

FEDERAL TRADE COMMISSION
ANNUAL REPORT 2011:
FAIR DEBT COLLECTION
PRACTICES ACT



INTRODUCTION

The Federal Trade Commission (“FTC” or “Commission”) is pleased to submit to Congress this thirty-third annual report summarizing its activities to administer the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692-1692p, during the past year.¹ These activities 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 debt collectors who engage in deceptive, unfair, and abusive collection practices.

The FTC has primary government enforcement responsibility under the FDCPA.² The Commission, however, shares overall enforcement responsibility with other federal

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. As discussed *infra*, this requirement will soon pass to the nascent Consumer Financial Protection Bureau (“CFPB”) under the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010) (“Dodd-Frank Act”), at § 1089.

² See p. 19, *infra*, for a discussion of anticipated changes in law enforcement authority in light of the Dodd-Frank Act.

agencies.³ In addition, consumers who believe they have been victims of FDCPA violations may seek relief in state or federal court.⁴

As in past years, the FTC took significant steps in 2010 to curtail illegal debt collection practices. This report: (1) summarizes the number and types of consumer complaints the FTC received in 2010; (2) presents recent developments in FTC law enforcement; (3) describes the FTC's consumer and industry education efforts; (4) discusses the Commission's recent policy initiatives; and (5) addresses upcoming changes in FDCPA administration in light of the Dodd-Frank Act.

FTC CONSUMER COMPLAINTS

BACKGROUND

The FDCPA requires the FTC to report on the level of industry compliance with the law. The FTC receives copious information about the conduct of debt collectors from complaints consumers file with the FTC and from its enforcement work.⁵ The FTC uses complaints generally to monitor the industry, select targets, and conduct preliminary analysis that, with further factual development, might reveal or help prove a law violation.

Based on the FTC's experience, many consumers never file complaints with anyone other than the debt collector itself. Others complain only to the underlying

³ Section 814 of the FDCPA, 15 U.S.C. § 1692l, empowers seven other federal agencies to enforce the FDCPA. 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.

⁴ Section 813 of the FDCPA, 15 U.S.C. § 1692k, furnishes consumers with a private right of action. Note that the Commission generally neither intervenes in private FDCPA actions nor opines on individual FDCPA disputes.

⁵ Consumers may file complaints with the FTC via its toll-free hotline (1-877-FTC-HELP), online complaint forms, or United States mail.

creditor or to enforcement agencies other than the FTC. Some consumers may not be aware that the conduct they have experienced violates the FDCPA or that the FTC enforces the FDCPA. For these reasons, the total number of consumer complaints the FTC receives may understate the extent to which the practices of debt collectors violate the law.

On the other hand, the FTC acknowledges that not all of the debt collection practices about which consumers complain are necessarily law violations. Many consumers complain of conduct that, if accurately described, would indeed violate the FDCPA, or Section 5 of the FTC Act, 15 U.S.C. § 45. The FTC, however, does not verify whether the information consumers provide is accurate unless the agency 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 FDCPA. For example, a consumer may complain that a debt collector will not accept partial payments on the same installment terms that the original lender permitted when the account was current. Although a collector's demand for accelerated payment or larger installments may be frustrating to the consumer, such a demand generally does not violate the FDCPA. To the extent that consumers complain about conduct that may not or does not violate the FDCPA, the FTC's complaint data may overstate the extent of law violations.

Finally, consumers may complain of conduct about which more information is needed to determine whether it would violate the law. If a consumer complains that a debt collector has threatened to file a civil lawsuit to collect a debt, for example, the FTC cannot determine whether such conduct violates the FDCPA without investigating whether the debt collector had the requisite intention to do so.⁶

Despite these 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 complain most frequently. The total number of FTC complaints, as well as the number of complaints reported to the FTC about any specific practice, fluctuate yearly for a variety of reasons. To convey the relative impact of a particular practice on consumers during the past year, this report presents the percentage of all 2010 FTC complaints related to each specific practice. To assist in identifying trends over time, this report compares the percentage of all FDCPA

⁶ 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," 15 U.S.C. § 1692e(5), a prohibition that includes false threats of suit.

complaints to the FTC in 2010 that mention a practice with the percentage of all such complaints in 2009 that did so.

TOTAL NUMBER OF FTC COMPLAINTS

Hundreds of thousands of consumers contact the FTC every year about 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.⁷ When this report references "complaints," it includes only complaints that consumers have filed directly with the FTC, as opposed to any other body.⁸

ALL COLLECTORS: The FTC receives more complaints about the debt collection industry than any other specific industry.⁹ Complaints about third-party debt collectors¹⁰

⁷ In general, consumer complaints concern the alleged behavior of specific actors, whereas consumer inquiries ask for information about their legal rights or other topics.

