

Current Issues in Debt Collection

Responding to a Changing Regulatory Landscape

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Current Issues in Debt Collection

- The FDCPA
- UDAAP
- CFPB Priorities and Enforcement
- CFPB Proposed Debt Collection Rule
- FTC Actions and Enforcement
- Compliance Best Practices
- Questions



The FDCPA: History

- Abusive Practices
 - Evidence of abusive, deceptive, and unfair debt collection practices by many debt collectors
- Inadequacy of laws
 - Existing laws for redressing injuries were inadequate
- Available non-abusive collection methods
 - Means other than misrepresentation or other abusive debt collection practices were available
- Purposes
 - To eliminate abusive debt collection practices
 - To insure debt collectors who refrain from using abusive practices are not competitively disadvantaged
 - To promote consistent State action against abusers



The FDCPA: Requirements

- Third parties may be contacted only to obtain location information
- Initial Mini-Miranda Notice
 - Issue: Leaving messages vs. Disclosure to third parties
- Cease and Desist Notices
- Validation of debts
- Prohibited practices
 - Harassment or abuse
 - False or misleading representations
 - Unfair practices
 - Furnishing deceptive forms

Source:
15 U.S.C. 1692a -1692j



The FDCPA: Applicability

- The term “debt collector” means:
 - Any person engaged in 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.
 - Includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts.
- Exclusion:
 - Any employee of a creditor while, in the name of the creditor, collecting debts for such creditor.
 - Issue: Debts acquired “in default”



UDAAP: CFPB Bulletin 2013-07



1700 G Street, N.W., Washington, DC 20552

CFPB Bulletin 2013-07

Date: July 10, 2013
Subject: Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), all covered persons or service providers are legally required to refrain from committing unfair, deceptive, or abusive acts or practices (collectively, UDAAPs) in violation of the Act. The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing this bulletin to clarify the contours of that obligation in the context of collecting consumer debts.

This bulletin describes certain acts or practices related to the collection of consumer debt that could, depending on the facts and circumstances, constitute UDAAPs prohibited by the Dodd-Frank Act. Whether conduct like that described in this bulletin constitutes a UDAAP may depend on additional facts and analysis. The examples described in this bulletin are not exhaustive of all potential UDAAPs. The Bureau may closely review any covered person or service provider's consumer debt collection efforts for potential violations of Federal consumer financial laws.

A. Background

UDAAPs can cause significant financial injury to consumers, erode consumer confidence, and undermine fair competition in the financial marketplace. Original creditors and other covered persons and service providers under the Dodd-Frank Act involved in collecting debt related to any consumer financial product or service are subject to the prohibition against UDAAPs in the Dodd-Frank Act.¹

In addition to the prohibition of UDAAPs under the Dodd-Frank Act, the Fair Debt Collection Practices Act (FDCPA) also makes it illegal for a person defined as a "debt collector" from engaging in conduct "the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt,"² to "use

¹ See Dodd-Frank Act, §§ 1002, 1031 & 1036(a), codified at 12 U.S.C. §§ 5481, 5531 & 5536(a). It is also prohibited for any person, even if not a covered person or service provider, to knowingly or recklessly provide substantial assistance to a covered person or service provider in violating section 1031 of the Dodd-Frank Act. See Dodd-Frank Act, § 1036(a)(3), 12 U.S.C. § 5536(a)(3). The principles of "unfair" and "deceptive" practices in the Act are informed by the standards for the same terms under Section 5 of the Federal Trade Commission Act (FTC Act). See CFPB Examination Manual v.2 (Oct. 2012) at UDAAP 1 (CFPB Exam Manual). To the extent that this Bulletin cites FTC guidance or authority, such references reflect the views of the FTC, and are not binding upon the Bureau in interpreting the Dodd-Frank Act's prohibition on UDAAPs.

² FDCPA § 806, 15 U.S.C. § 1692d.

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C. Examples of Unfair, Deceptive and/or Abusive Acts or Practices

Depending on the facts and circumstances, the following non-exhaustive list of examples of conduct related to the collection of consumer debt could constitute UDAAPs. Accordingly, the Bureau will be watching these practices closely.

