Fair Debt Collection Practices Act

CFPB Annual Report 2016

Consumer Financial Protection Bureau

March 2016

Message from Richard Cordray

Director of the CFPB

The Consumer Financial Protection Bureau ("Bureau" or "CFPB") is the only federal government agency dedicated solely to consumer financial protection. Unlawful debt collection practices can cause harm to consumers across virtually all the consumer financial markets we oversee.

At the CFPB, we envision a debt collection market that is fair, transparent, and law-abiding. We believe the best way to achieve such a market is to ensure that debt collectors have sufficient information to support the debt before attempting to collect it, accurately verify that they are attempting to collect from the right consumer if the consumer disputes the debt, and communicate with the consumer about the debt in a respectful, honest, and consumer-oriented manner. We believe such a market is in the best interests of consumers, creditors, and debt collectors alike.

This report describes the federal government's efforts to administer the Fair Debt Collection Practices Act ("FDCPA") in 2015. Among different developments related to debt collection in the past year, five are particularly noteworthy.

First, since its inception, the CFPB has taken enforcement actions to protect consumers from these harmful practices. In 2015 such actions by the CFPB returned $360 million to consumers wronged by unlawful debt collection practices and collected over $79 million in fines. During this time period, our colleagues at the Federal Trade Commission (FTC) banned 30 companies and individuals that engaged in serious and repeated violations of the law from ever again working in debt collection. In addition, the FTC filed 12 new cases, a record number of debt collection enforcement actions for the FTC in a year.

The Bureau finds three of its recent cases to be particularly noteworthy. In its case with JP Morgan Chase, the Bureau took action against the bank for selling credit card debts which, in some cases, overstated the amount owed or misidentified the individual owing the debt. In its cases with Encore and Portfolio Recovery Associates, the nation's two largest debt buyers, the Bureau took action against those entities for demanding payments and filing lawsuits on debts that they knew very little about and without reviewing the appropriate documentation to make sure they were collecting the right amount from the right consumer. These matters put over $110 million back in consumers' pockets, penalized the companies $48 million, and also brought debt relief with a face value of several billion dollars to hundreds of thousands of consumers. Taken together, these cases paint a broader picture about how the Consumer Bureau is working to clean up the market from both ends. Regardless of whether you are a debt seller or a debt buyer, all players in the collections market need to do their part and invest the resources to ensure they are collecting the right amount from the right consumer.

Second, the Bureau continues its effort to develop the first comprehensive federal regulations covering debt collection. We are considering provisions to ensure that debt collectors have sufficient information to collect the debt, prevent unfair, deceptive and abusive acts and practices, inform consumers of their rights, and provide interpretation of some sections of the FDCPA. In order to inform rulemaking efforts, the Bureau surveyed consumers in 2015 about their debt collection experiences and preferences. Furthermore, the Bureau conducted extensive interviews with industry vendors and participants to expand its understanding of the debt collection market. Currently, the Bureau is preparing to convene one or more Small Business Regulatory Enforcement Fairness Act panels before issuing a notice of proposed rulemaking. Additionally, the Bureau continuously engages industry and consumers through roundtables, meetings, and field hearings.

Third, the Bureau now has two full years of data on debt collection complaints. In 2015, the Bureau handled over 85,200 debt collection complaints, making debt collection the largest source of consumer complaints. The Bureau forwarded almost half of these complaints to debt collectors, which responded in a timely manner to 90% of them. The leading reason for complaints is consumers being contacted for debts they report they do not owe.

Fourth, the Bureau's examiners completed examinations of debt collection agencies. They identified many violations of the FDCPA, including: misleading statements about credit reporting; failures of debt collectors to identify themselves as debt collectors during calls to consumers; and failures to ensure that consumer requests about communications, such as requests not to call at work, were honored. Bureau examiners directed institutions found in violation to comply with the FDCPA and in some cases directed them to improve employee training, or take other steps necessary to fully comply with the law.

Fifth, the CFPB worked closely with the FTC and state regulators to enforce the laws applicable to debt collectors, file amicus briefs, supervise debt collectors, coordinate rulemaking activities, and reach out to consumer and trade groups. The FTC has been a highly valued partner in the CFPB's efforts to regulate the debt collection industry and enforce the FDCPA. For instance, the FTC led an effort, working with the CFPB and state regulators, to bring over 115 actions against debt collection firms and phantom debt scammers. Furthermore, the Bureau and the FTC jointly filed two amicus briefs in 2015. Additionally, the CFPB and the FTC organized and participated in events across the country to engage industry. The CFPB looks forward to continuing and strengthening its relationship with the FTC, state attorneys general, state regulators, and other partners in the mission of protecting consumers from harmful debt collection practices.

At the Consumer Bureau, we are committed to protecting consumers and enforcing the law. Through our supervisory, legal, and regulatory efforts we hope to bring about positive changes in the debt collection industry. We intend to establish and enforce clear rules that will do just that.

Sincerely,

Richard Cordray

Richard Cordray

Table of contents

1. Introduction

The Consumer Financial Protection Bureau ("CFPB" or "the Bureau") is pleased to submit to Congress its fifth annual report summarizing activities to administer the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq*. The Bureau and the Federal Trade Commission ("FTC" or "the Commission") share overall enforcement responsibility for the FDCPA. The Commission's activities during the past year are included in this report as the Appendix. The CFPB and the FTC work closely to coordinate debt collection enforcement actions among other matters related to debt collection.[1]

This report (1) provides a background of the debt collection market; (2) contains an overview of consumer complaints submitted to the CFPB and the FTC in 2015; (3) summarizes the Bureau's supervisory activities in the debt collection market; (4) describes the Bureau's and the Commission's enforcement actions; (5) presents the CFPB's and FTC's consumer education and outreach initiatives; and (6) discusses developments in the Bureau's rulemaking activities, and the FTC's policy and research initiatives.

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[1] *See* Memorandum of Understanding between the Consumer Financial Protection Bureau and the Federal Trade Commission (March 2015), *available at* https://www.ftc.gov/system/files/documents/cooperation_agreements/150312ftc-cfpb-mou.pdf. As part of this coordination, CFPB and FTC staff regularly meet to discuss ongoing and upcoming law enforcement, rulemaking, and other activities, share debt collection complaints, cooperate on consumer education efforts in the debt collection arena, and consult on debt collection rulemaking and guidance initiatives.

2. Background

Debt collection is a $13.7 billion dollar industry that employs more than 130,000 people[2] across approximately 6,000 collection agencies.[3] The debt collection industry affects millions of Americans. A research project by the Urban Institute examining credit reports showed that 35% of Americans, more than 77 million people, had a trade line on their credit reports indicating some type of debt in collections – including financial, healthcare, retail, and telecom debt.[4] These debts averaged $5,178, ranging from as little as $25 to as much as $125,000. A substantial portion of this debt is likely being collected by third-party collection agencies. Many consumers are not aware that they have debts in collections until they receive calls from debt collectors or review their credit reports.[5]

Industry breakdown

Debt collectors generate most of their revenue from collections of medical debt, student loans, and financial services obligations such as credit cards, auto loans, and mortgages. Financial services are the largest source of revenue for the industry, accounting for more than a third of all debt collection revenue. However, telecommunications debt also accounts for a large share of

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[2] Edward Rivera at IBIS World, *Debt Collection Agencies in the US* (September 2015).

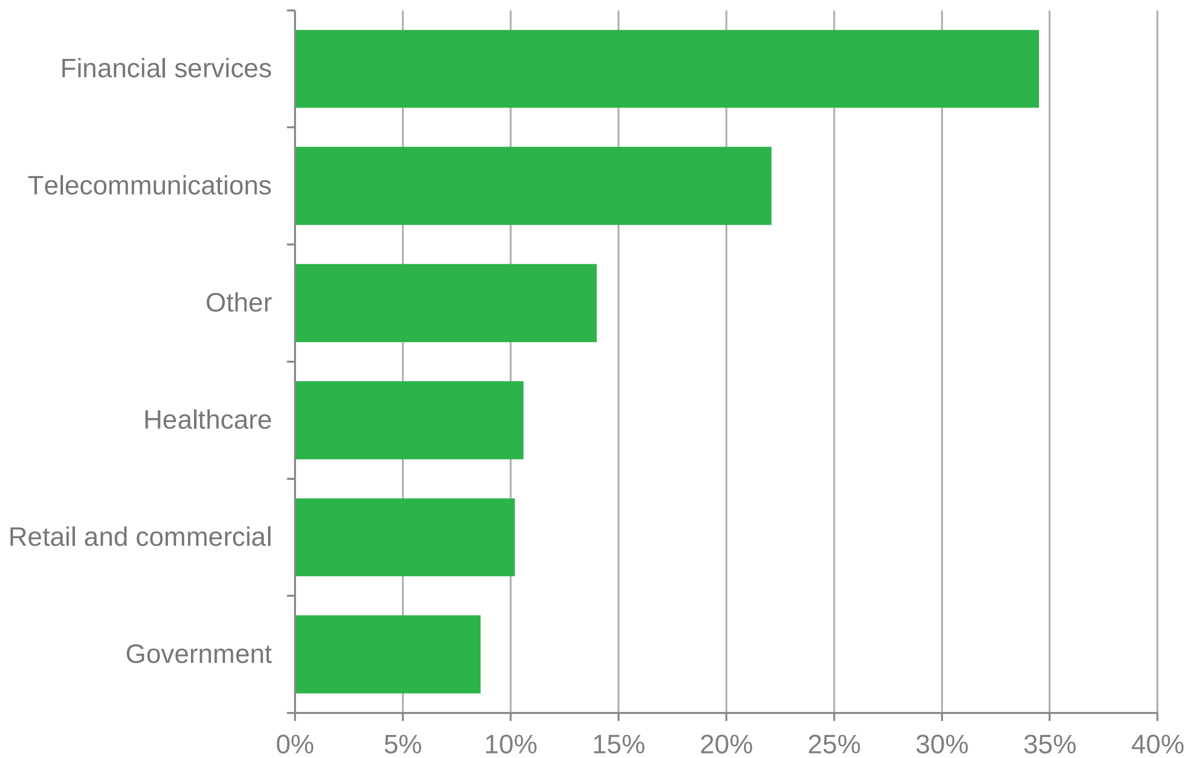
[3] This figure was obtained with an Infogroup Government Division search for businesses with the debt collection NAICS code.

[4] Caroline Ratcliffe et al. *"Delinquent Debt in America."* Urban Institute. July 2014. *available at* http://www.urban.org/research/publication/delinquent-debt-america.

[5] Consumer Financial Protection Bureau, *CFPB Considers Debt Collection Rules* (2013), *available at* http://www.consumerfinance.gov/newsroom/cfpb-considers-debt-collection-rules.

industry revenue – more than a fifth.[6] Government, retail, and medical debt also comprise significant amounts of the market's revenue.

FIGURE 1: DEBT COLLECTION MARKET SEGMENTS BY SHARE OF REVENUE, 2015 (IBIS WORLD)

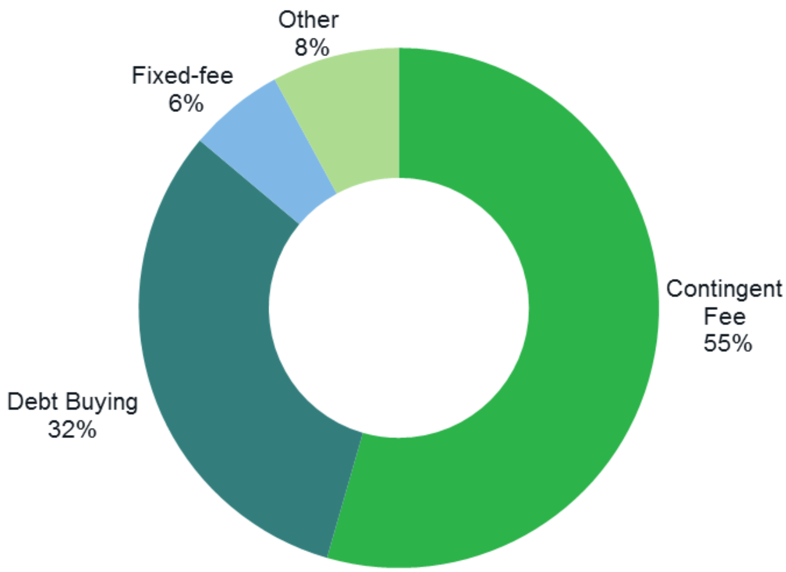


More than half the industry's revenue, $7.5 billion, is generated by firms contracting with creditors to collect their debts on a contingency fee basis – in contingency fee collections, the creditor and the collector each receive a share of the amount collected. About one third of debt collection revenue, $4.4 billion, comes from debt buyers, who purchase accounts from the original creditor or other debt buyers and then generally seek to collect on that debt, either themselves or through third-party debt collectors.[7]

[6] Edward Rivera at IBIS World, *Debt Collection Agencies in the US* (September 2015).

[7] Edward Rivera at IBIS World, *Debt Collection Agencies in the US* (September 2015).

FIGURE 2 DEBT COLLECTION AGENCY TYPES BY SHARE OF REVENUE, 2015 (IBIS WORLD)



Since the early 1990s, debt buying has become a substantial part of the collections process.[8] Banks and other credit card issuers often sell defaulted credit card debt, which debt buyers either collect in-house or place with other collection agencies. Debt buyers may also repackage purchased debt portfolios and sell them to other buyers. The two biggest debt buyers are publicly traded companies; combined, they earned more than $2.1 billion in gross annual revenues in 2015.[9]

The sale and resale of debts has raised concerns about data integrity and information flows from creditor to debt buyer to subsequent debt buyers and potentially also to one or many debt collectors along the way. Recent Bureau enforcement activities discovered examples of how

[8] Federal Trade Commission, *The Structure and Practices of the Debt Buying Industry* (January 2013), *available at* http://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf.

[9] SEC Filings, *10-K* (2015). Encore Capital Group and PRA Group.

consumers are harmed by the ineffective flow of information through the collections lifecycle.[10] In 2014, the Office of the Comptroller of Currency ("OCC") issued a bulletin providing guidance to national banks and federal savings associations engaged in debt sales.[11] The OCC issued supervisory expectations for information exchange, categories of debt that should not be sold, and due diligence practices for debt buyers, among other measures for the application of consumer protection requirements and safe and sound banking. After this bulletin, the Bureau was advised through market outreach that many banks have eliminated or restricted the ability of debt buyers to resell purchased customer debt. Some creditors have gone further and completely halted debt sales. Many small and medium-sized firms have exited credit card debt buying or have been acquired by larger debt buyers.[12]

These and other changes have produced significant market consolidation in recent years. According to a study by the Association of Credit and Collection Professionals, there were 25% fewer debt collection agencies in 2013 than in 2005,[13] despite industry revenues being slightly higher.[14]

Market Outlook

In coming years, the supply of debt is expected to increase across debt markets. Consumer credit is expanding, and the collections industry is projecting continued growth for the next five years.[15] Consumer credit excluding mortgages is $615 billion higher than pre-2008 levels. While

[10] *See* http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-the-two-largest-debt-buyers-for-using-deceptive-tactics-to-collect-bad-debts/.

[11] Office of the Comptroller of the Currency, *Risk Management* Guidance (August 2013), *available at* http://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-37.html.

[12] According to Kaulkin Ginsberg, M&A activity has increased by more than 70% between 2012 and 2014 *available at* http://www.insidearm.com/obs-in-focus/kaulkin-ginsbergs-top-10-reasons-for-a-flurry-of-ma-activity-in-2015.

[13] ACA International, Ernst and Young, *Impact of Third-Party Debt Collection on the National and State Economies* (2014, 2012, 2011, 2007), *available at* http://www.acainternational.org/economicimpact.aspx.

[14] Edward Rivera at IBIS World, *Debt Collection Agencies in the US* (September 2015).

[15] Edward Rivera at IBIS World, *Debt Collection Agencies in the US* (September 2015).

revolving debt continues to grow, non-revolving debt, driven largely by student loans, is growing even faster and is now almost 60% higher than pre-recession levels.[16]

Against a backdrop of overall growth, the market is changing in significant ways. In the last decade, the student loan market has undergone rapid growth and change.[17] Student debt is now the largest category of unsecured debt owed by American consumers. Today, the CFPB estimates that there are over 40 million borrowers with student loans who collectively owe over $1.2 trillion.[18] We estimate that there are nearly 8 million student loan borrowers in default, representing over $110 billion in balances.[19] The overall volume of student loans in default has grown at a rapid rate, and outstanding student loan debt[20] continues on an upward trajectory;[21] some sources suggest that outstanding student loan debt grew nearly 25% from 2012 to 2015.[22] On the other hand, the number of Americans with medical debts in collections may be on the decline. One study states that the number of Americans reporting medical bill problems declined in 2014, the first time since 2005. The number of Americans between 19 to 64 years of age reporting that they were contacted by a collection agency about medical bills declined from

[16] Board of Governors of the Federal Reserve, *Consumer Credit – G*.19 (January 2016), *available at* http://www.federalreserve.gov/releases/g19/current.

[17] Consumer Financial Protection Bureau, *Student Loan Servicing* (September 2015), *available at* http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.

[18] Consumer Financial Protection Bureau, *Request for Information Regarding Student Loan Servicing* (May 2015), *available at* http://files.consumerfinance.gov/f/201505_cfpb-rfi-student-loan-servicing.pdf.

[19] *Id.*

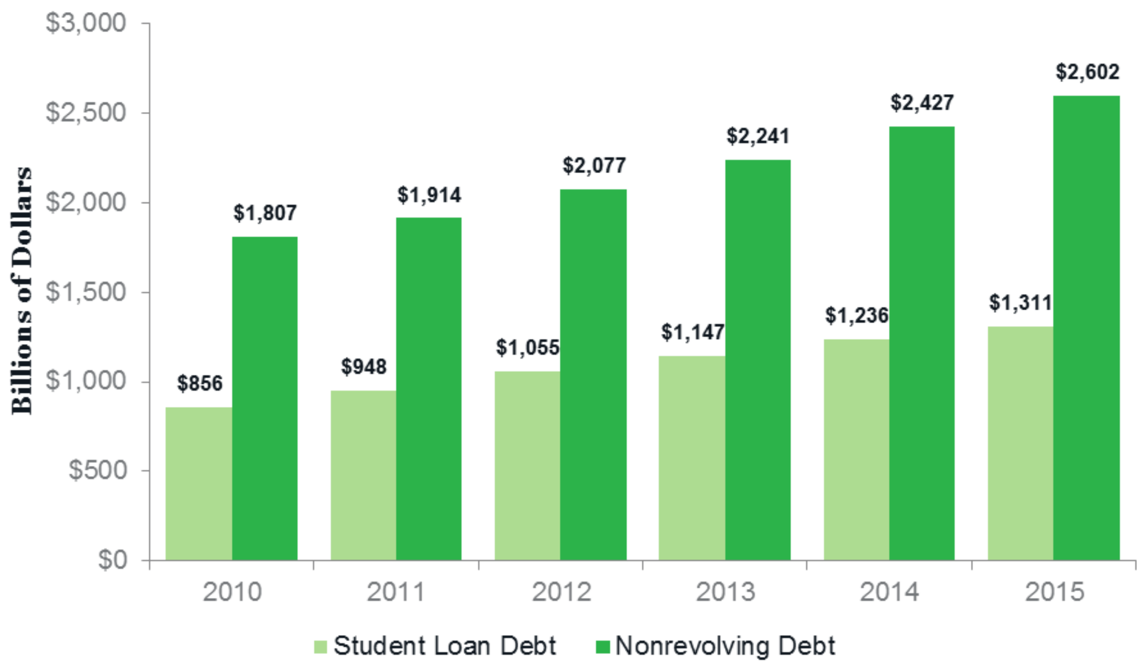
[20] US Department of Education, *Federal Student Aid Data Center* (March 2015), *available at* https://studentaid.ed.gov/data-center.

[21] Federal Reserve Bank of New York, *Student Loan Debt by Age Group* (March 2013), *available at* http://www.newyorkfed.org/studentloandebt/index.html.

[22] Board of Governors of the Federal Reserve, *Consumer Credit G.19* (November 2015), *available at* http://www.federalreserve.gov/releases/g19/current.

