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FEDERAL TRADE COMMISSION

PUBLIC WORKSHOP: DEBT COLLECTION 2.0:

PROTECTING CONSUMERS AS TECHNOLOGIES CHANGE

AGENCY: Federal Trade Commission (“FTC” or the “Commission”).

ACTION: Public Workshop and Request for Public Comments and Participation.

SUMMARY: The FTC announces that it will hold a public workshop on April 28, 2011, to address consumer protection issues that have arisen as debt collectors avail themselves of advances in technology. The workshop will explore developments in technology that debt collectors use to gather, store, and manage information about consumers; to comply with the law; to communicate with consumers; and to receive payment. The workshop will provide an opportunity for government regulators, industry members, technologists, consumer advocates, and researchers, to discuss the costs and benefits of these technologies for debt collectors and consumers. It will also address whether and how collectors may use such technologies consistent with applicable laws, including the Fair Debt Collection Practices Act and Section 5 of the FTC Act, what consumer protection concerns arise from use of these technologies, and what actions, if any, the Commission and other policymakers should take to respond to those concerns. This notice poses a series of questions on which the Commission seeks comment.

The event is open to the public, and there is no fee for attendance. For admittance to the workshop, all attendees will be required to show a valid form of government-issued photo identification, such as a driver’s license. Additional information about the

workshop will be posted on the FTC's website at:

<http://www.ftc.gov/bcp/workshops/debtcollectiontech/index.shtml>.

DATE AND LOCATION: The workshop will be held on April 28, 2011, from 8:30 a.m. to 5:30 p.m., at the Federal Trade Commission's Satellite Building Conference Center, located at 601 New Jersey Avenue, N.W., Washington, D.C.

WORKSHOP AGENDA: Additional information, including an agenda and panelist biographies, will be posted on the FTC's website at

<http://www.ftc.gov/bcp/workshops/debtcollectiontech/index.shtml>.

PUBLIC COMMENTS: Interested parties are invited to submit written comments electronically or in paper form, by following the instructions in the Instructions For Filing Comments part of the SUPPLEMENTARY INFORMATION section below.

Comments filed in electronic form should be submitted by using the following weblink:

<https://ftcpublishcommentworks.com/ftc/debtcollecttechworkshop>, and following the

instructions on the web-based form. Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex F), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, in the manner detailed in the SUPPLEMENTARY INFORMATION section below. To be considered in preparation for the workshop, comments must be received by Thursday, April 7, 2011. However, comments will be accepted through Friday, May 27, 2011.

REQUESTS TO PARTICIPATE AS WORKSHOP PANELISTS: FTC staff will identify and invite individuals with relevant expertise to participate as panelists. In addition, the FTC staff may invite other persons to participate as panelists who submit requests in response to this *Federal Register* notice. Requests to participate as panelists

in the workshop must be received on or before 5:00 p.m. EST, Tuesday, March 22, 2011. Persons filing requests to participate as panelists will be notified whether they have been selected on or before Wednesday, March 31, 2011. For further instructions, please see the “Requests to Participate as Workshop Panelists” section under “SUPPLEMENTARY INFORMATION” below.

FOR FURTHER INFORMATION CONTACT: Leah Frazier, (202) 326-3224, dctech@ftc.gov, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Mail Stop NJ-3158, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: When the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692-1692p, was enacted in 1977, debt collectors contacted consumers to collect debts primarily through mail and landline telephone, reflecting the means of communication then available. Technological advances have expanded the tools available to debt collection companies as they attempt to locate consumers, monitor their employees’ practices, communicate with consumers, and receive payment on debts. The Commission examined these developments as part of a broad review of the evolution of the debt collection industry at a public workshop held in 2007. Using data gleaned from the workshop, public comments, and the FTC’s law enforcement experience, the Commission issued a report in 2009, *Collecting Consumer Debts: The Challenges of Change – A Workshop Report*.¹ The Report recognized that the legal framework for consumer debt collection had not been updated to account for many technological

¹ Federal Trade Commission, *Collecting Consumer Debts: The Challenges of Change – A Workshop Report* (Feb. 2009), *available at* <http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf> (hereinafter “Report”).

