

# **Federal Trade Commission Annual Report 2002: Fair Debt Collection Practices Act**

## **Introduction**

The Federal Trade Commission ("Commission") is required by Section 815(a) of the Fair Debt Collection Practices Act ("FDCPA" or "Act"), 15 U.S.C. §§ 1692-1692o, to submit a report to Congress each year summarizing the administrative and enforcement actions taken under the Act over the preceding twelve months. These actions are part of the Commission's ongoing effort to curtail abusive, deceptive, and unfair debt collection practices in the marketplace. Such practices have been known to cause various forms of consumer injury, including emotional distress, invasions of privacy, and the payment of amounts that are not owed, and can severely hamper consumers' ability to function effectively at work. Although

Harassing the alleged debtor or others: As in 2000, this was the complaint we heard most frequently last year. Approximately 7,300 consumers alleged that a third-party collector harassed them. Many of these consumers complained that a debt collector was harassing them by calling periodically. Infrequent contacts, such as once a week or once a month, certainly might induce stress in a consumer but would not be "harassment" under the FDCPA. Other consumers, however, described collection tactics that do appear to constitute "harassment." Such apparent violations ranged from collectors calling several times within a very short period to collectors screaming obscenities and racial slurs, or even threatening violence to the consumers or their family members.

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. [\(6\)](#) In 2001, more than 800 consumers complained to the Commission that collectors who called them did not provide such a notice. 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.

Some collectors call consumers demanding that they make payments directly to the collector's client, the alleged creditor. According to consumer complaints the Commission has received, some of these collectors send consumers nothing in writing while at the same time refusing to reveal the name of their collection agency or collection firm. Consumers subjected to this practice are prevented from even complaining about the collector to law enforcement agencies or Better Business Bureaus.

Failing to verify disputed debt: The FDCPA also provides that, if a consumer does submit a dispute in writing, the collector must cease collection efforts until it has provided written verification of the debt. More than 700 consumers complained that collectors failed to verify debts that the consumers allegedly owed. Many of these consumers told us that collectors ignored their written disputes, sent no verification, and continued their collection efforts. Other consumers told us that some collectors who did provide them with verification continued to contact them about the debts between the date the consumers submitted their dispute and the date the collectors provided the verification, a practice that also violates the FDCPA.

Calling consumer's place of employment: 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 the consumer from receiving such contacts. [\(7\)](#) Many of the 1,023 consumers who complained about such illegal contacts told us that debt collectors continued to call them at work after they or their colleagues specifically told the collectors that such calls were prohibited by the consumer's employer. By continuing to contact consumers at work in these circumstances, debt collectors may put the consumers in jeopardy of losing their jobs.

Revealing alleged debt to third parties: Third-party contacts for any purpose other than obtaining information about the consumer's location violate the Act, unless authorized by the consumer or unless they fall within one of the Act's exceptions. We received 618 complaints about unauthorized third-party contacts in 2001. Consumers' employers, relatives, children, neighbors, and friends have been contacted and informed about consumers' debts. Such contacts typically embarrass or intimidate the consumer and are a continuing aggravation to third parties. Contacts with consumers' employers and co-workers about their alleged debts put consumers in jeopardy of losing their jobs.

More than 500 consumers complained that collectors ignored their "cease communication" notices and continued their aggressive collection attempts.

Threatening dire consequences if consumer fails to pay: Another source of complaints involves the use of false or misleading threats of what might happen if a debt is not paid. These include threats to institute 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. Such threats violate the Act unless the collector has the legal authority and the intent to take the threatened action.<sup>(9)</sup> The Commission received 788 complaints in 2001 alleging that third-party collectors falsely threatened a lawsuit or some other action that they could not or did not intend to take, and 268 complaints alleging that such collectors falsely threatened arrest or seizure of property.

Demanding a larger payment than is permitted by law: The FDCPA prohibits debt collectors from (1) misrepresenting the amount that a consumer owes on a debt<sup>(10)</sup> and (2) colle



a proposed consent order, the Commission delivers the proposed order and accompanying complaint to the Department of Justice, which files the documents in the appropriate federal district court.<sup>(15)</sup> If the debt collector will not agree to an appropriate settlement that remedies the alleged violations, the Commission requests that the Department of Justice file suit in federal court on behalf of the Commission, usually seeking a civil penalty and injunctive relief that would prohibit the collector from continuing to violate the Act. On occasion, these debt collectors agree to an appropriate settlement after suit has been brought.

The Commission staff is currently conducting a number of non-public investigations of debt collectors to determine whether they are or have engaged in serious violations of the Act. In addition, there have been significant developments in several Commission public enforcement actions.

