

FEDERAL TRADE COMMISSION
ANNUAL REPORT 2009:
FAIR DEBT COLLECTION
PRACTICES ACT



INTRODUCTION

The Federal Trade Commission (“Commission” or “FTC”) is pleased to submit to Congress this annual report summarizing the administrative and enforcement actions it has taken under the Fair Debt Collection Practices Act (“FDCPA” or “Act”), 15 U.S.C. §§ 1692-1692p, during the past year.¹ These actions are part of the Commission’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 Commission’s goal is to ensure compliance with the Act 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 Commission also appreciates the need to protect consumers from those debt collectors who engage in deceptive, unfair, and abusive collection practices.

The Commission is vested with primary enforcement responsibility under the FDCPA. However, it shares overall enforcement responsibility with other federal agencies.² In addition, consumers who believe they have been victims of violations of the FDCPA may seek relief in state or federal court.

¹ Section 815 of the FDCPA, 15 U.S.C. § 1692m, requires the Commission to report to Congress annually concerning the administration of its functions under the Act.

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

As in past years, the Commission took significant steps in 2008 to curtail illegal debt collection practices. This report presents an overview of the types of consumer complaints the FTC received in 2008, a summary of recent developments in Commission law enforcement related to debt collection, and a description of the FTC's 2008 consumer and industry education and policy initiatives.

Over the course of the past year, the Commission also has undertaken a comprehensive assessment of the debt collection industry and its practices. The debt collection industry has grown and changed significantly since the FDCPA was enacted 31 years ago. The FTC held a two-day public workshop in October 2007 to examine the industry and a number of current issues. The Commission invited consumer advocates, industry representatives, state and federal regulators, and other experts to provide information and their views on the collection industry and related policy issues. The FTC evaluated the information submitted in connection with the workshop, and it is issuing a separate report in conjunction with this report that recommends a number of changes to the debt collection legal framework, including specific proposed legislative changes for Congress to consider. That report, *Collecting Consumer Debts: The Challenges of Change – A Workshop Report*, is available at <http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf>.

CONSUMER COMPLAINTS

BACKGROUND

The FDCPA mandates that the Commission report on the level of industry compliance with the law. Historically, the Commission has received much of its information about the conduct of debt collectors directly from consumers through complaints they file with the FTC³ and through its enforcement work. The Commission uses complaints for general monitoring of the industry, target selection, and preliminary analysis which might, with further factual development, reveal or help prove a law violation.

Based on the Commission's experience, it is clear that many consumers never file a complaint with any organization other than the debt collector itself. Others complain only to the underlying 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 Commission enforces the Act. The total number of consumer complaints the

³ Consumers may file complaints with the Commission via its toll-free hotline (1-877-FTC-HELP), online complaint forms, or United States mail.

FTC receives therefore may understate the extent to which consumers have concerns about the practices of debt collectors.

On the other hand, the Commission acknowledges that not all of the debt collection practices about which consumers complain are law violations. Certainly, many consumers do complain of conduct that, if accurately described, violates the Act.⁴ The FTC, however, does not verify that 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 Act. For example, consumers sometimes complain that a debt collector will not accept partial payments on the same installment terms that the original lender provided 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 is not a violation of the FDCPA. Also, for example, if a consumer complains that a debt collector has threatened to file a civil lawsuit to collect a debt, the Commission cannot determine whether such conduct violates the FDCPA without investigating to ascertain whether the debt collector had the requisite intention to file suit.⁵

Despite their limitations, the Commission 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 receives as well as the types of practices about which consumers most frequently complain.

TOTAL NUMBER OF COMPLAINTS

Hundreds of thousands of consumers contact the FTC every year about all kinds of consumer protection issues. With respect to debt collection, the Commission 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

⁴ Much of the conduct, as alleged, also would violate Section 5 of the FTC Act as an unfair or deceptive act or practice in or affecting commerce.

⁵ Section 807(5) prohibits debt collectors from threatening "to take any action that cannot legally be taken or that is not intended to be taken," a prohibition that includes false threats of suit. 15 U.S.C. § 1692e(5).

data presented here include only consumer contacts that the CRC has identified as complaints. When this report refers to “complaints,” the term refers solely to complaints that consumers have filed directly with the Commission.

