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

Office of the Chairman

March 19, 1999

The Honorable Albert Gore, Jr.
President of the Senate
United States Senate
Washington, D.C. 20510

Re: Twenty-First Annual Report to Congress Pursuant to Section 815(a) of the Fair Debt Collection Practices Act

Dear Mr. President:

The Federal Trade Commission ("Commission") is required by Section 815(a) of the Fair Debt Collection Practices Act ("FDCPA" or "Act"), 15 U.S.C. §§ 1692-1695o, to submit a report to Congress each year summarizing the administrative and enforcement actions taken under the Act over the preceding twelve months. These actions are part of the Commission's ongoing effort to curtail abusive, deceptive, and unfair debt collection practices in the marketplace. Such practices have been known to cause various forms of consumer injury, including emotional distress, invasions of privacy, and the payment of amounts that are not owed, and can severely hamper consumers' ability to function effectively at work. Although the Commission is vested with primary enforcement responsibility under the Act, overall enforcement responsibility is shared by other federal agencies. In addition, consumers who believe they have been victims of statutory violations may seek relief in state or federal court.

This report presents an overview of the types of consumer complaints received by the Commission over the past year, a summary of the Commission's consumer and industry education initiatives this year, and a summary of the Commission's debt collection enforcement cases that became public in 1998. The report also contains four recommendations for changes to the FDCPA that the Commission believes will improve the statute's clarity and its effectiveness as a law enforcement tool. These recommendations have been included in previous annual reports. Finally, the report outlines the activities of the other federal agencies responsible for administering and enforcing the Act with regard to entities under their respective jurisdictions.

INTRODUCTION

Although the Fair Debt Collection Practices Act prohibits abusive, deceptive, and otherwise improper collection practices, it permits reasonable collection efforts that promote repayment of legitimate debts. Thus, the Commission's goal is to ensure compliance with the Act without unreasonably impeding the collection process. The Commission recognizes that the

timely payment of debts is important to creditors and that the debt collection industry offers useful assistance toward that end. The Commission also appreciates the need to protect consumers from those debt collectors who engage in abusive and unfair collection practices.

Congress enacted the FDCPA in an effort to balance the debt collector's right to recover just obligations with the consumer's right to protection from harassment, deceit, invasions of privacy, interference with the employment relationship, and other abusive collection tactics. Many members of the debt collection industry supported this legislation when it was proposed, and most debt collectors now conform their practices to the standards the Act imposes. The Commission staff continues to work with industry groups to clarify ambiguities in the law and to educate the industry and the public regarding the Act's requirements.

CONSUMER COMPLAINTS RECEIVED BY THE COMMISSION

Most of the Commission's information about how debt collectors are complying with the Act comes from consumers. Occasionally, however, debt collectors contact us to express concern about allegedly violative practices of competitors, because they fear that such practices may cause them to lose business to collectors who violate the law. Complaints to the Commission about third-party debt collectors ranked second only to complaints about credit bureaus in 1998. We continue to believe that the number of consumers who contact the Commission represents a relatively small percentage of the total number of consumers who actually encounter problems with debt collectors.[1] Experience indicates that some consumers may not even be aware that the Commission enforces the Act or that the conduct they have experienced violates the Act.

Not all consumers who complain to the Commission about collection problems have experienced law violations. In some cases, for example, consumers 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, in these circumstances, be frustrating to the consumer, such a demand is not a violation of the Act. Many consumers, however, complain of conduct that, if accurately described, clearly violates the Act. Some of the allegations that we hear most frequently are the following:

Harassing the alleged debtor or others: This was the complaint we heard most frequently in 1998. Many of these consumers complained that a debt collector was harassing them by calling periodically. Infrequent contacts, such as once a week or once a month, certainly might induce stress in a consumer but would not be “harassment” under the FDCPA. Other consumers,

---

[1] We cannot determine the extent to which abusive debt collection practices in general are represented by the complaints the Commission receives. Based on our enforcement experience, we know that many consumers never complain, while others complain to the underlying creditor or to other enforcement agencies.

however, described collection tactics that, if described accurately, clearly do constitute "harassment." Such apparent violations ranged from collectors calling several times within a very short period to collectors screaming obscenities and racial slurs, or even threatening violence to the consumers or their family members.