⁸ In contrast, the Commission's Annual Report includes in the complaint numbers the complaints submitted to certain other entities that partner with the FTC in Consumer Sentinel, the agency's law enforcement complaint-sharing system. See FTC, THE FEDERAL TRADE COMMISSION IN 2010: FEDERAL TRADE COMMISSION ANNUAL REPORT (Apr. 2010) at 58, available at www.ftc.gov/os/2010/04/2010ChairmansReport.pdf. For this reason, the total number of debt collection complaints set forth in this report is less than the number stated in the FTC's Annual Report.

⁹ The FTC does not count in the total number of debt collection complaints any identity theft or Do Not Call Registry complaints that may involve debt collection. The agency does not consider identity theft and Do Not Call 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 to contact consumers. Note, however, that some identity theft and Do Not Call Registry complaints may implicate deceptive, unfair, or abusive debt collection practices. For example, a consumer may complain about suspected identity theft when a debt collector is contacting him or her about a debt he or she never incurred. To that extent, the FDCPA complaint data in this report may under-report consumer complaints about debt collection practices.

¹⁰ "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

and in-house collectors in 2010 together totaled 140,036 complaints¹¹ and accounted for 27% of all complaints the FTC received.¹² This represents an increase in absolute terms and as a percentage of total complaints over 2009, when the agency received 119,609 debt collection complaints, accounting for 22.8% of all complaints to the FTC.¹³

THIRD-PARTY DEBT COLLECTORS: In 2010, consumer complaints to the FTC about third-party debt collectors (“FDCPA complaints”) increased in absolute terms and as a percentage of all complaints that consumers filed directly with the FTC.¹⁴ The FTC received 108,997 FDCPA complaints in 2010, representing 21% of all complaints it received directly from consumers. By comparison, in 2009, the FTC received 88,326 FDCPA complaints, representing 16.8% of the complaints it received directly from consumers.

IN-HOUSE DEBT COLLECTORS: Last year, the number of complaints the FTC received about creditors’ in-house collectors decreased slightly in absolute terms, but remained relatively constant as a percentage of total complaints. In 2010, the FTC received 31,952 complaints about in-house collectors, representing 6.2% of all complaints received. In 2009, the FTC received 32,200 complaints about in-house collectors, representing 6.1% of all complaints received.

Although the Commission received over one hundred thousand consumer complaints about third-party collectors in 2010, it recognizes that collectors contact millions of consumers each year. The number of complaints the FTC receives about debt collectors, therefore, corresponds to only a small fraction of the overall number of consumers contacted.

another, as well as debt buyers collecting on debts they purchased in default.

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 is slightly less than the sum of all third-party complaints and all in-house creditor complaints.

¹² See Appendix A for a chart showing the number of third-party collector complaints, in-house collector complaints, and total debt collector complaints in 2010 and 2009.

¹³ The 2009 complaint numbers identified in this year’s report differ slightly from those identified in last year’s report because, in connection with a quality assurance review, the FTC staff reviewed and re-coded some complaints after the 2010 Annual Report was issued.

¹⁴ Last year, the FTC received 518,743 complaints about all industries directly from consumers, down from 524,534 in 2009.

FTC 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 consumer complaints frequently address more than one debt collection practice, the CRC historically has assigned many complaints more than one code.¹⁵ 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.¹⁶

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.¹⁷ In 2010, 49.7% of FDCPA complaints the FTC received, or 54,147 complaints, claimed that collectors harassed the complainants by calling repeatedly or continuously. This was the most frequent law violation about which consumers complained during 2010, as it was in 2009, when 41,063 FDCPA complaints, representing 46.5% of FDCPA complaints, stated that collectors harassed them by calling repeatedly or continuously.

Also in 2010, 16.1% of FDCPA complaints, or 17,532 complaints, claimed that a collector had used obscene, profane, or otherwise abusive language. In 2009, roughly the same proportion of FDCPA complaints, 16.2%, or 14,337 complaints, raised concerns about this practice. Allegations that collectors called 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, made up 11.8% of complaints, or 12,871 complaints, in 2010, up from 11% of complaints, or 9,688 complaints, in 2009. Reports that collectors used or threatened to use violence if consumers failed to pay accounted for 3.8% of FDCPA complaints, or 4,182 complaints, in 2010, up from 2.9% of complaints, or 2,519 complaints, in 2009.

DEMANDING A LARGER PAYMENT THAN IS PERMITTED BY LAW: This category includes two different FDCPA law violation codes. First, the FDCPA prohibits debt

¹⁵ Each CRC code assigned to an FDCPA complaint corresponds to a potential law violation.

¹⁶ See Appendix B for a chart showing the number and percentage of FTC complaints for each FDCPA violation code in 2010 and 2009.

¹⁷ Section 806, 15 U.S.C. § 1692d.

collectors from misrepresenting the character, amount, or legal status of a debt.¹⁸ 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 are seeking to collect on debts that have been discharged in bankruptcy. For the third consecutive year, this was the second most common category of FDCPA complaint. In 2010, there were 33,122 complaints describing this conduct, representing 30.4% of FDCPA complaints. In 2009, 31.1% of FDCPA complaints, or 27,483 complaints, were of this type.

