

Fair Debt Collection Practices Act

CFPB Annual Report 2015



Consumer Financial
Protection Bureau

March 2015

Message from Richard Cordray

Director of the CFPB



As the only federal government agency dedicated solely to consumer financial protection, the Consumer Financial Protection Bureau (“Bureau” or “CFPB”) has taken actions to protect consumers from problematic collection practices. These practices pose significant risks and harms to consumers, and we have increasingly found that the issues and problems are widespread across virtually all the consumer financial markets we oversee. This report describes the federal government’s efforts to administer the Fair Debt Collection Practices Act (“FDCPA”) in 2014. Among different developments related to debt collection in the past year, four are particularly noteworthy.

First, we began accepting consumers’ debt collection complaints in the second half of 2013. Hence, 2014 is the first full year of data on such complaints. Last year the Bureau handled over 88,300 debt collection complaints, positioning debt collection as the leading source of consumer complaints. The Bureau forwarded 45% of these complaints to debt collectors, which responded in a timely manner to 89% of them, a total of 35,100 answered complaints.

Second, the Bureau is making progress on developing the first comprehensive federal regulations covering debt collection. In developing these rules, we are considering provisions to protect consumers from problematic practices of some collectors as well as to reflect technological changes in the debt collection industry. The Bureau’s decisions on proposed rules will be informed, among other things, by the more than 23,000 comments we received in response to our debt collection advance notice of proposed rulemaking (“ANPR”); a consumer survey and disclosure research; and the views of small businesses at any Small Business Regulatory Enforcement Fairness Act (“SBREFA”) panel the Bureau may convene before issuing a notice of proposed rulemaking (“NPRM”). Furthermore, the Bureau’s rulemaking efforts are

informed by engaging with the public through roundtables, field hearings, meetings, and surveys about their experiences with debt collection.

Third, the Bureau reported on legal violations related to debt collection practices uncovered by the Bureau's examiners. The Bureau found deceptive student loan debt collection practices, prohibited disclosures of debts to third parties, and excessive calls to consumers, among other violations.

Fourth, the CFPB continuously works with the FTC to enforce the laws applicable to debt collectors, and files amicus briefs, often jointly with the FTC, on important issues of law. This has become a busy and highly productive partnership, and we are deeply appreciative of our colleagues at the FTC for all the fine work they do, including their notable work on collection practices affecting Latino consumers with low English proficiency ("LEP") and the substantial outreach efforts both to that population specifically and more generally, as described herein. We also are grateful for the close strategic work we are doing together, which helps us make the most of our joint efforts to protect consumers in this important area. In 2014, the CFPB and the FTC provided almost \$700 million in relief to consumers who were subject to illegal collections practices; the CFPB collected \$13 million in fines, and took seven enforcement actions involving egregious debt collection violations; the FTC's enforcement actions resulted in 47 businesses and individuals being banned from the debt collection business.¹

At the Consumer Bureau, we are focused on creating a transparent and fair market and regulatory environment for consumers, creditors, and debt collectors. Businesses should be able to collect, in compliance with applicable laws, debts owed to them, and consumers should be able to recognize their debt obligations and be treated with dignity. We hope to continue our efforts to create a marketplace with clear rules that establish rights and responsibilities for both debt collectors and consumers.

Sincerely,



Richard Cordray

¹ Federal Trade Commission, *The FTC's new Hall of Shame — Banned Debt Collectors* (February 2015), available at <http://www.consumer.ftc.gov/blog/ftcs-new-hall-shame-banned-debt-collectors>.

Table of contents

Message from Richard Cordray	2
Table of contents.....	4
1. Introduction.....	6
2. Background.....	7
3. Consumer complaints	11
3.1 Number and types of complaints received.....	12
3.2 Responses to complaints received.....	15
4. Bureau supervision of debt collection activities	18
4.1 Excessive or inconveniently timed telephone calls.....	19
4.2 Misleading representations in collection litigation	19
4.3 False threats of litigation	20
4.4 Faulty training materials causing prohibited disclosures to third parties...	20
4.5 False and misleading representations in debt collection communications	21
5. Enforcement.....	22
5.1 Bureau law enforcement actions	22
5.2 FTC law enforcement actions	26

5.3	Debt collection advocacy	36
6.	Education and outreach initiatives	42
6.1	Bureau education and outreach initiatives	42
6.2	FTC education and public outreach	45
7.	Rulemaking, research, and policy initiatives	47
7.1	Bureau rulemaking and research	47
7.2	FTC's research and policy development activities	50
8.	Conclusion	52
Appendix A:	FTC Letter	53

1. Introduction

The Consumer Financial Protection Bureau (“CFPB” or “the Bureau”) is pleased to submit to Congress its fourth 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 Attachment A. The CFPB and the FTC work closely to coordinate debt collection enforcement actions among other matters related to debt collection.²

This report (1) provides a background of the debt collection market; (2) contains an overview of consumer complaints submitted to the CFPB in 2014; (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.