Failing to send required consumer notice: The FDCPA requires that debt collectors send consumers a written notice that includes, among other things, the amount of the debt, the name of the creditor to whom the debt is owed, and a statement that, if within thirty days of receiving the notice the consumer disputes the debt in writing, the collector will obtain verification of the debt and mail it to the consumer.[2] Many consumers complained that collectors who contacted them did not provide such a notice. Without the notice, these consumers did not know how much the debt collector was demanding or to which creditor they allegedly owed a debt. Consumers who did not receive the notice also did not know they had to send their dispute in writing if they wished to obtain verification of the debt. Moreover, because many of these collectors even refused to give consumers the name of their company, the consumers could not complain to law enforcement agencies or Better Business Bureaus.

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

Calling consumer's place of employment: A debt collector may not contact a consumer at work if the collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such contacts.[3] Many consumers complained that debt collectors continued to call them at work after they or their colleagues specifically told the collector that such calls were prohibited by the consumer's employer. By continuing to contact consumers at work in these circumstances, debt collectors may put the consumers in jeopardy of losing their jobs.

Revealing alleged debt to third parties: We continue to receive complaints about unauthorized third-party contacts. Consumers' employers, relatives, children, neighbors, and friends have been contacted and informed about consumers' debts. Such contacts typically embarrass or intimidate the consumer and are a continuing aggravation to third parties. Contacts with consumers'

---

[2] Section 809(a), 15 U.S.C. § 1692g(a). The collector need not send such a written notice if the collector's initial communication with the consumer was oral and the consumer received this information in the initial communication.

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

employers and co-workers about their alleged debts jeopardize continued employment or prospects for promotion. Relationships between consumers and their families, friends, or neighbors may also 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. Third-party contacts for any purpose other than obtaining information about the consumer's location violate the Act, unless authorized by the consumer or unless they fall within one of the Act's exceptions.

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 wants all such communications to stop or that he refuses to pay the alleged debt.[4] 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. Many consumers complained that collectors ignored their "cease communication" notices and continued their aggressive collection attempts.

Threatening dire consequences if consumer fails to pay: Another source of complaints involves the use of false or misleading threats of what might happen if a debt is not paid. These include threats to institute civil suit or criminal prosecution, garnish salaries, seize property, cause job loss, have a consumer jailed, or damage or ruin a consumer's credit rating. Some of these practices, such as those involving false threats of the consequences of nonpayment, are specifically prohibited by the Act.[5] Other practices, such as the threat to cause a consumer's arrest, violate the Act only if the collector does not have the legal authority or intent to accomplish the promised result.[6]

Demanding a larger payment than is permitted by law: The FDCPA prohibits debt collectors from (1) misrepresenting the amount that a consumer owes on a debt[7] and (2) collecting any amount unless it is "expressly authorized by the agreement creating the debt or permitted by law."[8] The Commission received a large number of complaints in 1998 about debt collectors that attempted to collect amounts far higher than the amounts owed. In particular, complaints concerning medical and hospital debts are becoming more prevalent. Some consumers allege that they never receive a final statement from the medical service provider and their accounts are forwarded, without further notice, to collection agencies which then attempt to charge exorbitant interest, late fees and other collection costs in addition to the original debt. Some of these

---

[4] Section 805(c), 15 U.S.C. § 1692c(c).

[5] Section 807(5), 15 U.S.C. § 1692e(5).

[6] Section 807(4), 15 U.S.C. § 1692e(4).

[7] Section 807(2)(A), 15 U.S.C. § 1692e(2)(A).