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.”¹⁹ In 2010, 9.7% of FDCPA complaints, or 10,614 complaints, asserted that collectors demanded interest, fees, or expenses that were not owed (such as unauthorized collection fees, late fees, and court costs). In 2009, 10.9% of FDCPA complaints, or 9,634 complaints, made these assertions.

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.²⁰ Many consumers who do not receive this notice are unaware that they must dispute their debts in writing if they wish to obtain verification of the debts. In 2010, 29.8% of the FDCPA complaints, or 32,477 complaints, reported that collectors did not provide the required notice, up from 25.7% of all FDCPA complaints, or 22,712 complaints, in 2009.

THREATENING DIRE CONSEQUENCES IF CONSUMER FAILS TO PAY: The FDCPA bars debt collectors from making threats as to what might happen if the consumer fails to pay the debt, unless the collector has the legal authority and the intent to take the threatened action.²¹ Among other things, collectors might threaten to initiate civil suit or criminal prosecution, garnish wages, seize property, cause job loss, have a consumer jailed, or damage or ruin a consumer’s credit rating. In 2010, 25.3% of FDCPA complaints, or 27,554 complaints, reported that third-party collectors falsely threatened a lawsuit or

¹⁸ Section 807(2), 15 U.S.C. § 1692e(2).

¹⁹ Section 808(1), 15 U.S.C. § 1692f(1).

²⁰ Section 809(a), 15 U.S.C. § 1692g(a).

²¹ Sections 807(4)-(5), 15 U.S.C. §§ 1692e(4)-(5).

some other action that they could not or did not intend to take, an increase from the 20.9% of FDCPA complaints, or 18,456 complaints, that reported the same type of conduct in 2009. Also in 2010, 18.6% of FDCPA complaints, or 20,256 complaints, alleged that such collectors falsely threatened arrest or seizure of property, up from the 13% of FDCPA complaints, or 11,515 complaints, reporting such conduct in 2009.

FAILING TO IDENTIFY SELF AS DEBT COLLECTOR: To avoid creating a false or misleading impression, the FDCPA requires a debt collector to disclose in all communications with a consumer that he or she is a debt collector and, in the first communication with the consumer, that he or she is attempting to collect a debt and that any information obtained will be used for that purpose.²² Consumers who do not receive such notification may reveal under false pretenses information that will later be used against them to collect the alleged debt. In 2010, 22.8% of all FDCPA complaints, or 24,889 complaints, alleged the collector failed to provide the required “mini-Miranda” warning, up from 19.7% of FDCPA complaints, or 17,370 complaints, in 2009.

REVEALING ALLEGED DEBT TO THIRD PARTIES: The FDCPA generally prohibits third-party contacts for any purpose other than obtaining information about the consumer’s location.²³ Collectors calling to obtain location information also are prohibited from revealing that a consumer allegedly owes a debt.²⁴

Improper third-party contacts may embarrass or intimidate the consumer who allegedly owes the debt and be a continuing aggravation to the third parties. In some cases, collectors reportedly have used misrepresentations as well as harassing and abusive tactics in their communications with third parties, or even have attempted to collect from the third party. Contacts with consumers’ employers and co-workers about consumers’ alleged debts also may jeopardize continued employment or prospects for promotion. Relationships between consumers and their families, friends, or neighbors may additionally suffer from improper third-party contacts.

²² Section 807(11), 15 U.S.C. § 1692e(11). This requirement does not apply if the communication at issue is a formal pleading made in connection with a legal action. *Id.* Section 806(6) of the Act also provides that it is generally an abusive practice to place telephone calls without meaningful disclosure of the caller’s identity. 15 U.S.C. § 1692d(6).

²³ Section 805(b), 15 U.S.C. § 1692c(b). Location information includes a consumer’s home address and telephone number or place of employment. Section 803(7), 15 U.S.C. § 1692a(7).

²⁴ Section 804(2), 15 U.S.C. § 1692b(2).

This past year, 21.8% of FDCPA complaints, or 23,758 complaints, claimed that collectors called a third party repeatedly to obtain location information about the consumer,²⁵ up from 19.2% of complaints, or 16,961 complaints, in 2009. The third parties contacted included employers, relatives, children, neighbors, and friends. Also in 2010, 12.4% of all FDCPA complaints, or 13,568 complaints, reported that debt collectors illegally disclosed a purported debt to a third party, similar to the 12.2% of FDCPA complaints, or 10,761 complaints, reporting these disclosures in 2009.

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.²⁶ By continuing to contact consumers at work under these circumstances, debt collectors may put them in jeopardy of losing their jobs. In 2010, 15.6% of FDCPA complaints, or 17,008 complaints, related to calls to consumers at work, up from 13.6% of FDCPA complaints, or 11,991 complaints, in 2009.