² 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 billion dollar industry,³ employing more than 140,000 workers, in as many as 6,000 firms.⁴ Around 35 percent of adults, or 77 million of the 220 million Americans with credit files, show debts in collections. These debts range from less than \$25 to more than \$125,000, averaging \$5,178.⁵ Many consumers are not aware that they have debts in collections until they receive calls from debt collectors or review their credit reports.⁶

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. Over half the industry's revenue (\$6.56 billion) is generated by collection agencies working on behalf of creditors and charging fees for services, often a percentage of the amount collected. Nearly one

³ Daniel Carusotto at IBIS World, *Debt Collection Agencies in the US* (November 2014), available at www.ibisworld.com/gosample.aspx?cid=1&rctid=101.

⁴ Robert Hunt and Viktor Fedaseyeu, Fed. Reserve Bank of Pa., *The Economics of Debt Collection: Enforcement of Consumer Credit Contracts* (Working Paper, March 2014), available at <http://www.philadelphiahed.org/research-and-data/publications/working-papers/2014/wp14-7.pdf>.

⁵ Urban Institute, *Delinquent Debt in America* (July 2014), available at <http://www.urban.org/UploadedPDF/413191-Delinquent-Debt-in-America.pdf> is an update to a 2004 Federal Reserve Summer Bulletin which found that 36.5% of consumers with credit files have reports of debt in collections. The 2004 Bulletin is available at https://www.philadelphiahed.org/consumer-credit-and-payments/related-resources/summero4_credit.pdf.

⁶ Consumer Financial Protection Bureau, *CFPB Considers Debt Collection Rules* (2013), available at <http://www.consumerfinance.gov/newsroom/cfpb-considers-debt-collection-rules>.

third of the revenue (\$4.22 billion) in the debt collection space comes from debt buyers, who purchase accounts from the original creditor or other debt buyers.⁷

Consumer credit is expanding in response to changes in economic conditions, with industry projecting continued growth for the next five years.⁸ Consumer credit, excluding mortgages is \$615 billion higher than pre-2008 levels. While revolving debt continues to grow, non-revolving debt, driven largely by student loans, is almost 45% higher than pre-recession levels.⁹ Against a backdrop of overall growth, the market is changing in significant ways.

Since the early 1990s, debt buying has become a substantial part of the collections process.¹⁰ Banks and other credit card issuers often sell debt buyers defaulted credit card debt, which debt buyers collect in-house or place with other collection agencies. Debt buyers may also repackaging purchased debt portfolios and sell them to other buyers. The two biggest debt buyers are publicly traded companies; combined, they grossed more than \$1.9 billion in annual revenues in 2014.¹¹

The sale and resale of debts has raised concerns about debt data integrity and information flows from creditor to debt buyer to subsequent debt buyers. In the past, debt buyers resold debt portfolios, sometimes leading into untraceable cycles of reselling that did not safeguard

⁷ Daniel Carusotto at IBIS World, *Debt Collection Agencies in the US* (December 2014), available at <http://www.ibisworld.com/industry/default.aspx?indid=1474>.

⁸ Daniel Carusotto at IBIS World, *Debt Collection Agencies in the US* (December 2014), available at <http://www.ibisworld.com/industry/default.aspx?indid=1474>.

⁹ Board of Governors of the Federal Reserve, Consumer Credit – G.19 (January 2015), available at <http://www.federalreserve.gov/releases/g19/current>.

¹⁰ Federal Trade Commission, *The Structure and Practices of the Debt Buying Industry* (January 2013), (During the crisis, the Resolution Trust Corporation, the federal entity assigned to liquidate failed thrifts, auctioned off nearly \$500 billion in unpaid loans that creditors had owned. The success of these sales in producing revenue persuaded other creditors to commence selling their debts), available at <http://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf>.