- Collecting or assessing a debt and/or any additional amounts in connection with a debt (including interest, fees, and charges) not expressly authorized by the agreement creating the debt or permitted by law.²⁶
- Failing to post payments timely or properly or to credit a consumer's account with payments that the consumer submitted on time and then charging late fees to that consumer.²⁷
- Taking possession of property without the legal right to do so.
- Revealing the consumer's debt, without the consumer's consent, to the consumer's employer and/or co-workers.²⁸
- Falsely representing the character, amount, or legal status of the debt.
- Misrepresenting that a debt collection communication is from an attorney.
- Misrepresenting that a communication is from a government source or that the source of the communication is affiliated with the government.
- Misrepresenting whether information about a payment or non-payment would be furnished to a credit reporting agency.²⁹
- Misrepresenting to consumers that their debts would be waived or forgiven if they accepted a settlement offer, when the company does not, in fact, forgive or waive the debt.³⁰
- Threatening any action that is not intended or the covered person or service provider does not have the authorization to pursue, including

²⁶ See Compl. ¶¶ 34-38 & 43-44, *FTC v. Fairbanks Capital Corp.*, 03-12219 (D. Mass. Nov. 12, 2003) (alleging that the charging of late fees and other associated charges was unfair practice under Section 5 of the FTC Act and a violation of §§ 807 and 808 of the FDCPA), available at <http://www.ftc.gov/os/2003/11/0323014comp.pdf>.

²⁷ Id. ¶¶ 22-25.

²⁸ See, e.g., Compl. ¶¶ 24 & 30-31, *FTC v. Cash Today, Ltd.*, 3:08-cv-590 (D. Nev. Nov. 12, 2008), available at <http://www.ftc.gov/os/caseset/0723093/081112emp0923093.pdf>, (asserting that Cash Today engaged in unfair collection practices in violation of Section 5 of the FTC Act by, among other things, disclosing the existence of consumer's debt to employers, co-workers, and other third parties despite being told by consumers not to contact their workplaces). *FTC v. LoanPointe, LLC*, 2:10 CV 00225-DAK, 2011 WL 4348304, at *5-6 (D. Utah Sept. 16, 2011) (finding that disclosure of existence and amount of debt to consumer's employer without consumer's prior approval constitutes unfair practice under the FTC Act).

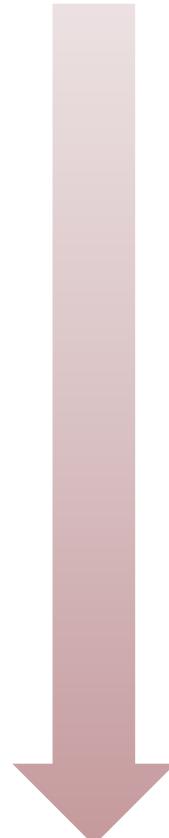
²⁹ See, e.g., *In re Am. Express Centurion Bank*, Joint Consent Order at 3 (Oct. 1, 2012), available at <http://files.consumerfinance.gov/E2012-CFPB-0002-American-Express-Centurion-Consent-Order.pdf>.

³⁰ Id.

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UDAAP: Novel CFPB Actions



- **Hanna & Associates – July 2014**
- Law firm allegedly engaged in a “lawsuit mill” by filing lawsuits and affidavits without “meaningful attorney involvement.” The firm filed numerous lawsuits over the course of 2 years. The CFPB claims the practice is a type of intimidation against consumers with no legal expertise.
- **Corinthian Colleges – September 2014**
- For-profit colleges sued for allegedly conducting a predatory lending scheme. After students agreed to take out private loans, Corinthian allegedly began debt collection tactics to influence students to pay back loans while still in school. The debt collection practices allegedly included taking students out of class, blocking access to educational resources, and withholding diplomas.
- **Universal Debt & Payment Solutions – March 2015**
- Debt collector allegedly attempted to collect debts not owed. CFPB further alleged the debt collectors harassed and lied to consumers, including multiple threatening robo-calls that told consumers they had committed crimes, and by threatening legal action.
- Suit also names telemarketing company and payment processors as defendants.

