complaints, or 11,973 complaints, related to (jeopardy) 29.8800 0.0a.6600 0.0000 S 0.00(t works 15.720800 0.0000 T

²⁰(...continued)

complaints). Similarly, the percentage of FDCPA complaints during those months for false threats of arrest or seizure of property also rose from 11.6% in 2008 (4,782 complaints) to 14.2% in 2009 (6,120 complaints).

²¹ Section 805(a)(3), 15 U.S.C. § 1692c(a)(3).

²² For the July through December period, the percentage of FDCPA complaints claiming impermissible calls to consumers at work rose from 13% in 2008 (5,337 complaints) to 14.3% in 2009 (6,161 complaints).

²³ Section 804(2), 15 U.S.C. § 1692b(2).

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complaints, claimed that collectors failed to verify disputed debts, up from 8% of all FDCPA complaints, or 6,345 complaints, in 2008.²⁹

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 or she wants all such communications to stop or that he or she refuses to pay the alleged debt.³⁰ 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. In 2009, 8.4% of FDCPA complaints, or 7,411 complaints, reported that collectors ignored “cease communication” notices and continued their collection attempts, up from 6.4 % of complaints (5,013 complaints) reported by such complainants in 2008.

ENFORCEMENT

The FTC’s debt collection program has three prongs: (1) vigorous law enforcement; (2) consumer and industry education efforts; and (3) research and policy initiatives.

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 FTC 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 consumer disgorgement of ill-gotten gains, and other ancillary relief under Section 13(b) of the FTC Act.³² Alternatively, the FTC may request that the

²⁹ For the July through December period, 11.3% of FDCPA complaints (4,869 total) in 2009 reported a failure to verify a disputed debt, compared to 11.7% (4,803 total) of FDCPA complaints in 2008.

³⁰ Section 805(c) 15 U.S.C. § 1692c(c)

³¹ For the July through December period, 8% of FDCPA complaints (3,448 total) in 2009 reported continued collector contact despite a consumer’s sending a “cease contact” notice, compared to 8.9% (3,680 total) in 2008.

³² Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to sue in federal district court to obtain a preliminary injunction against entities that the FTC has reason to believe
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Department of Justice file suit in federal court on behalf of the FTC, seeking a civil penalty, other monetary relief, and injunctive relief that would prohibit the collector from continuing to violate the FDCPA.

The FTC 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. It has also filed or settled four public law enforcement actions in the past twelve months: two new law enforcement actions alleging FDCPA and Section 5 violations against companies collecting debts, and settlements in two previously filed cases.

In June 2009, the FTC settled an action against Oxford Collection Agency, Inc., its officers, and an attorney who acted as its agent, for collection practices allegedly in violation of the FTC Act and the FDCPA.³³ The FTC's complaint alleged that the defendants falsely threatened to garnish consumers' wages, bring lawsuits against them, or have them arrested. It also charged that the defendants used illegal and abusive collection methods such as calling consumers before 8 a.m. or after 9 p.m.; calling them at home (when they are not at home);

³²(...continued)

are violating any law the FTC enforces. The court may grant a preliminary injunction or a temporary restraining order if the FTC shows that, weighing the equities and considering the FTC'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 FTC seeks the remedy Section 13(b)(2) of the FTC Act, 15 U.S.C. § 53(b)(2)

³³ U.S. v. Oxford Collection Agency, Inc., No. 2:09-cv-02467-LDW-AKT (E.D.N.Y. June 10, 2009). See Press Release, Federal Trade Commission, Debt Collectors Settle with FTC on Abusive Practices Affecting Consumers Nationwide, available at <http://www.ftc.gov/opa/2009/07/oxford.shtm>.

debt collection, making misrepresentations or engaging in unfair practices in violation of the FTC Act.

In February 2010, the FTC settled an action against Credit Bureau Collection Services and two of its officers to resolve allegations that the defendants violated the law in the course of collecting debts from consumers.³⁶ Among other things, the complaint alleged that the defendants violated the FDCPA by misrepresenting both to consumers and to consumer reporting agencies ("CRAs") that consumers owe the debts and by failing to inform the CRAs that those debts were disputed by consumers. The complaint also alleged that the defendants violated the FTC Act by misrepresenting that consumers owed debts or by failing to have a reasonable basis for such representations. The consent decree filed requires the defendants to pay a \$1,095,000 civil penalty. Among other things, it also prohibits violations of the FDCPA, and requires the defendants to have a reasonable basis for representations that a consumer owes a debt, and requires them to conduct a reasonable investigation when the truth of those representations is cast in doubt.

CONSUMER AND INDUSTRY EDUCATION

The FTC's consumer and industry education efforts are the second prong of its FDCPA program. Consumer education informs consumers nationwide of their rights under the FDCPA and its requirements on 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. With this knowledge, industry members can take all necessary steps to comply with the FDCPA.

TOOL FOR BOTH CONSUMERS AND INDUSTRY: The Staff Commentary on the FDCPA is useful in both the consumer and industry education initiatives. The Commentary, issued in 1988, provides the staff detailed analysis of every section of the FDCPA and gives guidance to consumers, their attorneys, courts, and members of the collection industry.³⁷ The Commentary is available on the FTC's FDCPA web page, located at <http://www.ftc.gov/os/statutes/fdcpajump.shtml>.

³⁶ United States v. Credit Bureau Collection Servs., No. 2:10-cv-00169-ALM-NMK (S.D. Ohio filed February 24, 2010).

³⁷ 53 Fed. Reg 50,097 (1988).

⁴⁰ 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 "Fair Debt Collection" brochure and any other responsive consumer education materials, or refer the consumer to the app.

a communication that has no purpose other than stating (1) the results of the collector's investigation; or (2) the collector's belief that the communication is frivolous or irrelevant.⁴²

RESEARCH AND POLICY INITIATIVES

The third prong of the FTC's FDCPA enforcement program is research and policy initiatives. In the past year, the FTC has continued to monitor and evaluate the debt collection industry and its practices.

In February 2009, the FTC issued a report⁴³ setting forth findings, conclusions, and recommendations derived from an October 2007 FTC Workshop assessing the need for change in the debt collection system. In that report, the FTC recommended amendments to the FDCPA, including a grant of rulemaking authority to promulgate rules to implement the FDCPA. The FTC continues to advocate the recommendations in the report.

In the wake of the issuance of the FTC's debt collection workshop report, FTC staff has undertaken a comprehensive review of debt collection litigation and arbitration. In 2009, the FTC hosted a series of regional roundtables relating to these issues.⁴⁴ These events brought together debt collector representatives, consumer advocates, academics, government officials, arbitration providers, judges, and others to discuss consumer protection problems arising in debt collection litigation and arbitration as well as possible solutions to those problems. To supplement the record compiled from the roundtable discussions, the FTC also solicited comments from the public. The FTC anticipates that in the near future it will issue a report setting forth findings, conclusions, and recommendations related to debt collection litigation and arbitration.

⁴² The text of the advisory opinion can be accessed at <http://www.ftc.gov/os/statutes/andersonletter.pdf>.

⁴³ Collecting Consumer Debts: The Challenges of Change – A Workshop Report, available at <http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf>

⁴⁴ The roundtables were held in Chicago, San Francisco, and Washington, D.C. See Announcement, Federal Trade Commission, Protecting Consumers in Debt Collection Litigation and Arbitration: a Roundtable Discussion (December 4, 2009), available at <http://www.ftc.gov/bcp/workshops/debtcollectround/index.shtm>.