advances, and that, in some instances, the Commission lacked data on the use of new technologies in the debt collection system.²

Further exploration of the impact of evolving technology on consumer debt collection is warranted not only in light of questions raised by the 2007 workshop and ensuing Report, but also due to developments that have occurred since then, such as the increasing popularity of social media networking sites.³ Facebook, which did not become available to the general public until 2006, now has approximately 150 million users in the United States,⁴ and some debt collectors are using it to find and contact debtors.⁵ The technology that debt collectors use to obtain, store, and manage information about consumers also continues to evolve.⁶ In addition, collectors may be using older technologies in new ways. For example, although electronic mail (“email”)

² *Id.* at 38 (lack of data on frequency of debt collection calls resulting in “hang-ups” or “dead air” calls). The Commission requested that interested parties submit information on the use of certain technologies in debt collection. *Id.* at 42 (mobile phones); *id.* at 45 (caller ID); *id.* at 49 (voicemail); *id.* at 50-51 (email and instant messaging).

³ Social media refers to Internet websites that enable people to network, communicate, or share information. Examples of social media sites include Facebook, MySpace, Twitter, and LinkedIn.

⁴ See Facebook, Statistics, <http://www.facebook.com/press/info.php?statistics> (last visited Jan. 25, 2011).

⁵ See, e.g., Alexis Madrigal, *Facebook Warns Debt Collectors About Using Its Service*, THE ATLANTIC (Nov. 19, 2010), available at <http://www.theatlantic.com/technology/archive/2010/11/facebook-warns-debt-collectors-about-using-its-service/66831/#>.

⁶ See, e.g., Press Release, Collections & Credit Risks, Convoke Systems Adopted By 15 Debt Buyers (Jan. 20, 2011), available at <http://www.collectionscreditrisk.com/news/news-release-convoke-systems-adopted-by-debt-buyers-3004747-1.html>; *Global Debt Registry Recognized As Visa PCI DSS Validated Service Provider*, Business Wire (Jan. 31, 2011), available at <http://www.businesswire.com/news/home/20110131006698/en/Global-Debt-Registry-Recognized-Visa-PCI-DSS>.

is not a new technology, its use by debt collectors to contact consumers has increased, giving rise to questions about its treatment under the current regulatory scheme.⁷ Similarly, the use of electronic payments continues to rise.⁸ Debt collectors, like many retailers, have begun to accept payment from consumers electronically.⁹ These trends call for a discussion of the relative costs and benefits to consumers and the debt collection industry of these technologies and correspondingly, whether there is a need for action, including changes in law, policy, or industry practice.

As discussed below, advances in technology can affect the entire debt collection life cycle, from locating consumers and communicating with them to receiving payment.

Information Technologies

Advances in technology may assist debt collectors in managing the flow of information about consumers and improving its accuracy. The Internet, through public search engines and proprietary commercial platforms, allows access to large quantities of information about consumers in a consolidated and searchable format.¹⁰ Web-based social media channels also contribute to the available pool of data, as they allow

⁷ Letter from FTC Secretary Donald S. Clark to Barbara A. Sinsley & Manny H. Newburger, counsel for Vion Holdings LLC.

⁸ Federal Reserve System, *The 2010 Federal Reserve Payments Study: Noncash Payment Trends in the United States: 2006-2009* (Dec. 8, 2010), at 13 (“The number of electronic payments grew 9.3 percent per year from 2006 to 2009. The proportion of electronic payments to overall noncash payments increased from 67.9 percent to 77.6 percent over the same period. The value of electronic payments increased 6.0 percent per year, growing from 45.1 percent of noncash payments in 2006 to 56.3 percent in 2009.”), *available at* http://www.frb services.org/files/communications/pdf/press/2010_payments_study.pdf.

⁹ Report, *supra* note 1, at 20.