[8] Section 808(1), 15 U.S.C. § 1692f(1).

charges exceed the debt itself. Finally, consumers are complaining in increasing numbers that debt collectors are debiting their bank accounts without their knowledge or permission and that banks are permitting the practice on the erroneous assumption that consumers have authorized the transfers. Collectors may be obtaining consumers' account numbers from checks consumers have written in the past, from current checks written on accounts with insufficient funds, or from consumers themselves on false pretenses. While it is true that some transfers are supported by proper authorization and are, in fact, more convenient for both consumer and debt collector alike, it appears that some abuse of the practice is occurring.

Complaints about creditors' in-house collectors: The Commission continued to receive many complaints about creditors collecting their own debts. Because creditors are not generally covered by the FDCPA, some in-house collectors use no-holds-barred collection tactics in their dealings with consumers. While the Commission cannot pursue such creditor employees under the FDCPA, it can do so under the Federal Trade Commission Act. The agency has brought such cases in the past and will continue to do so as appropriate cases present themselves in the future.

CONSUMER AND INDUSTRY EDUCATION: The First Prong of the FDCPA Program

The Commission's consumer education initiative and business education initiative combine to form the first prong of the Commission's FDCPA program. The other prong is the Commission's enforcement initiative, discussed below. The consumer education initiative informs consumers throughout the nation of their rights under the FDCPA and the requirements that the Act places on debt collectors. With this knowledge, consumers can identify when 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, informal enforcement mechanism. The industry education initiative informs collectors of the Commission staff's positions on various FDCPA issues. With this knowledge, industry members can then take all necessary steps to comply with the Act.

Tools for both consumers and industry: Two of the Commission's educational tools are useful in both the consumer education initiative and the industry education initiative. The Commission staff's Commentary on the Fair Debt Collection Practices Act ("Commentary"),[9] was issued in 1988 and provides the staff's detailed analysis of every section of the Act. The comments serve as valuable guidance for consumers, their attorneys, courts, and members of the collection industry.[10] The Commentary superseded staff opinions issued prior to its publication, but staff members have issued many additional opinion letters since that date. Like the Commentary, these letters provide consumers, attorneys, courts and the collection industry with the Commission

---

[9] 53 Fed. Reg. 50,097 (1988).

[10] A small number of the staff's Commentary positions are now inaccurate because of a minor amendment to the statute and several recent court decisions.

staff's views on knotty statutory interpretations. In October 1998, both of these educational tools -- the Commentary and the staff opinion letters -- were added to the Commission's new FDCPA web page, located at "www.ftc.gov/os/statutes/fdcpajump.htm." To date, the web page has been viewed by 13,227 online users, which gives great confidence that this important information is reaching its intended audiences.

Tools specifically for consumers: The Commission's "Facts for Consumers" brochure explains the FDCPA in the language of a layperson. In 1998, the Commission dispersed more than 100,000 of these brochures to consumers through non-profit consumer groups, state consumer protection agencies, Better Business Bureaus, and other sources of consumer assistance. Like the Commentary and the staff opinions, the brochure is available from the Commission's web site. The brochure was viewed by online users more than 23,000 times in 1998. Another extremely valuable component of the Commission's consumer education initiative is the Consumer Response Center ("CRC"), whose highly trained contact representatives respond to telephone calls and correspondence (in both paper and electronic form) each day from consumers concerning a wide array of issues. As noted above, a large percentage of these consumer contacts relate to debt collection. For those consumers who contact the CRC seeking only information about the FDCPA, the contact representatives answer any urgent questions and then mail out the Facts for Consumers or refer the consumer to the web page to find it there. As noted above, however, many consumers who contact the CRC complain about specific third-party debt collectors. For these consumers, the CRC contact representatives provide essential information about the FDCPA's self-help remedies, such as the right to demand that the collector cease all communications about the debt and the right to obtain written verification of the debt. The contact representatives also record information about debt collectors who are the subjects of complaints, enabling the Commission to track patterns of complaints for use in its enforcement initiative described below. A third component of the consumer education initiative stems from the public speaking that Commission staff members do to groups of consumers across the country. From local talk shows, to military bases, to county fairs, staff members inform consumers of their rights under a number of consumer-finance statutes. Almost invariably, these presentations include a discussion of the FDCPA.