41 million in 2012 to 37 million in 2014, perhaps as a result of recent growth in health insurance coverage.[23]

FIGURE 4 GROWTH IN NONREVOLVING AND STUDENT LOAN DEBT SINCE 2010 (FEDERAL RESERVE)

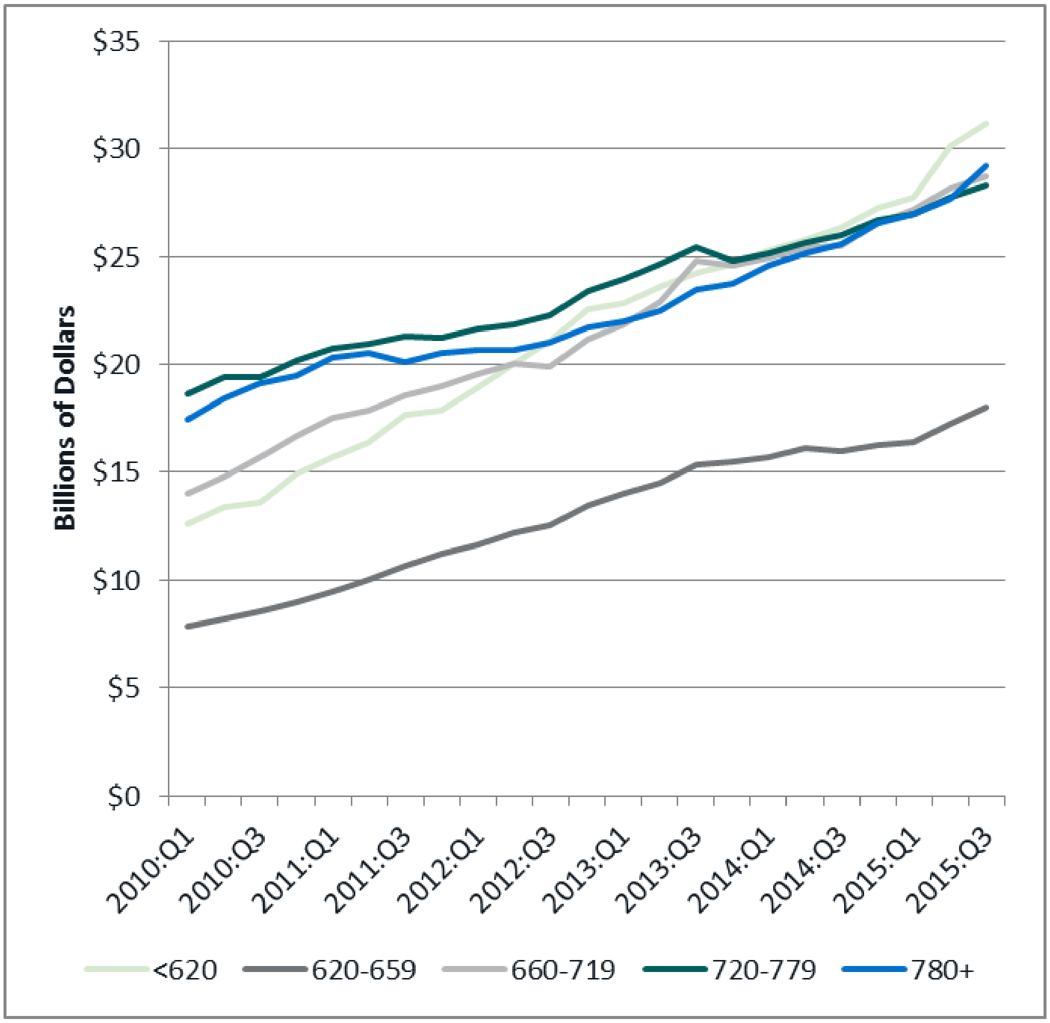


Growth in lending through auto loans and bank-issued credit cards may also increase the overall amount of Americans' indebtedness. Even with low default rates, the rising number of consumer credit accounts may increase placements by creditors to collection agencies and boost the number of debt sales. The growth of subprime lending in auto, which recently reached a post-

[23] The Commonwealth Fund, *Biennial Health Insurance Survey* (January 2015), available at http://www.commonwealthfund.org/~/media/files/publications/issue-brief/2015/jan/1800_collins_biennial_survey_brief.pdf?la=en.

recession high (light green in Figure 5 below),[24] and subprime bank-issued credit cards (42.9% more in 2014 compared to 2013) will also contribute to growth in the debt collection industry.[25]

FIGURE 5 AUTO LOAN ORIGINATION VOLUME BY CREDIT TIER (FEDERAL RESERVE)

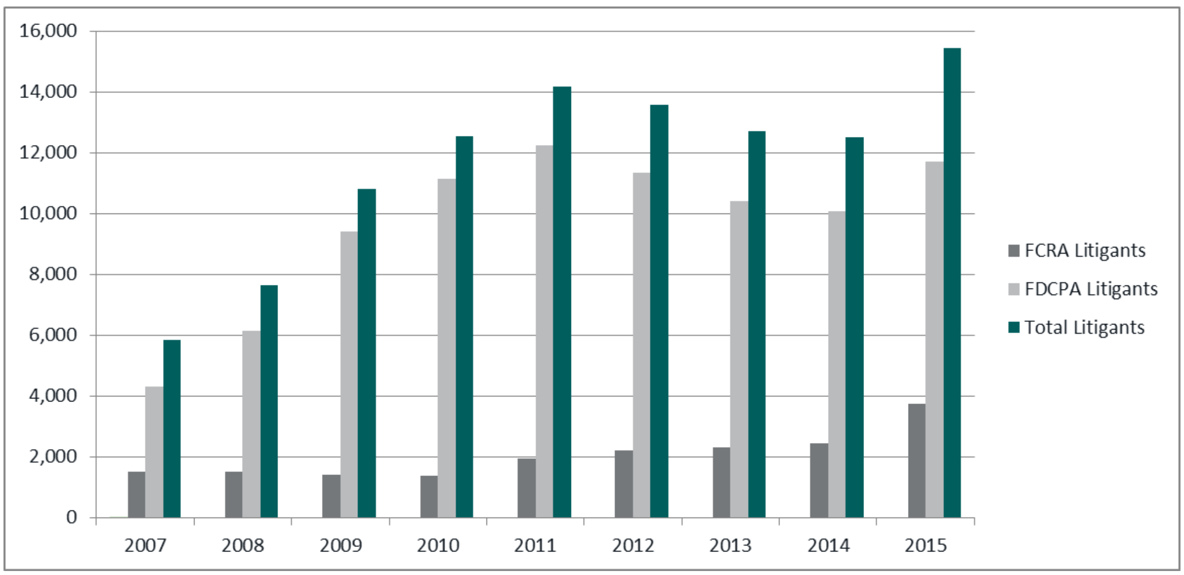


[24] Federal Reserve Bank of New York. Liberty Street Economics. "Just released: New and Improved Charts and Data on Auto Loans." November 19, 2015. *available at* http://libertystreeteconomics.newyorkfed.org/2015/11/just-released-new-charts-new-data-on-auto-loans.html#.VrTjO7jR9mM.

[25] Equifax, *Equifax Reports New Credit Growth for Bank- and Retail-Issued Cards Led by Subprime Segment* (November 2014), *available at* http://investor.equifax.com/releasedetail.cfm?ReleaseID=881777.

While debts continue to rise across many sectors, implying significant growth in accounts in collections, the industry also faces challenges adjusting to a new regulatory and legal environment. The CFPB and FTC have taken actions, detailed throughout this report, to enforce debt collection laws – primarily the FDCPA. Consumer litigation against debt collectors has also increased significantly in recent years. Litigation under the FDCPA increased significantly since the start of the recession from 4,316 cases in 2007 to 11,697 in 2015. Litigation under the Fair Credit Reporting Act has also increased rapidly from 1,515 cases in 2007 to nearly 3,751 cases in 2015. [26]

FIGURE 6 CONSUMER LITIGATION IN THE DEBT COLLECTION MARKET (WEBRECON)



[26] WebRecon. *"Out Like a Lion… Debt Collection Litigation & CFPB Complaint Statistics, Dec 2015 & Year in Review."* (December 2015).

3. Consumer complaints

Collecting, investigating, and responding to consumer complaints are integral parts of the CFPB's work.[27] The CFPB's Office of Consumer Response ("Consumer Response") hears directly from consumers about the challenges they face in the marketplace, brings their concerns to the attention of companies, and assists in addressing these complaints.

The CFPB, which began taking consumer complaints about debt collection in July 2013, accepts complaints through its website and by telephone, mail, email, fax, and referral. Consumers submit complaints on the Bureau's website using complaint forms tailored to specific products, and can also log on to a secure consumer portal to check the status of a complaint and review a company's response. When completing the complaint form, consumers provide a narrative of the events giving rise to their complaint and—beginning in 2015–can elect to publish a scrubbed narrative on the Bureau's website. While on the website, consumers can chat with a live agent to get help completing a complaint form. Consumers can also call the Bureau's toll-free number to ask questions, submit a complaint, check the status of a complaint, and more.[28] The Bureau answers questions and refers consumers to other regulators or additional resources as appropriate and forwards complaints to companies for review and response.

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[27] See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1021(c)(2) (2010). ("Dodd-Frank Act").

[28] The CFPB's U.S.-based contact centers provide services to consumers in more than 180 languages and to consumers who are deaf, have hearing loss, or have speech disabilities via a toll-free telephone number.

The CFPB's complaint handling process focuses on collecting, investigating, and responding to complaints.[29] The Bureau also uses complaints for law enforcement purposes and shares complaint data with the FTC. Using the Bureau's information, as well as complaints submitted directly to it by consumers and from other federal and state agencies, the FTC compiles consumer complaints in its Consumer Sentinel system and makes them available to federal and state law enforcement. The FTC uses consumer complaints generally to monitor the debt collection industry, select targets for investigation, and conduct preliminary analysis that, with further factual development, might reveal or help prove a law violation.

As in previous years, collections is the most complained about product in the Bureau's complaint system. As shown in Table 1, in 2015, again the most common issue selected by consumers submitting a debt collection complaint is continued attempts to collect a debt that the consumer states is not owed (40%). Many consumers, for example, report that they already paid the debt in collection. In many of these complaints, the attempt to collect the debt is not itself the problem; rather, consumers assert that the calculation of the amount of underlying debt is inaccurate or unjust. In other complaints, the consumer complains about the furnishing of information to credit reporting agencies.

Though consumers selected communication tactics as their primary issue at a lower rate than in 2014 (see Table 2), complaints about debt collectors' communications tactics (telephone calls especially) continue to be common (18%). In addition to complaints about collection calls that are too frequent or at inconvenient times of the day, there are a significant number of complaints about calls to third-parties or calls to the consumer's place of employment.

Consumers continue to submit complaints about a lack of debt verification by collectors in response to consumer disputes; in fact, this issue saw the largest percentage increase from 2014 (see Table 2). Consumers are often asking for debt collectors to provide more detailed documentation of the debt that is being collected. The lack of documentation provided by some debt collectors appears to frustrate consumers, especially when the documentation is a simple invoice or bill for the services or goods that were the subject of the debt being collected. There are a number of collectors that respond to consumer complaints about the lack of verification they have been provided by ceasing collection and returning debts to creditors.

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[29] See Dodd-Frank Act, Pub. L. No. 111-203, § 1021(c)(2), 124 Stat. 1376, 1979 (2010).

3.1 Number and types of complaints received

From January 1, 2015 through December 31, 2015, the CFPB handled approximately 85,200 debt collection complaints—3,100 fewer complaints than the prior year, although still the most common of all the products the Bureau handles. These complaints include first-party (creditors collecting on their own debts) and third-party collections. Table 1 shows the types of debt collection complaints the CFPB has received, while Table 2 shows the change in complaint volume by issue.[30]

TABLE 1: DEBT COLLECTION COMPLAINTS BY ISSUE

Primary issue	%
Continued attempts to collect debt not owed	40%
Communication tactics	18%
Disclosure verification of debt	15%
Taking or threatening an illegal action	11%
False statements or representation	9%
Improper contact or sharing of information	7%
Total debt collection complaints	**100%**

[30] The Bureau recognizes that, for a variety of reasons, the debt collection complaints it receives may understate or overstate the extent of debt collector law violations: http://www.consumerfinance.gov/f/201307_cfpb_debt-collection-letter_1-not-my-debt.doc.

TABLE 2: CHANGE IN COMPLAINT VOLUME BY ISSUE

	% change	2014 complaints	2015 complaints
Disclosure verification of debt	10%	11,700	12,900
Continued attempts to collect debt not owed	6%	32,600	34,500
False statements or representation	-7%	8,700	8,100
Communication tactics	-14%	17,700	15,200
Improper contact or sharing of info	-16%	6,600	5,600
Taking or threatening an illegal action	-18%	11,000	9,000
Grand Total	**-4%**	**88,300**	**85,200**

For each of the six issues listed in Table 1 and Table 2, consumers also select additional, more-detailed sub-issues when submitting a complaint.

As indicated in Table 1, the most common debt collection complaint is about continued attempts to collect a debt that the consumer reports is not owed. The vast majority of these consumers report that the debt is not their debt (63%) or that the debt was paid (26%), while the remaining consumers report that the debt resulted from identity theft (6%) or was discharged in bankruptcy (4%).

Complaints about communication tactics used when collecting debts are the second-most common issue selected by consumers (see line 2 in Table 1). Many of these types of complaints are about improper telephone calls. The majority of complaints about communication tactics are about frequent or repeated calls (52%). Often, these complaints stem from being called about another person's debt. Sometimes the call is for someone with a similar name. More often, it appears the call recipient's phone number has mistakenly been included in the collector's information about the alleged debtor's account. Consumers often complain to the CFPB when the collector continues to call even after the consumer has repeatedly told the collector that the alleged debtor cannot be contacted at the dialed number. They also complain about debt collectors calling their places of employment or third parties. Other communication tactics complaints relate to reports of companies threatening to take legal action (31%), using obscene, profane, or abusive language (8%), calling after being sent written cease communication notices (6%), or calling outside of the FDCPA's assumed convenient calling hours from 8 a.m. to 9 p.m. at the consumer's location (3%).

Complaints involving consumers' disputes about debts were common in 2015 (see line 3 of Table 1). If a debt collector does not include the information in its initial communication with the alleged debtor, the FDCPA requires collectors within five days of that communication to provide consumers with a written notice informing them, among other things, of their right to dispute debts. Some consumers, however, complain that debt collectors do not provide a notice within five days of the collectors' initial communication to collect (28%). Most consumers who complain about the dispute process raise the concern that when they exercise their rights to dispute debts, collectors do not provide them with documentation that consumers believe collectors need to verify the debt (64%). The complaints related to disputed debts also reveal confusion on the part of consumers as to when and how they can dispute a debt.[31] Other consumers report that the company did not disclose that the communication was an attempt to collect a debt (8%).

Consumers also commonly report that the company is taking or threatening to take an illegal action (see line 4 of Table 1). Most of these complaints are about threats to arrest or jail consumers if they do not pay (47%). Other complaints relate to lawsuits including threats to sue on a debt that is too old (28%), being sued without proper notification of the lawsuit (9%), seizures or attempts to seize property (7%), collection or attempts to collect exempt funds such as child support or unemployment benefits (6%), or being sued in a place that is different from where the consumer lives or where the consumer signed the contract (3%).

The majority of complaints about false statements or representations (line 5 of Table 1) are about attempts to collect the wrong amount from the consumer (61%). Consumers also commonly report that companies impersonated an attorney or a law enforcement or government official (22%), indicated the consumer committed a crime by not paying debt (15%), or indicated that the consumer should not respond to a lawsuit (3%).

For consumers submitting complaints about improper contact or sharing of information (line 6 of Table 1), consumers most often report the collector talked to a third party about the debt (50%), contacted an employer after being asked not to do so (24%), or contacted the consumer after being asked not to do so (23%). A less common complaint relates to consumers reporting that they are contacted directly, instead of the debt collector contacting their attorney (3%).

[31] As discussed in Section 6.1, the Bureau has developed and made available a form letter to assist consumers in disputing debts.

3.2 Responses to complaints received

The CFPB has sent approximately 40,300 (47%) of the about 85,200 debt collection complaints it has received to companies for their review and response. The CFPB has referred some of the remaining debt collection complaints to other regulatory agencies (42%), while other complaints were found to be incomplete (6%), or are pending[32] with the consumer or the CFPB (5%).

Companies have already responded to approximately 36,200 complaints or 90% of the approximately 40,300 complaints sent to them for response. Consumers have disputed approximately 6,900 company responses (19%) to their complaints.

The following table shows how companies have responded to consumer complaints.

TABLE 3: HOW COMPANIES HAVE RESPONDED TO CONSUMER COMPLAINTS TO THE CFPB

Company Response	#	%
Closed with explanation	27,200	67%
Closed with non-monetary relief	6,100	15%
Company did not provide a timely response	3,300	8%
Closed (without relief or explanation)	1,700	4%
Company reviewing	1,100	3%
Closed with monetary relief	400	1%
Administrative response	600	1%
Total Complaints Sent to Companies for Response	**40,300**	**100%**[33]

[32] This category includes complaints that do not include information needed for the CFPB to send to companies for responses or refer to other regulatory agencies.

[33] Due to rounding, volume and percentages for each company response category may not add up to the total.

Company responses include descriptions of steps taken or that will be taken, communications received from the consumer, any follow-up actions or planned follow-up actions, and categorization of the response. Response category options include “closed with monetary relief,” “closed with non-monetary relief,” “closed with explanation,” “closed,” and other administrative options. Monetary relief is defined as objective, measurable, and verifiable monetary relief to the consumer as a direct result of the steps taken or that will be taken in response to the complaint. Non-monetary relief is defined as other objective and verifiable relief to the consumer as a direct result of the steps taken or that will be taken in response to the consumer’s complaint. “Closed with explanation” indicates that the steps taken by the company in response to the complaint included an explanation that was tailored to the individual consumer’s complaint. For example, this category would be used if the explanation substantively meets the consumer’s desired resolution or explains why no further action will be taken. “Closed” indicates that the company closed the complaint without relief – monetary or non-monetary – or explanation. Consumers are given the option to review and dispute all company closure responses.

4. Bureau supervision of debt collection activities

Under the Dodd-Frank Act, the CFPB has the authority to supervise certain bank and nonbank entities that offer or provide consumer financial products or services.[34] In addition, for other nonbank markets for consumer financial products or services, the Bureau has the authority to supervise "larger participants" as the Bureau defines by rule. Under the Bureau's larger participant rule for the debt collection market, the Bureau has supervisory authority over any firm with more than $10 million in annual receipts from consumer debt collection activities.

In 2015, the Bureau's supervision of debt collectors uncovered a number of violations of the FDCPA.[35]

[34] Specifically, the Bureau has authority to supervise certain banks and nonbank entities in the residential mortgage, payday lending, and private education lending markets. The Bureau also has the authority to supervise nonbank entities that offer or provide consumer financial products or services where it has "reasonable cause to determine, by order, after notice to the person and a reasonable opportunity for such person to respond…that such person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or service." 12 U.S.C. § 5514(a)(1)(C).

[35] In deference to the importance of confidentiality and consistent with the policies of the prudential regulators, the Bureau treats information obtained from companies through the supervisory process as confidential and privileged. *See* 12 C.F.R. pt. 1070; CFPB Bulletin 12-01: *The Bureau's Supervision Authority and Treatment of Confidential Supervisory Information* (January 2012), *available at* http://files.consumerfinance.gov/f/2012/01/GC_bulletin_12-01.pdf; *see also* 12 U.S.C. §§ 1821(t), 1828(x).

4.1 Failure to state that a call is from a debt collector

The FDCPA requires debt collectors to make certain disclosures in their first communication with a consumer.[36] In subsequent communications, among other things, they must state that the communication is from a debt collector. During the examination of one or more debt collectors, examiners determined that the collectors' employees did not always state during subsequent phone calls that the calls were from debt collectors. Supervision directed the debt collectors to improve training with regard to the FDCPA's requirement to provide these disclosures.

4.2 Failure to implement consumer requests regarding communications

The FDCPA requires debt collectors to limit their communications with consumers in certain ways. Among other things, the law generally prohibits a debt collector from contacting a consumer the debt collector knows is represented by an attorney, and it prohibits a debt collector from contacting a consumer at his or her place of employment if the debt collector "knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication."[37] During one or more examinations, examiners determined that debt collectors had inadequate systems in place to comply with these requirements, creating a risk of violating the FDCPA. When consumers made verbal requests regarding phone calls, such as a request not to be called at work, the debt collectors' agents would note the request in one of several places in the account notes. The debt collectors did not, however, remove or block the affected telephone numbers in their dialer systems. Not removing or blocking the numbers and the placement of do-not-call request notes in different places by different teams of agents created risks that a consumer would receive calls that violated the FDCPA. Supervision directed the collectors to improve their training so that agents would annotate accounts and check for dialing restrictions in a consistent manner.

[36] 15 U.S.C. § 1692e(11).

[37] 15 U.S.C. § 1692c(a)(2).

Relatedly, the FDCPA requires a debt collector, with certain exceptions, to cease communication with the consumer with respect to the debt when the consumer submits written notification that the consumer refuses to pay a debt, or that the consumer wishes the debt collector to cease further communication with the consumer.[38] In one or more examinations, examiners determined that debt collectors failed to honor some consumers' written requests to cease communication. In some instances, the debt collectors had not properly coded the accounts to prevent further calls. In other instances, debt collectors changed the accounts back to "active" status, allowing further communications to be made. Supervision directed the debt collectors to improve training for their employees on how to identify and handle cease-communication requests.