In 2008, consumer complaints to the FTC about third-party debt collectors⁶ (“FDCPA complaints”) increased in absolute terms, but decreased as a percentage of all complaints⁷ that consumers filed directly with the Commission. The FTC received 78,838 FDCPA complaints in 2008. This represents 18.9% of all complaints received directly from consumers in 2008.⁸ By comparison, in 2007,⁹ the FTC received 71,004 FDCPA complaints, representing 20.8% of the complaints received directly from consumers that year.

The Commission recognizes that third-party collectors contact millions of consumers each year. The number of consumer complaints the FTC receives about such collectors is therefore but a small percentage of the overall number of consumers contacted by debt collectors. Nevertheless, the Commission receives more complaints about the debt collection industry than any other specific industry.¹⁰

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

⁷ Last year, the Commission received 416,066 complaints directly from consumers about all industries, up from the 341,123 complaints received in 2007. As in past years, complaint numbers in this report do not include complaints about identity theft or violations of the Commission’s Do Not Call Registry.

⁸ Because absolute numbers of complaints fluctuate from year to year, this report analyzes collection industry trends by comparing the number of debt collection complaints each year to the number of all complaints the Commission has received. The percentage figures this analysis produces portray industry trends more accurately than would reliance on absolute numbers of complaints.

⁹ The 2007 complaint numbers identified in this year’s report differ slightly from those identified in last year’s report because, in connection with a continuous quality assurance review, the FTC staff reviewed and re-coded some complaints after the 2007 report was issued.

¹⁰ The FTC does not count any identity theft and Do Not Call Registry complaints that may involve debt collection in determining the total number of debt collection complaints. The agency does not consider identity theft complaints and Do Not Call Registry 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

Last year, the number of complaints the Commission received about creditors' in-house collectors increased somewhat, both in absolute terms and as a percentage of total complaints. In 2008, the FTC received 26,598 complaints about in-house collectors, representing 6.4% of all complaints the Commission received. In 2007, the Commission received 20,095 complaints about in-house collectors, representing 5.9% of all complaints received.

Combined, complaints about third-party debt collectors and in-house collectors in 2008 totaled 104,661 complaints¹¹ and accounted for 25.2% of all complaints the Commission received. This represents an increase in absolute terms from the 2007 figure, and a slight decrease as a percentage of total complaints: in 2007, the agency received 89,934 complaints, accounting for 26.4% of all complaints to the Commission.

In evaluating the complaints the Commission received in 2008 relative to those received in 2007, it is important to recognize that in June 2008 the agency substantially changed the way it processes complaints it receives over the Internet. The agency changed from a form-based web complaint system to an interactive, question-based web complaint system. Although both systems permit a single complaint to be coded for multiple law violations, this change in the FTC's web-based complaint system appears to have been associated with an increase in the number of law violations reported per complaint.¹² To evaluate possible changes in underlying debt collector behavior, it is

complaints similarly are excluded because the complaints capture the actions of a variety of industries that use telemarketing as a tool to contact consumers.

Note also that, based on the Commission's law enforcement experience, some identity theft and Do Not Call Registry complaints arise out of deceptive, unfair, or abusive debt collection practices. For example, a consumer may complain about identity theft if a debt collector is contacting him or her about a debt he or she does not owe. To that extent, the FDCPA complaint data may under-report complaints about debt collection practices.

¹¹ Some complaints are directed toward both third-party debt collectors and in-house creditor collectors. Thus, the total number of complaints against all debt collectors can be less than the sum of all third-party complaints and all in-house creditor complaints.

¹² For example, among all complaints received directly by the FTC on the web, the average number of law violations per complaint increased from 0.94 in 2007 and 0.93 in early 2008 to 1.97 after the FTC switched to the new web complaint system in June 2008. This increase is even greater for FDCPA complaints: the average number of law violations per web complaint increased from approximately 0.98 under the old system to 3.5 under the new web complaint system.

useful to compare complaint information during periods in 2007 and 2008 in which the Commission was using the same complaint system. Specifically, the Commission will supplement its annual complaint comparisons by comparing complaints received from January through May 2008 with complaints received from January through May 2007.

For the January through May period, total FDCPA complaints decreased slightly in 2008 as compared to the same period in 2007, from 31,124 FDCPA complaints in 2007 to 30,640 in 2008. For each category of complaints below, a similar comparison of the January through May data will appear in footnotes.