¹⁰ Report, *supra* note 1, at 18-19.

consumers to post information about themselves online, including the identities of friends and family members, whom collectors could approach for certain information. Further, a variety of database platforms now exist that purport to aid debt collectors in maintaining and updating information about consumers.¹¹ All of these technologies may enhance collectors' ability to locate or skip-trace consumers and verify the accuracy of their information. At the same time, however, the collection and retention of what may be sensitive personally identifiable information may raise privacy concerns for consumers.

Developments in technology may also aid collection companies in complying with the law by enabling them to better monitor and constrain their individual collectors as they communicate with consumers. For example, certain software may allow companies to track both volume level during calls and the words used and to record calls so that companies can monitor for verbal abuse.¹² Other software programs might be used to limit the number of calls per day placed to a telephone number, exclude placing calls to a telephone number before 8:00 a.m. or after 9:00 p.m. in the relevant area code, or otherwise limit how frequently a collector dials a particular number.¹³

Communication Technologies

Post-FDCPA advances in communication technologies are of particular import, since the existing legal framework focuses heavily on communications between consumers and debt collectors.¹⁴ Technology has expanded debt collectors' capacity to

¹¹ Report, *supra* note 1, at 17-20.

¹² See, e.g., Anne Rosso, *Technology Tug O' War*, COLLECTOR, Dec. 2010, at 20.

¹³ See John H. Bedard Jr., *Dialer Control*, COLLECTOR, Feb. 2010, at 32.

¹⁴ See, e.g., FDCPA § 805(a)(1), 15 U.S.C. § 1692c(a)(1) (time and place restrictions on telephone calls from debt collectors communications); FDCPA §§ 805(c), 809(b) (written

access consumers. Collectors may use automatic or predictive dialers and recorded voice technology to contact people more efficiently. Mobile phones now abound. Indeed, many households have given up land line phones in favor of mobile phones, enabling consumers to receive calls regardless of their location.¹⁵ Additionally, means of communication exist today beyond the simple voice and written communications contemplated by the FDCPA. For instance, collectors sometimes send text messages using the Short Messaging System. In addition, at times debt collectors use the Internet to interact with consumers. Internet communications include sending emails and instant messages as well as interacting on social networking sites. While these communication technologies may provide benefits, they raise potential consumer protection concerns as well, including the security of electronic communications, whether such communications satisfy the FDCPA's written notice requirements, and how they implicate the FDCPA's prohibition against contacting consumers at inconvenient times or places.¹⁶

Payment Technologies

Debt collectors, like many retailers, offer payment options to consumers other than cash or check, such as credit, debit, and stored value cards and automated clearinghouse transactions ("ACH").¹⁷ As discussed in the Report, these technologies

notice requirements).

¹⁵ Report, *supra* note 1, at 16 (By June 2008, 16% of consumers had replaced their landline telephones with mobile phones.).

¹⁶ FDCPA § 809(a) (written validation notice from collector to consumer); FDCPA §§ 805(c) & 809(b) (written notices from consumer to collector); FDCPA § 805(a)(1) (convenience restrictions).

¹⁷ Report, *supra* note 1, at 20.

can benefit consumers and debt collectors alike by streamlining the payment process and, in some cases, allowing consumers to engage in online negotiations with collectors.¹⁸

The Report, however, also identified the potential for unauthorized debits as a significant consumer protection concern arising from the use of electronic payment technologies.¹⁹

The Workshop

The workshop will focus on post-FDCPA advancements in information, communication, and payment technologies. Workshop panelists will discuss, among other things, the effects that these technologies have had on the debt collection industry, the prevalence of their use, best practices for their use, what consumer protection concerns they raise, and what responses those concerns may warrant.

The Commission seeks public comment and data submission on the topics and questions set forth below or any issue raised by this notice. Comments or data submissions may address the issues raised in these questions or other issues relevant to the topics to be addressed at the workshop. Any interested person may submit written comments. In preparing for the workshop, the Commission will consider comments received by April 7, 2011. Later comments will be accepted as well through May 27, 2011.

Topics for comment and discussion include:

1. What technologies have come into existence since the enactment of the FDCPA that have significantly affected consumer debt collection, or are likely to do so in the future? What are the nature and magnitude of these effects?