4.3 False, deceptive or misleading representations regarding credit reporting

The FDCPA prohibits the use of any false, deceptive, or misleading representation or means in connection with the collection of any debt.[39] During one or more examinations, examiners found debt collectors made online statements about credit reporting that were false, deceptive or misleading. The Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V, require furnishers to conduct a reasonable investigation with respect to disputed information after receiving a dispute notice from a consumer or consumer reporting agency. Furnishers are also required to review all relevant information provided by the consumer, to complete their investigation and report the results to the consumer within the timeframes specified in the FCRA, and to notify the consumer reporting agency and correct any inaccurate information.[40] Examiners found that the debt collectors stated online that they rarely deleted trade lines and regularly investigated disputes. In practice, the entities summarily deleted trade lines and failed

[38] 15 U.S.C. § 1692c(c).

[39] 15 U.S.C. § 1692e.

[40] 15 U.S.C. § 1681s-2(b); 12 C.F.R. § 1022.43(e).

to conduct investigations of disputes. Supervision directed the collectors to remove the deceptive statements.

In addition, during one or more examinations, examiners found debt collectors used false, deceptive or misleading representations or means regarding administrative wage garnishment when performing collection services of defaulted student loans for the Department of Education. The debt collectors threatened garnishment against borrowers who were not eligible for garnishment under the Department of Education’s guidelines. Additionally, the debt collectors created a false sense of urgency by providing inaccurate information about when garnishment would begin. Supervision directed the debt collectors to conduct a root-cause analysis of what led their agents to make these statements and to improve agent training to prevent such statements in the future.

5. Enforcement

The Bureau announced fifteen new law enforcement actions in 2015 related to unlawful collection conduct in violation of the FDCPA, the Consumer Financial Protection Act of 2010 (“CFPA”), or both. Some of these actions are still pending. The Bureau also resolved two debt collection matters that were filed in 2014 and continues to be in active litigation on a matter filed in 2013. In addition to the Bureau’s public enforcement actions involving debt collection practices, the Bureau is conducting a number of non-public investigations of companies to determine whether they engaged in collection practices that violate the FDCPA or the CFPA.

In 2015, public actions involving debt collection have resulted in over $360 million in consumer relief and over $79 million paid into the civil penalty fund, which is used to provide relief to eligible consumers who would not otherwise get full compensation or, to the extent that is not practicable, to provide consumer education and financial literacy programs designed to help consumers.

5.1 Bureau law enforcement actions

5.1.1 Debt collection enforcement actions filed in 2015

CFPB, et al. v. Freedom Stores, Inc., et al.[41]

(E.D. Va. No. 2:14-cv-00643-AWA-TEM) (stipulated final judgment and order entered January 8, 2015).

The CFPB and the Attorneys General of North Carolina and Virginia reached a settlement with Freedom Stores, Inc., Freedom Acceptance Corporation, Military Credit Services LLC, and their owners, of claims relating to the companies' practices of extending credit to and collecting debts from members of the United States military and other consumers. The stipulated final judgment and order prohibits the companies from filing debt-collection actions far away from where a consumer resides or entered into the purchase contract, and from disclosing consumers' debts to third parties in attempting to collect. It also required the companies to provide over $2.5 million in consumer redress in the form of refunds or debt-forgiveness and to pay a $100,000 civil money penalty.

CFPB v. Universal Debt & Payment Solutions, LLC, et al.[42]

(N.D.GA No. 1:15-CV-0859) (complaint filed March 26, 2015; preliminary injunction issued April 7, 2015).

On April 7, 2015, the Bureau obtained a preliminary injunction that froze the assets and enjoined unlawful conduct related to a phantom debt collection scheme. The Bureau's suit

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[41] Consumer Financial Protection Bureau, *CFPB and States Take Action Against Freedom Stores for Illegal Debt Collection Practices Against Servicemembers* (December 2014), *available at* http://www.consumerfinance.gov/newsroom/cfpb-and-states-take-action-against-freedom-stores-for-illegal-debt-collection-practices-against-servicemembers/.

[42] Consumer Financial Protection Bureau, *CFPB Sues Participants in Robo-Call Phantom Debt Collection Operation* (April 2015), *available at* http://www.consumerfinance.gov/newsroom/cfpb-sues-participants-in-robo-call-phantom-debt-collection-operation/.

against a group of seven debt collection agencies, six individual debt collectors, four payment processors, and a telephone marketing service provider alleges violations of the FDCPA and the CFPA's prohibition on unfair and deceptive acts and practices, and providing substantial assistance to unfair or deceptive conduct. The complaint alleges that the individuals, acting through a network of corporate entities, use threats and harassment to collect "phantom" debt from consumers. Phantom debt is debt consumers do not actually owe or debt that is not payable to those attempting to collect it. These individuals' misconduct was facilitated and substantially assisted by the payment processors and the telephone service provider. The Bureau is seeking a permanent injunction, redress for consumers, and a monetary penalty. This action is still pending.

CFPB v. National Corrective Group, Inc., et al.[43]

(D. Md. No. 1:15-cv-899) (stipulated final judgment and consent order entered on March 31, 2015).

The CFPB took action against National Corrective Group, Inc. (NCG) and its Chief Executive Officer for violations of the FDCPA and the deceptive acts and practices prohibition in the CFPA. NCG specializes in the collection of consumer debt for bounced checks, operating what is known as a "bad check diversion program." Many bad check diversion programs are run by companies that enter into contracts with state and local prosecutors' offices to collect bounced-check debt. The CFPB's complaint alleged that NCG sent consumers notices on prosecutors' letterheads and created the false impression that consumers may be prosecuted for writing bounced checks. NCG told consumers that, to qualify for the diversion program and avoid prosecution, they must pay the bounced check debts and enroll in the company's financial education class for an additional fee. The consent order entered by the court requires NCG to end its illegal practices and imposes a $50,000 civil money penalty.

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[43] Consumer Financial Protection Bureau, *CFPB Takes Action Against "Bad Check" Debt Collector* (March 2015), *available at* http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-bad-check-debt-collector/.

CFPB v. Green Tree Servicing, LLC[44]

(D. Minn. No. 0:15-cv-02064-SRN-JSM) (stipulated order for permanent injunction entered April 23, 2015).

The CFPB, accompanied by the FTC, obtained a Stipulated Order for Permanent Injunction requiring the mortgage servicer Green Tree Servicing LLC, to pay a $15 million penalty and $48 million in redress to consumers whose loan modifications were not honored, who had their short sales decisions delayed because of Green Tree's poor servicing, or who were deceptively charged convenience fees when paying their mortgage. The order also requires Green Tree to honor loan modifications obtained from prior servicers; obtain detailed account level documents from the prior servicers; create a home preservation program; and put in place other reforms. Green Tree's mortgage servicing practices violated the CFPA's prohibitions against unfair and deceptive practices, as well as the FDCPA, FCRA, and RESPA.

CFPB v. Security National Automotive Acceptance Company, LLC[45]

(S.D. OH. No. 1:15-cv-401) (complaint filed June 17, 2015, administrative consent order entered October 28, 2015, federal district court order entered October 26, 2015).

The Bureau filed a lawsuit in federal district court against Security National Automotive Acceptance Company, LLC (SNAAC), an Ohio auto lender, addressing its collection of debt from servicemembers throughout the United States. The complaint alleges that the company engaged in unfair, deceptive, and abusive acts or practices in violation of the CFPA, including threatening to contact consumers' commanding officers regarding unpaid debt, disclosing consumers' debts to commanding officers and characterizing delinquencies as military violations subjecting the

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[44] Consumer Financial Protection Bureau, *CFPB and Federal Trade Commission Take Action Against Green Tree Servicing for Mistreating Borrowers Trying to Save Their Homes* (April 2015), *available at* http://www.consumerfinance.gov/newsroom/cfpb-and-federal-trade-commission-take-action-against-green-tree-servicing-for-mistreating-borrowers-trying-to-save-their-homes/.

[45] Consumer Financial Protection Bureau, *CFPB Takes Action Against Servicemember Auto Lender for Aggressive Debt Collection Tactics* (June 2015), *available at* http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-servicemember-auto-lender-for-aggressive-debt-collection-tactics/.

consumers to discipline, and falsely implying that the company intended to sue consumers when the company had not yet determined whether or not it would take such action.

A stipulated final order requires the company to refund or credit about $2.28 million to servicemembers and other consumers who were allegedly harmed, and pay a penalty of $1 million. A separate court order bans SNAAC from using aggressive tactics, such as exaggeration, deception, and threats to contact commanding officers, to coerce servicemembers into making payments.

In the Matter of: Syndicated Office Systems, LLC, d/b/a Central Financial Control[46]

(File No. 2015-CFPB-0012) (consent order entered June 18, 2015).

The CFPB took action against Syndicated Office Systems, LLC, a medical debt collector, for mishandling consumer credit reporting disputes and preventing consumers from exercising important debt collection rights. The Bureau found that the company failed to: (1) investigate and respond to more than 13,000 consumer credit reporting disputes within the 30-day timeframe required by the FCRA; and (2) send a "debt validation notice" to more than 10,000 consumers, as required by the FDCPA. Under the terms of the consent order, the company is required to provide over $5.1 million in total relief to harmed consumers and pay a $500,000 civil money penalty.

[46] Consumer Financial Protection Bureau, *CFPB Takes Action Against Medical Debt Collector* (June 2015), *available at* http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-medical-debt-collector/.

In the Matter of: Chase Bank, USA N.A. and Chase Bankcard Services, Inc.[47]

No. 2015-CFPB-0013) (consent order entered July 8, 2015).

The Bureau found that Chase violated the CFPA's prohibition on deceptive and unfair acts and practices when selling delinquent credit card accounts. Chase sold erroneous and unenforceable charged-off credit card accounts to debt buyers. These debts sometimes overstated the amount owed, were not actually owed by the borrower named, or could not be lawfully enforced. The Bureau also found that Chase filed sworn documents that were not executed or notarized lawfully, that contained inaccurate amounts, or were not based on the direct knowledge of the signer. The Bureau ordered Chase to pay $50 million in restitution to consumers and a $30 million civil money penalty. Chase has also agreed that it will not collect on or sell over 500,000 credit card accounts, and that it will reform its practices, including by prohibiting its debt buyers from reselling the debts they purchase from Chase. The Bureau was joined by 48 state attorneys general who filed similar orders simultaneously, and the OCC which announced a civil penalty.

CFPB v. Discover Bank, The Student Loan Corporation, and Discover Products, Inc.[48]

(File No. 2015-CFPB-0016) (consent order filed entered July 22, 2015).

The CFPB took action against Discover Bank, The Student Loan Corporation, and Discover Products, Inc. (Discover) for unfair and deceptive acts and practices related to the misrepresentations on its website about the amount of student-loan interest consumers paid, unfair practices related to initiating collection calls at early in the morning and late at night, often excessively, deceptive acts and practices related to overstating the minimum amount due

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[47] Consumer Financial Protection Bureau, *CFPB, 47 States and D.C. Take Action Against JPMorgan Chase for Selling Bad Credit Card Debt and Robo-Signing Court Documents* (July 2015), *available at* http://www.consumerfinance.gov/newsroom/cfpb-47-states-and-d-c-take-action-against-jpmorgan-chase-for-selling-bad-credit-card-debt-and-robo-signing-court-documents/.

[48] Consumer Financial Protection Bureau, *CFPB Orders Discover Bank to Pay $18.5 Million for Illegal Student Loan Servicing Practices* (July 2015), *available at* http://www.consumerfinance.gov/newsroom/cfpb-orders-discover-bank-to-pay-18-5-million-for-illegal-student-loan-servicing-practices/.

in billing statements, and violations of the FDCPA related to collection activities on acquired student loans. Discover was ordered to pay a $2.5 million civil money penalty for these violations and to pay up to $16 million in redress to consumers affected by these practices.

CFPB v. NDG Financial Corp., et al.[49]

(S.D.N.Y. No. 15-cv-5211) (complaint filed July 6, 2015).

The CFPB filed a complaint against the NDG Financial Corporation and nine of its affiliates for engaging in unfair, deceptive, and abusive practices relating to its payday lending enterprise. The complaint alleges that the enterprise, which has companies located in Canada and Malta, originated, serviced, and collected payday loans that were void under state law, represented that U.S. federal and state laws did not apply to the Defendants or the payday loans, and used unfair and deceptive tactics to secure repayment, all in violation of the CFPA. This action is still pending.

In the Matter of: Encore Capital Group, Inc., Midland Funding, LLC, Midland Credit Management, Inc. and Asset Acceptance Capital Corp.[50]

(File No. 2015-CFPB-0022) (consent order entered September 9, 2015).

The CFPB took action against Encore Capital Group, one of the nation's two largest debt buyers. The Bureau found violations of the FDCPA, FCRA, and CFPA related to Encore's collection of bad debts, litigation practices, and other collections activities. Specifically, the Bureau found that Encore threatened and deceived consumers to collect on debts the company should have known were inaccurate or had other problems. The Bureau ordered Encore to cease reselling debts, stop collections on $125 million worth of judgments, and halt collection of future debts

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49 Consumer Financial Protection Bureau, *CFPB Sues Offshore Payday Lender* (August 2015), *available at* http://www.consumerfinance.gov/newsroom/cfpb-sues-offshore-payday-lender/.

50 Consumer Financial Protection Bureau, *CFPB Takes Action Against the Two Largest Debt Buyers for Using Deceptive Tactics to Collect Bad Debts* (September 2015), *available at* http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-the-two-largest-debt-buyers-for-using-deceptive-tactics-to-collect-bad-debts/.

that cannot be verified. Encore is required to pay up to $42 million in consumer relief and $10 million in civil monetary penalties.

In the Matter of: Portfolio Recovery Associates, LLC[51]

(File No. 2015-CFPB-0023) (consent order entered September 9, 2015).

The CFPB took action against Portfolio Recovery Associates (PRA), one of the two largest debt buyers in the country. The Bureau found PRA bought debts that were potentially inaccurate, lacking documentation, or unenforceable. Without verifying the debt, the company collected payments by pressuring consumers with false statements and churning out lawsuits using robo-signed court documents. The Bureau ordered PRA to cease reselling debts, stop collecting on over $3 million worth of judgments, and halt collection of future debts that cannot be verified. PRA is required to pay $19 million in consumer relief and $8 million civil monetary penalties.

In the Matter of: Westlake Services, LLC & Wilshire Consumer Credit, LLC[52]

(File No. 2015-CFPB-0026) (consent order entered September 30, 2015).

The CFPB took action against an indirect auto finance company and its auto title lending subsidiary for pressuring borrowers using illegal debt collection tactics. The CFPB found that Westlake Services, LLC and Wilshire Consumer Credit, LLC deceived consumers by calling under false pretenses and using phony caller ID information, falsely threatened to refer borrowers for investigation or criminal prosecution, and illegally disclosed information about debts to borrowers' employers, friends, and family. The Bureau ordered the companies to

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[51] Consumer Financial Protection Bureau, *CFPB Takes Action Against the Two Largest Debt Buyers for Using Deceptive Tactics to Collect Bad Debts* (September 2015), *available at* http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-the-two-largest-debt-buyers-for-using-deceptive-tactics-to-collect-bad-debts/.

[52] Consumer Financial Protection Bureau, *CFPB Orders Indirect Auto Finance Company to Provide Consumers $44.1 Million in Relief for Illegal Debt Collection Tactics* (October 2015), *available at* http://www.consumerfinance.gov/newsroom/cfpb-orders-indirect-auto-finance-company-to-provide-consumers-44-1-million-in-relief-for-illegal-debt-collection-tactics/.

overhaul their debt collection practices and to provide consumers $44.1 million in cash relief and balance reductions. The companies will also pay a civil penalty of $4.25 million.

CFPB v. Collecto, Inc. d/b/a EOS CCA[53]

(D. Mass. File No. 1:15-cv-14024) (stipulated final judgment and order entered December 8, 2015).

The CFPB filed a complaint in federal court against Collecto, Inc. d/b/a EOS CCA (EOS), a Massachusetts debt collection firm, for reporting and collecting on old cellphone debt that consumers disputed and EOS did not verify. The company also provided inaccurate information to credit reporting companies about the debt and failed to correct reported information that it had determined was inaccurate.

The stipulated final judgment and order requires EOS to refund at least $743,000 to consumers and pay a $1.85 million civil money penalty. The order also requires EOS to cease collecting and reporting on disputed debt from the AT&T portfolio; stop collecting unsubstantiated debt and, for five years, review original account-level documents to verify a debt before collecting on it; and ensure accuracy when providing information to credit reporting companies. For five years, EOS will also be subject to restrictions on re-selling debt.

In the Matter of: EZCORP, Inc.[54]

(File No. 2015-CFPB 0031) (consent order entered December 16, 2015).

The CFPB took action against EZCORP, Inc., a payday and other small-dollar lender, for illegal debt collection practices. These practices related to sending debt collectors to consumers' workplaces and homes, which risked disclosing the consumers' debts to third parties and causing adverse employment consequences; empty threats of legal action; misrepresenting

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53 CFPB complaint against Collecto, Inc. d/b/a EOS CCA *available at* http://files.consumerfinance.gov/f/201512_cfpb_complaint-eos.pdf.

54 Consumer Financial Protection Bureau, *CFPB Orders EZCORP to Pay $10 Million for Illegal Debt Collection Tactics* (December 2015), *available at* http://www.consumerfinance.gov/newsroom/cfpb-orders-ezcorp-to-pay-10-million-for-illegal-debt-collection-tactics/.

consumers' rights; and exposing consumers to bank fees through multiple electronic withdrawal attempts on consumer accounts. The Bureau issued a consent order requiring EZCORP to pay $7.5 million in refunds to approximately 93,000 consumers, pay $3 million in penalties, and stop all further collection efforts on its remaining payday and installment loans, owed by roughly 130,000 consumers and estimated to include tens of millions of dollars in debt. The consent order also bars EZCORP from future in-person debt collection, prohibits EZCORP from attempting to debit a consumer's account after a previous attempt failed because of insufficient funds without the consumer's permission, and includes various other injunctive terms.

In the Matter of: Eric V. Sancho d/b/a Lead Publisher[55]

(File No. 2015-CFPB-0033) (consent order issued December 17, 2015).

The CFPB took action against Eric V. Sancho, who operated a company called Lead Publisher that sold leads to fraudulent debt collectors without regard for how they would use the data. The Bureau found that from 2011 to 2014, Sancho failed to vet his leads' sources or buyers. He sold roughly three million leads to two related companies that used the information to harass and deceive consumers into paying alleged debts they did not actually owe. Moreover, these companies threatened consumers with "financial restraining orders" – falsely claiming that the consumers had bounced checks so they could fraudulently collect debts. The CFPB ordered Sancho to disgorge $21,151 he made illegally and banned him from the financial products and consumer leads industries. Lead Publisher is now out of business.

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[55] Consumer Financial Protection Bureau, *CFPB Takes Action Against Lead Aggregators for Online Trafficking of Personal Information* (December 2015), *available at* http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-lead-aggregators-for-online-trafficking-of-personal-information/.

5.1.2 Continuation of pre-2015 debt collection enforcement matters

CFPB v. Corinthian Colleges, et al.[56]

(N.D. Ill. No. 1:14-cv-07194) (complaint filed September 16, 2014; final judgment entered on October 27, 2015).

A federal district court entered a final default judgment against Corinthian Colleges, Inc., resolving a lawsuit filed by the CFPB in September 2014. The Bureau's lawsuit against Corinthian alleged that the company lured tens of thousands of students into taking out private loans to cover expensive tuition costs by advertising bogus job prospects and career services and that Corinthian then used illegal debt collection tactics to strong-arm students into paying back those loans while still in school. The court ordered that Corinthian was liable for more than $530 million and prohibited the company from engaging in future misconduct. Corinthian is in bankruptcy proceedings and the Bureau is seeking to collect the judgment in that venue. Partial relief on the loans at issue in the case was provided in February 2015 when the CFPB and the U.S. Department of Education announced more than $480 million in forgiveness for a large portion of Corinthian's high-cost private student loans.

CFPB v. Frederick J. Hanna & Associates, P.C., et al.[57]

(N.D. Ga. No. 1:14-cv-2211-AT) (complaint filed July 14, 2014; final judgment entered on January 6, 2016).

In January 2016, the district court entered a consent order filed by the CFPB to resolve the lawsuit it filed in 2014 against Frederick J. Hanna & Associates, a Georgia-based law firm, and its three principal partners, for operating an illegal debt collection lawsuit mill. The lawsuit had

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[56] Consumer Financial Protection Bureau, *CFPB Secures $480 Million in Debt Relief for Current and Former Corinthian Students* (February 2015), *available at* http://www.consumerfinance.gov/newsroom/cfpb-secures-480-million-in-debt-relief-for-current-and-former-corinthian-students/.

[57] Consumer Financial Protection Bureau, *CFPB Takes Action to Stop Illegal Debt Collection Lawsuit Mill* (December 2015), *available at* http://www.consumerfinance.gov/newsroom/cfpb-takes-action-to-stop-illegal-debt-collection-lawsuit-mill/.

alleged that the defendants rely on deceptive court filings and faulty evidence to churn out consumer debt lawsuits. The order bars the firm and its principal partners from illegal debt-collection practices, including filing lawsuits without being able to verify the consumers' debt is owed, and using deceptive court filings, and requires the firm and its principals to pay $3.1 million in civil penalties. The consent order follows an earlier court order issued in July 2015 that rejected the defendants' motion to dismiss the case. Among other things, that court ruling held that attorneys have an obligation to meaningfully review the facts of a lawsuit before filing it and that the CFPB has the authority to take action against attorneys engaged in illegal consumer debt-collection practices.