COMPLAINTS BY CATEGORY

In addition to evaluating the total number of complaints about third-party debt collectors, it also is instructive to consider the specific types of debt collection practices about which consumers complain. Because consumers frequently complain about more than one debt collection practice, the CRC historically has assigned many complaints more than one code. Thus, if one adds together all the complaints for each of the fourteen debt collection codes each year, the total exceeds the number of FDCPA complaints the FTC actually received in that year.

DEMANDING A LARGER PAYMENT THAN IS PERMITTED BY LAW: This category includes two different FDCPA law violation codes. First, the FDCPA prohibits debt collectors from misrepresenting the character, amount, or legal status of a debt.¹³ The types of complaints that fall in this category include, for example, reports that a collector is attempting to collect either a debt the consumer does not owe at all or a debt larger than what the consumer actually owes. Other complaints in this category state that collectors have sought to collect on debts that have been discharged in bankruptcy. In 2008, there was a decrease in the number and percentage of complaints of this law violation compared to 2007. This was the second most common category of FDCPA complaint in 2008: 32.5%, or 25,644 FDCPA complaints, described this conduct. In 2007, 38.6% of FDCPA complaints, or 27,434 complaints, reported that collectors engaged in these practices, making this the most common category of FDCPA complaint in that year.

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.”¹⁴ In 2008, 7.5% of FDCPA complaints, or 5,942 complaints, asserted that collectors demanded interest, fees, or expenses that were not owed (such as collection fees, late

¹³ Section 807(2), 15 U.S.C. § 1692e(2).

¹⁴ Section 808(1), 15 U.S.C. § 1692f(1).

fees, and court costs), significantly up from 2.3% of FDCPA complaints in 2007.¹⁵

HARASSING THE ALLEGED DEBTOR OR OTHERS: This complaint category encompasses four distinct law violation codes. Under the FDCPA, debt collectors may not harass consumers to try to collect on a debt.¹⁶ In 2008, 34.7% of FDCPA complaints the Commission received, or 27,382 complaints, claimed that collectors harassed the complainants by calling repeatedly or continuously. This was the most frequent law violation about which consumers complained during 2008. These figures are significantly up from 2007, when 19.7% of FDCPA complaints the Commission received, or 14,006 complainants, stated that collectors harassed them by calling repeatedly or continuously. Also in 2008, 10,610 complainants, or 13.5% of FDCPA complaints, claimed that a collector had used obscene, profane, or otherwise abusive language. Five thousand, four hundred seventy-three complaints, or 6.9% of 2008 FDCPA complaints, said 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. One thousand, one hundred eighty-six complaints, or 1.5% of 2008 FDCPA complaints, reported that collectors used or threatened to use violence if consumers failed to pay. As proportions of total FDCPA complaints, the complaint levels increased substantially from 2007 for all these categories.¹⁷

THREATENING DIRE CONSEQUENCES IF CONSUMER FAILS TO PAY: The FDCPA bars debt collectors from making threats as to what might happen unless the collector has the

¹⁵ For the January through May period, there was a decrease in the number and percentage of complaints received about misrepresenting the character, amount, or legal status of a debt in 2008 compared to that period during 2007. During those months in 2008, the Commission received 10,851 such complaints, amounting to 35.4% of FDCPA complaints, while during the same months in 2007, the FTC received 13,123 complaints, or 42.2% of FDCPA complaints. In addition, for the January through May period, there was a slight decrease in consumer complaints concerning collecting unauthorized amounts: from 770 complaints, or 2.5% of FDCPA complaints, in 2007, to 748 complaints, or 2.4% of FDCPA complaints, in 2008.

¹⁶ Section 806, 15 U.S.C. § 1692d.