¹¹ SEC Filings, 10-K (2014) available at <http://www.sec.gov/Archives/edgar/data/1084961/000108496115000011/ecpg-20141231x10k.htm> and <http://www.sec.gov/Archives/edgar/data/1185348/000118534815000008/praa-20141231x10k.htm>.

consumer information or guarantee other debt buyers unique ownership of debts.¹² 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.¹³ 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. The Bureau was advised that many banks eliminated or restricted the practice of reselling their customers’ debts. Some creditors have completely halted debt sales. Small and medium-sized firms have either exited credit card debt buying or have been acquired by larger debt buyers. The market dynamics for credit card debt sales have changed, leading to frequent mergers and acquisitions, and some firms exiting the space.¹⁴ Consolidation in the debt buying space, commented upon in the 2014 FDCPA Annual Report, continues.

Third-party contingency debt collectors also appear to be experiencing consolidation. According to annual studies sponsored by the Association of Credit and Collection Professionals (“ACA”), a quarter (1,556) of debt collection agencies exited the industry between 2005 and 2013.¹⁵

As the economy improves, the supply of debt is expected to increase across debt markets, potentially increasing contact between debt collectors and consumers. The volume of student loans in default has grown at a rapid rate and outstanding student loan debt¹⁶ continues on an

¹² “For most portfolios, buyers did not receive any documents at the time of purchase. Only a small percentage of portfolios included documents, such as account statements or the terms and conditions of credit.” 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>. This statement applies to sales from creditor to debt buyer. Thus, we can infer that the availability of documents when debt is resold is even more if not equally limited.

¹³ 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>.

¹⁴ 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>.

¹⁵ 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>.

¹⁶ US Department of Education, *Federal Student Aid Data Center* (March 2015), available at <https://studentaid.ed.gov/data-center>.

upward trajectory;¹⁷ some sources suggest that outstanding student loan debt grew 20% from 2012 to 2014.¹⁸ Medical debt continues to be a growing area for this industry as 19.5% of consumers have credit reports containing one or more medical debt collections tradelines.¹⁹

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 volume of consumer credit accounts may increase placements by creditors to collection agencies and boost the volume of debt sales. The growth of subprime lending in auto, which has almost doubled since 2009,²⁰ and subprime bank-issued credit cards (42.9% more in 2014 compared to 2013) will also contribute to growth in the debt collection industry.²¹

Since the FDCPA has not been substantially updated since 1977, there can be some uncertainty as to what the law requires in some circumstances. The Bureau expects that its rulemaking activities will address many of the primary uncertainties in the market, promote compliant debt collection practices, lessen unfair competition from bad actors, and most importantly, assist in protecting consumers from illegitimate collection practices.

¹⁷ Federal Reserve Bank of New York, *Student Loan Debt by Age Group* (March 2013), available at <http://www.newyorkfed.org/studentloandebt/index.html>.

¹⁸ Board of Governors of the Federal Reserve, *Consumer Credit – G.19* (January 2015), available at <http://www.federalreserve.gov/releases/g19/current>.

¹⁹ CFPB, *Consumer Credit Reports: A study of medical and non-medical collections* (December 2014), available at http://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf.

²⁰ Federal Reserve Bank of New York Consumer Credit Panel/Equifax, *Auto Loan Originations by Credit Score* (Q2 2014), available at <http://www.newyorkfed.org/microeconomics/hhdc.html#/2014/q2>.

²¹ 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>.

3. Consumer complaints

Collecting, investigating, and responding to consumer complaints are integral parts of the CFPB’s work.²² The CFPB’s Office of Consumer Response (“Consumer Response”) began accepting consumer complaints about debt collection in July 2013. The CFPB 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. 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.²³ The Bureau answers questions and refers consumers to other regulators or additional resources as appropriate and forwards complaints to companies for review and response.

The CFPB’s complaint handling process focuses on collecting, investigating, and responding to complaints.²⁴ 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 industry,

²² See Dodd-Frank Act, Pub. L. No. 111-203, § 1021(c)(2) (2010).

²³ 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.

²⁴ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1021(c)(2), 124 Stat. 1376, 1979 (2010). (“Dodd-Frank Act”).

select targets for investigation, and conduct preliminary analysis that, with further factual development, might reveal or help prove a law violation.

From 2013 to 2014, consumers' complaints about debt collection have stayed consistent. The most common type of debt collection complaint is about continued attempts to collect a debt that the consumer reports is not owed (37%). In many of these cases, 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 unfair. In other cases, the consumer complains about the furnishing of information to credit reporting agencies. These complaints, which are often consistent with complaints consumers submit to the Bureau about credit reporting, suggest that consumers frequently only learn that their accounts have gone into collection when they check their credit reports.

