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## FTC Joins With Federal, State and Local Authorities on Nationwide Debt Collection Enforcement Initiative

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On November 4, 2015, a group of law enforcement authorities, led by the Federal Trade Commission (FTC or the Commission), announced Operation Collection Protection, a coordinated federal, state and local initiative aimed at illegal debt collection practices.<sup>1</sup> The initiative is the latest indication that regulators at all levels are focused on debt collection law enforcement, and signals a period of increased scrutiny for collectors and their financial institution partners.<sup>2</sup> Collectively, the partner agencies have brought more than 115 actions this year, including 34 federal cases and 86 state and local cases. Most notable are the individual criminal indictments announced as part of the initiative, which can be seen as part of a broader enforcement push for individual accountability in enforcement proceedings.<sup>3</sup> According to the announcement, Operation Collection Protection is the first coordinated federal-state enforcement initiative targeting deceptive and abusive debt collection practices.<sup>4</sup>

Among the most common allegations in the announced actions were:

- harassing phone calls;
- false threats of litigation, arrest and wage garnishment;
- knowingly attempting to collect so-called phantom debts (debts that consumers do not actually owe);
- failing to give consumers legally required disclosures and notices, or to follow state and local licensing requirements;
- impersonating attorneys or process servers;
- unlawfully disclosing debts to, or harassing, third parties;
- failing to identify as a debt collector; and
- failing to notify consumers of their right to receive verification of the debts.

Partnering with the FTC in the initiative at the federal level are the Consumer Financial Protection Bureau (CFPB or the Bureau), the US Attorney's Office for the Southern District of New York, and the Consumer Protection Branch of the US Department of Justice. The attorneys general of 46 states<sup>5</sup> and the District of Columbia are joined by a number of state regulatory agencies, including the New York State Department of Financial Services and the Massachusetts Division of Banks. Other

participants in the initiative include the California State Bar, the Los Angeles County Department of Consumer and Business Affairs, and the New York City Department of Consumer Affairs.

Operation Collection Protection reflects broader political momentum to constrain participants in the debt collection market. The day after the FTC's announcement, Senators Cory Booker (D-NJ) and Mike Lee (R-UT) introduced the Stop Debt Collection Abuse Act of 2015, a sign of potentially bipartisan support for reform. The bill would eliminate the present Fair Debt Collection Practices Act (FDCPA) exemption for third-party collectors that collect on behalf of the federal government, and limit collection fees to 10% of the amount collected. It would also confirm that "debt buyers" are "debt collectors" for purposes of the FDCPA. Finally, the bill would require the Government Accountability Office (GAO) to conduct a study on third-party debt collectors who collect on behalf of debt owned by state and local governments. While the bill is bipartisan, it is too early to tell whether it will garner enough support to pass through both houses of Congress and be signed into law.

## **Background**

The FTC shares with the CFPB jurisdiction to enforce the FDCPA, and also has power to bring actions based on unfair or deceptive trade practices under Section 5 of the FTC Act.<sup>6</sup> In addition to its FDCPA jurisdiction, the CFPB also has power to bring actions based on unfair, deceptive, or abusive acts or practices in connection with the offering or sale of a consumer financial product or service.<sup>7</sup>

This joint and overlapping jurisdiction has resulted in cooperation between the CFPB and the FTC. For example, Dodd-Frank requires the CFPB to report annually to Congress on the FDCPA, and the FTC submits a letter to CFPB Director Richard Cordray each year to ensure the FTC's work is included in the Bureau's report. The FTC and the CFPB also formalized their cooperation in the consumer protection area through a Memorandum of Understanding (MOU), signed in January 2012, and subsequently reauthorized. The purpose of the MOU was to coordinate and avoid duplication in law enforcement and regulatory efforts. Under the MOU, the agencies agreed to (among other things): (i) meet regularly to coordinate upcoming law enforcement activities; (ii) inform the other agency before initiating an investigation or bringing an enforcement action; (iii) consult on rulemaking and guidance initiatives; (iv) cooperate on consumer education efforts; and (v) share consumer complaints.