¹⁷ For the January through May period, the percentage of FDCPA complaints claiming repeated or continual harassing calls in 2008 was 22.0%, up from 18.2% in 2007; the percentage of FDCPA complaints reporting use of obscene, profane, or otherwise abusive language was 8.7% in 2008, down from 9.5% in 2007; the percentage of complaints reporting that collectors called before 8:00 a.m., after 9:00 p.m., or at other inconvenient times was 1.9% in 2008, down from 2.1% in 2007; and the percentage of complaints reporting that collectors used or threatened to use violence remained unchanged at 0.3%.

legal authority and the intent to take the threatened action.¹⁸ Among other things, collectors 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 2008, 15% of FDCPA complaints, or 11,787 complainants, reported that third-party collectors falsely threatened a lawsuit or some other action that they could not or did not intend to take, more than double the 6.5% of complaints that reported the same conduct in 2007. Also in 2008, 8.1% of FDCPA complaints, or 6,404 complaints, alleged that such collectors falsely threatened arrest or seizure of property, which was treble the 2.7% of FDCPA complaints reporting such conduct in 2007.¹⁹

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.²⁰ By continuing to contact consumers at work under these circumstances, debt collectors may put the consumers in jeopardy of losing their jobs. In 2008, 10.3% of FDCPA complaints, or 8,092 complaints, related to calls to consumers at work, compared with only 5.9% of FDCPA complaints in 2007.²¹

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. Collectors calling to obtain location information also are prohibited from revealing that a consumer allegedly owes a debt.²²

Improper third-party contacts typically embarrass or intimidate the consumer who allegedly owes the debt and are a continuing aggravation to the third parties. Contacts with consumers' employers and co-workers about consumers' alleged debts also may jeopardize continued employment or prospects for promotion. Relationships between

¹⁸ Sections 807(4)-(5), 15 U.S.C. §§ 1692e(4)-(5).

¹⁹ For the January through May period, the percentage of FDCPA complaints for false threats of lawsuits or other unintended actions increased: it constituted 7.4% of FDCPA complaints in 2008, up from 6.6% of FDCPA complaints in 2007. Likewise, the percentage of FDCPA complaints during those months for false threats of arrest or seizure of property was 3.2% in 2008, up from 2.4% in 2007.

²⁰ Section 805(a)(3), 15 U.S.C. § 1692c(a)(3).

²¹ For the January through May period, the percentage of FDCPA complaints claiming impermissible calls to consumers at work was 6.3% in 2008, up from 6.0% in 2007.

²² Section 804(2), 15 U.S.C. § 1692b(2).

consumers and their families, friends, or neighbors also may suffer from improper third-party contacts. 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.

In 2008, 8.8% of all FDCPA complaints, or 6,949 complaints, reported that debt collectors illegally disclosed a purported debt to a third party, up considerably from 3.8% of FDCPA complaints in 2007. The third parties contacted include employers, relatives, children, neighbors, and friends. This past year, 16.1% of complaints, or 12,695 complainants, claimed that collectors called a third party repeatedly to obtain location information about the complainant,²³ up from 13.2% of FDCPA complaints in 2007.²⁴

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.²⁵ Many consumers who do not receive the notice are unaware that they must dispute their debts in writing if they wish to obtain verification of the debts. Last year, 15.7% of the FDCPA complaints, or 12,365 complaints, reported that collectors did not provide the required notice, up considerably from 3.1% of all FDCPA complaints in 2007.²⁶

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

²³ Section 804(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.

²⁴ For the January through May period, the percentage of FDCPA complaints in 2008 related to third parties remained relatively unchanged from 2007 levels. The percentages of FDCPA complaints during those months reporting that a collector impermissibly disclosed a debt to a third party were 3.8% in 2008 and 3.7% in 2007. In addition, the percentage of FDCPA complaints stating that collectors called a third party repeatedly to obtain location information was 13.0% in both years.

²⁵ Section 809(a), 15 U.S.C. § 1692g(a).

²⁶ For the January through May period, the percentage of FDCPA complaints in 2008 claiming that collectors did not provide the required notice was 3.4%, up slightly from 3.1% in 2007.

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, 8.0% of all FDCPA complaints, or 6,340 complainants, claimed that collectors failed to verify disputed debts, up from 2.6% of all FDCPA complaints in 2007.²⁸

CONTINUING TO CONTACT CONSUMER AFTER RECEIVING “CEASE COMMUNICATION” NOTICE: The FDCPA requires debt collectors to cease all communications with a consumer about an alleged debt if the consumer communicates in writing that he or she wants all such communications to stop or that he or she refuses to pay the alleged debt.²⁹ This “cease communication” notice does not prevent collectors or creditors from filing suit against the consumer, but it does stop collectors from calling the consumer or sending dunning notices. In 2008, 6.3% of FDCPA complaints, or 4,992 complainants, reported that collectors ignored consumers’ “cease communication” notices and continued their collection attempts, up from 4.9% of total FDCPA complaints in 2007.³⁰

