



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

Office of the Secretary

February 12, 2016

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

(FDCPA).

<sup>1</sup> This letter and its appendix describe 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.

In 2015, the Commission continued aggressive law enforcement activities and public outreach to address new and troubling issues in debt collection, doing more than ever to protect consumers. Among other things, the FTC:

- coordinated the first federal-state-local enforcement initiative targeting deceptive and abusive debt collection practices;
- prosecuted a sweep of cases against collectors that used unlawful text messages to collect debts;
- filed 12 new cases against 52 new defendants (a record number of debt collection enforcement actions for the FTC in a year);
- resolved 9 cases and obtained nearly \$94 million in judgments;<sup>2</sup>

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Frank Act),

-203, § 1089, 124 Stat. 1376, 2092-93 (2010) (amending the Fair Debt Collection Practices Act, 15 U.S.C. 692p). Before the enactment of the Dodd-Frank Act, Section 815(a) of the FDCPA, 15 U.S.C. § 1692m, the FTC to report directly to Congress on these topics. The Commission submitted such annual reports to 2011.

<sup>2</sup> These figures include cases filed and resolved in 2015, as well as cases filed in previous years but resolved in 2015.



A. Legal Actions

From January 1 through December 31, 2015, the FTC brought or resolved 18 debt collection cases – the highest number in any single year. In several of its Section 13(b) cases, the Commission obtained preliminary relief that included *ex parte* temporary restraining orders with asset freezes, immediate access to business premises, and appointment of receivers to take over the debt collection businesses.

The actions discussed below represent a concerted effort by the FTC to target unlawful debt collection practices.

- 1. Operation Collection Projec**



Sessum, had been criminally charged with wire fraud and conspiracy to commit wire fraud. The charges were based on the allegations made against the defendants in the FTC's and the N











## **5. Other FTC Actions to Halt Egregious Collection Practices**

In addition to the cases described above, the FTC filed four other cases in 2015 to protect consumers from unlawful collection practices: (1) *Commercial Recovery Systems*; (2) *Warrant Enforcement Division*; (3) *AFS Legal Services*; and (4) *BAM Financial*.

In *United States v. Commercial Recovery Systems, Inc.*, a case that the FTC referred to the Department of Justice for prosecution, the government's complaint charged that, since at

In October 2015, the Commission filed suit against *AFS Legal Services* and related companies, alleging that the defendants impersonated investigators and law enforcement and threatened to arrest, jail, and sue consumers if they did not pay.<sup>27</sup> Because the defendants often had consumers' personal information such as Social Security and bank account numbers, consumers believed the calls were legitimate and thought they would be arrested for check fraud or sued. The collectors also allegedly made harassing calls and contacted relatives, friends, and co-workers about consumers' debts. The defendants, who according to the Commission caused approximately \$4 million in consumer injury, used multiple corporate names and locations to avoid detection, and failed to identify themselves as debt collectors. In November 2015, the Commission obtained an ex parte temporary restraining order with an asset freeze, appointment of a receiver, and injunctive relief prohibiting the defendants from engaging in the misrepresentations and other violations of the FTC Act and the FDCPA. The Commission continues to litigate the case.

In *BAM Financial*, the FTC's complaint alleged that the defendants had extracted payments from consumers through intimidation, lies, and other unlawful tactics.<sup>28</sup> The complaint also alleged that the defendants bought consumer debts and collected payment on their own behalf by threatening consumers with lawsuits, wage garnishment, and arrest, and by impersonating attorneys or process servers. According to the complaint, the defendants also unlawfully disclosed debts to, or harassed, third parties, failed to identify themselves as debt collectors, and failed to notify consumers of their right to receive verification of the purported debts. At the FTC's request, the court entered a temporary restraining order that, among other things, prohibited the defendants from violating the FDCPA and the FTC Act, froze the defendants' assets, and appointed a receiver for the corporate defendants. The TRO remains in

personal information.<sup>29</sup> The companies also must have their security programs evaluated both initially and every two years by a certified third party.