In addition to coordinating with one another, both the FTC and the CFPB have long partnered with state attorneys general on consumer protection initiatives. Since its inception, the CFPB has sought to work collaboratively with attorneys general to investigate and resolve consumer protection issues. Director Cordray delivers remarks annually to the National Association of Attorneys General (NAAG), during which he emphasizes the importance of coordinating efforts between the CFPB and state consumer protection agencies, noting which entity is best suited to handle a particular issue.

## **Operation Collection Protection**

As part of the initiative, the FTC announced 30 new enforcement actions and highlighted that the partner agencies have together taken more than 115 actions against debt collectors in 2015. In announcing the initiative, the FTC published a list of recent federal debt collection actions,<sup>8</sup> along

with a list of actions by state and local enforcement bodies.<sup>9</sup> Interestingly, these lists indicate that the Operation Collection Protection state partners took additional, non-public actions.<sup>10</sup>

While Operation Collection Protection is a natural extension of prior efforts at coordination by the FTC, CFPB, state attorneys general and other parties, the significance of the initiative for future enforcement activity is not yet clear. The announcement of Operation Collection Protection focused on past actions and instances of past coordination between the partners to the program. That said, at a minimum the industry should expect a continuation of the heightened activity and coordination levels that have been evident for a year or more.

On its website, the FTC has highlighted four key takeaways for the collections industry:<sup>11</sup>

- Illegal debt collection practices are a front-and-center concern of the FTC. Since 2010, the FTC has sued more than 250 debt collectors and secured judgments of almost \$350 million in contested and unconsented proceedings. Eighty-six companies and individuals have found themselves banned from the industry.
- Violations can result in prison time. As part of Operation Collection Protection, 19 individuals face indictment, have pleaded guilty, or have been convicted of criminal charges.
- Enforcement partners have created a united front against debt collection abuses. In 2014, consumers filed more than 280,000 complaints with federal agencies related to debt collection, and the announcement of Operation Collection Protection is just the beginning of the partnership.
- Industry members have a role to play, too. The FTC has reached out to members of the debt collection industry to work collaboratively to stop questionable practices before they start.

## Conclusion

Although it is unclear whether this initiative will mean a further uptick in enforcement activity beyond the surge in recent years, or more cooperation among enforcement authorities, it is clear that a number of government actors are renewing their focus on debt collection. At a minimum, Operation Collection Protection, paired with other initiatives in Congress and during the election season, will further increase focus on debt collection as an issue. Industry participants should expect still more political pressure, enforcement activity and press coverage of their practices. Institutions that have not recently reviewed their debt collection practices should do so, as expectations and risks are greater than in the past.

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<sup>1</sup> <https://www.ftc.gov/news-events/press-releases/2015/11/ftc-federal-state-local-law-enforcement-partners-announce>.

<sup>2</sup> <https://www.wilmerhale.com/pages/EventDetails.aspx?eventId=17179876857>.

<sup>3</sup> <http://www.justice.gov/dag/file/769036/download>.

<sup>4</sup> <https://www.ftc.gov/news-events/press-releases/2015/11/ftc-federal-state-local-law-enforcement->

partners-announce?utm\_source=govdelivery.

<sup>5</sup> All but New Jersey, Michigan, Utah, and Wyoming.

<sup>6</sup> 15 U.S.C. § 45.

<sup>7</sup> 12 U.S.C. §§ 5531, 5536.

<sup>8</sup> <https://www.ftc.gov/system/files/attachments/press-releases/ftc-federal-state-local-law-enforcement-partners-announce-nationwide-crackdown-against-abusive-debt/151102ocp-fedactionlist.pdf>.

<sup>9</sup> <https://www.ftc.gov/system/files/attachments/press-releases/ftc-federal-state-local-law-enforcement-partners-announce-nationwide-crackdown-against-abusive-debt/151104ocp-stateactionlist.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> <https://www.ftc.gov/news-events/blogs/business-blog/2015/11/operation-collection-protection-puts-heat-illegal-debt>.

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