ENFORCEMENT

The FTC’s debt collection program has three prongs. The first prong is vigorous law enforcement. 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 Commission proceeds in one of two ways. Through its own attorneys, the FTC can file suit in federal court seeking preliminary and permanent injunctive relief, restitution for consumers, disgorgement of ill-gotten gains, and other

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

²⁸ For the January through May period, the percentage of FDCPA complaints reporting a failure to verify a disputed debt in 2008 was 2.9%, up slightly from 2.7% of FDCPA complaints in 2007.

²⁹ Section 805(c), 15 U.S.C. § 1692c(c).

³⁰ For the January through May period, the percentage of FDCPA complaints reporting continued collector contact despite a consumer’s sending a “cease contact” notice in 2008 was 2.7%, down from 3.2% in 2007.

ancillary relief under Section 13(b) of the FTC Act.³¹ Alternatively, the Commission 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 Act.

The Commission currently is conducting a number of non-public investigations of debt collectors to determine whether they have engaged in violations of the FDCPA or the FTC Act. The agency has also filed and settled a number of public law enforcement actions. Recently, the Commission surpassed its 2007 record for the largest amount of civil penalties obtained in a single FDCPA case, obtaining \$2.25 million from a company and its principal. In addition, between March 2008 and February 2009, the Commission (or the Department of Justice on its behalf) filed two new law enforcement actions alleging FDCPA violations; filed one new law enforcement action alleging Section 5 claims against creditors collecting debts; and announced a settlement in a previously filed case.

In a recent settlement, the Commission obtained the largest amount of civil penalties ever in an FDCPA case.³² Academy Collection Service, Inc. (“Academy”) and its owner, Keith Dickstein, agreed in November 2008 to pay \$2.25 million in civil penalties to settle charges that they violated the FDCPA and Section 5 of the FTC Act.³³ The complaint alleged that those defendants and two other corporate officer defendants, Albert Bastian and Edward Hurt III, had “formulated, directed, participated in, controlled, or had the authority to control” the following acts by Academy collectors: (1) misleading, threatening, and harassing consumers; (2) depositing postdated checks early;

³¹ Section 13(b), 15 U.S.C. § 53(b), authorizes the Commission to sue in federal district court to obtain a preliminary injunction against entities that the FTC has reason to believe are violating any law the Commission enforces. The court may grant a preliminary injunction or a temporary restraining order if the FTC shows that, weighing the equities and considering the Commission’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), 15 U.S.C. § 53(b)(2).

³² Previously, the largest civil penalty judgment in an FDCPA case was \$1.375 million, entered in *United States v. LTD Financial Services*, No. H-07-3741 (S.D. Tex. Nov. 5, 2007). See Press Release, Federal Trade Commission, Nationwide Debt Collector Will Pay \$1.3 Million to Settle FTC Charges (Nov. 6, 2007), <http://www2.ftc.gov/opa/2007/11/debtcol.shtm>.

³³ *United States v. Acad. Collection Serv., Inc.*, No. 2:08-CV-1576 (D. Nev. Nov. 18, 2008). See Press Release, Federal Trade Commission, Nationwide Debt Collector Will Pay \$2.25 Million to Settle FTC Charges (Nov. 21, 2008), <http://www.ftc.gov/opa/2008/11/academy.shtm>.

(3) falsely threatening or implying that the company would garnish consumers' wages, seize or attach their property, or initiate lawsuits against the consumers if they failed to pay; (4) making unfair and unauthorized withdrawals from consumers' bank accounts; (5) communicating impermissibly with third parties about consumers' alleged debts; and (6) engaging in harassing or abusive behavior, such as threatening the use of physical violence, using obscene or profane language, and repeatedly or continuously causing the telephone to ring. In addition to requiring Academy and its owner to pay civil penalties, the consent decree enjoins them from violating the FDCPA in the future and requires them to clearly and conspicuously notify consumers of their rights under the FDCPA. Litigation in this case continues against defendants Bastian and Hurt.