FAILING TO VERIFY DISPUTED DEBTS: The FDCPA also mandates that, if a consumer submits a dispute in writing, the collector must cease collection efforts until it has provided written verification of the debt.²⁷ Many consumers complained that collectors ignored their written disputes, sent no verification, and continued their collection efforts. Other consumers reported that some collectors continued to contact them about the debts between the date the consumers submitted their dispute and the date the collectors provided the verification. Last year, 10.5% of all FDCPA complaints, or 11,492 complaints, claimed that collectors failed to verify disputed debts. In 2009, 11.5% of all FDCPA complaints, or 10,164 complaints, were of this type.

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

²⁵ Section 804(3), 15 U.S.C. § 1692b(3), prohibits a debt collector contacting a third party for location information from communicating with the third party more than once, unless the third party requests it or the collector reasonably believes the third party’s earlier response was erroneous or incomplete and that the third party now has correct or complete location information.

²⁶ Section 805(a)(3), 15 U.S.C. § 1692c(a)(3).

²⁷ Section 809(b), 15 U.S.C. § 1692g(b).

wants all such communications to stop or that he or she refuses to pay the alleged debt.²⁸ This “cease communication” notice does not prevent collectors or creditors from filing suit against the consumer to collect, but it does prohibit collectors from calling the consumer or sending dunning notices. In 2010, 6.7% of FDCPA complaints, or 7,343 complaints, reported that collectors ignored “cease communication” notices and continued their collection attempts, down from 8.4% of complaints, or 7,426 complaints, in 2009.

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 can proceed 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.²⁹ Alternatively, the FTC may request that the 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.

As part of its aggressive enforcement campaign to deter debt collectors from violating the FDCPA and the FTC Act, the FTC has emphasized several law enforcement strategies. These include: bringing suit against responsible individuals in addition to companies when debt collectors violate the law; for suits brought by FTC attorneys, filing *ex parte*, where appropriate, and seeking temporary and preliminary as well as

²⁸ Section 805(c), 15 U.S.C. § 1692c(c).

²⁹ Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to sue in federal district court to obtain injunctive relief against entities that the FTC has reason to believe 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 that remedy. Section 13(b)(2) of the FTC Act, 15 U.S.C. § 53(b)(2).

permanent injunctive relief; and, for suits brought on the FTC's behalf by the Department of Justice, seeking civil penalty amounts sufficient to deter future violations.

The FTC currently is conducting numerous non-public investigations of debt collectors to determine whether they have engaged in violations of the FDCPA or the FTC Act. It also has filed three law enforcement actions in the past twelve months: a settlement imposing the largest civil penalty ever in an FTC debt collection case, an ongoing suit against collectors who violated the law in collecting on online payday loans, and a settlement with a major collector that allegedly failed to verify disputed debts.

In March 2011, the Commission announced a settlement agreement with collector West Asset Management, Inc. ("WAM"), resulting in a \$2.8 million civil penalty, the largest civil penalty ever obtained by the FTC in a debt collection case.³⁰ The complaint alleged WAM violated the FDCPA by calling consumers and third parties repeatedly with intent to harass or annoy, and by revealing debts to third parties and calling them for reasons other than to obtain location information about the consumer. In addition, the Commission alleged that WAM engaged in deception in violation of the FTC Act by materially misrepresenting to consumers that WAM was a law firm, it would bring civil action or criminal prosecution against consumers who failed to pay, and nonpayment would result in the seizure, garnishment, attachment, or sale of consumers' properties or wages, or their arrest or imprisonment. The FTC further alleged WAM engaged in unfairness in violation of the FTC Act by debiting consumers' financial accounts or charging their credit cards without their express, informed consent. Under the settlement agreement, in addition to paying the record civil penalty mentioned above, WAM is enjoined from: (1) further violating the FDCPA or the FTC Act through engaging in the same or similar conduct as alleged in the complaint; (2) making any misrepresentation about the consequences of paying or not paying a debt; (3) making any material misrepresentation to collect or attempt to collect or to obtain information concerning a consumer; and (4) making bank account withdrawals or imposing credit card charges without authorization.

In April, 2010, the FTC filed suit under Section 13(b) of the FTC Act against an alleged common enterprise composed of Internet-based payday lenders, a collection agency, and their principals, seeking preliminary and permanent injunctive relief in

³⁰ *United States v. West Asset Mgmt., Inc.*, No. 1-11-CV-0746 (N.D. Ga. Mar. 14, 2011). The largest civil penalty obtained by the Commission in a previous debt collection case was \$2.25 million. *United States v. Acad. Collection Serv., Inc.*, No. 2:08-CV-1576 (D. Nev. Nov. 18, 2008).