**B. Other Law Enforcement Activities: List of Banned Debt Collectors**

As a complement to all of the debt collection law enforcement cases that the FTC has brought over the years, the FTC began publishing a list this year of every individual and company that has been banned from the debt collection industry because of the FTC's work.<sup>30</sup> Each person and company on this list is under a federal court order prohibiting them from engaging in debt collection activities. The list, which is periodically updated, will serve as a valuable resource for law-abiding collection industry professionals so that they know who NOT to do business with, as well as for state debt collection licensing officials and law enforcers. Currently, the list includes over 100 banned individuals and companies.

**C. Other Law Enforcement Activities: *Amicus Curiae* Briefs**

The FTC also periodically submits briefs as *amicus curiae* in federal court cases around the country on important debt collection issues. Even when the FTC is not a plaintiff or a defendant in private FDCPA cases, courts all around the country often seek and rely on the Commission's expertise in debt collection issues. See, e.g., *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010, 1020 (7th Cir. 2014); *Bridge v. Ocwen Fed. Bank*, 681 F.3d 355, 361 (6th Cir. 2012). This is yet another way for the FTC to protect consumers from unlawful practices and ensure consistency and logic in the development of federal debt collection law and policy.

Since Congress passed the Dodd-Frank Act, the FTC has often partnered with the CFPB on these *amicus* briefs. This trend continued in 2015. The FTC filed three *amicus* briefs, in: (1) *Bock v. Pressl(e)4(l2(r)3 .wc)4(y)3 .wc[(744 4S4e[nund7di)7dir2(n t)ssn tki2 -0.0 Rt210(r.004Rt)sse(ur)3(-0.00*

The case arose out of a lawsuit filed by a collection law firm to collect on a defaulted credit-card debt that the plaintiff, Daniel Bock owed the firm's client. The firm receives accounts for collection from its clients on spreadsheets. If consumers do not respond to the firm's first round of collection letters, non-attorney personnel use computer programs to "scrub" the data to identify missing data, invalid addresses, records showing whether the debtor is bankrupt or deceased, and similar issues. The non-attorneys also confirm that the initial letters were sent, that the statutes of limitations have not expired, and that the suits will be filed in the right venue, and populate template summonses and complaints with the consumers' information. The results are sent to an attorney through an "automated feed process" to approve filing of the lawsuits. The attorney who reviewed the lawsuit against Bock reviewed 672 other cases on the same day; he spent four seconds on the Bock case. Bock eventually settled the collection matter.

Bock then sued the collection law firm, claiming that it violated the FDCPA's prohibition on "false, deceptive, or misleading" debt collection practices by filing a debt collection suit that appeared to be from an attorney even though no attorney had meaningfully reviewed it. Ruling on cross-motions for summary judgment, the district court granted summary judgment to Bock and denied summary judgment to the law firm. The firm appealed.

As the Commission's reports have noted, the number of debt collection lawsuits has vastly increased in recent years, dominating and threatening to overwhelm the state courts in which they are filed.<sup>32</sup> As the reports also point out, most consumers do not answer the complaints debt collectors file or appear in court to defend themselves, which permits collectors to obtain default judgments in most cases.

The practice of bulk-filing lawsuits without any meaningful attorney involvement exacerbates these problems. As the FTC-CFPB *amicus* brief explains, the impression that an attorney is meaningfully involved in a consumer's debt conveys authority and credibility, and can increase the consumer's sense of urgency in responding to the debt. Accordingly, several courts of appeals have held that dunning letters are false and misleading – and violate the FDCPA – if they purport to be from an attorney but the attorney has not reviewed the debtor's file.<sup>33</sup> The brief explains that the same principles apply when a lawsuit is filed without the meaningful participation of an attorney. *See* *FTC v. Phyllis M. Kates & Co.*, 82(h)-10(exRTf -0.004 Tc .t is)-18(y)2 -0.004 Tc .t is

## 2. Unpaid Parking Charges as “Debts”: *Franklin Amicus Brief*

In December 2015, responding to an invitation from the Seventh Circuit, the FTC and the CFPB submitted a joint *amicus* brief urging the court to reverse a district court ruling that unpaid parking fees are not “debts,” as that term is defined in the FDCPA.<sup>34</sup> The case arose out of a class action