In May 2008, the Commission settled an action filed in June 2007 against Tono Records and related companies and individuals whose representatives allegedly victimized Spanish-speaking consumers nationwide by posing as debt collectors seeking payments for purported debts that consumers did not owe. Because the defendants presented themselves as if they were third-party debt collectors, they were subject to the FDCPA as well as the FTC Act. The defendants were charged with violating the FTC Act and the FDCPA by: (1) falsely claiming that a debt is owed; (2) falsely claiming to be, or to represent, an attorney; and (3) falsely threatening legal action, arrest, imprisonment, property seizure, or garnishment of wages. Other FDCPA violations alleged included attempting to collect an amount of debt not authorized by contract or permitted by law; harassing consumers; and failing to inform consumers, within five days of their initial communication with them, of their right to dispute and obtain verification of their debt and the name of the original creditor. The settlement imposed a \$1.19 million judgment against the defendants and permanently enjoined them from violating the FTC Act or the FDCPA.

In September 2008, the FTC settled charges that EMC Mortgage Corporation and its parent, The Bear Stearns Companies, LLC, violated the FDCPA and Section 5 of the FTC Act, among other statutes, in conjunction with servicing and collecting on mortgage loans, including debts that were in default when EMC obtained them.³⁴ Among other practices, the complaint alleged the defendants had: (1) misrepresented the amounts consumers owed; (2) assessed and collected unauthorized fees; and (3) misrepresented that they possessed and relied upon a reasonable basis to substantiate their representations about consumers' mortgage loan debts. The complaint further alleged the defendants to have made harassing collection calls; falsely represented the character,

³⁴ *Federal Trade Commission v. EMC Mortgage Corp.*, No. 4:08-cv-338 (E.D. Tex. Sept. 9, 2008). See Press Release, Federal Trade Commission, Bear Stearns and EMC Mortgage to Pay \$28 Million to Settle FTC Charges of Unlawful Mortgage Servicing and Debt Collection Practices (Sept. 9, 2008), <http://www2.ftc.gov/opa/2008/09/emc.shtm>.

amount, or legal status of consumers' debts; and used false representations and deceptive means to collect, including falsely representing to consumers with "Caller ID" service that defendants were calling from a consumer's local area code. The settlement required the defendants to pay \$28 million in consumer redress, barred them from future law violations, and imposed new restrictions on their business practices. In particular, it required EMC to establish and maintain a comprehensive data integrity program to ensure the accuracy and completeness of data and other information about consumers' loan accounts before servicing those accounts.

In November 2008, the Commission and the State of Nevada charged 10 related Internet payday lenders and their principals, mainly based in the United Kingdom, with violating the FTC Act and other statutes by, among other things, using abusive and deceptive debt collection tactics.³⁵ In collecting on payday loans, the creditor defendants were alleged to have used unfair and deceptive tactics, including: (1) falsely threatening consumers with arrest or imprisonment; (2) falsely claiming that consumers were legally obligated to pay the debts where they were not; (3) making false threats to take legal action that they could not take; (4) repeatedly calling consumers at work; (5) using abusive and profane language; and (6) disclosing consumers' purported debts to third parties. Preliminary injunctions have been entered against the U.S. defendants.³⁶

In December 2008, the Commission settled an action against subprime credit card marketer CompuCredit Corporation and its debt collection subsidiary, Jefferson Capital Systems, LLC ("Jefferson Capital").³⁷ In addition to allegations that the defendants made deceptive claims in marketing credit card products, the complaint alleged that Jefferson Capital violated the FTC Act and the FDCPA by: (1) misrepresenting that upon a consumer's acceptance of a new "pre-approved" credit card, the consumer would immediately be issued a credit card and that Jefferson Capital would cause the

³⁵ *Federal Trade Commission and State of Nevada v. Cash Today, Ltd.*, No. 3:08-CV-00590 (D. Nev. Nov. 6, 2008). See Press Release, Federal Trade Commission, FTC Charges Internet Payday Lenders with Failing to Disclose Key Loan Terms and Using Abusive and Deceptive Collection Tactics (Nov. 12, 2008), <http://www2.ftc.gov/opa/2008/11/cashtoday.shtm>.

³⁶ *Federal Trade Commission and State of Nevada v. Cash Today, Ltd.*, No. 3:08-CV-00590 (D. Nev. Jan. 6, 2009 (numerous corporate defendants); Jan. 12, 2009 (individual defendant Jim Harris)).