addition to consumer redress or disgorgement of ill-gotten gains.³¹ The complaint alleged the defendants violated the FTC Act and the FDCPA by falsely claiming to consumers' employers that they were entitled by law to garnish wages without obtaining a court order; falsely claiming to have informed consumers of their intent to garnish and provided consumers with the opportunity to dispute the debt; and communicating with consumers' employers and co-workers about debts without the consumers' knowledge or consent. The defendants also were alleged to have violated the Credit Practices Rule³² and the FTC Act by including an unlawful wage assignment clause in their loan agreements with consumers. In April, most of the defendants stipulated to the entry of a preliminary injunction. In September, the Commission entered into a settlement with defendant Mark S. Lofgren containing a \$38,133 suspended judgment and permanent conduct relief. Litigation against the remaining defendants³³ – payday lender Eastbrook, LLC, also doing business as Ecash and Getecash; collector LoanPointe, LLC; and principal Joe S. Strom – is ongoing.

In October 2010, the FTC reached a settlement agreement with collector Allied Interstate, Inc. ("Allied"), one of the nation's largest debt collectors.³⁴ The Commission alleged that Allied continued collection efforts even after consumers told the company that they did not owe the debt, without verifying the accuracy of the disputed information or otherwise having a reasonable basis for representing that the consumers owed the debt. The FTC further alleged that Allied violated the FDCPA and Section 5 of the FTC Act by making improper harassing phone calls to consumers (using abusive language or calling many times a day for weeks or months); making repeated calls to third parties seeking to locate a consumer; revealing alleged debts to third parties without the consumer's consent or court permission; and threatening legal action against consumers that it did not intend to take. Under the settlement agreement, Allied paid a \$1.75 million civil penalty

³¹ *FTC v. LoanPointe, LLC*, No. 2:10 CV 00225 DAK (C.D. Utah 2010). See Press Release, Federal Trade Commission, *FTC Charges Payday Lender with Deceiving Employers in Scheme to Collect Debts* (Apr. 7, 2010), available at www.ftc.gov/opa/2010/04/getecash.shtm.

³² 16 C.F.R. § 444.

³³ The Commission voluntarily agreed to dismiss two defendants, Benjamin J. Lonsdale and James C. Endicott, who were named in the FTC's complaint. See Press Release, Federal Trade Commission, *Payday Loan Defendant Settles FTC Charges; Illegally Tried to Garnish Borrowers' Wages* (Sept. 2, 2010), available at www.ftc.gov/opa/2010/09/getecash.shtm.

³⁴ *United States v. Allied Interstate, Inc.*, No. 10-cv-04295-PJS-AJB (D. Minn. 2010). See Press Release, Federal Trade Commission, *Debt Collector Will Pay \$1.75 Million to Settle FTC Charges: Ignored Consumers' Disputes Without Checking Its Information for Accuracy* (Oct. 21, 2010), available at www.ftc.gov/opa/2010/10/alliedinterstate.shtm.

and agreed to stop collection efforts on disputed debts in the future unless and until it conducts a reasonable investigation and verifies the debt. In addition, the agreement bars Allied from violating the FDCPA or from engaging in the types of conduct the complaint alleged violated the FTC Act.

CONSUMER AND INDUSTRY EDUCATION

The FTC's consumer and industry education efforts are the second prong of its FDCPA program. Consumer education informs consumers of their rights under the FDCPA and what the law requires of 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.³⁵ With this knowledge, industry members can take all necessary steps to comply with the FDCPA.

TOOLS FOR CONSUMERS: The FTC informs consumers about their rights and responsibilities under the FDCPA by means of written materials, one-to-one guidance, and speeches and presentations.

First, the FTC provides written materials for consumers, including a "Facts for Consumers" brochure entitled "Debt Collection FAQs: A Guide for Consumers" that explains the FDCPA in plain language.³⁶ In 2010, the FTC distributed 65,800 paper copies of the brochure to consumers in response to inquiries to the FTC and through non-profit consumer groups, state consumer protection agencies, Better Business Bureaus, and other sources of consumer assistance. In addition, online users accessed the brochure on the FTC's website 678,051 times in 2010.

The FTC also publishes Spanish-language versions of the "Debt Collection FAQs: A Guide for Consumers" brochure and several related consumer brochures,

³⁵ The Commission does not license, certify, or register debt collectors, and it does not approve or endorse the practices of specific debt collectors other than through issuing advisory opinions, as discussed below.

³⁶ The FTC's "Debt Collection FAQs: A Guide for Consumers" brochure is accessible at www.ftc.gov/bcp/edu/pubs/consumer/credit/cre18.shtm.

including “Credit and Your Consumer Rights” and “Knee Deep in Debt.”³⁷ The FTC distributed 6,700 paper copies of the Spanish version of “Debt Collection FAQs: A Guide for Consumers,” 10,700 paper copies of the Spanish version of “Credit and Your Consumer Rights,” and 10,300 paper copies of the Spanish version of “Knee-Deep in Debt” in 2010. Online users accessed the FAQ brochure in Spanish 7,501 times in 2010.