Tools specifically for the collection industry: Commission staff also deliver speeches and participate in panel discussions at industry conferences throughout the year. Several recent presentations have focused on debt collectors' new responsibilities under the amended Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681-1681u. Congress amended the FCRA in response to, among other things, complaints about the accuracy of information in credit reports. Some of the amendments are applicable to debt collectors. Section 623 of the amended FCRA imposes duties upon "furnishers" of credit information, including all debt collectors who report information to consumer reporting agencies. For example, furnishers may not report information that they know is inaccurate; in addition, they have a duty to correct information previously reported if it is subsequently found to be wrong. If a furnisher receives notice of a dispute from a consumer reporting agency about information reported by the furnisher, the furnisher must conduct an investigation to determine whether the information reported was correct and report the results of the investigation to the consumer reporting agency within thirty days, even if the dispute is

received beyond the verification period found in the FDCPA. Various remedies are available to consumers, states, and the Commission for failure to comply.

In addition to the presentations at industry conferences, Commission staff maintain an informal communications network with the leading trade associations, which permits staff members to exchange information and ideas and discuss problems as they arise. Commission staff members also provide interviews to trade publications. These interviews provide yet another vehicle for staff to make their positions known to the nation's debt collectors.

ENFORCEMENT: The Second Prong of the FDCPA Program

Every consumer who learns which debt collection tactics are illegal and asserts their FDCPA self-help rights assists the Commission in policing the collection industry. Every debt collector who hears or reads about FDCPA compliance issues is that much more likely to comply with the Act without the need for a Commission investigation. Thus, both consumer education and industry education encourage voluntary compliance by debt collectors and conserve the Commission's enforcement resources.

There are times, however, when it appears to Commission staff, based often on complaints from consumers, state or local agencies, or other industry members, that a debt collector is not complying with the statute voluntarily. Accordingly, the Commission's FDCPA program includes investigations of certain debt collectors. If an investigation reveals evidence of continuing FDCPA violations, staff contacts the debt collector and attempts to negotiate a settlement before recommending that the Commission issue a complaint. If a settlement is reached and the Commission accepts the staff's recommendation to approve a proposed consent order, the Commission delivers the proposed order and accompanying complaint to the Department of Justice, which files them in the appropriate federal district court.[11] If the debt collector will not agree to an appropriate settlement that remedies the alleged violations, the Commission requests that the Department of Justice file suit in federal court on behalf of the Commission, usually seeking a civil penalty and injunctive relief that would prohibit the collector from continuing to violate the Act. On occasion, debt collectors agree to an appropriate settlement only after suit has been brought.

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

In October 1998, the Commission announced a settlement in which ***Nationwide Credit, Inc.*** ("NCI") agreed to pay a $1 million civil penalty, the largest the Commission has ever obtained in a debt collection case, for widespread FDCPA violations. The complaint alleged that NCI harassed consumers, made false and misleading representations, failed to send required

[11] Consent orders are for settlement purposes only and do not constitute an admission by the debt collector that it violated the law.

validation notices, failed to verify debts when requested to do so by consumers, and revealed debts to third parties impermissibly. Many of the alleged violations are the same as those addressed in a settlement with the Commission that NCI entered into in 1992; the company paid a civil penalty of $100,000 at that time. As part of the new settlement, NCI is developing a comprehensive consumer complaint and resolution program and is revamping its training program. NCI must submit a draft syllabus and the materials to be used during the training program to Commission staff for approval.

In July 1998, the Commission reached a settlement with the principal of ***Lundgren & Associates, P.C.***, a collection law firm that allegedly made baseless threats of suit and misrepresented the amount that the firm was entitled to collect under state law. Under the settlement, the principal is prohibited from violating any provisions of the FDCPA in the future and must include, in any written communication to a consumer from whom he is collecting a debt, two disclosures that explain the consumer's rights under the FDCPA.