### 3. Person Who Buys and Collects on Defaulted Debts as “Debt Collector”: *Davidson Amicus Brief*

In September 2015, the FTC submitted an *amicus* brief in in *Davidson v. Capitol One Bank (USA), N.A.* urging the Eleventh Circuit to grant a consumer’s petition for a rehearing *en banc* to review a panel decision holding that a person who buys debts in default and collects on them does not qualify as a “debt collector” under the FDCPA.<sup>36</sup>

In *Davidson*, after the defendant, Capital One Bank, acquired a defaulted credit-card debt that the plaintiff, Keith Davidson, owed to another bank, the company sued him to collect, but for more than the amount he owed. Davidson then sued Capital One, alleging that the company violated the FDCPA by misrepresenting “the character, amount, or legal status of any debt.” 15 U.S.C. § 1692e(1).

The FDCPA defines “debt collector” to include those whose business has the “principal purpose” of collecting debts and those who “regularly collect[] or attempt[] to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6). It defines the complementary and mutually exclusive term “creditor” to mean a person to whom a debt is owed, except “to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.” 15 U.S.C. 1692a(4). The question in *Davidson* was how the definition of “debt collector” applies to a company that purchases defaulted debts and collects them on its own behalf.

A panel of the Eleventh Circuit held that the phrase “regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another” reaches only those who collect debts that are owed to someone other than the person collecting. The panel held that Capital One did not meet the definition because it had acquired Davidson’s debt and was therefore collecting for itself. Davidson filed a petition for rehearing or rehearing *en banc*.

The FTC’s brief first pointed out that the Third, Fifth, Sixth, and Seventh Circuits have all held that a debt buyer is a “debt collector” within the FDCPA’s definition when it collects on debts that were in default when the debt buyer acquired them. No other court of appeals has adopted the Eleventh Circuit panel’s view that a debt buyer who acquires and collects on defaulted debts is immune from the requirements of the FDCPA because the debts are not owed to someone other than the collector.

The FTC then explained that the panel misinterpreted the phrase “owed or due another” to reach only those collectors who are collecting “for another.” As the FTC pointed out, the panel could reach that interpretation only by reading “owed or due another” to mean “currently owed or due another.” The FTC’s brief argued that the phrase instead should be read to mean

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<sup>36</sup> Brief of *Amicus Curiae*, *Davidson v. Capitol One Bank (USA), N.A.*, No. 14-14200 (11th Cir. Sept. 21, 2015), available at [https://www.ftc.gov/system/files/documents/amicus\\_briefs/keith-davidson-v.capital-one-bank-usa-n.a./150921davidsonamicusbrief.pdf](https://www.ftc.gov/system/files/documents/amicus_briefs/keith-davidson-v.capital-one-bank-usa-n.a./150921davidsonamicusbrief.pdf).

“*originally* owed or due another.” That reading takes into account the complementary definitions of “creditor” and “debt collector,” each of which contains an exception based on whether the debt being collected was in default when acquired. Together, the two definitions sort debt buyers into “creditors” for debts that were not in default when acquired and “debt collectors” for those that were.

As the brief pointed out, the panel’s view nullifies 15 U.S.C. § 1692a(6)(F)(iii), the provision that excludes from the definition of debt collector a person collecting an acquired non-defaulted debt “owed or due another.” Under the panel’s reading of “another,” one cannot collect a debt *for another* after acquiring it for oneself. Thus, the FTC argued, the exception can never come into play. Reading the exception out of the statute would bring within its scope persons Congress did not intend the Act to cover. For example, companies that purchase new auto or home loans may have debt collection as their principal purpose, but they typically collect only non-defaulted debts. Yet under the panel’s approach they would be covered by the statute.