In October 2010, the FTC released a new publication informing consumers about debt collection arbitration proceedings. Called “Debt Collection Arbitration: The Who, What, Why, and How,” it was distributed in print 6,000 times and accessed online 4,230 times in the last two months of 2010.³⁸

Second, the FTC offers an animated video that explains consumer rights regarding debt collection. The video can be found at www.ftc.gov/debtcollection and www.youtube.com/ftcvideos. Online users accessed it at least 26,892 times in English and 4,766 times in Spanish during 2010.

Third, the FTC provides consumer education through its Consumer Response Center, whose highly trained contact representatives respond to consumers’ telephone calls and correspondence (in both paper and electronic form) each weekday. A toll-free number, 1-877-FTC-HELP, makes it very easy for consumers to contact the CRC. As discussed above, a large percentage of consumer contacts with the FTC relate to debt collection. For those consumers who complain about the actions of third-party collectors, the CRC contact representatives provide essential information about their rights under the FDCPA, 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.³⁹

³⁷ The Spanish-language version of “Debt Collection FAQs: A Guide for Consumers” (“Preguntas Frecuentes sobre Cobranza de Deudas: Una Guía para Consumidores”) is accessible at www.ftc.gov/bcp/edu/pubs/consumer/credit/scrc18.shtm; “Credit and Your Consumer Rights” (“El Crédito y Sus Derechos como Consumidor”) is accessible at www.ftc.gov/bcp/edu/pubs/consumer/credit/scrc01.shtm; and “Knee Deep in Debt” (“Endeudado Hasta el Cuello”) is accessible at www.ftc.gov/bcp/edu/pubs/consumer/credit/scrc19.shtm.

³⁸ The FTC’s “Debt Collection Arbitration: The Who, What, Why, and How” brochure is accessible at www.ftc.gov/bcp/edu/pubs/consumer/credit/cre44.shtm.

³⁹ 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 FTC’s website, located at www.ftc.gov.

Finally, the FTC extends the reach of its consumer education initiatives through public speaking engagements to groups across the country. In all types of venues, the FTC informs consumers of their rights under the FDCPA and responds to a wide range of questions and concerns.

TOOLS FOR THE COLLECTION INDUSTRY: The FTC also delivers speeches and participates in panel discussions at industry conferences. In addition, the staff maintains an informal communications network with the leading debt collection trade associations and consumer groups, which permits staff members to exchange information and ideas and discuss problems as they arise. The FTC also provides interviews to general media and trade publications. These interviews serve as yet another vehicle to make agency positions known to the nation's debt collectors. Finally, the FTC released a video in 2010 intended to educate businesses about how to comply with the FDCPA.⁴⁰

ADVISORY OPINIONS: The FTC, where appropriate, issues formal advisory opinions regarding the application or interpretation of the FDCPA.⁴¹

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. As described below, important policy topics examined by the FTC in 2010 included: (1) debt collection litigation and arbitration proceedings; (2) the collection of decedents' debts; (3) the debt buying industry; and (4) technological changes.

DEBT COLLECTION LITIGATION AND ARBITRATION: In July 2010, the FTC issued a report derived from a series of nationwide roundtable discussions and public comments examining debt collection litigation and arbitration proceedings.⁴² It concluded that the

⁴⁰ This video, "Debt Collection," is located at business.ftc.gov/multimedia/videos/debt-collection as well as on the FTC's YouTube page, www.youtube.com/user/FTCvideos.

⁴¹ The FTC issues advisory opinions pursuant to Sections 1.1-1.4 of the FTC's Rules of Practice, 16 C.F.R. §§ 1.1-1.4.

⁴² FTC, REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION (Jul. 2010), *available at*

(continued...)

system for resolving consumer debt collection disputes is broken, and recommended significant reforms to improve efficiency and fairness to consumers.

The report identified four major concerns in debt collection litigation. First, finding that consumers frequently fail to appear or defend themselves and that collectors sometimes fail to properly notify consumers of suits they have filed, the Commission suggested that the states consider adopting measures to increase consumer participation in suits against them. Second, finding that the complaints filed in debt collection suits often do not contain sufficient information to allow consumers in their answers to admit or deny the allegations and assert affirmative defenses, the report suggested that the states consider requiring collectors to include more debt-related information in their complaints. Third, finding consumers are generally unaware that collectors cannot lawfully sue to recover on time-barred debt, the Commission suggested that the states assign to collectors the burden of proving that debts are not time-barred, and emphasized that collectors, to avoid engaging in a deceptive practice, may need to disclose to consumers that they cannot be sued for failure to pay time-barred debt and the consequences of making partial payments on time-barred debt. Finally, finding that banks sometimes freeze funds in consumer bank accounts that are exempt from garnishment by law, the report recommended that federal and state laws be changed to limit the amounts frozen in accounts containing exempt funds.