CFPB v. CashCall, Inc., et al.[58]

(C.D.Cal. File CV 15-7522-JFW (RAOx) (complaint filed December 16, 2013 in D. Mass. No. 1:13-cv-13167; order denying defendants' motion for judgment on the pleadings entered on December 30, 2015).

In 2013, the Bureau filed a lawsuit against online loan servicer, CashCall Inc., its owner, a subsidiary, and an affiliate, for collecting money consumers do not owe, because the underlying loans were void under state lending or licensing laws. In December 2015, the court denied the defendants' motion for judgment on the pleadings, holding that a CFPA UDAAP claim could be predicated on conduct which also constituted a state law violation and that the CFPA prohibition against establishing a usury cap does not prevent the CFPB from enforcing the UDAAP prohibition in connection with the collection of void debts. This action is still pending.

5.2 FTC law enforcement actions

In 2015, the Commission continued aggressive law enforcement activities and public outreach to address new and troubling issues in debt collection, doing more than ever to protect consumers. From January 1 through December 31, 2015, the FTC brought or resolved 18 debt collection cases—the highest number in any single year. In several of its Section 13(b) cases, the

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[58] Consumer Financial Protection Bureau, *CFPB Sues CashCall for Illegal Online Loan Servicing* (December 2013), *available at* http://www.consumerfinance.gov/newsroom/cfpb-sues-cashcall-for-illegal-online-loan-servicing/.

Commission obtained preliminary relief that included *ex parte* temporary restraining orders with asset freezes, immediate access to business premises, and appointment of receivers to run the debt collection businesses.

The cases discussed below represent a concerted effort by the FTC to target unlawful debt collection practices including harassment or abuse; attempts to collect on “phantom” debts; unlawful text messages or emails; and the unlawful disclosure of consumers’ sensitive personal information by debt brokers.

5.2.1 Joint actions with law enforcement partners

In 2015, the FTC collaborated successfully with its partners in law enforcement, including the CFPB, the New York State Office of the Attorney General (“New York AG”) and the Illinois Attorney General’s Office (“Illinois AG”), to combat egregious collection practices. As part of those efforts, the FTC filed one joint action with the CFPB, and one with the Illinois AG. The FTC filed three joint actions with the New York AG and settled a fourth case filed in 2014.

In April, the FTC and the CFPB filed their first-ever joint law enforcement action, against *Green Tree Servicing LLC* (discussed above).[59]

In *4 Star Resolution LLC*, the FTC and the New York AG alleged that the company used abusive and deceptive tactics to pressure consumers into making payments on supposed debts. The complaint alleges that 4 Star falsely claimed that they were attorneys, process servers, government agents, or criminal law enforcement officials, and falsely claimed that the consumers had committed an illegal or criminal act such as bank or check fraud.[60] 4 Star’s collectors then falsely threatened consumers with dire consequences, including arrest, imprisonment, and civil lawsuits, unless the consumers made an immediate payment on the supposed debts. Finally, the complaint alleges that 4 Star’s collectors unlawfully disclosed

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[59] *FTC and CFPB v. Green Tree Servicing LLC*, No. 15-cv-2064 (D. Minn. Apr. 23, 2015) (Stipulated Order for Permanent Injunction and Monetary Judgment). *See also* Press Release, *National Mortgage Servicing Company Will Pay $63 Million to Settle FTC, CFPB Charges* (Apr. 21, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/04/national-mortgage-servicing-company-will-pay-63-million-settle.

[60] *FTC and State of New York v. 4 Star Resolution LLC*, No. 1:15-cv-00112-WMS (W.D.N.Y. Feb. 9, 2015) (Complaint).

information about supposed debtors to third parties, including friends, family members, and employers, and illegally used abusive and profane language. In February 2015, the court granted the plaintiffs' application for a temporary restraining order with an asset freeze, appointment of a receiver, expedited discovery, and other equitable relief. In May 2015, the parties entered into a stipulated preliminary injunction without an asset freeze. The FTC and the New York AG then moved for an asset freeze as part of the preliminary injunction, and the court granted their motion in November. Litigation continues in the matter. In October 2015, Preet Bharara, the U.S. Attorney for the Southern District of New York, announced that fifteen individuals associated with the 4 Star debt collection enterprise, including its principals Travell Thomas and Maurice Sessum, had been criminally charged with wire fraud and conspiracy to commit wire fraud. The charges were based on the allegations made against the defendants in the FTC's and the New York AG's case.

In *Vantage Point Services, LLC*, the FTC and the New York AG alleged that in collection calls to consumers the defendants often falsely claimed to be a law firm, process server, unrelated debt collection company, or entity affiliated with the government. In some instances, the defendants even posed as government agents, including FBI agents and district attorneys.[61] With this deceptive backdrop, the defendants allegedly falsely claimed that consumers had committed a crime and that an arrest warrant would be issued unless they made a payment. Often, the defendants told consumers that the consumers would spend 90 or 120 days in jail, or that they would need to pay thousands of dollars in bail if they did not pay. In some cases, the defendants allegedly falsely told third parties that the supposed debtors had committed a crime and that a warrant had been issued for their arrest. Finally, the complaint states that the defendants failed to provide consumers with basic information about their identity during calls, did not provide consumers with information about the supposed debt within five days of the call, as required by the FDCPA, and illegally charged them a "processing fee." The Court granted the FTC's request to enter a temporary restraining order prohibiting the defendants from engaging in unlawful collection practices, freezing the defendants' assets, and placing the defendant entities under the control of a court-appointed receiver. The court subsequently entered a preliminary injunction against the defendants, finding – over the defendants' objections – that the FTC and the New York AG had presented ample evidence showing that the defendants likely violated the law and

[61] *FTC and State of New York v. Vantage Point Services, LLC*, No. 1:15-cv-00006-WMS (W.D.N.Y. Jan. 5, 2015) (Complaint).

that the continuation of the asset freeze, receivership, and other relief was warranted. The FTC and the New York AG continue to litigate the matter.

In *FTC and State of New York v. Brace,* the FTC and the New York AG alleged that the defendants attempted to collect on debts they knew were bogus. According to the complaint, the defendants bought payday loans supposedly owed to a company that repeatedly told them to stop collection efforts because the debts were invalid, and ignored consumers' evidence that they had never authorized a payday loan.[62] The complaint also alleged that the defendants failed to identify themselves to consumers as debt collectors, falsely portrayed themselves as process servers or attorneys, and falsely threatened arrest or litigation. The defendants also allegedly unlawfully disclosed consumers' debts to third parties in an attempt to embarrass the consumers into paying them. The Court granted – over the defendants' objections – the plaintiffs' request to enter a temporary restraining order prohibiting the defendants from engaging in unlawful collection practices, granting plaintiffs immediate access to the business premises, and freezing the defendants' assets. The Court entered a stipulated preliminary injunction order that, among other things, freezes defendants' assets, requires them to preserve records, and bans them from engaging in any debt collection or debt brokering activities. The Commission continues to litigate the matter. This was the seventh case against an abusive Buffalo debt collection enterprise that the FTC has filed in the past two years, four of which were filed jointly with the New York AG's office.

The FTC and the New York AG also successfully resolved their litigation against the defendants in *FTC and State of New York v. National Check Registry, LLC*, a case that was filed in 2014. To settle charges that the defendants used lies and false threats to collect millions of dollars from consumers, the operators of that debt collection scheme agreed to a ban on participating in any debt collection business.[63] In the complaint, the two agencies had charged the defendants with violating the FDCPA, the FTC Act, and New York State law by falsely representing that consumers had committed check fraud, and then threatening the consumers with arrest, wage garnishment, or litigation if they did not pay the amounts demanded. The complaint also alleged that the defendants assessed unlawful convenience fees on consumers that were not

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[62] *FTC and State of New York v. Brace*, No. 1:15-cv-00875-RJA (W.D.N.Y. Oct. 5, 2015) (Complaint).

[63] *FTC and State of New York v. National Check Registry, LLC*, No. 1:14-cv-00490-RJA-JJM (W.D.N.Y. Oct. 16, 2015) (Stipulation to Enter Into a Final Order for Permanent Injunction and Settlement of Claims).

expressly authorized by the agreement creating the debt or permitted by law. Notably, the defendants had continued violating the law despite repeated public and private enforcement efforts, including an investigation by the New York AG that the defendants had resolved by entering into an assurance of discontinuance. The settlement order prohibits the defendants from misrepresenting material facts about any financial-related product or service, including lending, credit repair, debt relief, and mortgage-assistance relief services, and profiting from customers' personal information. The settlement order imposes a monetary judgment totaling $8,507,423, which has been partially suspended based on the defendants' inability to pay. It also requires the turnover of much of the defendants' remaining assets, including approximately $112,000, certain bank accounts, two cars, and two boats.

In *FTC and State of Illinois v. K.I.P., LLC*, the two agencies charged the defendants with illegally using threats and intimidation tactics to coerce consumers to pay payday loan debts they either did not owe, or did not owe to the defendants.[64] According to the complaint, the defendants used a host of business names to target consumers who obtained or applied for payday or other short-term loans. Claiming those loans were delinquent, the defendants threatened to garnish consumers' wages, to suspend or revoke their driver's licenses, to have them arrested or imprisoned, or to have them sued if they did not pay. Immediately after filing their case, the FTC and the Illinois AG obtained a court order that halted the defendants' scheme and froze their assets, and that appointed a receiver to take control of the business while the case was litigated. Later in the year, the defendants entered into a settlement with the FTC and the Illinois AG in which they agreed to a $6.4 million judgment and a ban on working in any debt collection business.[65] The stipulated final order also prohibits the defendants from misrepresenting financial products and services, profiting from customers' personal information, and failing to dispose of such information properly.

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[64] *FTC and State of Illinois v. K.I.P., LLC*, No. 1:15-cv-02985 (N.D. Ill. Apr. 6, 2015) (Complaint); *see also* Press Release, FTC, *Illinois Attorney General Halt Chicago Area Operation Charged With Illegally Pressuring Consumers to Pay 'Phantom' Debts* (Apr. 10, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/04/ftc-illinois-attorney-general-halt-chicago-area-operation-charged.

[65] *FTC and State of Illinois v. K.I.P., LLC*, No. 1:15-cv-02985 (N.D. Ill. Nov. 3, 2015) (Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief); *see also* Press Release, *FTC and Federal, State and Local Law Enforcement Partners Announce Nationwide Crackdown Against Abusive Debt Collectors* (Nov. 4, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/11/ftc-federal-state-local-law-enforcement-partners-announce.

5.2.2 Phantom debt collection

The Commission also continued its efforts to fight so-called "phantom debt collectors" this year. Phantom debt collectors engage in unfair, deceptive, or abusive conduct by attempting to collect on debts that either do not exist or are not owed to the phantom debt collector. The Commission initiated or resolved four actions against phantom debt collectors in 2015: *Williams, Scott & Associates*; *Centro Natural Corp.*; *Broadway Global Master Inc.*; and *K.I.P., LLC* (discussed above).

In May 2014, the FTC filed a complaint alleging that *Williams, Scott & Associates LLC* used a variety of false threats to bully consumers nationwide into paying supposed payday loan debts and other debts. Among the threats made, the defendants allegedly falsely claimed to be affiliated with federal and state agents, investigators, members of a government fraud task force, and other law enforcement agencies, and pretended to be a law firm. The defendants also allegedly told consumers that their driver's licenses were going to be revoked, and that the consumers were criminals facing imminent arrest and imprisonment.[66] In April 2015, the court issued an order permanently banning John Williams; Williams, Scott & Associates, LLC; and WSA, LLC from debt collection and requiring them to pay $3.9 million. In November 2015, the court issued a permanent injunction against the final defendant in the case, Chris Lenyszyn, banning him from debt collection activities and ordering him to pay more than $565,000.[67]

In *FTC v. Centro Natural Corp.*, the FTC had alleged in an October 2014 complaint that the defendants targeted thousands of Spanish-speaking consumers and used deceptive and abusive tactics to collect on debts that these consumers did not owe and to coerce them into purchasing goods that they did not want. The defendants allegedly held themselves out to consumers as court officials, government officials, or lawyers, and threatened dire consequences, such as arrest, if consumers failed to pay amounts demanded. The FTC charged the defendants with

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[66] *FTC v. Williams, Scott & Associates, LLC*, No. 1:14-cv-01599-HLM (N.D. Ga. May 27, 2014) (Complaint), *see also* Press Release, *At the FTC's Request, Court Halts Collection of Allegedly Fake Payday Debts* (July 1, 2014), *available at* http://www.ftc.gov/news-events/press-releases/2014/07/ftcs-request-court-halts-collection-allegedly-fake-payday-debts.

[67] *FTC v. Williams, Scott & Associates, LLC*, No. 1:14-cv-01599-HLM (N.D. Ga. Nov. 4, 2015) (Order), *see also* Press Release, *FTC and State Law Enforcement Partners Announce More Actions and Results in Continuing Crackdown Against Abusive Debt Collectors* (Jan. 7, 2016), *available at* https://www.ftc.gov/news-events/press-releases/2016/01/ftc-state-law-enforcement-partners-announce-more-actions-results.

violations of the FTC Act, the FDCPA, and the Telemarking Sales Rule.[68] In July 2015, the numerous defendants, in four separate stipulated orders, agreed to be banned from debt collection and telemarketing and to be prohibited from making the misrepresentations alleged in the complaint, and from making material misrepresentations about any product or service.[69] The defendants are also barred from selling or otherwise benefitting from customers' personal information. The settlement orders impose judgments on the defendants totaling nearly $6.8 million, which were suspended upon the transfer of approximately $776,000 worth of assets, including Florida real estate. For each defendant, the full judgment will become due immediately if the defendant is found to have misrepresented his or her financial condition.

In *Broadway Global Master Inc.*, the operators of a fraudulent debt collection scheme agreed in September 2015 to be banned from the debt collection business under a settlement with the FTC, resolving charges in a 2012 complaint that they illegally processed more than $5.2 million in payments from consumers for payday loan debts they did not owe.[70] The complaint alleged that callers working with the defendants harassed consumers into paying on bogus debts, often pretending to be agents of law enforcement or fake government agencies such as the "Federal Crime Unit of the Department of Justice." The court subsequently halted the operation and froze the defendants' assets pending litigation. In addition to banning the defendants from the debt collection business, the FTC's settlement order also prohibits the defendants from making misrepresentations about any product or service, profiting from customers' personal information, or failing to properly dispose of customer information. The order imposes a judgment of more than $4.3 million. Because of the defendants' inability to pay, the amount was suspended upon payment of $608,500, which will be used for consumer redress. The full judgment will become due immediately if the defendants are found to have misrepresented their

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[68] 15 U.S.C. §§ 6101-6108 (Telemarketing Act) and 16 CFR part 310 (Telemarketing Sales Rule).

[69] *See, e.g., FTC v. Centro Natural Corp.*, No. 14-cv-23879 CMA (S.D. Fla. June 30, 2015) (Stipulated Order for Permanent Injunction and Monetary Judgment as to Javier Sumbre, Jessica Anzola, and Sumore, L.L.C.); *see also* Press Release, *FTC Action Puts an End to Fraudulent Debt Collection Scheme that Targeted Spanish-Speaking Consumers* (July 8, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/07/ftc-action-puts-end-fraudulent-debt-collection-scheme-targeted.

[70] *FTC v. Broadway Global Master Inc.*, No. 2:12-cv-0855 JAM GGH (E.D. Cal. Sept. 10, 2015) (Stipulated Order for Permanent Injunction and Monetary Judgment); *see also* Press Release, *FTC Action Stops Scammers Who Collected Millions in Phantom Payday Loan Debts* (Sept. 16, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/09/ftc-action-stops-scammers-who-collected-millions-phantom-payday.

financial condition. In a separate criminal proceeding, the primary individual defendant pleaded guilty to mail and wire fraud charges brought by the U.S. Department of Justice based on his scheme, and he was ordered to pay restitution and sentenced to a one-year prison term.

5.2.3 Debt collection via unlawful text messages and email

Also in 2015, at the Federal Trade Commission's request, federal courts in New York and Georgia temporarily halted three debt collection operations that allegedly violated the FDCPA and the FTC Act by threatening and deceiving consumers via text messages, emails, and phone calls.[71] According to the FTC, the defendants used text messages, emails, and phone calls to falsely threaten to arrest or sue consumers. They also unlawfully contacted friends, family members, and employers, withheld information consumers needed to confirm or dispute debts, and did not identify themselves as debt collectors, as required by law. The defendants in this law enforcement sweep, called "Messaging for Money," are known as *Premier Debt Acquisitions*, *Unified Global Group*, and *The Primary Group*. The defendants in *Premier Debt Acquisitions* have settled that case, but the FTC continues litigation in the other two.

In *Premier Debt Acquisitions LLC,* the defendants impersonated law enforcement and government officials, falsely threatened consumers with a lawsuit or arrest, and falsely threatened to charge some consumers with criminal fraud, garnish their wages, or seize their property.[72] In text messages, the defendants allegedly claimed they would sue consumers and threatened to seize consumers' possessions unless they paid. In voicemails, the defendants also allegedly falsely claimed a "uniformed officer" was on the way to consumers' homes and asked them to "secure any large animals or firearms" before the officer arrived. The defendants also allegedly sent deceptive emails claiming that making a payment would help a consumer's credit report, but the defendants had no ability to make good on that claim. In May 2015, the FTC secured court-ordered preliminary relief that halted this abusive debt collection operation, froze

[71] *See* Press Release, *FTC Halts Three Debt Collection Operations That Allegedly Threatened and Deceived Consumers via Illegal Text Messages* (May 21, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/05/ftc-halts-three-debt-collection-operations-allegedly-threatened.

[72] *FTC v. Premier Debt Acquisitions LLC*, No. 1:15-cv-00421-FPG (W.D.N.Y. May 11, 2015) (Complaint); *see also* Press Release, *FTC Halts Three Debt Collection Operations That Allegedly Threatened and Deceived Consumers via Illegal Text Messages* (May 21, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/05/ftc-halts-three-debt-collection-operations-allegedly-threatened.

the operation's assets, and appointed a receiver to take over the defendants' business. In January 2016, the court entered a stipulated order for permanent injunction that banned the defendants from debt collection activities and prohibited them from misrepresenting material facts about financial-related products and services and from profiting from their former customers' personal information. The order imposed a judgment of $2,229,756, representing the amount of the defendants' debt collection revenue, which was partially suspended when the defendants surrendered certain personal assets, including real estate.

The FTC's complaint against *Unified Global Group*[73] alleged that the defendant companies at times sent texts to trick consumers into calling them back. The texts included false statements such as, "YOUR PAYMENT DECLINED WITH CARD ****-****-****-5463 . . . CALL 866.256.2117 IMMEDIATELY," even though consumers had never arranged to make payments to the defendants. The texts failed to identify the senders as debt collectors. The defendants also allegedly used deceptive emails and calls that threatened arrest and civil lawsuits, and unlawfully contacted consumers' friends, families, and co-workers about the supposed debts. The court entered an ex parte temporary restraining order and subsequently a stipulated preliminary injunction, both of which included an asset freeze and the appointment of a receiver. Litigation is ongoing.

The FTC's complaint against *The Primary Group* alleged that the defendants sent consumers a series of text messages, which failed to disclose that the company is a debt collector.[74] The defendants allegedly threatened consumers with false statements such as "I'm a process server with Primary Solutions, appointed to serve you papers for case [eight-digit number]. . ." and "Please have proper ID and a witness present who can provide a signature. If there's no reply I'll have to bring the document to your employer." The court granted the FTC's request to enter a temporary restraining order prohibiting the defendants from engaging in unlawful collection activities and freezing the defendants' assets. The court later entered a preliminary injunction – over the defendants' objections – preserving much of the relief contained in the TRO, including the asset freeze. The FTC continues to litigate the matter.

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[73] *FTC v. Unified Global Group, LLC*, 15-cv-422-W (W.D.N.Y. May 11, 2015) (Complaint).

[74] *FTC v. The Primary Group*, No. 1:15-cv-1645 (N.D. Ga. May 11, 2015) (Complaint).

5.2.4 Other FTC actions to halt egregious collection practices

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

In *United States v. Commercial Recovery Systems, Inc.*, a case that the FTC referred to the Department of Justice for prosecution, the government's complaint charged that, since at least 2010, the company ("CRS") and its current and former principals had violated the FDCPA and the FTC Act.[75] According to the complaint, CRS collectors called consumers and falsely claimed to be attorneys or judicial employees. Collectors also allegedly falsely stated that lawsuits had already been filed against consumers and offered to resolve the fictitious lawsuits "out of court," and left voicemail messages falsely representing that a failure to return the collector's call would result in a waiver of rights. The complaint also alleged that, in some instances, collectors told consumers that their wages, taxes, and 401(K) plans would be garnished if they did not pay. In reality, CRS had neither the intent nor the authority to file lawsuits against the consumers or attempt to have their wages garnished. The Department of Justice, with assistance from the Commission, continues to litigate the case.