In a January 1998 complaint, the Commission alleged that Capital City Mortgage Corporation and its owner, Thomas K. Nash, among other things, violated the FDCPA by falsely representing that letters from the company's in-house attorney were from a third-party collector, making false and misleading representations when collecting loan payments, and engaging in unfair or unconscionable debt collection practices. In March 1999, the court permitted the Commission to add the in-house attorney, Eric J. Sanne, as a defendant based on the Commission's discovery during litigation of hundreds of additional letters sent by the attorney. The trial was delayed recently, and the court has not yet set a new trial date.

The Commission recommends that Congress eliminate this problem by amending Section 809 explicitly to require a more conspicuous format for the notice by mandating that it be "clear and conspicuous." That standard could be defined as "readily noticeable, readable and comprehensible to the ordinary consumer." The definition could also reference various factors such as size, shade, contrast, prominence and location that would be considered in determining whether the notice meets the definition. A number of Commission decisions and orders define the "clear and conspicuous" standard in a variety of contexts.[\(18\)](#) Proper application of such a standard in Section 809(a) would help ensure that the information in the required notice is effectively conveyed and eliminate dunning letters artfully designed to confuse their readers and frustrate the purposes of this provision of the FDCPA.

Section 809(b) --Effect of Thirty -day Period : Section 809(b) of the FDCPA provides that if a consumer, within the thirty-day period specified in Section 809(a), disputes a debt in writing or requests verification of the debt, the collector must cease all collection efforts until verification is obtained and mailed to the consumer. The Commission and its staff have consistently read Section 809(b) to permit a debt collector to continue to make demands for payment or take legal action within the thirty-day period unless the consumer disputes the debt or requests verification during that time. Nothing within the language of the statute indicates that Congress intended an absolute bar to appropriate collection activity or legal action within the thirty-day period where the consumer has not disputed the debt or requested verification. The Commission articulated this position in an April 2000 advisory opinion. Commission staff has taken the same position in staff opinion letters and the Staff Commentary on the FDCPA.[\(19\)](#)

Federal circuit courts that have addressed this issue recently have arrived at the same conclusion. In a 1997 opinion, the Seventh Circuit stated that "[t]he debt collector is perfectly free to sue within the thirty days; he just must cease his efforts at collection during the interval between being asked for verification of the debt and mailing the verification to the debtor."[\(20\)](#) In the most recent federal appellate court pronouncement on the subject, the Sixth Circuit stated that "[a] debt collector does not have to stop its collection efforts [during the thirty-day period] to comply with the Act. Instead, it must ensure that its efforts do not threaten a consumer's right to dispute the validity of his debt."[\(21\)](#)

Although these courts have been consistent with the position taken by the Commission and its staff, some continue to argue that the thirty-day time frame set forth in Section 809 is a grace period within which collection efforts are prohibited, rather than a dispute period within which the consumer may insist that the collector verify the debt. The Commission therefore recommends that Congress clarify the law by adding a provision expressly permitting appropriate collection activity within the thirty-day period, if the debt collector has not received a letter from the consumer disputing the debt or requesting verification. The clarification should include a caveat that the collection activity should not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt specified by Section 809(a).

Section 803(6) --Litigation Attorney as "Debt Collector" : The Supreme Court has resolved the conflict in the federal courts concerning whether attorneys in litigation to collect a debt are covered by the Act. In *Heintz v. Jenkins*, 514 U.S. 291 (1995), the Court held that they are, in fact, covered like any other debt collector because they fall within the plain language of the statute.[\(22\)](#) The difficulties in applying the Act's

pursues alleged debtors solely through litigation (or similar "legal" practices) -- as opposed to one who collects debts through the sending of dunning letters or making calls directly to the consumer (or similar "collection" practices) -- is not covered by the statute. Alternatively, Congress could amend the definition of "communication" to state that the term "does not include actions taken pursuant to the Federal Rules of Civil Procedure or, in the case of a proceeding in a State court, the rules of civil procedure available under the laws of such State."

Model Collection Letters : The Commission's fourth recommendation for an amendment to the FDCPA grew out of discussions between Commission staff and representatives of the debt collection industry. These collectors often complain that, no matter how hard they try to make their collection letters comply with the FDCPA notice requirements, there is always an attorney who will allege that their letters violate the statute in some way -- and a judge who may agree. These collectors have suggested that the FDCPA be amended to contain model collection letters that, if adhered to precisely, would insulate them from liability for the form of their letters. The Commission believes that model letters would benefit both

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2. The Commission also receives consumer complaints that are referred by state attorneys general.