In a January 1998 complaint, the Commission alleged that ***Capital City Mortgage Corporation*** and its owner, Thomas K. Nash, among other things, violated the FDCPA by falsely representing that letters from the company's in-house attorney were from a third-party collector, making false and misleading representations when collecting loan payments, and engaging in unfair or unconscionable debt collection practices. The case is now in the discovery phase, and no trial date has been set. The Commission is seeking injunctive relief for the FDCPA violations.

In August 1998, ***General Electric Capital Corporation*** ("GE Capital") and its wholly-owned subsidiary, Montgomery Ward Credit Corporation, reached an agreement with the Commission over charges that GE Capital regularly sought out consumers who filed for bankruptcy protection to persuade them to "reaffirm" credit account debts and falsely represented that these "reaffirmation agreements" would be filed with the bankruptcy courts, as required by law. In November 1998, the Commission reached an agreement with the ***May Department Stores Company*** ("May") that settled similar allegations. Although the FDCPA does not apply to creditors such as GE Capital and May collecting their own debts, the Commission alleged that these practices violated Section 5(a) of the Federal Trade Commission Act. The Commission charged that in many cases either (1) GE Capital and May did not file the agreements or (2) the bankruptcy courts did not approve the agreements. Under either scenario, the Commission alleged, the reaffirmation agreements were not legally binding on consumers, but GE Capital and May nonetheless collected many of these debts unfairly. Under the two agreements, GE Capital agreed to make full refunds totaling at least $60 million, and May agreed to make full refunds totaling at least $15 million. The Commission coordinated both of the actions with actions by state attorneys general nationwide.

LEGISLATIVE RECOMMENDATIONS

The Commission recommends four amendments to, or clarifications of, the FDCPA as permitted by Section 815 of the Act. These recommendations have been reported in past annual reports.

Section 809(a): Clarity of Notice: The Commission continues to recommend that Congress amend Section 809 to make explicit the standard for clarity to be applied to the notice required by that Section. Section 809(a) of the Act requires debt collectors to send a written notice to each consumer within five days after the consumer is first contacted, stating that if the consumer disputes the debt in writing within thirty days after receipt of the notice, the collector will obtain and mail verification of the debt to the consumer.

As presently drafted, the FDCPA does not specify any standard for how the 809(a) notice must be presented to consumers such as the color and size of the typeface and the location on the collection notice. Attempting to take advantage of this lack of clarity, some debt collectors print the notice in a type size considerably smaller than the other language in the dunning letter, or obscure the notice by printing it on a non-contrasting background in a non-contrasting color. Significantly, two courts of appeal have held that collection letters that use small or otherwise obscured print in the notice required by Section 809(a) and at the same time use much larger, prominent or bold-faced type in the text of the letter violate the Act.[12] The courts reasoned that the payment demand in the text both contradicts and overshadows the required notice.[13] Neither of the courts attempted to specify which elements of presentation would constitute a clear disclosure to consumers of their dispute rights under Section 809(a).

The Commission recommends that Congress eliminate this problem by amending Section 809 explicitly to require a more conspicuous format for the notice by mandating that it be "clear and conspicuous." That standard could be defined as "readily noticeable, readable and comprehensible to the ordinary consumer." The definition could also reference various factors such as size, shade, contrast, prominence and location that would be considered in determining whether the notice meets the definition. A number of Commission decisions and orders define the "clear and conspicuous" standard in a variety of contexts.[14] Proper application of such a standard

---

[12] Miller v. Payco-General American Credits, Inc., 943 F.2d 482 (4th Cir. 1991); Swanson v. Southern Oregon Credit Services, Inc., 869 F.2d 1222 (9th Cir. 1989). See also United States v. National Financial Services, Inc., 98 F.3d 131, 139 (4th Cir. 1996) ("bold commanding type of the dunning text overshadowed the smaller, less visible, validation notice printed on the back in small type and light grey ink").

[13] Miller, 943 F.2d at 484; Swanson, 869 F.2d at 1225-26. Both the format and the substance of the letter were held to "overshadow" the notice required by Section 809(a) in each case.