In *Warrant Enforcement Division*, the FTC's complaint alleged that the defendants, while under contract to collect overdue utility bills, traffic tickets, court fines, and other debts for local governments in Texas and Oklahoma, sent consumers letters and postcards containing threats of arrest that appeared to come from a municipal court.[76] According to the FTC, in numerous instances, the defendants' threats were false. In other instances, the defendants did not have a reasonable basis to make the threats. The FTC charged that the false and unsubstantiated threats made to collect municipal court debts violated the FTC Act, and those made to collect utility debts violated both the FTC Act and the FDCPA. Under a stipulated order for permanent

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[75] *United States v. Commercial Recovery Sys., Inc.*, No. 4:15-cv-36 (E.D. Tex. Jan. 20, 2015) (Complaint). *See also* Press Release, *FTC Sues to Stop Texas Debt Collector from Coercing Consumers by Falsely Claiming It Will Bring Legal Action Against Them, Garnish Their Wages* (Jan. 21, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/01/ftc-sues-stop-texas-debt-collector-coercing-consumers-falsely.

[76] *FTC v. Municipal Recovery Servs. Corp.*, No. 15-CV-04064-N (N.D. Tex. Dec. 24, 2015) (Complaint).

injunction,[77] the defendants are prohibited from misrepresenting any material fact in collecting debts, including that failure to pay a debt will result in the consumer being arrested or jailed, having their vehicle impounded, or being unable to renew their driver's license. The order imposed a $194,888 judgment that was suspended based on the defendants' inability to pay. The full judgment will become due immediately if the defendants are found to have misrepresented their financial condition.

In October 2015, the Commission filed suit against *AFS Legal Services* and related companies, alleging that the defendants impersonated investigators and law enforcement and threatened to arrest, jail, and sue consumers if they did not pay.[78] Because the defendants often had consumers' personal information such as Social Security and bank account numbers, consumers believed the calls were legitimate and thought they would be arrested for check fraud or sued. The collectors also allegedly made harassing calls and contacted relatives, friends, and co-workers about consumers' debts. The defendants, who according to the Commission caused approximately $4 million in consumer injury, used multiple corporate names and locations to avoid detection, and failed to identify themselves as debt collectors. In November 2015, the Commission obtained an ex parte temporary restraining order with an asset freeze, appointment of a receiver, and injunctive relief prohibiting the defendants from engaging in the misrepresentations and other violations of the FTC Act and the FDCPA. The Commission continues to litigate the case.

In *BAM Financial*, the FTC's complaint alleged that the defendants had extracted payments from consumers through intimidation, lies, and other unlawful tactics.[79] The complaint also alleged that the defendants bought consumer debts and collected payment on their own behalf by threatening consumers with lawsuits, wage garnishment, and arrest, and by impersonating attorneys or process servers. According to the complaint, the defendants also unlawfully

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[77] *FTC v. Municipal Recovery Servs. Corp.*, No. 15-CV-04064-N (N.D. Tex. Jan. 29, 2016) (Stipulated Order for Permanent Injunction and Monetary Judgment); *see also*, Press Release, *FTC and State Law Enforcement Partners Announce More Actions and Results in Continuing Crackdown Against Abusive Debt Collectors* (Jan. 7, 2016), *available at* https://www.ftc.gov/news-events/press-releases/2016/01/ftc-state-law-enforcement-partners-announce-more-actions-results.

[78] *FTC v. Nat'l Payment Processing LLC*, No. 1:15-cv-3811-AT (N.D. Ga. Oct. 30, 2015) (Complaint).

[79] *FTC v. BAM Fin'l, LLC*, No. 8:15-cv-01672-JVS-DFM (C.D. Cal. Oct. 19, 2015) (Complaint).

disclosed debts to, or harassed, third parties, failed to identify themselves as debt collectors, and failed to notify consumers of their right to receive verification of the purported debts. At the FTC's request, the court entered a temporary restraining order that, among other things, prohibited the defendants from violating the FDCPA and the FTC Act, froze the defendants' assets, and appointed a receiver for the corporate defendants. The TRO remains in effect while the parties continue litigating the case.

5.2.5 Debt brokering and data security

In two separate 2014 cases – against *Bayview Solutions, LLC* and *Cornerstone and Company* – the FTC alleged that the defendant debt brokers posted the sensitive personal information of 55,000 consumers, including bank account and credit card numbers, birth dates, contact information, employers' names, and information about debts that the consumers allegedly owed, on a public website. Bayview and Cornerstone allegedly posted the sensitive data on a website geared for debt buyers, sellers, and other members of the debt collection industry, but accessible to anyone with an internet connection. The FTC's complaints alleged that by disclosing consumers' information online, the defendants exposed those consumers to risks ranging from identity theft to phantom debt collection. Soon after the FTC filed the complaints, the court ordered the website hosting the sensitive information to take it down immediately. It also ordered the defendants to notify the affected consumers that their information had been exposed and of steps they could take to protect themselves.   More recently, in April 2015, Bayview and Cornerstone entered into agreements with the FTC under which they must establish and maintain security programs that will protect consumers' sensitive personal information.[80] The companies also must have their security programs evaluated both initially and every two years by a certified third party.

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[80] *FTC v. Bayview Solutions, LLC*, No. 1:14-cv-01830-RC (D.D.C. Apr. 21, 2015) (Stipulated Final Order for Permanent Injunction); *FTC v. Cornerstone and Co., LLC*, No. 1:14-cv-01479-RC (D.D.C. Apr. 21, 2015) (Stipulated Final Order); *see also* Press Release, *Debt Brokers Settle FTC Charges They Exposed Consumers' Information Online* (Apr. 13, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/04/debt-brokers-settle-ftc-charges-they-exposed-consumers.

5.3 Debt collection advocacy

5.3.1 Amicus briefs

In the past year, the Bureau and the FTC have appeared together as amici (friends of the court) in two cases arising under the FDCPA. In addition, the Bureau appeared as an amicus in one case at the invitation of the court.

Non-judicial foreclosure: *Ho* amicus brief

On August 7, 2015, the Bureau filed an amicus brief at the invitation of the Ninth Circuit to address whether a trustee who forecloses on a deed of trust in a non-judicial action in California can qualify as a "debt collector" under the general definition of that term in the FDCPA. The Bureau's amicus brief urged the Ninth Circuit to conclude that such foreclosure trustees are "debt collectors" governed by the FDCPA.[81]

The FDCPA defines "debt collector" to mean "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another."[82] For purposes of one provision of the FDCPA, the FDCPA also includes as a "debt collector" a person whose principle business is enforcing security interests.[83] The FDCPA excludes from the definition of "debt collector" a person whose collection activities are "incidental to a bona fide fiduciary obligation."[84]

The consumer in this case is a California homeowner who fell behind on her loan payments for her residential property. ReconTrust was the trustee on the homeowner's deed of trust. In March 2009, ReconTrust sent the consumer a Notice of Default advising her of the initiation of

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[81] Brief of Amicus Curiae, *Ho v. ReconTrust Company, N.A.*, No. 10-56884 (9th Cir. Aug. 7, 2015) (*Ho* Br.), *available at* http://files.consumerfinance.gov/f/201508_cfpb_amicus-brief_ho-v-recontrust-n.pdf.

[82] 15 U.S.C. § 1692a(6).

[83] *See id.*

[84] 15 U.S.C. § 1692a(6)(F)(i).

non-judicial foreclosure proceedings on her property. The Notice of Default advised the homeowner that she could halt the trustee's sale by paying the entire amount demanded by her lender. Subsequently, ReconTrust sent the consumer a Notice of Trustee's Sale, which once again advised her that her home would be sold at public auction unless she took action to pay off her outstanding debt.

The Ninth Circuit, after briefing and argument in the case, invited the Bureau to address "whether, in this case, defendant ReconTrust is a 'debt collector'" under the FDCPA and "[i]n general . . . whether a trustee who forecloses on a California deed of trust in a non-judicial action qualifies as a 'debt collector' because he has 'attempt[ed] to collect, directly or indirectly, debts owed or asserted to be owed or due to another.'"[85] The Bureau's amicus brief argued that foreclosure trustees in California are "debt collectors" where they regularly send communications to homeowners such as the Notice of Default and the Notice of Trustee's Sale. As the brief explained, these notices provide the consumer an opportunity to cure her default and also threaten foreclosure on the consumer's home unless the consumer makes payment on her debt. The brief argued that such communications constitute attempts to collect mortgage debt and thus make a person who regularly sends such notices a "debt collector" under the FDCPA's definition.

The brief also addressed whether foreclosure trustees fall within the exception for collection activities that are "incidental to a bona fide fiduciary obligation." Specifically, the brief explained that this exception does not apply to trustees who owe no fiduciary duty to any party under applicable state law. The amicus brief also explained that the fact that California law may require foreclosure trustees to provide consumers with pre-foreclosure notices does not exempt such trustees from the definition of "debt collector" under the FDCPA.

Finally, the brief argued that foreclosure trustees can fall within the definition of "debt collector" even if their principal business can be characterized as enforcement of security interests. As the brief explained, entities that enforce security interests are not excluded from the definition of "debt collector." Rather, they are included within that definition for purposes of a specific provision of the FDCPA. The brief thus explained that an entity that enforces security interests may fall within the general definition of "debt collector" if the entity regularly demands payment

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[85] *See Ho* Br. at 1.

from consumers. The brief noted that exempting enforcers of security interests entirely from the FDCPA even when they regularly communicate with consumers would create a loophole in the statute that would undermine Congress's purpose in enacting the FDCPA to extend protection to consumers who have secured debts.

The court has not yet issued a decision in this case.

Definition of "debt": *Franklin* amicus brief

On December 11, 2015, the FTC and the Bureau jointly filed an amicus brief at the Seventh Circuit's invitation to address whether an unpaid parking-lot fee consisting of a $1.50 daily parking fee and a nonpayment penalty of $45 was a "debt" under the FDCPA.[86] The FDCPA defines "debt" as "[a]ny obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment."[87] In this case, the dispute centered on whether consumers' alleged failure to pay for parking at a public parking lot resulted in a "debt" that was subject to the FDCPA's protections.

The amicus brief argued that the $1.50 parking fee and the $45 penalty were debts under the FDCPA. As the brief explained, parking in a lot that is open to the public for a stated fee constitutes a "transaction" for purposes of the Act. A consumer who parks in the lot is under a contractual obligation to pay for parking. The resulting payment obligation, including the nonpayment penalty, "arise[s] out of a transaction" for purposes of the definition of "debt."

The brief also argued that the alleged failure to pay for parking should not be analogized to the lack of mutual agreement between a thief and his victim to enter into a transaction. Unlike a theft in which a person simply takes goods or services from another, the payment obligation in this case arose from the lot operator offering parking services to all comers, which consumers accepted by the act of parking their cars. Likewise, the brief argued that characterizing a portion of the payment obligation as a "fine" does not thereby take it outside of the FDCPA. As the brief

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[86] Brief of Amici Curiae, *Franklin v. Parking Revenue Recovery Servs., Inc.*, No. 14-3774 (7th Cir. Dec. 11, 2015), *available at* http://files.consumerfinance.gov/f/201512_cfpb_amicus-brief-franklin.pdf.

[87] 15 U.S.C. § 1692a(5).

explained, fines are typically not debts because they often do not arise out of a transaction. Where a payment obligation arises out of a consumer transaction, however, it is a “debt” under the FDCPA regardless of whether it can also be characterized as a “fine.”

The court has not yet issued a decision in this case.

“Meaningful Attorney Involvement”: *Bock* amicus brief

On August 13, 2015, the Bureau and the FTC jointly filed an *amicus* brief in the Third Circuit to address the practice by some debt-collection law firms of mass-filing collection lawsuits without any meaningful review by an attorney.[88] The consumer in this case alleged that the firm that filed a debt-collection suit against him violated the FDCPA by implicitly misrepresenting that an attorney had been meaningfully involved, even though an attorney spent only four seconds reviewing the case.

The agencies’ brief argued that a law firm violates the FDCPA when it files a debt-collection lawsuit without any attorney meaningfully reviewing the case first. The attorney’s imprimatur on the complaint conveys to the consumer that an attorney is meaningfully involved and has reached a professional judgment about the consumer’s case. If the attorney has not actually had any meaningful professional involvement, that representation is false. The amicus brief explains that this misleading representation can make a big difference to how consumers choose to respond to a debt-collection suit.

The agencies’ brief also argued that the record in this case supported the district court’s conclusion that the attorney who filed suit against the consumer had no meaningful involvement and failed to reach a professional judgment prior to filing suit. The attorney who filed the action spent a total of four seconds reviewing the complaint before approving it for filing. That review consisted solely of ministerial checks and involved no inquiry into the debt’s validity. Given those facts, the attorney cannot be said to have been meaningfully involved or to have reached a professional judgment about the consumer’s case.

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[88] Brief of Amici Curiae, *Bock v. Pressler & Pressler, LLP*, No. 15-1056 (3d Cir. Aug. 13, 2015), *available at* http://files.consumerfinance.gov/f/201508_cfpb_bock-v-pressler-and-pressler-amicus-brief.pdf.

The Bureau participated as *amicus curiae* in the oral argument on this case, which the U.S. Court of Appeals for the Third Circuit held in November 2015. The court has not yet issued a decision.

6. Education and outreach initiatives

The Bureau empowers consumers to make sound financial decisions for themselves and their families through wide-ranging consumer education efforts. These efforts include outreach to targeted consumer populations, including students, older Americans, servicemembers, veterans, and low-income and economically-vulnerable consumers. Similarly, the FTC's FDCPA program also involves extensive education and public outreach efforts. The FTC's consumer education initiative informs consumers of their rights under the FDCPA and what the statute requires of debt collectors, while its business education initiative informs debt collectors what they must do to comply with the law.[89]

6.1 Bureau education and outreach initiatives

The Bureau seeks to link consumers to information about specific financial decisions, including those relating to debt collection, and to elicit input from them to inform the Bureau's policymaking. One of the Bureau's initiatives is Ask CFPB, an interactive online tool that helps consumers find short, clear, unbiased, authoritative answers to their financial questions.

Ask CFPB for debt collections was initiated in October 2012. As of January 2016, debt collection was the second most-viewed category (credit reports and scores was first). The Ask CFPB

[89] *Available at* https://www.consumer.ftc.gov/articles/0149-debt-collection; https://www.ftc.gov/tips-advice/business-center/credit-and-finance.

questions and answers on debt collection address a wide range of issues under the FDCPA, including the meaning of specific terms, consumers' rights, and debt collectors' obligations. The questions and answers address many specific debt collection topics, as well as other federal and state laws that may apply to debt collection practices. Ask CFPB provides practical tips to consumers regarding steps they can take to exercise their rights under the FDCPA or better manage their debts.

Ask CFPB also includes FAQs targeted to special consumer populations, including older Americans, students and servicemembers. In May 2015, the Offices for Older Americans and Servicemember Affairs issued a consumer advisory entitled "Your benefits are protected from garnishment." The advisory was developed in response to numerous complaints received from older Americans, including veterans, who reported that debt collectors have threatened to garnish their benefits from Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), and VA benefits, even though these funds usually cannot be garnished. Along with the advisory, the Bureau created a sample letter to help consumers tell debt collectors that their income is protected from garnishment.

In July 2013, the Bureau added five sample letters to Ask CFPB that consumers may use when they interact with debt collectors. These letters can help consumers get valuable information and protect them from inappropriate or unwanted collection activities. The five letters address the following situations: (1) consumers who need more information about a debt; (2) consumers who want to dispute their debt; (3) consumers who want to restrict how and when a collector can contact them; (4) consumers who have hired an attorney with respect to the debt matter; and (5) consumers who want to stop all communication from debt collectors.[90]

Since tracking began in June 2014, the letters have been downloaded over 198,000 times as of the end of 2015. Of the letters, "I need more information about this debt" and "I do not owe this debt" are most popular, accounting together for over two thirds of total downloads:

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[90] Copies of these letters are available on the Bureau's website at http://www.consumerfinance.gov/askcfpb/1695/ive-been-contacted-debt-collector-and-need-help-responding-how-do-i-reply.html.

TABLE 4: DOWNLOADS OF CFPB'S COLLECTION-RELATED LETTERS

Letter	% total downloads
"I need more information about this debt"	41%
"I do not owe this debt"	32%
"I want the debt collector to stop contacting me"	13%
"I want to specify how the debt collector can contact me"	11%
"I want the debt collector to only contact me through my lawyer"	3%

In addition to online resources for consumers, the Bureau has developed numerous print publications and brochures on financial topics including debt collection, that consumers and organizations can download or order in bulk free of charge. In 2015, the Bureau added the brochure "Know Your Rights When a Debt Collector Calls," in both English and Spanish, and distributed 130,973 of the English version and 24,167 of the Spanish version as of the end of 2015.

Debt collection is a significant issue facing consumers, especially low-income and economically-vulnerable consumers. The Bureau, through its Office of Financial Empowerment, developed a financial empowerment training and toolkit – *Your Money, Your Goals* – for use by social services workers and other front-line staff working with economically vulnerable consumers. The modularized toolkit covers a variety of financial topics, including debt management and consumer financial protection. The module on dealing with debt provides an overview of the FDCPA, resources, and tools to help consumers better manage their debts. As of the end of 2015, more than 8,000 Social Services front-line staff were trained on *Your Money, Your Goals*, reaching an estimated 150,000 consumers. The toolkit and training, in both English and Spanish, can be accessed at www.consumerfinance.gov/your-money-your-goals.

Empowering consumers to manage their student loan debts has been and will continue to be a significant focus for the Bureau. The Bureau developed and continues to maintain web tools designed to help students and families make more informed decisions about paying for college and repaying their student loans. Our financial aid comparison[91] tool can assist consumers in comparing the financial burden between different colleges, such as their potential debt load and expected monthly student loan payments after graduation. Likewise, our Repay Student Debt[92] tool can provide help for borrowers who have fallen behind on their student loan payments. The tool has helped borrowers understand their options, communicate effectively with their loan servicer or debt collector, and work to bring their student loans out of default or delinquency. Improving borrower's performance in paying student loan debts helps them to rebuild their credit, go back to school, or buy a home.[93] In 2015, the Bureau launched a revised version of this tool, incorporating new resources to assist borrowers in default when seeking to communicate with debt collectors.

Debt collection is also a significant issue facing special consumer populations, including servicemembers. In April and November of 2015, the Office for Servicemember Affairs released its semiannual complaint snapshot that provides an overview of complaints submitted by servicemembers, veterans, and their family members.[94] As described in the report, debt collection complaints are the largest category of complaints from the military community, and as of December 2015, they remain the largest complaint category, comprising 42 percent of total complaints from military consumers. The report also highlighted the most common problems these consumers are reporting. In addition to the report, the Office for

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[91] *Available at* http://www.consumerfinance.gov/paying-for-college/compare-financial-aid-and-college-cost/.

[92] *Available at* http://www.consumerfinance.gov/paying-for-college/repay-student-debt/.

[93] For borrowers with private student loans, options to cure a student loan in default may be limited. In May 2013, the Bureau published *Student Loan Affordability*, a report analyzing 28,000 comments from policy experts, market participants, and consumers offering potential options for policymakers seeking to help borrowers manage their student debt. *Available at* http://www.consumerfinance.gov/reports/student-loan-affordability/. *Student Loan Affordability* featured a discussion of possible options for borrowers in distress, including increased access to loan modifications for borrowers seeking to avoid default and a mechanism through which private student loan borrowers in default can successfully repair their credit.

[94] *Available at* http://www.consumerfinance.gov/reports/complaints-received-from-servicemembers-veterans-and-their-families-2011-2014/; http://files.consumerfinance.gov/f/201511_cfpb_snapshot-of-servicemember-complaints.pdf.

Servicemembers Affairs released a blog detailing common debt collection tactics reported by servicemembers, including reports of debt collectors alleging that failure to pay a debt will result in the revocation of the servicemember's security clearance. The blog addressed this issue and steps servicemembers can take if they are concerned about the impact of financial difficulties on their security clearance.[95]

6.2 FTC education and public outreach

Education and public outreach also are important parts of the Federal Trade Commission's debt collection program. The FTC uses multiple formats and channels to inform consumers about their rights under the FDCPA, as well as what the statute requires of debt collectors; and to inform debt collectors about what they must do to comply with the law. The FTC also uses education and public outreach to enhance legal services providers' understanding of debt collection issues.

The FTC reaches tens of millions of consumers through English and Spanish print and online materials, blog posts, and speeches and presentations. To maximize its outreach efforts, FTC staff works with an informal network of about 16,000 community-based organizations and national groups that order and distribute FTC information to their members, clients, and constituents. In 2015, the FTC distributed 17.4 million print publications to libraries, police departments, schools, non-profit organizations, banks, credit unions, other businesses, and government agencies. In 2015, the FTC logged more than 102 million views of its website pages. The FTC's channel at YouTube.com/FTC Videos houses 144 videos, which were viewed more than 471,000 times in 2015. The Consumer blogs in English[96] and Spanish[97] reached 93,052 (English) and 34,892 (Spanish) email subscribers.