³⁷ *Federal Trade Commission v. CompuCredit Corp.*, No. 1:08-CV-1976 (N.D. Ga. Dec. 19, 2008). See Press Release, Federal Trade Commission, Subprime Credit Card Marketer to Provide At Least \$114 Million in Consumer Redress to Settle FTC Charges of Deceptive Conduct (Dec. 19, 2008), <http://www.ftc.gov/opa/2008/12/compucredit.shtm>.

consumer's pre-existing debt balance to immediately transfer to that card and be reported to consumer reporting agencies as "paid in full;" (2) using obscene or profane language in debt collection; and (3) causing a telephone to ring or engaging a person in telephone conversation repeatedly with the intent to annoy, abuse, or harass a person at the number called. The settlement prohibits Jefferson Capital from engaging in the challenged debt collection conduct and requires it to comply with the FDCPA.

CONSUMER AND INDUSTRY EDUCATION

The Commission's consumer and industry education efforts are the second prong of the FDCPA program. Consumer education informs consumers nationwide of their rights under the FDCPA and the requirements that the Act places on debt collectors. With this knowledge, consumers can determine whether collectors are violating the FDCPA and exercise their rights under the statute. An informed public that enforces its rights under the FDCPA operates as a powerful mechanism for deterring law violations. Industry education informs collectors on various FDCPA issues. With this knowledge, industry members can take all necessary steps to comply with the Act.

TOOL FOR BOTH CONSUMERS AND INDUSTRY: The Staff Commentary on the FDCPA is useful in both the consumer and industry education initiatives. The Commentary, issued in 1988, provides the staff's detailed analysis of every section of the Act and gives guidance to consumers, their attorneys, courts, and members of the collection industry.³⁸ The Commentary is available on the Commission's FDCPA web page, located at <http://www.ftc.gov/os/statutes/fdcpajump.shtm>. Members of the public accessed the web page 223,032 times in 2008. The number of times this page was accessed averaged approximately 7,000 times per month from January through March, and then increased substantially to approximately 22,000 times per month for the remainder of 2008.

TOOLS SPECIFICALLY FOR CONSUMERS: The Commission 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, including a "Facts for Consumers" brochure entitled "Fair Debt Collection," which explains the FDCPA in plain language.³⁹ In 2008, the Commission distributed 110,900 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

³⁸ 53 Fed. Reg. 50,097 (1988).

³⁹ The Commission's "Fair Debt Collection" brochure is accessible at <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre18.shtm>.

Bureaus, and other sources of consumer assistance. In addition, online users accessed the brochure on the Commission's website 386,647 times in 2008.

The Commission also publishes Spanish-language versions of the "Fair Debt Collection" brochure and several related consumer brochures, including "Credit and Your Consumer Rights" and "Knee Deep in Debt."⁴⁰ The Commission distributed 10,900 paper copies of the Spanish version of "Fair Debt Collection" in 2008. Online users accessed the brochure in Spanish 9,333 times in 2008.

Another FTC alert addresses the collection of debts that are so old that creditors and debt collectors may no longer sue to collect them. In 2008, online users accessed that consumer alert, "Time-Barred Debts," 43,934 times in either English or Spanish.⁴¹ The Commission issued the alert in 2004 in response to consumer inquiries, many of which arose in the wake of the FTC's case against Capital Acquisition & Management Company.⁴²

An additional consumer education publication entitled, "Mortgage Payments Sending You Reeling?"⁴³ provides consumers with important information about taking proactive steps when their mortgage payments increase, or when they have fallen or anticipate falling behind on payments. In 2008, 74,700 English and 5,600 Spanish copies were distributed to consumers. Online users accessed the brochure, either in English or in Spanish, 101,729 times in 2008.

⁴⁰ The Spanish-language version of "Fair Debt Collection" ("Cobranza Imparcial de Deudas") is accessible at <http://www.ftc.gov/bcp/online/spanish/credit/s-fdc.shtm>; "Credit and Your Consumer Rights" ("El Crédito y Sus Derechos como Consumidor") is accessible at <http://www.ftc.gov/bcp/online/spanish/credit/s-crdright.shtm>; and "Knee Deep in Debt" ("Endeudado Hasta el Cuello") is accessible at <http://www.ftc.gov/bcp/online/spanish/credit/s-kneedeep.shtm>.