[14] See, e.g., Geocities, Docket No. 3849, 1999 FTC Lexis 17, *14 (Feb. 5, 1999) (consent) (website privacy disclosure); California Suncare, Inc., 123 F.T.C. 332, 383 (1997) (consent)

(continued...)

in Section 809(a) would help ensure that the information in the required notice is effectively conveyed and eliminate dunning letters artfully designed to confuse their readers and frustrate the purposes of this provision of the FDCPA.

Section 809(b): Effect of Thirty-day Period: Section 809(b) of the FDCPA provides that if a consumer, within the thirty-day period specified in Section 809(a), disputes a debt in writing, the collector must cease all collection efforts until verification of the debt is obtained and mailed to the consumer. In opinion letters and the staff Commentary on the FDCPA,[15] Commission staff have consistently read Section 809(b) to permit a debt collector to continue to make demands for payment or take legal action within the thirty-day period. Nothing within the language of the statute indicates that Congress intended an absolute bar to any appropriate collection activity or legal action within the thirty-day period where the consumer has not disputed the debt.

Federal circuit courts that have addressed this issue recently have arrived at the same conclusion. In a 1997 opinion, the Seventh Circuit stated that "[t]he debt collector is perfectly free to sue within the thirty days; he just must cease his efforts at collection during the interval between being asked for verification of the debt and mailing the verification to the debtor."[16] In a case decided in December 1998, the Second Circuit held that a collector's dunning notice violated Section 809(a) because the language on the front, "[t]he hospital insists on immediate payment," contradicted the Section 809 notice on the back and would make the consumer uncertain as to her rights.[17] The court added, however, that the debt collector "could have both sought immediate payment and complied with the [FDCPA] simply by inserting into the text of its letter transitional language that referred the addressee to the validation notice."[18]

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

---

[14](...continued)
(skin-tanning product warnings).

[15] 53 Fed. Reg. at 50,109, comment 809(b)-1.

[16] Bartlett v. Heibl, 128 F.3d 497, 501 (7th Cir. 1997) (Posner, J.).

[17] Savino v. Computer Credit, Inc., 164 F.3d 81, 85 (2d Cir. 1998).

[18] Id. at 86.

should not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt specified by Section 809(a).[19]

Section 803(6): Litigation Attorney as "Debt Collector": The Supreme Court has resolved the conflict in the federal courts concerning whether attorneys in litigation to collect a debt are covered by the Act. In Heintz v. Jenkins, 514 U.S. 291 (1995), the Court held that they are, in fact, covered like any other debt collector because they fall within the plain language of the statute.[20] The difficulties in applying the Act's requirements to attorneys in litigation, however, and the anomalies that result, still remain. For example, pretrial depositions could violate Section 805(b) because they involve communicating with third parties about a debt.[21] In addition, it appears that an attorney must include the Section 809 validation notice in a complaint, if the complaint represents the attorney's initial contact with that consumer. Such a notice does not make sense in a litigation context. For example, the notice would state that, if the consumer sends a written request for verification within thirty days, the attorney will provide the verification. If the consumer does make such a request, it appears that Section 809(b) requires the attorney to put the lawsuit on hold until he or she provides the verification.[22]

Because it still seems impractical and unnecessary to apply the FDCPA to the legal activities of litigation attorneys, and because ample due process protections exist in that context, the Commission continues to believe that Congress should intervene and make its intent in this area clear. The Commission, therefore, recommends that Congress re-examine the definition of "debt collector" and state that an attorney who pursues alleged debtors solely through litigation (or similar "legal" practices) -- as opposed to one who collects debts through the sending of dunning letters or making calls directly to the consumer (or similar "collection" practices) -- is not covered by the statute.

Section 803(6)(F)(iii): "Early Out" Programs: Section 803(6) of the FDCPA sets forth a number of specific exemptions from the law, one of which is collection activity by a party that

---

[19] A current bill in the Senate, S. 576, proposes just such an amendment.

[20] Heintz, 514 U.S. at 299 ("[T]he Act applies to attorneys who "regularly" engage in consumer-debt-collection activity, even when that activity consists of litigation.").