As part its work to raise awareness about scams targeting the Latino community, the FTC has developed a series of fotonovelas in Spanish. The graphic novels tell stories based on complaints

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95 *Available at* http://www.consumerfinance.gov/blog/are-unpaid-debts-a-military-career-killer/.

96 http://www.consumer.ftc.gov/blog.

97 http://www.consumidor.ftc.gov/blog.

Spanish speakers make to the FTC and offer practical tips to help detect and stop common scams. People ordered more than 113,000 copies of the *Cobradores De Deuda* (Debt Collectors) fotonovela in 2015.

The FTC educates industry members by developing and distributing business education materials, delivering speeches, blogging, participating in panel discussions at industry conferences, and providing interviews to general media and to trade publications. As discussed more fully below, the FTC hosted a series of three Debt Collection Dialogues in 2015 for state and federal agency staff and members of the debt collection industry. In addition, the FTC provided a guest column for the November 2015 edition of "Collector," a leading trade publication, on the agency's debt collection program. The December 8, 2015 Business Center blog post about the FDCPA was featured on the homepage of InsideARM.com, another leading trade publication. The FTC's business education resources can be found in its online Business Center.[98] The Business Center logged more than 3.4 million page views in the first 11 months of 2015, and there are more than 49,000 email subscribers to the Business Blog.[99] A complete list of the FTC's consumer and business education materials relating to debt collection and information on the extent of their distribution is set forth in the Appendix.

FTC staff also regularly meet with legal service providers, consumer advocates, and people who work in immigrant, Native American, Latino, Asian, and African American communities to discuss consumer protection issues, including the FTC's work in the debt collection arena. In 2015, the FTC organized five Common Ground conferences that brought together law enforcement, consumer advocates, and members of these communities to discuss consumer protection issues including debt collection, and to encourage consumers to report frauds and scams to the FTC. The FTC also hosted five Ethnic Media Roundtables around the country during 2015, bringing together law enforcement, community organizations, and consumer advocates with members of the ethnic media to discuss how consumer protection issues – including debt collection – affect their communities.

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[98] http://business.ftc.gov/.

[99] http://business.ftc.gov/blog.

7. Rulemaking, research, and policy initiatives

The Bureau and FTC are working together to better understand the debt collection marketplace, and to inform policymaking initiatives designed to best protect consumers. This dialogue and collaboration between the Bureau and FTC are instrumental in enabling the Bureau to understand some of the most important issues to consider as it makes progress in developing the first comprehensive federal rules covering debt collection. In addition, the Bureau's ongoing outreach, review of comments in response to its November 2013 ANPR, and own research provide opportunities for the Bureau to learn more about what is occurring in the market, to interact with those industry and consumer groups who can provide feedback about this market, and to develop its own understanding of consumer experiences with debt and debt collection.

7.1 Bureau rulemaking and research

7.1.1 Debt collection ANPR and comment review process

The CFPB issued an ANPR in November 2013 to explore the idea of developing debt collection rules. On February 28, 2014, the comment period for the ANPR ended, and by that date, the Bureau had received more than 23,000 comments.

These comments came from individual consumers, industry participants, industry trade groups, consumer groups, government officials, and academic institutions. In addition to these comments, Cornell University submitted a report with nearly 1,000 responses received on their website, www.RegulationRoom.org, which is operated by law students and staff at Cornell Law School. This website makes it easy for people to participate in discussions about rulemaking proposals in an interactive and intuitive way. Approximately 80% of the participants on Cornell's site had never previously commented on a federal rulemaking.

During 2014, the Bureau began carefully evaluating the responses to the ANPR. Some of the broad themes identified from the ANPR responses are:

- Need to consider effect of technological change – Many third-party debt collectors and consumer groups noted that the debt industry has experienced significant technological changes since the enactment of the FDCPA in 1977, and the FDCPA, therefore, does not specifically address the use of new types of technology, like email. As a result, it would be useful for the Bureau to address the use of newer technologies. However, there were many differences among commenters as to how the CFPB should address these newer technologies.
- Information accuracy and flow – Consumer groups, debt collectors, and states' Attorneys General also repeatedly commented about the types of information that should travel with a debt when it is sold and the consumer advantages that may result from the transfer of additional information. There were also comments related to whether certain types of debt, like medical or student loan debt, should require more or less documentation. Some industry commenters noted that it was important to consider the burden of requiring particular types of information.
- Communication issues – Many consumer groups and industry members supported rules addressing or clarifying a wide variety of issues relating to the proper time, place, and manner of debt collection communications, offering diverse views as to how the Bureau should approach these issues.
- First- vs. third-party debt collection issues – Many consumer groups advocated for creating rules that would apply to first party collectors, because harm from first-party collectors can be equally problematic for the consumer. In contrast, credit unions and several industry groups stated that an extension of debt collection rules to first-party collectors could impose significant burdens and increase consumer confusion, and are not necessary.

To address these and other issues in the rulemaking in a thorough and rigorous manner, the Bureau, among other things, is actively engaged in research, as described below in Section 7.1.2.

In addition, prior to issuing a debt collection NPRM, the Bureau is planning to convene one or more panels pursuant to the SBREFA composed of the CFPB, Small Business Administration (SBA), and the Office of Management and Budget (OMB) to get input from small businesses in the debt collection industry on the possible impact of debt collection rulemaking on their businesses.

7.1.2 Bureau research projects

The Bureau is engaged in a number of research projects to better understand the collections market and its impact on consumers, which will help inform the development of rules. These research projects include a consumer survey to obtain quantitative data about consumers' experiences with debt and debt collection, qualitative testing including the use of cognitive interviews to learn about the effect of debt collection disclosures, and a qualitative survey of debt collectors to better understand the operational costs of collecting debt.

With respect to the consumer survey, the Bureau mailed a survey to more than 10,000 consumers asked to voluntarily participate. That survey asks consumers, for example, whether they have been contacted by debt collectors and, if so, for what type of debt and whether they recognized the debt that was being collected. The Bureau is currently processing responses to the survey, and will use the resulting data to inform the CFPB rulemaking concerning debt collection, future research, and stakeholders.

The Bureau is also conducting qualitative testing (including cognitive interviews and usability testing with consumers who agreed to participate) to assess, among other things, the efficacy of debt collectors' disclosing: (1) information about the debt and its owner; (2) that a communication is from a debt collector and how the collector will use information it receives from consumers; and (3) a consumer's legal rights in responding to debt collectors, including a consumer's ability to dispute a debt. The FDCPA currently requires that collectors provide some of this information to consumers during or within five days of the initial communication. Qualitative testing will provide insight into consumers' understanding of current disclosures debt collectors provide, allowing the Bureau to better gauge whether refinements to the type of information disclosed or the method of disclosing information might be helpful for consumers.

To better understand debt collector costs, the Bureau is conducting a qualitative survey of debt collection firms. The study includes a written questionnaire sent to 60 debt collection firms and phone interviews with more than 30 debt collection firms and vendors to the collections industry. The objective of the study is to obtain a baseline understanding of the operational costs of debt collection firms, and the Bureau anticipates using the results of the study to better understand the likely impact on the debt collection industry of any potential regulations.

7.1.3 Market monitoring and outreach

The Bureau continues to monitor the debt collection industry and engages key debt collection stakeholders to improve its understanding of the market and to develop informed policies that will protect consumers without imposing unnecessary costs.

During 2015, CFPB staff spoke at both regional and national events on the topic of debt collection. The CFPB also held meetings with many consumer groups, industry groups, vendors, and government officials to better understand consumers' experiences with debt collection, as well as how the market and industry function.

In addition, the Bureau has held a number of meetings with market participants to inform the Bureau as a part of the rulemaking process. The results of this outreach have provided Bureau staff with detailed information related to the costs of operating a debt collection business and potential impacts of the proposals under consideration.

The Bureau also gathered information regarding the debt collection policies and procedures of the credit card issuers that were surveyed as part of the Bureau's 2015 Consumer Credit Card Market Report.[100] Among other insights, the Bureau gained understanding into the issuers' policies and procedures relating to contacting the consumer and selling the debt.

7.2 FTC's research and policy development activities

In the past year, the FTC has continued to monitor and evaluate the debt collection industry and its practices. Specifically, as described below, the FTC has organized and hosted three Debt Collection Dialogues with the collection industry and provided the CFPB with input on debt collection rulemaking and guidance initiatives.

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[100] *See* http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf.

7.2.1 Debt collection dialogues

Between June and November 2015, the FTC hosted a series of three sold-out Debt Collection Dialogues around the country with a number of federal and state partners and leaders of the collection industry.[101] The sessions gave debt collectors opportunities to hear from the government law enforcers who police their industry and allowed the law enforcers and industry members to highlight areas of concern, share strategic priorities, and generate ideas for compliance. The Dialogues were held in Buffalo, NY, on June 15; Dallas, TX, on September 29; and Atlanta, GA, on November 18. Approximately 550 people attended the three Dialogues. Representatives from three federal agencies – the FTC, the Consumer Financial Protection Bureau, and the Office of the Comptroller of the Currency – participated in the conversations. Joining the federal law enforcers were representatives from six state agencies from five states – Georgia, New York, South Carolina, Tennessee, and Texas. The Attorneys General of Georgia (Samuel Olens) and New York (Eric Schneiderman) delivered opening remarks at the events in their respective states.

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

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[101] Each of the three Dialogues had its own event page. *See* https://www.ftc.gov/news-events/events-calendar/2015/06/debt-collection-dialogue-conversation-between-government (Buffalo); https://www.ftc.gov/news-events/events-calendar/2015/09/debt-collection-dialogue-conversation-between-government (Dallas); and https://www.ftc.gov/news-events/events-calendar/2015/11/debt-collection-dialogue-conversation-between-government (Atlanta).

debt collection. And the fourth focused on federal regulation and enforcement. Transcripts from all three Dialogues are available on the FTC's website.[102]

7.2.2 Debt collection rulemaking

The FTC also works closely with the CFPB to coordinate efforts to protect consumers from unlawful debt collection practices.[103] As part of this coordination, FTC and CFPB staff regularly meet to discuss ongoing and upcoming law enforcement, rulemaking, and other activities; share debt collection complaints; cooperate on consumer education efforts in the debt collection arena; and consult on debt collection rulemaking and guidance initiatives. Building on efforts initiated in 2013, when the CFPB published the Advance Notice of Proposed Rulemaking ("ANPR"), FTC staff have continued to consult with CFPB staff on their rulemaking efforts. FTC staff have provided suggestions and insights based upon its decades of experience in the debt collection arena. The FTC looks forward to continuing to work with the CFPB on this rulemaking and other efforts to further the agencies' common goal of protecting consumers from unlawful debt collection tactics.

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[102] *See* https://www.ftc.gov/system/files/documents/public_events/635431/buffalo_transcript_-_final_1.pdf (Buffalo); and https://www.ftc.gov/system/files/documents/public_events/677631/dallas_dialogue_transcript.pdf (Dallas); https://www.ftc.gov/system/files/documents/public_events/677651/atlanta_dialogue_transcript.pdf (Atlanta).

[103] The Dodd-Frank Act directs the FTC and the CFPB to coordinate their law enforcement activities and promote consistent regulatory treatment of consumer financial products and services, including debt collection. *See* Dodd-Frank Act, Pub. L. 111-203, 124 Stat. 1376 § 1024(c)(3) (July 21, 2010). In January 2012, the FTC and CFPB entered into a memorandum of understanding that supplements the requirements of the Dodd-Frank Act and creates a strong and comprehensive framework for coordination and cooperation. Memorandum of Understanding Between the Consumer Financial Protection Bureau and the Federal Trade Commission, January 2012, *available at* http://www.ftc.gov/sites/default/files/attachments/press-releases/federal-trade-commission-consumer-financial-protection-bureau-pledge-work-together-protect-consumers/120123ftc-cfpb-mou.pdf.

8. Conclusion

The CFPB is focused on creating a transparent and fair market for consumers, creditors, and debt collectors. We have worked to prevent harmful and illegal debt collection practices. We believe that debt collection should be honest and fair to consumers, and that a transparent, law-abiding debt collection marketplace benefits everyone. We will continue our efforts to ensure that debt collectors have sufficient information to collect the debt, accurately verify that they are attempting to collect from the right consumer if the consumer disputes the debt, and ensure that communications to consumers are honest, factual, and lawful.

The Bureau will continue the rulemaking process with the goal of implementing a set of clear rules that achieve these goals. With these rules, we intend to ensure that debt collectors (both first-party and third-party) treat consumers with dignity and respect, obtain and retain the information necessary to accurately verify that they are attempting to collect from the right consumer, and provide consumers with appropriate information about their rights and the debt collection process. The Bureau's rulemaking activity will be complemented by rigorous supervision and enforcement to ensure that institutions comply with current laws and, after the rulemaking is completed, the rules promulgated by the Bureau.

The Bureau will continue to implement its debt collection program in 2016, and will work actively - in close cooperation with the FTC and other regulators – to protect consumers from unfair, deceptive, abusive, and other unlawful conduct of some debt collectors.

APPENDIX:

February 12, 2016

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

Dear Director Cordray:

Thank you for your letter of January 12, 2016. As the letter mentions, the Consumer Financial Protection Bureau (CFPB) is responsible for providing annual reports to Congress concerning the federal government's efforts to implement the Fair Debt Collection Practices Act (FDCPA).[104] This letter and its appendix describe the efforts the Federal Trade Commission (Commission or FTC) has taken during the past year in the debt collection arena. In the FTC's debt collection work, the CFPB has been a valuable partner, and the Commission anticipates that our partnership will become even stronger in the future. We hope that the information in this letter will assist the CFPB in preparing this year's report.

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

- coordinated the first federal-state-local enforcement initiative targeting deceptive and abusive debt collection practices;
- prosecuted a sweep of cases against collectors that used unlawful text messages to collect debts;
- filed 12 new cases against 52 new defendants (a record number of debt collection enforcement actions for the FTC in a year);

[104] The Dodd-Frank Act directed the CFPB to report to Congress on the federal government's implementation and administration of the FDCPA. Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. 11-203, § 1089, 124 Stat. 1376, 2092-93 (2010) (amending the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p). Before the enactment of the Dodd-Frank Act, Section 815(a) of the FDCPA, 15 U.S.C. § 1692m, required the FTC to report directly to Congress on these topics. The Commission submitted such annual reports from 1977 to 2011.

- resolved 9 cases and obtained nearly $94 million in judgments;[105]
- banned 30 companies and individuals that engaged in serious and repeated violations of law from ever working in debt collection again;
- published a list of every company and individual banned by federal court order from engaging in debt collection activities;
- filed three amicus briefs, two of them jointly with the CFPB, on key debt collection issues; and
- hosted three Debt Collection Dialogues, to promote a more robust exchange of information between the debt collection industry and the state and federal governmental agencies that regulate their conduct.[106]

The FTC's debt collection program is a three-pronged effort: (1) vigorous law enforcement; (2) education and public outreach; and (3) research and policy initiatives. Over the past year, the FTC has employed all three prongs in its effort to curb unlawful debt collection practices and protect consumers.

A. LAW ENFORCEMENT ACTIVITIES

The Commission is primarily a law enforcement agency, and law enforcement investigations and litigation are at the heart of the FTC's recent debt collection work. Both the FDCPA and the FTC Act[107] authorize the Commission to investigate and take law enforcement action against debt collectors that violate those statutes.[108] If an FTC investigation reveals that a debt collector violated the law, the Commission may file a federal court action seeking injunctive and equitable monetary relief under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), or refer the matter to the Department of Justice for civil penalties and injunctive relief under Section 5(m) of the FTC Act. Where a collector's violations are so egregious that a court order is necessary to halt the conduct immediately, or where consumer redress and disgorgement are more appropriate forms of monetary relief than civil penalties, the FTC generally files the action itself under

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105 These figures include cases filed and resolved in 2015, as well as cases filed in previous years but resolved in 2015.

106 This past year's work built upon and expanded the FTC's ongoing crackdown on unlawful debt collection practices. Since January 1, 2010, the FTC has sued over 240 companies and individuals who engaged in unlawful collection practices, banning 95 from the industry, and securing over $352 million in judgments.

107 FDCPA, 15 U.S.C. § 1692-1692p; FTC Act, 15 U.S.C. §§ 41-58.

108 The FDCPA authorizes the Commission to investigate and take law enforcement action against debt collectors that engage in unfair, deceptive, abusive, or other practices that violate the statute. FDCPA § 814, 15 U.S.C. § 1692*l*. Under the FTC Act, the FTC may investigate and take law enforcement action against entities that, in connection with collecting on debts, engage in unfair or deceptive acts and practices. FTC Act § 5, 15 U.S.C. § 45.

Section 13(b) of the FTC Act. Where, on the other hand, preliminary injunctive relief to halt unlawful conduct is unnecessary and civil penalties are the appropriate monetary relief, the FTC may refer the case to the Department of Justice.

In addition to filing and referring law enforcement actions, the FTC files amicus briefs and undertakes other law enforcement-related activities.

B. Legal Actions

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

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

1. Operation Collection Protection

The Commission's efforts in 2015 to protect consumers from unlawful practices culminated in the announcement of the ongoing Operation Collection Protection initiative in November. Operation Collection Protection is the first coordinated federal-state-local enforcement initiative targeting deceptive and abusive debt collection practices. The nationwide crackdown has so far included over 130 new law enforcement actions by federal, state, and local law enforcement authorities against collectors who used illegal tactics such as harassing phone calls and false threats of litigation, arrest, and wage garnishment.[109] More than 70 law enforcement partners have participated so far in this continuing initiative. Operation Collection Protection included the twelve new enforcement actions against debt collectors brought by the FTC in 2015. Those actions are described in further detail below.

C. Joint Actions with Law Enforcement Partners

In 2015, the FTC collaborated successfully with its partners in law enforcement, including the CFPB, the New York State Office of the Attorney General ("New York AG") and

[109] *See* Press Release, FTC and Federal, State and Local Law Enforcement Partners Announce Nationwide Crackdown Against Abusive Debt Collectors (Nov. 4, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/11/ftc-federal-state-local-law-enforcement-partners-announce; Press Release, FTC and State Law Enforcement Partners Announce More Actions and Results in Continuing Crackdown Against Abusive Debt Collectors (Jan. 7, 2016), *available at* https://www.ftc.gov/news-events/press-releases/2016/01/ftc-state-law-enforcement-partners-announce-more-actions-results.

the Illinois Attorney General's Office ("Illinois AG"), to combat egregious collection practices. As part of those efforts, the FTC filed one joint action with the CFPB, and one with the Illinois AG. And the FTC filed three joint actions with the New York AG and settled a fourth case filed in 2014. In addition, as discussed more fully below, the FTC and the New York AG co-hosted a Debt Collection Dialogue in Buffalo in June. The FTC has greatly appreciated the opportunity to have worked with the CFPB, the Illinois AG, and the New York AG on debt collection and looks forward to continuing these partnerships going forward.

In April, the FTC and the CFPB filed their first-ever joint law enforcement action, against *Green Tree Servicing LLC*.[110] In addition to mortgage servicing violations and credit reporting violations, the two agencies alleged that Green Tree made illegal and abusive debt collection calls to consumers, misrepresented the amounts people owed, and failed to honor loan modification agreements between consumers and their prior servicers, among other things. The company, a national mortgage servicer, agreed to pay $63 million to resolve the charges, including $48 million in redress to affected consumers and a $15 million civil penalty. Green Tree also agreed to stop its illegal practices, create a home preservation plan for some distressed homeowners, and take rigorous steps to ensure that it collects the correct amounts from consumers.

In January and February, the Commission and the New York AG filed complaints aimed at shutting down two debt collection operations centered in Buffalo that allegedly targeted consumers nationwide using particularly egregious and abusive collection practices.[111] The complaints in both *4 Star Resolution LLC* and *Vantage Point Services, LLC* charged the respective defendants with violating the FTC Act and the FDCPA, as well as several New York State laws prohibiting deceptive acts and practices. In filing the complaints, the FTC and the New York AG are seeking to permanently stop the defendants' illegal conduct and to obtain money to provide refunds to consumers. The two agencies continue to litigate the two matters and are also actively exploring ways to continue this fruitful partnership.

In *4 Star Resolution LLC*, the FTC and the New York AG alleged that the company used abusive and deceptive tactics to pressure consumers into making payments on supposed debts. The complaint alleges that 4 Star falsely claimed that they were attorneys, process servers,

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[110] *FTC and CFPB v. Green Tree Servicing LLC*, No. 15-cv-2064 (D. Minn. Apr. 23, 2015) (Stipulated Order for Permanent Injunction and Monetary Judgment). *See also* Press Release, National Mortgage Servicing Company Will Pay $63 Million to Settle FTC, CFPB Charges (Apr. 21, 2015), available at https://www.ftc.gov/news-events/press-releases/2015/04/national-mortgage-servicing-company-will-pay-63-million-settle.