The report also addressed concerns about requiring consumers to resolve debt collection disputes through binding arbitration. Finding that consumers often lack meaningful choice about whether to arbitrate disputes, the Commission recommended that creditors, collectors, and others take steps to make consumers aware of that choice and provide consumers a meaningful method of exercising it. Also, finding that the process in arbitration proceedings is not fair to consumers in many cases, the FTC recommended that: (1) arbitration forums and arbitrators eliminate bias and the appearance of bias; (2) arbitration proceedings be conducted in a manner likely to increase consumer participation; (3) arbitration awards contain more information about how the case was decided and how the award was calculated; and (4) arbitration processes and results be more transparent.⁴³

⁴²(...continued)

www.ftc.gov/os/2010/07/debtcollectionreport.pdf.

⁴³ Under the Dodd-Frank Act, the CFPB is required to study and file a report to Congress regarding consumer arbitration agreements in connection with financial products or services. Dodd-Frank Act § 1028.

COLLECTION OF DECEDENTS' DEBTS: In October 2010, in response to concerns about possible unfair, deceptive, or abusive practices by certain debt collectors, the FTC issued a proposed statement of enforcement policy regarding the collection of the debts of deceased persons.⁴⁴ In general, debts survive the death of the debtor, and a debt collector may seek payment of the debt from the estate of the deceased. Pursuant to Section 805 of the FDCPA, however, debt collectors in this situation may only communicate with the deceased's spouse, parent (if the deceased was a minor), guardian, executor, or administrator.⁴⁵

State probate laws have evolved considerably since the passage of the FDCPA and now, in many cases, confer authority on individuals other than those set forth in Section 805 to pay the debts of decedents on behalf of the estate.⁴⁶ If collectors cannot communicate with those individuals to resolve the decedents' outstanding debts, collectors may force estates into probate, thereby imposing costs and delays in the resolution of estates in order to collect the debt. The Commission's proposed policy statement sought public comment on whether the Commission should decide not to take law enforcement action against debt collectors who communicate with any person who has authority to pay a decedent's debts from the assets of the estate, even if that person does not explicitly fall within the specific categories listed in Section 805(d). The proposed policy statement also provided guidance to collectors, consistent with the FDCPA,⁴⁷ on how to "locate" or identify the person with such authority, and how to communicate with that person without engaging in unfair, deceptive, or abusive acts and practices by, among other things, disclosing that the person with authority is not personally obligated to pay the debt.

The FTC called for public comments on its proposed statement of enforcement policy. One hundred forty-five comments were submitted, and the issue remains under review.

⁴⁴ Statement of Policy Regarding Communications in Connection With Collection of a Decedent's Debt, 75 Fed. Reg. 62,389 (Oct. 8, 2010). *See also* Press Release, Federal Trade Commission, *FTC Proposes Policy Statement Clarifying How to Collect Decedents' Debts* (Oct. 4, 2010), available at www.ftc.gov/opa/2010/10/debtcollect.shtm.

⁴⁵ 15 U.S.C. §§ 1692c(b) and 1692c(d).

⁴⁶ Typically, persons with authority to pay decedents' debts out of the assets of the estate are not obligated *personally* to pay those debts.

⁴⁷ Section 804, 15 U.S.C. § 1692b.

DEBT BUYING STUDY: Also in 2010, the FTC continued an empirical study of the debt buying industry. In December 2009, the agency issued orders to nine of the nation's largest debt buying companies, requiring them to produce extensive and detailed information about their practices in buying and selling consumer debt. Debt buying has become a significant part of the debt collection system over the past decade, and many debts are purchased and resold several times over a period of years before all collection efforts finally cease. Some parties have suggested that the age, amount, and quality of debt-related information transferred when debt is sold results in an increase in efforts by debt buyers to collect from the wrong party and/or in the wrong amount. To investigate empirically these information flow and other issues, the Commission undertook this investigation of the industry. The FTC anticipates issuing a report with its findings and recommendations, if appropriate, regarding the debt buying industry.

DEBT COLLECTION TECHNOLOGY WORKSHOP: In April 2011, the FTC will convene industry representatives, consumer advocates, regulators, researchers, and others to discuss debt collection technologies at a public workshop, *Debt Collection 2.0: Protecting Consumers as Technologies Change*.⁴⁸ Over the thirty-three years since the FDCPA was enacted, technologies for collecting and transmitting data, communicating, and making payments have advanced. Today's collectors, for example, increasingly communicate with consumers via electronic mail, mobile phones, text messaging, and social media. To enhance the Commission's understanding of the ramifications of these changes for consumers and the industry, workshop participants will discuss: how debt collection technologies have evolved in recent years; whether such technologies can increase the frequency with which collectors contact the right consumer seeking the right amount; the costs and benefits to consumers and collectors of employing newer technologies for information collection and storage, communication, and payment; and whether any legal or policy reforms might enhance consumer protection.