[21] Section 805(b) permits collectors to reveal a debt to third-parties under certain circumstances, including with "the express permission of a court of competent jurisdiction." Thus, an attorney could obtain "express permission" from the court before taking each third-party deposition, but this seems an inefficient method of proceeding.

[22] Because of a 1996 amendment to Section 807(11), attorneys do not have to state in their pleadings that they are attempting to collect a debt and that any information obtained will be used for that purpose -- the so-called "mini-Miranda" notice.

"concerns a debt which was not in default at the time it was obtained by such person."[23] The exemption was designed to avoid application of the FDCPA to mortgage servicing companies, whose business is accepting and recording payments on current debts.[24] The theory behind the exemption was that the Act should not apply to a business whose focus was the routine processing of remittances (as opposed to the collection of delinquent accounts) simply because such business continued to work an account after the account went into default.

The Commission staff has become aware, however, of a number of industry members that acquire all of the accounts of their clients (hospitals or other service providers) at an early stage when the accounts are current (sometimes called an "early out" program) and then claim exemption from the FDCPA because each account constitutes a "debt that was not in default when it was obtained" from the creditor. In fact, collection of delinquent debts is the major focus of these businesses. Apart from the fact that they acquire accounts prior to default, these businesses function in all respects like typical debt collectors. Nevertheless, they can argue that they are exempt from the FDCPA.

The Commission believes that Section 803(6)(F)(iii) was designed to exempt only businesses whose collection of delinquent debts is secondary to their function of servicing current accounts. However, the existing formulation of the exemption, which focuses on the status of the individual debts at the time they are obtained by the third party, allows collectors that obtain current debts that routinely go into default to escape the coverage of the FDCPA. Therefore, the Commission recommends that Congress amend this exemption so that its applicability will depend upon the nature of the overall business conducted by the party to be exempted rather than the status of individual obligations when the party obtained them. For example, the provision could be redrafted to exempt an activity that "is incidental to a business whose principal purpose is the servicing of current debts for others" or words to that effect. In this manner, the mortgage servicer (who acts more like a creditor than a debt collector) would not be covered, even though it might continue to collect the small fraction of its accounts that become delinquent. By contrast, the debt collector that primarily collects delinquent accounts (regardless of whether they were current when obtained) would be unmistakably within the scope of the FDCPA.

ADMINISTRATION AND ENFORCEMENT BY OTHER AGENCIES

Section 814 of the FDCPA places enforcement obligations upon seven other federal agencies for those organizations whose activities lie within their jurisdiction. These agencies are the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit

---

[23] Section 803(6)(F)(iii), 15 U.S.C. § 1692a(6)(F)(iii).

[24] The principal Senate Report on the final version of the FDCPA states that the Senate committee that drafted the Act did not intend the definition of “debt collector” to cover “mortgage service companies and others who service outstanding debts for others, so long as the debts were not in default when taken for servicing.” S. Rep. No. 382, 95th Cong., 1st Sess. 7, reprinted in 1977 U.S. Code Cong. & Ad. News 1695, 1698.

Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Department of Transportation, and the Department of Agriculture. These agencies have provided the Commission with a description of their activities during the past year. Almost all of the organizations regulated by these agencies are creditors and, as such, largely fall outside the coverage of the Act. When these agencies receive complaints about debt collection firms that are not under their jurisdiction, they generally forward them to the Commission.

The Office of the Comptroller of the Currency ("OCC") enforces compliance with the FDCPA's provisions with respect to national banks. The OCC reports that its examination of all national banks on a regular basis shows that there is a high level of compliance with the Act.[25] No violations of the Act were discovered as a result of the OCC examinations of national banks in 1998. The OCC also resolves complaints against national banks. It received 68,553 consumer complaints, of which 2480 involved debt collection practices or tactics. No violations of the Act by national banks were identified.