Source: Hanna & Associates: http://www.consumerfinance.gov/new_sroom/cfpb-files-suit-against-debt-collection-law-suit-mill/

Corinthian Colleges: http://www.consumerfinance.gov/new_sroom/cfpb-sues-for-profit-corinthian-colleges-for-predatory-lending-scheme/

Universal Debt & Payment Solutions: http://www.consumerfinance.gov/new_sroom/cfpb-sues-participants-in-robo-call-phantom-debt-collection-operation/



CFPB Debt Collection Enforcement Actions: 2013 - 2015

Collector	Date	Remediation	Civil Money Penalty
Cash America International	11/20/13	\$8,000,000	\$5,000,000
ACE Cash Express	7/10/14	\$5,000,000	\$5,000,000
Colfax Capital	7/29/14	\$92,000,000	\$1 (due to bankruptcy)
DriveTime Automotive	11/19/14	\$0	\$8,000,000
Freedom Furniture	12/18/14	\$2,596,124	\$100,000
Corinthian College	2/3/15	\$480,000,000	\$0
TOTAL		\$587,596,124	\$18,100,001

Source:
CFPB Public
Enforcement
Actions



Proposed Rule for Debt Collection

- ANPR: November 2013
- Proposed Rule: Expected late 2015 or Early 2016
- Final Rule: Expected Late 2016 or later

Expansion to Original Creditors

- Rules will likely apply to original creditors and third-party debt collectors alike

FDCPA = A Floor for Regulation

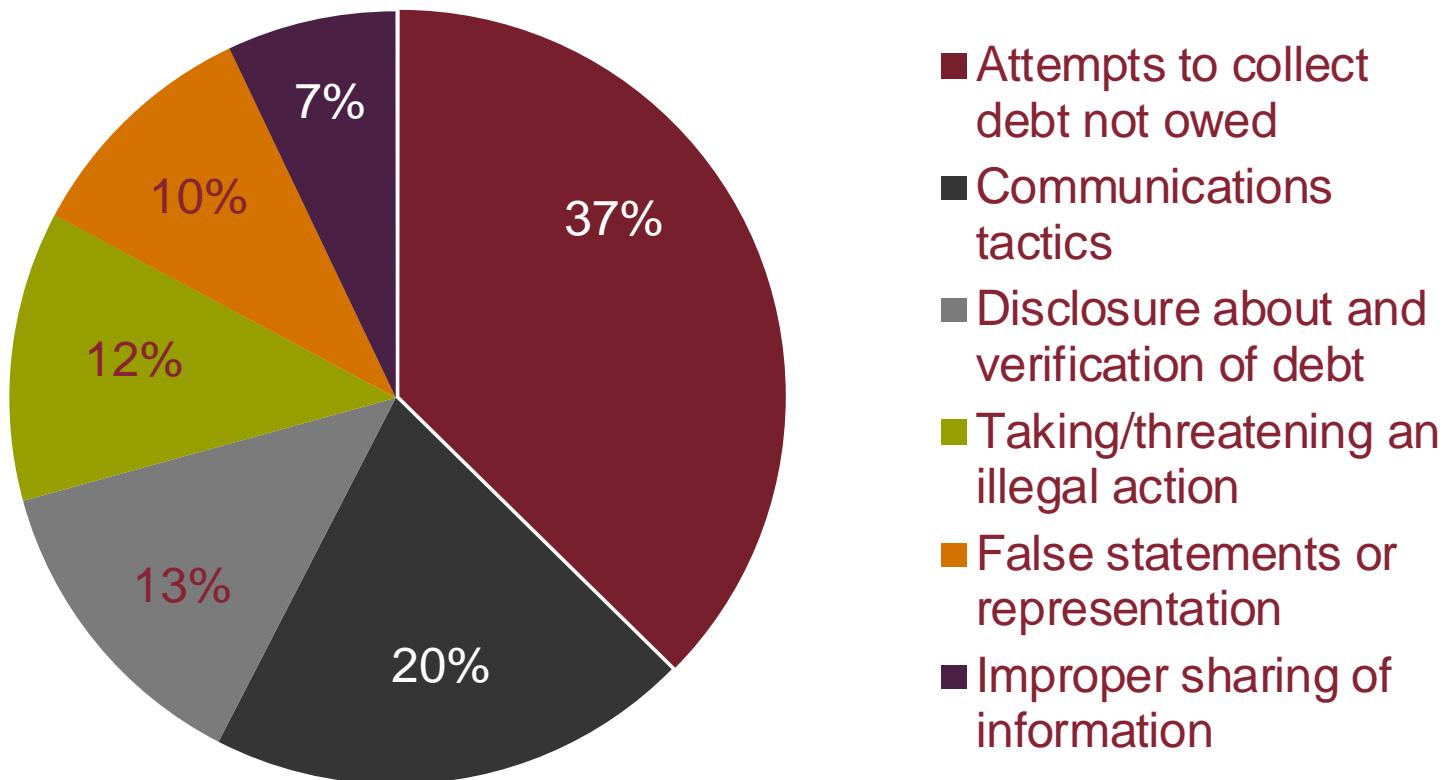
- Additional requirements and restrictions expected via UDAAP