⁴¹ The Commission's "Time-Barred Debt" ("Deudas Prescriptas") consumer alert is accessible at <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt144.shtm> in English, and at <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/salt144.shtm> in Spanish.

⁴² *Federal Trade Commission v. Capital Acquisitions & Mgmt. Corp.*, No. 04-C-7781 (N.D. Ill. Nov. 30, 2006). See Press Release, Federal Trade Commission, CAMCO To Pay \$1 Million to Settle Unfair, Deceptive Debt Collection Practices (Dec. 6, 2006), <http://www.ftc.gov/opa/2006/12/camco.shtm>.

⁴³ The brochure is accessible in English at <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea04.shtm> and is available in Spanish at <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/srea04.shtm>.

Second, the Commission provides consumer education through its Consumer Response Center, whose highly trained contact representatives respond to telephone calls and correspondence (in both paper and electronic form) each weekday from consumers. 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 Commission relate to debt collection. For those consumers who complain about the actions of third-party collectors, the CRC contact representatives provide essential information about the FDCPA's self-help remedies, 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.⁴⁴

Third, the Commission extends the reach of its consumer education initiatives through public speaking engagements to groups across the country. In all types of venues, including local talk shows and consumer fairs, the FTC informs consumers of their rights under the FDCPA and other consumer finance statutes, and responds to a wide range of questions and concerns.

TOOLS SPECIFICALLY FOR THE COLLECTION INDUSTRY: The Commission also delivers speeches and participates in panel discussions at industry conferences throughout the year. In addition, the FTC 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 Commission also provides interviews to general media and trade publications. These interviews serve as yet another vehicle to make positions known to the nation's debt collectors.

ADVISORY OPINIONS: The Commission, where appropriate, responds to requests for formal advisory opinions regarding the application or interpretation of the FDCPA.⁴⁵ In May 2008, the FTC issued an advisory opinion regarding whether debt collectors in the foreclosure context would violate the Act if they communicate with consumers about

⁴⁴ 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 Commission's website, located at <http://www.ftc.gov>.

⁴⁵ The FTC issues advisory opinions pursuant to Sections 1.1-1.4 of the Commission's Rules of Practice, 16 C.F.R. §§ 1.1-1.4.

possible settlement options that may assist consumers to avoid foreclosure.⁴⁶ The FTC's advisory opinion concluded that debt collectors do not commit a *per se* violation of the FDCPA when they provide such information to consumers, provided that the information is truthful and non-misleading.

RESEARCH AND POLICY INITIATIVES

The third prong of the Commission's FDCPA enforcement program is research and policy initiatives. As mentioned above, the FTC has undertaken a comprehensive assessment of the debt collection industry and its legal framework. In connection with a two-day public workshop held in October 2007, the Commission examined important changes in the debt collection industry since the 1977 enactment of the FDCPA (most centrally, those involving the collection marketplace and technological advances), as well as the chief current concerns of consumers and industry. The Commission solicited public comments and research in connection with this endeavor, and carefully reviewed all of the information submitted in connection with the workshop.

These efforts have culminated in the Commission's issuance of a workshop report in conjunction with this report.⁴⁷ The workshop report offers recommendations addressing several areas central to the debt collection process: the flow of information in the debt collection system; new technologies; collection litigation and arbitration; and FDCPA rulemaking and enforcement. Such recommendations include specific legislative proposals for the consideration of the Congress, designed to better protect consumers while not overburdening industry. The Commission plans to continue its policy work, in particular by hosting regional roundtables relating to debt collection litigation and arbitration issues over the course of 2009.

CONCLUSION

Through its debt collection program of enforcement, education, and policy initiatives, the Commission encourages collectors who comply with the law to continue to do so, and provides strong incentives for those who are not complying to conform their future practices with the dictates of the law. Vigorous federal and state law enforcement in this area is essential to stop those debt collectors who fail to follow the FDCPA.

⁴⁶ The text of the advisory opinion can be accessed at <http://www1.ftc.gov/os/2008/03/P084801fdcpa.pdf>.

⁴⁷ The Commission's report, *Collecting Consumer Debts: The Challenges of Change – A Workshop Report*, is available at <http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf>.