The Federal Reserve Board ("FRB") enforces compliance with the FDCPA's provisions with respect to member banks of the Federal Reserve System other than national banks. The FRB continues to enforce the Act, as it applies to state member banks, through regular compliance examinations. The FRB encountered no significant problems enforcing the Act in 1998 and considers compliance with the Act by state member banks to be satisfactory. A review of the 1998 Consumer Affairs examination reports submitted to the FRB by December 31, 1998, revealed one violation of the FDCPA. In 1998, the FRB received 33 complaints alleging violations of the Act. Nine of the complaints were against state member banks. None of the nine complaints was subject to the Act because state member banks collected only their own debts.

The Federal Deposit Insurance Corporation ("FDIC") enforces compliance with the FDCPA's provisions with respect to banks (other than members of the Federal Reserve System) whose deposits or accounts are insured by the FDIC. The FDIC encountered no significant problems with enforcement of the FDCPA in 1998. Examiners checked for compliance with the Act during the course of regular compliance examinations of approximately 6100 insured nonmember institutions that are supervised by the FDIC. Based upon a review of 1863 compliance examination reports completed in 1998, the FDIC found that only seven institutions supervised by the FDIC engaged in activities that brought them within the FDCPA's coverage. None of the seven was cited for FDCPA violations.

The Office of Thrift Supervision ("OTS") enforces compliance with the FDCPA with respect to institutions subject to certain provisions of the Home Owners Loan Act of 1933, the National Housing Act, and the Federal Home Loan Bank Act. The OTS's examiners conducted 463 compliance examinations in 1998. No FDCPA violations were cited. During 1998, the number of complaints received regarding the Act was less than one percent of all complaints received for the year.

---

[25] The OCC's compliance program includes examinations of all national banking companies every 24 or 36 months depending on the size and complexity of the bank.

The National Credit Union Administration ("NCUA") enforces compliance with the FDCPA's provisions with respect to federal credit unions. The NCUA has delegated the enforcement of the Act to six regional directors who supervise field examiners in conducting on-site examinations of credit unions under its jurisdiction. The NCUA's publication, Compliance: A Self-Assessment Guide, provides credit union officials with information about the requirements of the Act. The NCUA found no FDCPA violations in 1998 and received no complaints of federal credit unions violating provisions of the Act. In general, federal credit unions do not perform debt collection services for other credit unions or lenders.

The Department of Transportation ("DOT") enforces compliance with the FDCPA's provisions with respect to air carriers subject to the Federal Aviation Act of 1958. DOT did not report any FDCPA violations in 1998. DOT states that air carriers collect their own debts and are thus largely outside the scope of the provisions of the Act.

The United States Department of Agriculture ("USDA") enforces compliance with the FDCPA's provisions with respect to any activities subject to the Packers and Stockyards Act. The USDA reports that it has encountered no fact situations that fall within the statutory provisions of the Act.

STATE EXEMPTIONS FROM THE FDCPA

Section 817 of the FDCPA permits states to petition the Commission for an exemption from the provisions of the Act.[26] Pursuant to Section 817, the Commission promulgated regulations shortly after the statute's enactment that provide criteria and establish procedures whereby the Commission may exempt from the Act any debt collection practice within a state.[27] To seek an exemption under the Act, a state must petition the Commission for a determination that under the laws of that state, any class of debt collection practices within that state is subject to requirements that are substantially similar to, or provide greater protection for consumers than, the requirements of the FDCPA. To obtain an exemption under the Act, the petitioning state must provide documentation demonstrating that the state law provides protections substantially similar to those of the FDCPA, and that the state has sufficient resources to enforce its law. The Commission received no petitions for exemption in 1998.

---

[26] Section 817, 15 U.S.C. § 1692o provides:

> The Commission shall by regulation exempt from the requirements of this title any class of debt collection practices within any State if the Commission determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement.

[27] These regulations are codified at 16 C.F.R. Part 901 et seq.

CONCLUSION

As noted above, a high percentage of debt collectors covered by the FDCPA already comply with the FDCPA. The Commission's balanced FDCPA program of education and enforcement will continue to encourage those collectors to comply and provide strong incentives for those who are not complying to do so in the future.

By direction of the Commission.

Robert Pitofsky