⁴⁸ See Press Release, Federal Trade Commission, *FTC To Host Consumer Debt Collection Technology Workshop* (Mar. 10, 2011), available at www.ftc.gov/opa/2011/03/debtcollection.shtm.

CONSUMER FINANCIAL PROTECTION BUREAU

Under the Dodd-Frank Act, the CFPB will have the authority to enforce the FDCPA concurrently with the FTC.⁴⁹ In addition, the CFPB will have authority to prescribe rules with respect to debt collection; issue guidance concerning compliance with the law; collect complaint data; educate consumers and collectors; and undertake research and policy initiatives related to consumer debt collection. The CFPB also will become responsible for issuing future annual reports to Congress concerning federal government activities to implement the FDCPA.⁵⁰

CONCLUSION

Through its debt collection program of enforcement, education, and policy initiatives, including the annual reports it has issued every year since the FDCPA was enacted in 1977,⁵¹ the FTC has actively worked to protect consumers from the unfair, deceptive, and abusive conduct of debt collectors. In the future, the FTC intends to continue this work in cooperation with the CFPB.

⁴⁹ Dodd-Frank Act § 1089. The banking agencies and the CFPB will share authority to enforce the FDCPA for depository institutions subject to their jurisdiction, depending on the size of the institution. Dodd-Frank Act §§ 1025, 1026, 1061(c), and 1089(3)(b). For depository institutions with assets greater than \$10 billion, the CFPB has primary enforcement authority, and the banking agencies may refer potential enforcement actions to the CFPB and enforce them directly if the CFPB does not initiate enforcement within 120 days. Dodd-Frank Act §§ 1025, 1061(c). For smaller depository institutions, the banking agency with jurisdiction over the institution has primary enforcement authority, and the CFPB may refer potential enforcement actions to that agency. Dodd-Frank Act §§ 1026, 1061(c).

⁵⁰ Dodd-Frank Act § 1089.

⁵¹ The FTC staff who have worked on these reports during the past thirty-three years include, but are not limited to: Gil Bosque, Clarke Brinckerhoff, Connie Brown, Rachele Brown, Kathleen Buffon, Julie Bush, Beverly Childs, Reilly Dolan, Roger Fitzpatrick, Lauren France, Kathy French, Seena Gressin, Nicholas Herrera, Karen Hickey, Ronald Isaac, Thomas Kane, Christopher Keller, Christopher Koegel, Cynthia Lamb, John LeFevre, Cindy Liebes, Thomas Pahl, Alan Reffkin, Alberto Rivera-Fournier, Mary Rushen, David Torok, Peggy Twohig, and Joel Winston.

APPENDIX A

Year	2010	2009
Total Debt Collection (“DC”) Complaints	140,036	119,609
DC Complaints as Percentage of All FTC Complaints ⁵²	27.0%	22.8%
Total Third-Party DC Complaints	108,997	88,326
Third-Party DC Complaints as Percentage of All FTC Complaints	21.0%	16.8%
Total In-House DC Complaints	31,952	32,200
In-House DC Complaints as Percentage of All FTC Complaints	6.2%	6.1%

⁵² The term “All FTC Complaints” refers to all industry-specific complaints received by the FTC in a given calendar year. It excludes identity theft and Do Not Call Registry complaints.

APPENDIX B

FDCPA Complaint Category	Total 2010 Complaints	Percentage of 2010 FDCPA Complaints	2010 Category Rank	Total 2009 Complaints	Percentage of 2009 FDCPA Complaints	2009 Category Rank
Repeated Calls	54,147	49.7%	1	41,063	46.5%	1
Misrepresent Debt Character, Amount, or Status	33,122	30.4%	2	27,483	31.1%	2
No Written Notice	32,477	29.8%	3	22,712	25.7%	3
Falsely Threatens Illegal or Unintended Act	27,554	25.3%	4	18,456	20.9%	4
Fails to Identify as Debt Collector	24,889	22.8%	5	17,370	19.7%	5
Repeated Calls to Third Parties	23,758	21.8%	6	16,961	19.2%	6
Falsely Threatens Arrest, Property Seizure	20,256	18.6%	7	11,515	13.0%	9
Uses Obscene, Profane, or Abusive Language	17,532	16.1%	8	14,337	16.2%	7
Improperly Calls Debtor At Work	17,008	15.6%	9	11,991	13.6%	8
Reveals Debt To Third Party	13,568	12.4%	10	10,761	12.2%	10
Calls Before 8:00 a.m., after 9:00 p.m., or at Inconvenient Times	12,871	11.8%	11	9,688	11.0%	12
Refuses to Verify Debt After Written Request	11,492	10.5%	12	10,164	11.5%	11
Collects Unauthorized Fees, Interest, or Expenses	10,614	9.7%	13	9,634	10.9%	13
Calls Debtor After Getting "Cease Communication" Notice	7,343	6.7%	14	7,426	8.4%	14
Uses or Threatens Violence	4,182	3.8%	15	2,519	2.9%	15