¹⁸ Report, *supra* note 1, at 20.

¹⁹ Report, *supra* note 1, at 51-55.

Information Technologies

2. Have any advances in technology been made that could increase the likelihood that collectors will contact the correct consumer regarding the correct debt amount?

What are the costs and benefits of using any such technology to consumers and the industry? How commonly is such technology being used? Does its use vary by size or type of debt collector? If its use is not widespread, why is that the case? What role, if any, should the Commission or other policymakers play in fostering the use of such technology?

3. Have technological advances changed how and where debt collectors obtain information about consumers and debt? How have technological advances affected the efficacy of skip-tracing and recovery rates? What are the recent innovations in skip-tracing applications? What are the sources of the data they access about consumers?

4. What technologies do collectors use to maintain information regarding consumers and debts (*e.g.*, how do collectors record consumer disputes)? How do technological advances affect collectors' ability to ensure both that inaccurate information is removed from collectors' databases and that information indicating that a consumer should not be contacted is reflected in collectors' databases? To what extent is information overwritten by collectors in using or transferring to others the contents of databases, and what problems can this cause?

5. Do new information technologies create greater or different privacy or data security risks in the context of debt collection than traditional communication technologies? If so, what are the risks of such technologies, and how are the risks different? What, if anything, should collectors be required to do to prevent or mitigate

these risks? What do debt collectors do to keep information on consumers and debts secure? How frequently do data breaches occur? What sorts of breaches occur?

6. What technologies do creditors, debt buyers, and debt collectors use in transferring information among themselves about alleged debtors and debts? What information is transferred, and when and how is it transferred? How has technology affected the availability of media evidencing debt and the ability to store and transfer that material? To what extent are there problems with systems being unable to interact with each other?

7. What is the prevalence and feasibility of outsourcing the transfer (and storage) of information to third-party firms that act as repositories of information on consumer debts? What are the potential costs and benefits to consumers, collectors, and creditors of such repositories? What role should creditors play with respect to these repositories? Should the Commission or other policymakers mandate or encourage the use or creation of such repositories?

8. To what extent do advances in technology affect the process of selling debts, the ease and speed of selling debts, and the quantity and nature of the information conveyed when debts are sold? Are debt sales negotiated or closed using social media sites or Internet marketplaces? What is the significance, if any, of whether debts are bought or sold via social media or the Internet? What would be the costs and benefits to consumers of buying or selling debts through these media?

9. How do current federal and state laws apply to debt collectors' use of post-FDCPA information technologies? How, if at all, should the law be changed to take into account the costs and benefits of these technologies to consumers and collectors?

Communication Technologies

10. What are the costs and benefits to collectors and consumers of using various methods to communicate with consumers? Are the costs and benefits different for traditional communication technologies (*e.g.*, letters and landline telephone calls) compared with new communication technologies (*e.g.*, social networking sites, email, text messages, etc.)?

11. Should debt collectors be required to obtain consumer consent to use particular methods of communication to contact consumers? If so, which communication methods and why? Should it depend on whether the consumer provided the creditor or collector with the necessary contact information? If consent should be required, what, if anything, should collectors be required to do to obtain such consent? How likely are consumers to provide such consent?

12. Do new communication technologies create any greater or different privacy or data security risks in the context of debt collection than traditional communication technologies? If so, which communication methods create greater or different risks? What are the risks of such methods, and how are the risks different? What, if anything, should collectors be required to do to prevent or mitigate these risks?

13. Do new communication technologies in the context of debt collection create different risks of deception, unfairness, or abuse, compared to those associated with traditional technologies? If so, which technologies, and why?

14. What proportion of debt collectors' communications to consumers proceed by various modalities (*e.g.*, letters, email messages, calls to mobile phones, use of

artificial or prerecorded voices, etc.)? Are there variations by size of collection firm or type of debt subject to collection? If so, what are the variations?

15. How do current federal and state laws apply to debt collectors' and consumers' use of post-FDCPA communication technologies? How, if at all, should the law be changed to take into account the costs and benefits of these technologies to collectors and consumers?