[111] *See* Press Release, FTC, New York Attorney General Crack Down on Abusive Debt Collectors (Feb. 26, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/02/ftc-new-york-attorney-general-crack-down-abusive-debt-collectors.

government agents, or criminal law enforcement officials, and falsely claimed that the consumers had committed an illegal or criminal act such as bank or check fraud.[112] 4 Star's collectors then falsely threatened consumers with dire consequences, including arrest, imprisonment, and civil lawsuits, unless the consumers made an immediate payment on the supposed debts. Finally, the complaint alleges that 4 Star's collectors unlawfully disclosed information about supposed debtors to third parties, including friends, family members, and employers, and illegally used abusive and profane language. In February 2015, the court granted the plaintiffs' application for a temporary restraining order with an asset freeze, appointment of a receiver, expedited discovery, and other equitable relief. In May 2015, the parties entered into a stipulated preliminary injunction without an asset freeze. The FTC and the New York AG then moved for an asset freeze as part of the preliminary injunction, and the court granted their motion in November. Litigation continues in the matter. In October 2015, Preet Bharara, the U.S. Attorney for the Southern District of New York, announced that fifteen individuals associated with the 4 Star debt collection enterprise, including its principals Travell Thomas and Maurice Sessum, had been criminally charged with wire fraud and conspiracy to commit wire fraud. The charges were based on the allegations made against the defendants in the FTC's and the New York AG's case.

In *Vantage Point Services, LLC*, the FTC and the New York AG alleged that in collection calls to consumers the defendants often falsely claimed to be a law firm, process server, unrelated debt collection company, or entity affiliated with the government. In some instances, the defendants even posed as government agents, including FBI agents and district attorneys.[113] With this deceptive backdrop, the defendants allegedly falsely claimed that consumers had committed a crime and that an arrest warrant would be issued unless they made a payment. Often, the defendants told consumers that the consumers would spend 90 or 120 days in jail, or that they would need to pay thousands of dollars in bail if they did not pay. In some cases, the defendants allegedly falsely told third parties that the supposed debtors had committed a crime and that a warrant had been issued for their arrest. Finally, the complaint states that the defendants failed to provide consumers with basic information about their identity during calls, did not provide consumers with information about the supposed debt within five days of the call, as required by the FDCPA, and illegally charged them a "processing fee." The Court granted the FTC's request to enter a temporary restraining order prohibiting the defendants from engaging in unlawful collection practices, freezing the defendants' assets, and placing the defendant entities under the control of a court-appointed receiver. The court subsequently entered a preliminary injunction against the defendants, finding – over the defendants' objections – that the FTC and the New York AG had presented ample evidence showing that the defendants likely violated the

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[112] *FTC and State of New York v. 4 Star Resolution LLC*, No. 1:15-cv-00112-WMS (W.D.N.Y. Feb. 9, 2015) (Complaint).

[113] *FTC and State of New York v. Vantage Point Services, LLC*, No. 1:15-cv-00006-WMS (W.D.N.Y. Jan. 5, 2015) (Complaint).

law and that the continuation of the asset freeze, receivership, and other relief was warranted. The FTC and the New York AG continue to litigate the matter.

The FTC and the New York AG teamed up again in October to file another case against an egregious collector in New York. In *FTC and State of New York v. Brace*, the FTC and the New York AG alleged that the defendants attempted to collect on debts they knew were bogus. According to the complaint, the defendants bought payday loans supposedly owed to a company that repeatedly told them to stop collection efforts because the debts were invalid, and ignored consumers' evidence that they had never authorized a payday loan.[114] The complaint also alleged that the defendants failed to identify themselves to consumers as debt collectors, falsely portrayed themselves as process servers or attorneys, and falsely threatened arrest or litigation. The defendants also allegedly unlawfully disclosed consumers' debts to third parties in an attempt to embarrass the consumers into paying them. The Court granted – over the defendants' objections – the plaintiffs' request to enter a temporary restraining order prohibiting the defendants from engaging in unlawful collection practices, granting plaintiffs immediate access to the business premises, and freezing the defendants' assets. The Court entered a stipulated preliminary injunction order that, among other things, freezes defendants' assets, requires them to preserve records, and bans them from engaging in any debt collection or debt brokering activities. The Commission continues to litigate the matter. This was the seventh case against an abusive Buffalo debt collection enterprise that the FTC has filed in the past two years, four of which were filed jointly with the New York AG's office.

The FTC and the New York AG also successfully resolved their litigation against the defendants in *FTC and State of New York v. National Check Registry, LLC*, a case that was filed in 2014. To settle charges that the defendants used lies and false threats to collect millions of dollars from consumers, the operators of that debt collection scheme agreed to a ban on participating in any debt collection business.[115] In the complaint, the two agencies had charged the defendants with violating the FDCPA, the FTC Act, and New York State law by falsely representing that consumers had committed check fraud, and then threatening the consumers with arrest, wage garnishment, or litigation if they did not pay the amounts demanded. The complaint also alleged that the defendants assessed unlawful convenience fees on consumers that were not expressly authorized by the agreement creating the debt or permitted by law. Notably, the defendants had continued violating the law despite repeated public and private enforcement efforts, including an investigation by the New York AG that the defendants had resolved by entering into an assurance of discontinuance. The settlement order prohibits the defendants from misrepresenting material facts about any financial-related product or service, including lending, credit repair, debt relief, and mortgage-assistance relief services, and profiting from customers'

[114] *FTC and State of New York v. Brace*, No. 1:15-cv-00875-RJA (W.D.N.Y. Oct. 5, 2015) (Complaint).

[115] *FTC and State of New York v. National Check Registry, LLC*, No. 1:14-cv-00490-RJA-JJM (W.D.N.Y. Oct. 16, 2015) (Stipulation to Enter Into a Final Order for Permanent Injunction and Settlement of Claims).

personal information. The settlement order imposes a monetary judgment totaling $8,507,423, which has been partially suspended based on the defendants' inability to pay. It also requires the turnover of much of the defendants' remaining assets, including approximately $112,000, certain bank accounts, two cars, and two boats.

Just as the FTC has partnered successfully with the New York AG to combat unlawful collection practices in Buffalo, so has the FTC joined forces with the Illinois AG to stop rogue collection enterprises in Illinois. In *FTC and State of Illinois v. K.I.P., LLC*, the two agencies charged the defendants with illegally using threats and intimidation tactics to coerce consumers to pay payday loan debts they either did not owe, or did not owe to the defendants.[116] According to the complaint, the defendants used a host of business names to target consumers who obtained or applied for payday or other short-term loans. Claiming those loans were delinquent, the defendants threatened to garnish consumers' wages, to suspend or revoke their driver's licenses, to have them arrested or imprisoned, or to have them sued if they did not pay. Immediately after filing their case, the FTC and the Illinois AG obtained a court order that halted the defendants' scheme and froze their assets, and that appointed a receiver to take control of the business while the case was litigated. Later in the year, the defendants entered into a settlement with the FTC and the Illinois AG in which they agreed to a $6.4 million judgment and a ban on working in any debt collection business.[117] The stipulated final order also prohibits the defendants from misrepresenting financial products and services, profiting from customers' personal information, and failing to dispose of such information properly.

D. Phantom Debt Collection

The Commission also continued its efforts to fight so-called "phantom debt collectors" this year. Phantom debt collectors engage in unfair, deceptive, or abusive conduct by attempting to collect on debts that either do not exist or are not owed to the phantom debt collector. The Commission initiated or resolved four actions against phantom debt collectors in 2015: *Williams, Scott & Associates*; *Centro Natural Corp.*; *Broadway Global Master Inc*., and *K.I.P., LLC* (discussed above).

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[116] *FTC and State of Illinois v. K.I.P., LLC*, No. 1:15-cv-02985 (N.D. Ill. Apr. 6, 2015) (Complaint); *see also* Press Release, FTC, Illinois Attorney General Halt Chicago Area Operation Charged With Illegally Pressuring Consumers to Pay 'Phantom' Debts (Apr. 10, 2015), available at https://www.ftc.gov/news-events/press-releases/2015/04/ftc-illinois-attorney-general-halt-chicago-area-operation-charged.

[117] *FTC and State of Illinois v. K.I.P., LLC*, No. 1:15-cv-02985 (N.D. Ill. Nov. 3, 2015) (Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief); *see also* Press Release, FTC and Federal, State and Local Law Enforcement Partners Announce Nationwide Crackdown Against Abusive Debt Collectors (Nov. 4, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/11/ftc-federal-state-local-law-enforcement-partners-announce.

In May 2014, the FTC filed a complaint alleging that *Williams, Scott & Associates LLC* used a variety of false threats to bully consumers nationwide into paying supposed payday loan debts and other debts. Among the threats made, the defendants allegedly falsely claimed to be affiliated with federal and state agents, investigators, members of a government fraud task force, and other law enforcement agencies, and pretended to be a law firm. The defendants also allegedly told consumers that their driver's licenses were going to be revoked, and that the consumers were criminals facing imminent arrest and imprisonment. [118] In April 2015, the court issued an order permanently banning John Williams; Williams, Scott & Associates, LLC; and WSA, LLC from debt collection and requiring them to pay $3.9 million. In November 2015, the court issued a permanent injunction against the final defendant in the case, Chris Lenyszyn, banning him from debt collection activities and ordering him to pay more than $565,000.[119]

In *FTC v. Centro Natural Corp.*, the FTC had alleged in an October 2014 complaint that the defendants targeted thousands of Spanish-speaking consumers and used deceptive and abusive tactics to collect on debts that these consumers did not owe and to coerce them into purchasing goods that they did not want. The defendants allegedly held themselves out to consumers as court officials, government officials, or lawyers, and threatened dire consequences, such as arrest, if consumers failed to pay amounts demanded. The FTC charged the defendants with violations of the FTC Act, the FDCPA, and the Telemarking Sales Rule.[120] In July 2015, the numerous defendants, in four separate stipulated orders, agreed to be banned from debt collection and telemarketing and to be prohibited from making the misrepresentations alleged in the complaint, and from making material misrepresentations about any product or service.[121] The defendants are also barred from selling or otherwise benefitting from customers' personal information. The settlement orders impose judgments on the defendants totaling nearly $6.8 million, which were suspended upon the transfer of approximately $776,000 worth of assets,

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[118] *FTC v. Williams, Scott & Associates, LLC*, No. 1:14-cv-01599-HLM (N.D. Ga. May 27, 2014) (Complaint), *see also* Press Release, At the FTC's Request, Court Halts Collection of Allegedly Fake Payday Debts (July 1, 2014), *available at* http://www.ftc.gov/news-events/press-releases/2014/07/ftcs-request-court-halts-collection-allegedly-fake-payday-debts.

[119] *FTC v. Williams, Scott & Associates, LLC*, No. 1:14-cv-01599-HLM (N.D. Ga. Nov. 4, 2015) (Order), *see also* Press Release, FTC and State Law Enforcement Partners Announce More Actions and Results in Continuing Crackdown Against Abusive Debt Collectors (Jan. 7, 2016), *available at* https://www.ftc.gov/news-events/press-releases/2016/01/ftc-state-law-enforcement-partners-announce-more-actions-results.

[120] 15 U.S.C. §§ 6101-6108 (Telemarketing Act) and 16 CFR part 310 (Telemarketing Sales Rule).

[121] *See, e.g., FTC v. Centro Natural Corp.,* No. 14-cv-23879 CMA (S.D. Fla. June 30, 2015) (Stipulated Order for Permanent Injunction and Monetary Judgment as to Javier Sumbre, Jessica Anzola, and Sumore, L.L.C.); *see also* Press Release, FTC Action Puts an End to Fraudulent Debt Collection Scheme that Targeted Spanish-Speaking Consumers (July 8, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/07/ftc-action-puts-end-fraudulent-debt-collection-scheme-targeted.

including Florida real estate. For each defendant, the full judgment will become due immediately if the defendant is found to have misrepresented his or her financial condition.

In *Broadway Global Master Inc*., the operators of a fraudulent debt collection scheme agreed in September 2015 to be banned from the debt collection business under a settlement with the FTC, resolving charges in a 2012 complaint that they illegally processed more than $5.2 million in payments from consumers for payday loan debts they did not owe.[122] The complaint alleged that callers working with the defendants harassed consumers into paying on bogus debts, often pretending to be agents of law enforcement or fake government agencies such as the "Federal Crime Unit of the Department of Justice." The court subsequently halted the operation and froze the defendants' assets pending litigation. In addition to banning the defendants from the debt collection business, the FTC's settlement order also prohibits the defendants from making misrepresentations about any product or service, profiting from customers' personal information, or failing to properly dispose of customer information. The order imposes a judgment of more than $4.3 million. Because of the defendants' inability to pay, the amount was suspended upon payment of $608,500, which will be used for consumer redress. The full judgment will become due immediately if the defendants are found to have misrepresented their financial condition. In a separate criminal proceeding, the primary individual defendant pleaded guilty to mail and wire fraud charges brought by the U.S. Department of Justice based on his scheme, and he was ordered to pay restitution and sentenced to a one-year prison term.

2. The FTC's *Messaging for Money* Sweep: Debt Collection via Unlawful Text Messages and Emails

Also in 2015, at the Federal Trade Commission's request, federal courts in New York and Georgia temporarily halted three debt collection operations that allegedly violated the FDCPA and the FTC Act by threatening and deceiving consumers via text messages, emails, and phone calls.[123] According to the FTC, the defendants used text messages, emails, and phone calls to falsely threaten to arrest or sue consumers. They also unlawfully contacted friends, family members, and employers, withheld information consumers needed to confirm or dispute debts, and did not identify themselves as debt collectors, as required by law. The defendants in this law enforcement sweep, called "Messaging for Money," are known as *Premier Debt Acquisitions*,

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[122] *FTC v. Broadway Global Master Inc*., No. 2:12-cv-0855 JAM GGH (E.D. Cal. Sept. 10, 2015) (Stipulated Order for Permanent Injunction and Monetary Judgment); *see also* Press Release, FTC Action Stops Scammers Who Collected Millions in Phantom Payday Loan Debts (Sept. 16, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/09/ftc-action-stops-scammers-who-collected-millions-phantom-payday.

[123] *See* Press Release, FTC Halts Three Debt Collection Operations That Allegedly Threatened and Deceived Consumers via Illegal Text Messages (May 21, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/05/ftc-halts-three-debt-collection-operations-allegedly-threatened.

Unified Global Group, and *The Primary Group*. The defendants in *Premier Debt Acquisitions* have settled that case, but the FTC continues litigation in the other two.

In *Premier Debt Acquisitions LLC*, the defendants impersonated law enforcement and government officials, falsely threatened consumers with a lawsuit or arrest, and falsely threatened to charge some consumers with criminal fraud, garnish their wages, or seize their property.[124] In text messages, the defendants allegedly claimed they would sue consumers and threatened to seize consumers' possessions unless they paid. In voicemails, the defendants also allegedly falsely claimed a "uniformed officer" was on the way to consumers' homes and asked them to "secure any large animals or firearms" before the officer arrived. The defendants also allegedly sent deceptive emails claiming that making a payment would help a consumer's credit report, but the defendants had no ability to make good on that claim. In May 2015, the FTC secured court-ordered preliminary relief that halted this abusive debt collection operation, froze the operation's assets, and appointed a receiver to take over the defendants' business. In January 2016, the court entered a stipulated order for permanent injunction that banned the defendants from debt collection activities and prohibited them from misrepresenting material facts about financial-related products and services and from profiting from their former customers' personal information. The order imposed a judgment of $2,229,756, representing the amount of the defendants' debt collection revenue, which was partially suspended when the defendants surrendered certain personal assets, including real estate.

The FTC's complaint against *Unified Global Group*[125] alleged that the defendant companies at times sent texts to trick consumers into calling them back. The texts included false statements such as, "YOUR PAYMENT DECLINED WITH CARD ****-****-****-5463 . . . CALL 866.256.2117 IMMEDIATELY," even though consumers had never arranged to make payments to the defendants. The texts failed to identify the senders as debt collectors. The defendants also allegedly used deceptive emails and calls that threatened arrest and civil lawsuits, and unlawfully contacted consumers' friends, families, and co-workers about the supposed debts. The court entered an ex parte temporary restraining order and subsequently a stipulated preliminary injunction, both of which included an asset freeze and the appointment of a receiver. Litigation is ongoing.

The FTC's complaint against *The Primary Group* alleged that the defendants sent consumers a series of text messages, which failed to disclose that the company is a debt

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[124] *FTC v. Premier Debt Acquisitions LLC*, No. 1:15-cv-00421-FPG (W.D.N.Y. May 11, 2015) (Complaint); *see also* Press Release, FTC Halts Three Debt Collection Operations That Allegedly Threatened and Deceived Consumers via Illegal Text Messages (May 21, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/05/ftc-halts-three-debt-collection-operations-allegedly-threatened.

[125] *FTC v. Unified Global Group, LLC*, 15-cv-422-W (W.D.N.Y. May 11, 2015) (Complaint).

collector.[126] The defendants allegedly threatened consumers with false statements such as "I'm a process server with Primary Solutions, appointed to serve you papers for case [eight-digit number]. . ." and "Please have proper ID and a witness present who can provide a signature. If there's no reply I'll have to bring the document to your employer." The court granted the FTC's request to enter a temporary restraining order prohibiting the defendants from engaging in unlawful collection activities and freezing the defendants' assets. The court later entered a preliminary injunction – over the defendants' objections – preserving much of the relief contained in the TRO, including the asset freeze. The FTC continues to litigate the matter.

E. Other FTC Actions to Halt Egregious Collection Practices

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

In *United States v. Commercial Recovery Systems, Inc.*, a case that the FTC referred to the Department of Justice for prosecution, the government's complaint charged that, since at least 2010, the company ("CRS") and its current and former principals had violated the FDCPA and the FTC Act.[127] According to the complaint, CRS collectors called consumers and falsely claimed to be attorneys or judicial employees. Collectors also allegedly falsely stated that lawsuits had already been filed against consumers and offered to resolve the fictitious lawsuits "out of court," and left voicemail messages falsely representing that a failure to return the collector's call would result in a waiver of rights. The complaint also alleged that, in some instances, collectors told consumers that their wages, taxes, and 401(K) plans would be garnished if they did not pay. In reality, CRS had neither the intent nor the authority to file lawsuits against the consumers or attempt to have their wages garnished. The Department of Justice, with assistance from the Commission, continues to litigate the case.

In *Warrant Enforcement Division*, the FTC's complaint alleged that the defendants, while under contract to collect overdue utility bills, traffic tickets, court fines, and other debts for local governments in Texas and Oklahoma, sent consumers letters and postcards containing threats of arrest that appeared to come from a municipal court.[128] According to the FTC, in numerous instances, the defendants' threats were false. In other instances, the defendants did not have a

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[126] *FTC v. The Primary Group*, No. 1:15-cv-1645 (N.D. Ga. May 11, 2015) (Complaint).

[127] *United States v. Commercial Recovery Sys., Inc.*, No. 4:15-cv-36 (E.D. Tex. Jan. 20, 2015) (Complaint). *See also* Press Release, FTC Sues to Stop Texas Debt Collector from Coercing Consumers by Falsely Claiming It Will Bring Legal Action Against Them, Garnish Their Wages (Jan. 21, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/01/ftc-sues-stop-texas-debt-collector-coercing-consumers-falsely.

[128] *FTC v. Municipal Recovery Servs. Corp.*, No. 15-CV-04064-N (N.D. Tex. Dec. 24, 2015) (Complaint).

reasonable basis to make the threats. The FTC charged that the false and unsubstantiated threats made to collect municipal court debts violated the FTC Act, and those made to collect utility debts violated both the FTC Act and the FDCPA. Under a stipulated order for permanent injunction,[129] the defendants are prohibited from misrepresenting any material fact in collecting debts, including that failure to pay a debt will result in the consumer being arrested or jailed, having their vehicle impounded, or being unable to renew their driver's license. The order imposed a $194,888 judgment that was suspended based on the defendants' inability to pay. The full judgment will become due immediately if the defendants are found to have misrepresented their financial condition.

In October 2015, the Commission filed suit against *AFS Legal Services* and related companies, alleging that the defendants impersonated investigators and law enforcement and threatened to arrest, jail, and sue consumers if they did not pay.[130] Because the defendants often had consumers' personal information such as Social Security and bank account numbers, consumers believed the calls were legitimate and thought they would be arrested for check fraud or sued. The collectors also allegedly made harassing calls and contacted relatives, friends, and co-workers about consumers' debts. The defendants, who according to the Commission caused approximately $4 million in consumer injury, used multiple corporate names and locations to avoid detection, and failed to identify themselves as debt collectors. In November 2015, the Commission obtained an ex parte temporary restraining order with an asset freeze, appointment of a receiver, and injunctive relief prohibiting the defendants from engaging in the misrepresentations and other violations of the FTC Act and the FDCPA. The Commission continues to litigate the case.