Modernization

- Internet & Social Media
- Cell Phones
- Debt Markets



CFPB: Debt Collection Complaints Reported by Consumers



NOTE: Percentages do not add up to 100 % because of rounding.
Source: Fair Debt Collection Practices Act, CFPB Annual Report, March 2015



The FTC's Role

- FTC views itself as a law enforcement agency
 - “Crackdown” on unlawful debt collection since 2010
 - “Vigorous” enforcement efforts continued in 2014:

Initiated

- 10 new actions against 56 defendants

Resolved

- 9 cases for \$140M in judgments

Banned

- 47 companies and individuals from debt collection activities



FTC-CFPB Relationship

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CONSUMER FINANCIAL PROTECTION BUREAU AND
THE FEDERAL TRADE COMMISSION

I.

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for Co
Under



Office of the Secretary

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

February 5, 2015

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, 2015. As your 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).¹ 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
& the Latino
Community

OCT 23, 2014
9:00AM–5:00PM
GRAND BALLROOM

No. 13-2030

In The United States Court of Appeals For The Seventh Circuit

Juanita Delgado,
individually and on behalf of a class,
Plaintiff,

v.

Capital Management Services, LP,
CMS General Partner LLC, and CMS Group, Inc.,
Defendants-Appellees.

On Appeal from the United States District Court
For the Central District of Illinois
Hon. Sara Darrow

Case No. 12-cv-04057

Brief of Amici Curiae Federal Trade Commission
and Consumer Financial Protection Bureau Supporting Affirmance

dith Fuchs
General Counsel

Jonathan E. Nuechterlein
General Counsel



FTC FDCPA Cases

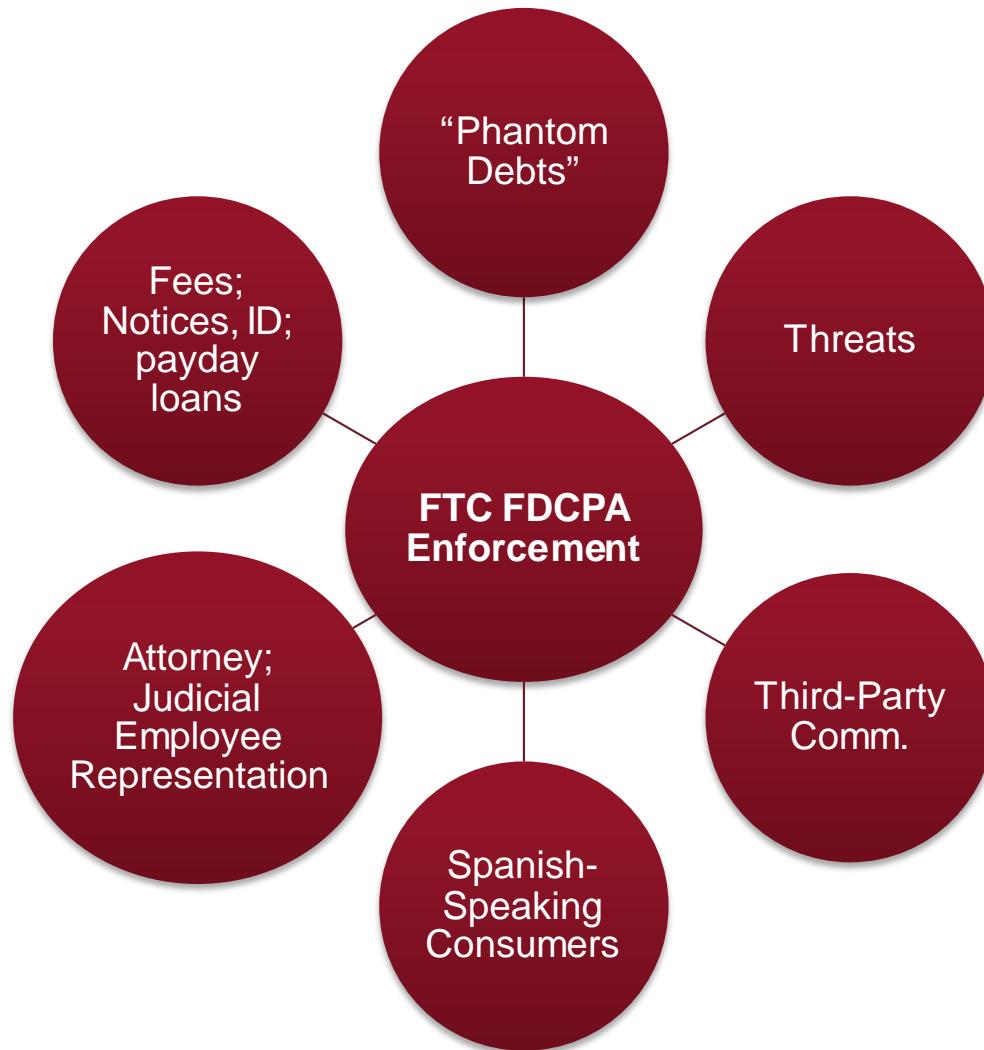
Recent FDCPA Cases Filed or Resolved by the FTC