Complaints about debt collectors' communications tactics (telephone calls especially) are also still very common (20%). In addition to the recurrent 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 also have complained about a lack of debt validation coming from collectors. 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 who respond appear to respond to consumer complaints by closing the accounts and returning them to their clients.

3.1 Number and types of complaints received

From January 1, 2014 through December 31, 2014, the CFPB handled approximately 88,300 debt collection complaints. 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.²⁵

TABLE 1: TYPES OF CONSUMER COMPLAINTS

Types of debt collection complaints	%
Continued attempts to collect debt not owed	37%
Communication tactics	20%
Disclosure about and verification of debt	13%
Taking/threatening an illegal action	12%
False statements or representation	10%
Improper contact or sharing of information	7%
Total debt collection complaints	100%²⁶

For each type of complaint listed in Table 1, consumers also select additional subtopics when submitting the complaint. These subtopics provide more details about the complaint.

As indicated in Table 1, the most common type of debt collection complaint is about continued attempts to collect a debt that the consumer reports is not owed. The vast majority of consumers submitting complaints about continued attempts to collect a debt report that the debt is not their debt (64%) or that the debt was paid (26%), while the remaining percentage of consumers report that the debt resulted from identity theft (6%) or the debt was discharged in bankruptcy (4%).

²⁵ 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.

²⁶ Percentages do not equal 100 percent due to rounding.

As indicated in line 2 of Table 1, complaints about the communication tactics that are used when collecting debts are also common. Many of these types of complaints are about improper telephone calls. The majority of complaints about communication tactics are about frequent or repeated calls (53%). 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 consumer's phone number has mistakenly been included in the collector's information about another person'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 (30%), using obscene, profane, or abusive language (7%), calling after being sent written cease communication notices (6%), or calling outside of 8 a.m. to 9 p.m. (3%).

Another common type of complaint involves consumers' disputes about debts (see line 3 of Table 1). The FDCPA requires collectors to provide consumers with validation notices to inform them, among other things, of their rights to dispute debts, but some consumers complain that debt collectors do not provide a validation notice within five days of the collectors' initial communication to collect (25%). Most consumers 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 (e.g., documents showing they signed the underlying credit contract) (68%). The complaints related to disputed debts also reveal confusion on the part of consumers as to when and how they can dispute a debt.²⁷ 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 (56%). Other complaints relate to lawsuits including threats to sue on a debt that is too old (23%), being sued without proper notification of the lawsuit (7%), seizures or attempts to seize property (6%), collection or attempts to collect exempt funds such

²⁷ As discussed in Section 6.1, the Bureau has developed and made available a form letter to assist consumers in disputing debts.

as child support or unemployment benefits (5%), or being sued in a place that is different from where the consumer lives or where the consumer signed the contract (2%).

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 (55%). Consumers also commonly report that companies impersonated an attorney or a law enforcement or government official (27%), 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 (46%), contacted an employer after being asked not to do so (26%), or contacted the consumer after being asked not to do so (26%). A less common complaint relates to consumers reporting that they are contacted directly, instead of the debt collector contacting their attorney (2%).

3.2 Responses to complaints received

The CFPB has sent approximately 39,500 (45%) of the about 88,300 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 (44%), while other complaints were found to be incomplete (8%), or are pending²⁸ with the consumer or the CFPB (3%).

Companies have already responded to approximately 35,100 complaints or 89% of the approximately 39,500 complaints sent to them for response. Consumers have disputed approximately 6,200 company responses (18%) to their complaints.

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

²⁸ 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.

TABLE 2: HOW COMPANIES HAVE RESPONDED TO CONSUMER COMPLAINTS TO THE CFPB

Company Response	%	
Closed with explanation	26,000	66%
Closed with non-monetary relief	6,200	16%
Company did not provide a timely response	3,600	9%
Closed (without relief or explanation)	1,500	4%
Company reviewing	1,200	3%
Closed with monetary relief	600	2%
Administrative response	400	1%
Total Complaints Sent to Companies for Response	39,500	100%²⁹

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. “Closed with non-monetary relief” indicates that the steps taken by the company in response to the complaint did not result in monetary relief to the consumer that is objective, measurable, and verifiable, but may have addressed some or all of the consumer’s complaint involving non-monetary requests. 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 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

²⁹ Percentages do not equal 100 percent due to rounding.