In *BAM Financial,* the FTC's complaint alleged that the defendants had extracted payments from consumers through intimidation, lies, and other unlawful tactics.[131] The complaint also alleged that the defendants bought consumer debts and collected payment on their own behalf by threatening consumers with lawsuits, wage garnishment, and arrest, and by impersonating attorneys or process servers. According to the complaint, the defendants also unlawfully disclosed debts to, or harassed, third parties, failed to identify themselves as debt collectors, and failed to notify consumers of their right to receive verification of the purported debts. At the FTC's request, the court entered a temporary restraining order that, among other

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[129] *FTC v. Municipal Recovery Servs. Corp.*, No. 15-CV-04064-N (N.D. Tex. Jan. 29, 2016) (Stipulated Order for Permanent Injunction and Monetary Judgment); *see also*, Press Release, FTC and State Law Enforcement Partners Announce More Actions and Results in Continuing Crackdown Against Abusive Debt Collectors (Jan. 7, 2016), *available at* https://www.ftc.gov/news-events/press-releases/2016/01/ftc-state-law-enforcement-partners-announce-more-actions-results.

[130] *FTC v. Nat'l Payment Processing LLC*, No. 1:15-cv-3811-AT (N.D. Ga. Oct. 30, 2015) (Complaint).

[131] *FTC v. BAM Fin'l, LLC*, No. 8:15-cv-01672-JVS-DFM (C.D. Cal. Oct. 19, 2015) (Complaint).

things, prohibited the defendants from violating the FDCPA and the FTC Act, froze the defendants' assets, and appointed a receiver for the corporate defendants. The TRO remains in effect while the parties continue litigating the case.

F. Debt Brokering and Data Security

In two separate 2014 cases – against *Bayview Solutions, LLC* and *Cornerstone and Company* – the FTC alleged that the defendant debt brokers posted the sensitive personal information of 55,000 consumers, including bank account and credit card numbers, birth dates, contact information, employers' names, and information about debts that the consumers allegedly owed, on a public website. Bayview and Cornerstone allegedly posted the sensitive data on a website geared for debt buyers, sellers, and other members of the debt collection industry, but accessible to anyone with an internet connection. The FTC's complaints alleged that by disclosing consumers' information online, the defendants exposed those consumers to risks ranging from identity theft to phantom debt collection. Soon after the FTC filed the complaints, the court ordered the website hosting the sensitive information to take it down immediately. It also ordered the defendants to notify the affected consumers that their information had been exposed and of steps they could take to protect themselves. More recently, in April 2015, Bayview and Cornerstone entered into agreements with the FTC under which they must establish and maintain security programs that will protect consumers' sensitive personal information.[132] The companies also must have their security programs evaluated both initially and every two years by a certified third party.

G. <u>Other Law Enforcement Activities: List of Banned Debt Collectors</u>

As a complement to all of the debt collection law enforcement cases that the FTC has brought over the years, the FTC began publishing a list this year of every individual and company that has been banned from the debt collection industry because of the FTC's work.[133] Each person and company on this list is under a federal court order prohibiting them from engaging in debt collection activities. The list, which is periodically updated, will serve as a valuable resource for law-abiding collection industry professionals so that they know who NOT to do business with, as well as for state debt collection licensing officials and law enforcers. Currently, the list includes over 100 banned individuals and companies.

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[132] *FTC v. Bayview Solutions, LLC*, No. 1:14-cv-01830-RC (D.D.C. Apr. 21, 2015) (Stipulated Final Order for Permanent Injunction); *FTC v. Cornerstone and Co., LLC*, No. 1:14-cv-01479-RC (D.D.C. Apr. 21, 2015) (Stipulated Final Order); *see also* Press Release, Debt Brokers Settle FTC Charges They Exposed Consumers' Information Online (Apr. 13, 2015), *available at* https://www.ftc.gov/news-events/press-releases/2015/04/debt-brokers-settle-ftc-charges-they-exposed-consumers.

[133] This list can be found at https://www.ftc.gov/enforcement/cases-proceedings/banned-debt-collectors.

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

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

Since Congress passed the Dodd-Frank Act, the FTC has often partnered with the CFPB on these *amicus* briefs. This trend continued in 2015. The FTC filed three *amicus* briefs, in: (1) *Bock v. Pressler & Pressler LLP*; (2) *Franklin v. Parking Revenue Recovery Servs. Inc*.; and (3) *Davidson v. Capitol One Bank (USA), N.A.* The CFPB joined the FTC in the first two briefs.

1. Attorneys' Meaningful Involvement in Debt Collection Lawsuits: *Bock Amicus* Brief

In August 2015, the FTC joined the CFPB in filing an *amicus* brief in the Third Circuit, urging it to affirm the district court's summary judgment decision that a law firm violated the FDCPA by filing a collection lawsuit without any meaningful involvement by an attorney.[134]

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

Bock then sued the collection law firm, claiming that it violated the FDCPA's prohibition on "false, deceptive, or misleading" debt collection practices by filing a debt collection suit that appeared to be from an attorney even though no attorney had meaningfully reviewed it. Ruling

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[134] Brief of *Amici Curiae*, *Bock v. Pressler & Pressler LLP*, No. 15-1056 (3d Cir. Aug. 13, 2015), *available at* https://www.ftc.gov/policy/advocacy/amicus-briefs/2015/08/daniel-bock-jr-plaintiff-appellee-v-pressler-pressler-llp. Commissioner Maureen K. Ohlhausen dissented from the filing of this joint FTC/CFPB amicus brief.

on cross-motions for summary judgment, the district court granted summary judgment to Bock and denied summary judgment to the law firm. The firm appealed.

As the Commission's reports have noted, the number of debt collection lawsuits has vastly increased in recent years, dominating and threatening to overwhelm the state courts in which they are filed.[135] As the reports also point out, most consumers do not answer the complaints debt collectors file or appear in court to defend themselves, which permits collectors to obtain default judgments in most cases.

The practice of bulk-filing lawsuits without any meaningful attorney involvement exacerbates these problems. As the FTC-CFPB *amicus* brief explains, the impression that an attorney is meaningfully involved in a consumer's debt conveys authority and credibility, and can increase the consumer's sense of urgency in responding to the debt. Accordingly, several courts of appeals have held that dunning letters are false and misleading – and violate the FDCPA – if they purport to be from an attorney but the attorney has not reviewed the debtor's file.[136] The brief explains that the same principles apply when a lawsuit is filed without the meaningful participation of an attorney. Consumers reasonably believe that a lawsuit comes with the imprimatur of the attorney who filed it and may be misled and intimidated into paying the debt or fail to participate in the lawsuit, believing that a defense would be too costly or futile – contributing to the problems identified in the Commission's reports.

The Third Circuit heard arguments on the appeal in November 2015 but has not yet issued a ruling.

I. Unpaid Parking Charges as "Debts": *Franklin Amicus* Brief

In December 2015, responding to an invitation from the Seventh Circuit, the FTC and the CFPB submitted a joint *amicus* brief urging the court to reverse a district court ruling that unpaid parking fees are not "debts," as that term is defined in the FDCPA.[137] The case arose out of a

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135 *See* FTC, *Collecting Consumer Debts: The Challenges Of Change* (Feb. 2009), *available at* https://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf; and FTC, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (July 2010), *available at* https://www.ftc.gov/reports/repairing-broken-system-protecting-consumers-debt-collection-litigation.

136 *See, e.g.*, *Avila v. Rubin*, 84 F.3d 222 (7th Cir. 1996); *Clomon v. Jackson*, 988 F.2d 1314 (2d Cir. 1993).

137 Brief of *Amici Curiae*, *Franklin v. Parking Revenue Recovery Servs. Inc.*, No. 14-3774 (7th Cir. Dec. 11, 2015), *available at* https://www.ftc.gov/system/files/documents/amicus_briefs/franklin-et-al-v.parking-revenue-recovery-services-inc./p082105_parking_revenue_amicus_brief_7th_cir_14-3774.pdf.

class action complaint alleging that a collection company hired by a private parking lot operator to collect unpaid parking fees sent dunning letters to consumers that violated the FDCPA. The plaintiffs had parked their cars in a parking lot operated by a private entity, CPS Chicago Parking, LLC ("CPS"). A sign at the entrance to the lot offered parking spaces at the rate of $1.50 per day. A lot attendant, believing that the plaintiffs had not paid the fee, placed parking violation notices on the plaintiffs' cars, demanding payment of the $1.50 parking charge and an additional fee of $45. When the plaintiffs did not pay that sum, CPS assigned the matters to a debt collection company. The debt collector and its counsel sent plaintiffs dunning letters seeking payment of $46.50 each.

The plaintiffs filed a class action complaint alleging that the letters violated the FDCPA in various respects. The defendants moved for summary judgment, which the district court granted. It found that the $46.50 charge was a "fine" and not the byproduct of a "transaction." Thus, the court reasoned, the sum the defendants were attempting to collect was not a "debt," as that term is defined in the FDCPA, so the prohibitions of the Act did not apply to the defendants' dunning letters.

The FTC and the CFPB explained in their joint brief that the district court erred in concluding that the $46.50 charged to each plaintiff was not a "debt" under the FDCPA. The agencies noted that, in enacting the FDCPA, Congress broadly defined "debt" to mean "any obligation . . . to pay money arising out of a [consumer] transaction." 15 U.S.C. § 1692a(5). The brief cites a Seventh Circuit case for the proposition that the critical term "transaction," which Congress left undefined, is a broad reference to many different types of consensual business dealings.[138] According to the two agencies, parking in a lot that was open to the public for a stated fee constituted a "transaction," similar to "many commercial dealings in which people engage daily, such as visiting a doctor, ordering groceries, or calling a pharmacy to request delivery of prescription refills." Because the $46.50 charges that the debt collector sought "ar[ose] out of" that transaction, the charges were "debts" and the collection of those debts was governed by the FDCPA.

The Seventh Circuit has not yet issued a ruling.

J. Person Who Buys and Collects on Defaulted Debts as "Debt Collector": *Davidson Amicus* Brief

In September 2015, the FTC submitted an *amicus* brief in in *Davidson v. Capitol One Bank (USA), N.A.* urging the Eleventh Circuit to grant a consumer's petition for a rehearing *en banc* to

[138] *See Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C.*, 111 F. 3d 1322, 1325 (7th Cir. 1997).

review a panel decision holding that a person who buys debts in default and collects on them does not qualify as a "debt collector" under the FDCPA.[139]

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

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

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

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

The FTC then explained that the panel misinterpreted the phrase "owed or due another" to reach only those collectors who are collecting "*for* another." As the FTC pointed out, the panel could reach that interpretation only by reading "owed or due another" to mean "*currently* owed or due another." The FTC's brief argued that the phrase instead should be read to mean "*originally* owed or due another." That reading takes into account the complementary definitions of "creditor" and "debt collector," each of which contains an exception based on whether the debt being collected was in default when acquired. Together, the two definitions

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

sort debt buyers into "creditors" for debts that were not in default when acquired and "debt collectors" for those that were.

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

The FTC's third reason for seeking an *en banc* review of the panel's decision was that it might exempt a broad swath of debt collectors in the Eleventh Circuit from the consumer protection requirements of the FDCPA. For example, mortgage servicers routinely purchase large portfolios of debt from loan originators. At the time of purchase, some of the accounts may be current and others in default. Such a loan purchaser would not fall within the panel's interpretation of "debt collector," leaving the FTC unable to police collection abuses using the FDCPA. The FTC has brought at least four such cases,[140] resulting in judgments totaling more than $130 million. But under the panel ruling it could not bring such a case under the FDCPA in the Eleventh Circuit. Despite these arguments, the Eleventh Circuit denied the consumer's petition for a rehearing *en banc*.

K. Education and Public Outreach

Education and public outreach also are important parts of the Commission's debt collection program. The FTC uses multiple formats and channels to inform consumers about their rights under the FDCPA, as well as what the statute requires of debt collectors; and to inform debt collectors about what they must do to comply with the law. The FTC also uses education and public outreach to enhance legal services providers' understanding of debt collection issues.

The Commission reaches tens of millions of consumers through English and Spanish print and online materials, blog posts, and speeches and presentations. To maximize its outreach efforts, FTC staff works with an informal network of about 16,000 community-based organizations and national groups that order and distribute FTC information to their members, clients, and constituents. In 2015, the FTC distributed 17.4 million print publications to libraries, police departments, schools, non-profit organizations, banks, credit unions, other businesses, and

[140] *See FTC v. Green Tree Servicing LLC*, No. 0:15-cv-2064 (D. Minn. 2015); *FTC v. EMC Mortg. Corp.*, No. 4:08-cv-338 (E.D. Tex. 2008); *United States v. Fairbanks Capital Corp.*, No. 1:03-cv-12219 (D. Mass. 2003); *FTC v. Capital City Mortg. Corp.*; No. 1:98-cv-237 (D.D.C. 1998).

government agencies. In 2015, the FTC logged more than 102 million views of its website pages. The FTC's channel at YouTube.com/FTC Videos houses 144 videos, which were viewed more than 471,000 times in 2015. The Consumer blogs in English[141] and Spanish[142] reached 93,052 (English) and 34,892 (Spanish) email subscribers.

As part its work to raise awareness about scams targeting the Latino community, the FTC has developed a series of fotonovelas in Spanish. The graphic novels tell stories based on complaints Spanish speakers make to the FTC and offer practical tips to help detect and stop common scams. People ordered more than 113,000 copies of the *Cobradores De Deuda* (Debt Collectors) fotonovela in 2015.

The Commission educates industry members by developing and distributing business education materials, delivering speeches, blogging, participating in panel discussions at industry conferences, and providing interviews to general media and trade publications. As discussed more fully below, the FTC hosted a series of three Debt Collection Dialogues in 2015 for state and federal agency staff and members of the debt collection industry. In addition, the FTC provided a guest column for the November 2015 edition of "Collector," a leading trade publication, on the agency's debt collection program. The December 8, 2015 Business Center blog post about the FDCPA was featured on the homepage of InsideARM.com, another leading trade publication. The FTC's business education resources can be found in its online Business Center.[143] The Business Center logged more than 3.4 million page views in the first 11 months of 2015, and there are more than 49,000 email subscribers to the Business Blog.[144] A complete list of the FTC's consumer and business education materials relating to debt collection and information on the extent of their distribution is set forth in the Appendix.

FTC staff also regularly meet with legal service providers, consumer advocates, and people who work in immigrant, Native American, Latino, Asian, and African American communities to discuss consumer protection issues, including the FTC's work in the debt collection arena. In 2015, the FTC organized five Common Ground conferences that brought together law enforcement, consumer advocates, and members of these communities to discuss consumer protection issues including debt collection, and to encourage consumers to report frauds and scams to the FTC. The FTC also hosted five Ethnic Media Roundtables around the country during 2015, bringing together law enforcement, community organizations, and

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141 http://www.consumer.ftc.gov/blog.

142 http://www.consumidor.ftc.gov/blog.

143 http://business.ftc.gov/.

144 http://business.ftc.gov/blog.

consumer advocates with members of the ethnic media to discuss how consumer protection issues – including debt collection – affect their communities.

L. RESEARCH AND POLICY DEVELOPMENT ACTIVITIES

The third prong of the Commission's debt collection 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. Specifically, as described below, the FTC has organized and hosted three Debt Collection Dialogues with the collection industry and provided the CFPB with input on debt collection rulemaking and guidance initiatives.

A. Debt Collection Dialogues

Between June and November 2015, the FTC hosted a series of three sold-out Debt Collection Dialogues around the country with a number of federal and state partners and leaders of the collection industry.[145] The sessions gave debt collectors opportunities to hear from the government law enforcers who police their industry and allowed the law enforcers and industry members to highlight areas of concern, share strategic priorities, and generate ideas for compliance. The Dialogues were held in Buffalo, NY, on June 15; Dallas, TX, on September 29; and Atlanta, GA, on November 18. Approximately 550 people attended the three Dialogues. Representatives from three federal agencies – the FTC, the Consumer Financial Protection Bureau, and the Office of the Comptroller of the Currency – participated in the conversations. Joining the federal law enforcers were representatives from six state agencies from five states – Georgia, New York, South Carolina, Tennessee, and Texas. The Attorneys General of Georgia (Samuel Olens) and New York (Eric Schneiderman) delivered opening remarks at the events in their respective states.

In Buffalo, the federal and state law enforcers talked about recent enforcement actions their agencies had taken as well as how they choose companies to investigate and how they conduct their investigations, and shared their enforcement priorities. They also answered questions from the audience for the third hour of the event. At the Dallas and Atlanta Dialogues, federal and state law enforcers were joined on four moderated panels by representatives from four collection industry organizations: ACA International, DBA International, insideARM, and NARCA – The National Creditors Bar Association. The first panel focused on debt collection

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145 Each of the three Dialogues had its own event page. *See* https://www.ftc.gov/news-events/events-calendar/2015/06/debt-collection-dialogue-conversation-between-government (Buffalo); https://www.ftc.gov/news-events/events-calendar/2015/09/debt-collection-dialogue-conversation-between-government (Dallas); and https://www.ftc.gov/news-events/events-calendar/2015/11/debt-collection-dialogue-conversation-between-government (Atlanta).

issues central to collection agencies and debt buyers. The second focused on collection issues central to collection attorneys. The third focused on the state regulation and enforcement of debt collection. And the fourth focused on federal regulation and enforcement. Transcripts from all three Dialogues are available on the FTC's website.[146]

B. Debt Collection Rulemaking

The FTC also works closely with the CFPB to coordinate efforts to protect consumers from unfair, deceptive, and abusive debt collection practices.[147] As part of this coordination, FTC and CFPB staff regularly meet to discuss ongoing and upcoming law enforcement, rulemaking, and other activities; share debt collection complaints; cooperate on consumer education efforts in the debt collection arena; and consult on debt collection rulemaking and guidance initiatives. Building on efforts initiated in 2013, when the CFPB published the Advance Notice of Proposed Rulemaking ("ANPR"), FTC staff have continued to consult with CFPB staff on their rulemaking efforts. FTC staff have provided suggestions and insights based upon our decades of experience in the debt collection arena. We look forward to continuing to work with the CFPB on this rulemaking and other efforts to further our common goal of protecting consumers from unlawful debt collection tactics.

C. Conclusion

The Commission hopes that the information contained in this letter will assist the CFPB in its annual report to Congress about its administration of the FDCPA. The FTC looks forward to continuing to cooperate and coordinate with the CFPB on consumer protection issues relating to debt collection. If any other information would be useful or if you wish to request additional

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[146] *See* https://www.ftc.gov/system/files/documents/public_events/635431/buffalo_transcript_-_final_1.pdf (Buffalo); and https://www.ftc.gov/system/files/documents/public_events/677631/dallas_dialogue_transcript.pdf (Dallas); https://www.ftc.gov/system/files/documents/public_events/677651/atlanta_dialogue_transcript.pdf (Atlanta).

[147] The Dodd-Frank Act directs the FTC and the CFPB to coordinate their law enforcement activities and promote consistent regulatory treatment of consumer financial products and services, including debt collection. *See* Dodd-Frank Act, Pub. L. 111-203, 124 Stat. 1376 § 1024(c)(3) (July 21, 2010). In January 2012, the FTC and CFPB entered into a memorandum of understanding that supplements the requirements of the Dodd-Frank Act and creates a strong and comprehensive framework for coordination and cooperation. Memorandum of Understanding Between the Consumer Financial Protection Bureau and the Federal Trade Commission, January 2012, *available at* http://www.ftc.gov/sites/default/files/attachments/press-releases/federal-trade-commission-consumer-financial-protection-bureau-pledge-work-together-protect-consumers/120123ftc-cfpb-mou.pdf.

assistance, please contact Malini Mithal, Acting Associate Director, Division of Financial Practices, at (202) 326-2972.

By direction of the Commission,

Donald S. Clark
Secretary

Appendix A

Debt Collection Information 2015

Title	Page Views[148]		Print distribution	
	English	Spanish	English	Spanish
Consumer Information				
Coping with Debt	152,249	18,779	619,885	24,175
Debt Collection	502,332	34,085	134,100	
Debt Collection Arbitration	12,626	542	21,850	
Debt Collectors (Spanish)				113,000
Debts and Deceased Relatives	64,188	19,633		
Fake Debt Collectors	71,428	1,109		
Garnishing Federal Benefits	30,232	1,500		
Settling Credit Card Debt	88,775	3,949		
Managing Debt: What to Do	4,588	608	72,750	14,150
Identity Theft Letter to a Debt Collector	10,741	1,215		
Time-Barred Debts	130,698	16,007		
Video				
Dealing with Debt Collectors	23,419	875		
Helping Victims of Identity Theft	5,342			

Title	Page Views		Print Distribution	
	English	Spanish	English	Spanish
Business Information				
The Fair Debt Collection Practices Act	45,223		12,635	
Video				
Debt Collection	4,152	322		

148 Page view numbers include pages viewed on FTC websites, but not pages viewed when non-FTC sites download and re-post FTC content.

One-stop resource pages:

- Consumer Advocates
- Financial Educators

Blog Posts for Consumers:

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

Blog Posts for Business:

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