Commercial Recovery Sys., Inc. (filed 1/20/15)	Complaint alleges that TX debt collector: Falsely claimed that calls were on behalf of an attorney or judicial employee; falsely claimed that a legal action had been commenced against the consumer, seeking to resolve debts “out of court”; and falsely threatened to sue consumers or garnish their wages, levy bank accounts, or seize property. Litigation is pending in E.D. Texas. FTC is seeking injunctive relief and civil monetary penalties.
Centro Natural Corp. (filed 10/20/2014)	Complaint alleges that FL debt collector: Targeted Spanish-speaking consumers nationwide; falsely claimed that calls were on behalf of an attorney or judicial employee; falsely threatened consumers with legal action/arrest; contacted consumers who asked not to be called; and collected more than \$2M in “phantom” debts.” Litigation is pending in S.D. Fla. FTC is seeking injunctive relief, disgorgement and civil monetary penalties for consumer redress, and has secured a temporary restraining order, frozen assets, and appointed temporary receiver.
Pinnacle Payment Servs. (orders entered 08/2014)	“Common enterprise” of CA, GA, and OH debt collectors stipulated to ban from debt collection and \$9,384,628 in consumer redress to settle allegations that collectors: Collected \$MM in “phantom” debts; “robocalled” payday loan consumers at work/at inconvenient times; left unauthorized messages with third parties; falsely threatened consumers with legal action/arrest; failed to identify themselves as debt collectors; and failed to provide required notices.
Reg’l Adjustment Bureau (order entered 07/14/14)	Tenn. debt collector stipulated to \$1.5M civil penalty and injunction to settle allegations that collector: Attempted to collect “phantom” debts, often after notice from person that they are not whom the debt collector was seeking; withdrew funds from consumers bank accounts without consent; disclosed existence of consumers’ debt to third parties, often by leaving voicemails at numbers not belonging to consumers; called third parties multiple times to locate consumers; called consumers at work where prohibited and/or who asked not to be called; and called consumers frequently per day.
Credit Smart, LLC (order entered 08/2014)	“Common enterprise” of NY debt collectors stipulated to \$1.2M civil penalty and injunction to settle allegations that collector: Falsely threatened consumers with legal action/arrest; falsely threatened to garnish consumers’ wages; failed to identify themselves as debt collectors or provide required notices; and attempted to collect on unsubstantiated debts.

Source: See FTC Letter to Hon. Richard Cordray, Director, Consumer Financial Protection Bureau, available at <https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-enforcement-fair-debt-collection-practices-act-report-consumer-financial/150209cfpbreport.pdf> (February 5, 2015); see also FTC Enforcement Releases.



FTC Areas of Enforcement Focus—Conduct





FTC Enforcement—Other Trends

Issue	Enforcement Trends
Defendant Characteristics	<ul style="list-style-type: none">• Entities vary; targets typically have contacted consumers nationwide, collected \$1M or more• Separate entities charged jointly as “common enterprise”• Principals and managers charged jointly with corporate defendants• Geographic concentration: New York; Texas; California
Penalties	<ul style="list-style-type: none">• Monetary penalties typically exceed \$1M• Injunctive relief, including preliminary injunctions, TROs, asset freezes, receiverships• Industry bans• Penalties designated for consumer remediation
Coordination with Other Agencies	<ul style="list-style-type: none">• DOJ (Consumer Protection Branch)• USAO• State authorities, such as NY and IL Attorneys General



Compliance Best Practices



Questions?

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