The FTC’s third reason for seeking an *en banc* review of the panel’s decision was that it might exempt a broad swath of debt collectors in the Eleventh Circuit from the consumer protection requirements of the FDCPA. For example, mortgage servicers routinely purchase large portfolios of debt from loan originators. At the time of purchase, some of the accounts may be current and others in default.



more than 471,000 times in 2015. The Consumer blogs in

A. Debt Collection Dialogues

Between June and November 2015, the FTC hosted a series of three sold-out [Debt Collection Dialogues](#) around the country with a number of federal and state partners and leaders of the collection industry.<sup>42</sup> The sessions gave debt collectors opportunities to hear from the government law enforcers who police their industry and allowed the law enforcers and industry members to highlight areas of concern, share strategic priorities, and generate ideas for compliance. The Dialogues were held in Buffalo, NY, on June 15; Dallas, TX, on September 29; and Atlanta, GA, on November 18. Approximately 550 people attended the three Dialogues. Representatives from three federal agencies – the FTC, the Consumer Financial Protection Bureau, and the Office of the Comptroller of the Currency – participated in the conversations. Joining the federal law enforcers were representatives from six state agencies from five states – Georgia, New York, South Carolina, Tennessee, and Texas. The Attorneys General of Georgia (Samuel Olens) and New York (Eric Schneiderman) delivered opening remarks at the events in their respective states.

In Buffalo, the federal and state law enforcers talked about recent enforcement actions their agencies had taken as well as how they choose companies to investigate and how they conduct their investigations, and shared their enforcement priorities. They also answered questions from the audience for the third hour of the event. At the Dallas and Atlanta Dialogues, federal and state law enforcers were joined on four moderated panels by representatives from four collection industry organizations: ACA International, DBA International, insideARM, and NARCA – The National Creditors Bar Association. The first panel focused on debt collection issues central to collection agencies and debt buyers. The second focused on collection issues central to collection attorneys. The third focused on the state regulation and enforcement of debt collection. And the fourth focused on federal regulation and enforcement. Transcripts from all three Dialogues are available on the FTC's website.<sup>43</sup>

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<sup>42</sup> Each of the three Dialogues had its own event page. See <https://www.ftc.gov/news-events/events-calendar/2015/06/debt-collection-dialogue>11(r)-1(o)-4(m)-6.00c648 163.921 0.481 re f BT 0.006 Tc -0.1-6(m.006 Tc(a)-7.2)Tj 9

**B. Debt Collection Rulemaking**

The FTC also works closely with the CFPB to coordinate efforts to protect consumers from unfair, deceptive, and abusive debt collection practices.<sup>44</sup> As part of this coordination, FTC and CFPB staff regularly meet to discuss ongoing and upcoming law enforcement, rulemaking, and other activities; share debt collection complaints; cooperate on consumer education efforts in the debt collection arena; and consult on debt collection rulemaking and guidance initiatives. Building on efforts initiated in 2013, when the CFPB published the Advance Notice of Proposed Rulemaking (“ANPR”), FTC staff have continued to consult with CFPB staff on their rulemaking efforts. FTC staff have provided suggestions and insights based upon our decades of experience in the debt collection arena. We look forward to continuing to work with the CFPB on this rulemaking and other efforts to further our common goal of protecting consumers from

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**Appendix A**

**Debt Collection Information 2015**

Title	Page Views <sup>45]</sup>		Print distribution	
	English	Spanish	English	Spanish
Consumer Information				
<a href="#">Coping with Debt</a>	152,249	18,779	619,885	24,175
<a href="#">Debt Collection</a>	502,332	34,085	134,100	

**Blog Posts for Consumers:**

- [Partners bring more than 100 debt collection enforcement actions](#)
- [Their “debt” collection days are over](#)
- [Stand up to fake debt collectors](#)
- [Don't recognize that debt? Here's what to do.](#)
- [Another abusive debt collector bites the dust](#)
- [A lesson in phantom debt collection](#)
- [When dead debt comes back to life](#)
- [Don't forget the debt](#)
- [Tick-tock goes the clock on old debts](#)
- [Adiós fake debt collectors](#)
- [Attention Grandparents: Watch out for phony debt collectors](#)
- [FTC refunds nearly \\$4 million from debt collection scam](#)
- [Can debt collectors message you for money?](#)
- [FTC racks up charges against unscrupulous debt collector](#)
- [A story in Spanish about debt collection rights](#)

**Blog Posts for Business:**

- [Think your company's not covered by the FDCPA? You may want to think again.](#)
- [FTC Debt Collection Dialogue takes the midnight train to – well, you know where](#)
- [Operation Collection Protection puts the heat on illegal debt collection tactics](#)
- [Buffalo bill collecting](#)
- [FTC and NY AG Team Up Against Abusive Buffalo Debt Collectors](#)