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 nonbank entities that offer or provide consumer financial products or services.³⁰ 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. This authority extends to about 175 debt collectors, which account for more than 60% of the industry’s annual receipts in the consumer debt collection market.

In 2014, the Bureau’s supervision of debt collectors uncovered a number of violations of the FDCPA.³¹

³⁰ Specifically, the Bureau has authority to supervise nonbank entities in the residential mortgage, payday lending, and private education lending markets. The Bureau also has the authority to supervise persons who 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).

³¹ 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 Excessive or inconveniently timed telephone calls

The FDCPA prohibits a number of harmful practices related to telephone calls.³² In one or more examinations, the Bureau determined that a supervised entity had engaged in repeated violations of the FDCPA. During the review period, an entity had made approximately 17,000 calls to consumers outside of the appropriate calling hours set forth in the FDCPA. In addition, the entity also violated the FDCPA when it repeatedly contacted more than 1,000 consumers, contacting some consumers as often as 20 times within two days.

4.2 Misleading representations in collection litigation

The FDCPA also prohibits entities from making false or misleading representations in connection with the collection of a debt.³³ As part one or more examinations, the Bureau reviewed collection lawsuits initiated by one or more entities. Examiners found that in 70% of the cases, when the consumer filed an answer, one or more entities would dismiss the suit because they were unable to locate documentation to support their claims. Despite one or more entities' express or implied representations to consumers that they intended to establish that consumers owed a debt in the amount claimed in court filings, in numerous instances, one or more entities misled consumers because collectors demonstrably had no such intention.

³² See, e.g., 15 U.S.C. §§ 1692c(a)(1) (placing restrictions on call times), 1692d(5) (prohibiting “any conduct the natural consequence of which is to harass, oppress, or abuse,” including “[c]ausing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass”).

³³ 15 U.S.C. § 1692e.

4.3 False threats of litigation

The FDCPA prohibits a debt collector from threatening a consumer with any action it does not intend to undertake.³⁴ Accordingly, a debt collector violates the FDCPA when it threatens a consumer with litigation it does not intend to pursue. In one or more examinations, the Bureau determined that one or more collectors routinely threatened consumers with litigation even though they generally did not intend to file suit. Litigation was initiated on only a small fraction of the accounts collected. The Bureau directed one or more collectors to cease threatening consumers with litigation they did not intend to pursue.

4.4 Faulty training materials causing prohibited disclosures to third parties

The FDCPA prohibits a debt collector's representatives from identifying their employer when communicating with a third party for the purpose of acquiring location information, unless expressly requested to do so.³⁵ During one or more examinations, the Bureau determined that representatives regularly identified their employer to third parties without being expressly requested to do so. One or more collectors provided faulty training materials that directed their representatives to disclose their name and the name of the collector before identifying the party with whom they were speaking. The Bureau directed one or more collectors to conduct remedial training and update their training program, and monitor their collection agents to ensure the effectiveness of the training program.

³⁴ 15 U.S.C. § 1692e(5); *see also* 12 U.S.C. § 1692e(10) (prohibiting “[t]he use of any false representation or deceptive means to collect or attempt to collect any debt”).

³⁵ 15 U.S.C. § 1692b(1).

4.5 False and misleading representations in debt collection communications

The FDCPA prohibits the use of any false, deceptive, or misleading representation or means in connection with the collection of any debt.³⁶ In one or more examinations of debt collectors performing collection services of defaulted student loans for the Department of Education, Bureau examiners identified collections calls, scripts, and letters containing various misrepresentations to consumers. Examiners found that collection agents overstated the benefits of federal student loan rehabilitation. Specifically, these agents overstated the rehabilitation program's impact on consumers' credit reports and credit scores and the extent to which collection fees would be waived upon completion of the program.³⁷ In addition, Bureau examiners identified instances in which collection agents misrepresented to consumers that they could not participate in a federal student loan rehabilitation program unless consumers made payments by credit card, debit card, or ACH payment, when in fact no such program requirement existed.³⁸ Bureau examiners also found that collectors threatened to take action against certain consumers, which created the impression that if they did not make a payment they would be sued. In fact, none of the collection agents knew whether legal action would be taken and did not intend to take legal action.³⁹ To address these violations, the relevant financial institutions have undertaken remedial and corrective actions regarding these violations, which are under review by the Bureau.

³⁶ 15 U.S.C. § 1692e.