Payment Technologies

16. What proportion of consumer payments to debt collectors proceed by various payment methods (*e.g.*, paper checks, ACH debits, or online credit card payment portals)? Are there variations by size of collection firm or type of debt subject to collection? If so, how?

17. What are the costs and benefits to collectors and consumers of accepting consumer payments using electronic payment technologies (*e.g.*, direct ACH debits, electronic checks, online payment portals) as compared to traditional payment technologies (*e.g.*, paper checks, credit card payments)?

18. Does debt collector use of electronic payment technologies create any greater or different privacy or data security risks in the context of debt collection than in the general retail industry? If so, which payment technologies create greater or different risks? What are the risks of such methods, and how are the risks different? What, if anything, should collectors be required to do to prevent or mitigate these risks?

19. Do electronic payment technologies in the context of debt collection create different risks of deception, unfairness, or abuse, compared to those associated with traditional technologies? If so, which technologies, and why?

20. How, if at all, should collectors be required to obtain and document consumer consent to making a payment using various payment technologies? Should requirements for collectors differ from requirements for general retailers?

21. How do current federal and state laws apply to debt collectors' use of post-FDCPA payment technologies? How, if at all, should the law be changed to take into account the costs and benefits of these technologies to consumers and collectors?

Instructions For Filing Comments

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Debt Collection 2.0, Project No. P114802" to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC website, <http://www.ftc.gov/os/publiccomments.shtm>. To be considered in preparation for the workshop, comments must be received by April 7, 2011, although the Commission will accept comments until May 27, 2011.

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential . . .," as provided in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR

4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).²⁰

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form.

Comments filed in electronic form should be submitted using the following weblink: <https://ftcpublic.commentworks.com/ftc/debtcollecttechworkshop> (and following the instructions on the web-based form). If this document appears at www.regulations.gov/#!home, you may also file an electronic comment through that website. The Commission will consider all timely comments that [regulations.gov](http://www.regulations.gov) forwards to it. You may also visit the FTC Website at <http://www.ftc.gov> to read this notice and the related news release.

A comment filed in paper form should include the “Debt Collection 2.0, Project No. P114802” reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex F), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form be sent by **courier or overnight service**, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

²⁰ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at <http://www.ftc.gov/ftc/privacy.shtm>.

Requests to Participate as Workshop Panelists:

The FTC staff will identify and invite individuals with relevant expertise to participate as panelists. In addition, the FTC staff may invite other persons to participate as panelists who submit requests in response to this *Federal Register* notice.

Requests to participate as workshop panelists must be received in writing by 5:00 p.m. EST on Tuesday, March 22, 2011, and should refer to "Debt Collection 2.0 – Panelist Participation Request." Such requests (except requests containing any confidential material) should be submitted in electronic form to dctech@ftc.gov and should be captioned: "Debt Collection 2.0 – Panelist Participation Request." If the request to participate contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential." Please include an original and two copies of each document submitted in paper form. Requests submitted in paper form should include

this reference both in the text and on the envelope, and should be sent by **overnight delivery or courier** to the following address: Debt Collection 2.0, c/o Leah Frazier, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Mail Stop 3158, Washington, D.C. 20580.

Requests to participate as workshop panelists should include the following information:

- 1) A brief biographical description, résumé, or curriculum vitae, including name and affiliation;
- 2) A statement setting forth the potential panelist's expertise in or knowledge of one or more issues likely to be addressed by the workshop;
- 3) A list of the topic(s) that the potential panelist would like to address, and a one-paragraph summary of the potential panelist's unique perspective or knowledge of each such topic; and
- 4) Contact information, including a daytime telephone number, facsimile number, and email address (if available).

Parties filing requests to participate as workshop panelists will be notified whether they have been selected on or before Thursday, March 31, 2011.

The FTC Act and other laws the Commission administers permit the collection of requests to participate as workshop panelists to consider and use in this proceeding as appropriate. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at <http://www.ftc.gov/ftc/privacy/htm>.

By direction of the Commission.

Donald S. Clark
Secretary.