³⁷ 15 U.S.C. § 1692e(10).

³⁸ 15 U.S.C. § 1692e(10).

³⁹ 15 U.S.C. § 1692e(5).

5. Enforcement

The Bureau announced seven public law enforcement actions in 2014 related to unfair, deceptive, and abusive debt collection. Some of these actions are still pending. 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 Dodd-Frank Act.

To date, these seven public actions involving debt collection have resulted in over \$570 million in consumer relief and over \$13 million paid into the civil money penalty fund, which is used to provide relief to consumers who would not otherwise get full compensation or to provide consumer education and financial literacy programs.

5.1 Bureau law enforcement actions

In Re ACE Cash Express, Inc.⁴⁰

In 2014, the Bureau's first public enforcement action involving debt collection was an administrative consent order against ACE Cash Express, one of the largest payday lenders in the United States. The Bureau found that ACE used unfair, deceptive, and abusive acts or practices to collect consumer debts, both when collecting its own debt and when using third-party debt collectors to collect its debts. Specifically, the Bureau found that ACE debt collectors falsely led consumers to believe that they would be sued or subject to criminal prosecution if they did not

⁴⁰ Consumer Financial Protection Bureau, *CFPB Takes Action Against ACE Cash Express for Pushing Payday Borrowers Into Cycle of Debt* (July 2014), available at <http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-ace-cash-express-for-pushing-payday-borrowers-into-cycle-of-debt>.

make payments, and threatened to charge extra fees and report consumers to credit reporting agencies, when as a matter of corporate policy, it took none of these actions. The Bureau also found that ACE harassed consumers by making an excessive number of collection calls, and in some cases, repeatedly called the consumers' employers and relatives and disclosed consumers' debts to them.

The Bureau found that ACE used these illegal debt collection tactics in part to create a false sense of urgency to lure overdue borrowers into payday debt traps. The Bureau found that ACE's creation of the false sense of urgency to get delinquent borrowers to take out more payday loans was abusive.

ACE agreed to reform its debt collection practices, including a prohibition on using debt collectors to market new loans, and to provide \$5 million in consumer refunds and \$5 million in penalties.

CFPB v. Frederick J. Hanna & Associates, et al.⁴¹

The Bureau's second debt collection action announced in 2014 was a lawsuit filed in federal district court against a Georgia-based law firm, Frederick J. Hanna & Associates, and its three principal partners. The Bureau alleged that the defendants operate a debt collection lawsuit mill that uses illegal tactics to intimidate consumers into paying debts they may not owe. The Bureau alleges that the Hanna firm violated the FDCPA by misrepresenting the level of attorney involvement in its lawsuits and by filing false court affidavits.

The Bureau alleged that the firm operates like a factory, producing hundreds of thousands of debt collection lawsuits against consumers, frequently relying on deceptive court filings and faulty or unsubstantiated evidence. Between 2009 and 2013 the firm filed more than 350,000 debt collection lawsuits in Georgia alone. One attorney at the firm signed over 130,000 debt collection lawsuits over a two-year period.

⁴¹ Consumer Financial Protection Bureau, *CFPB Files Suit Against Debt Collection Lawsuit Mill* (July 2014), available at <http://www.consumerfinance.gov/newsroom/cfpb-files-suit-against-debt-collection-lawsuit-mill>.

This action is still pending. The Bureau seeks to stop the alleged unlawful activity and obtain compensation for victims, a civil fine, and an injunction against the company and its partners.

In Re Colfax Capital Corporation, et al.⁴²

The Bureau's third action related to debt collection in 2014 was taken in collaboration with 13 state attorneys general and resulted in an administrative consent order against Colfax Capital Corporation and Culver Capital, LLC, also collectively known as "Rome Finance," for running an unlawful predatory lending scheme and using unfair, deceptive, and abusive tactics to collect debt that was not owed.

Rome Finance was not licensed to provide consumer lending in any state and charged annual percentage rates higher than some states allowed, which voided or limited the debt that Rome could seek to recover in some states in compliance with state lending law. The Bureau found that the company deceived consumers in these states by failing to inform them that some or all of their debt was void or otherwise did not have to be repaid. As a result, many consumers were misled into thinking that they had to repay the entire loan balance and making those payments, when they did not have to.

Rome Finance was ordered by the Bureau and the states to provide \$92 million in debt relief for about 17,000 U.S. servicemembers and other consumers harmed by the company's predatory lending scheme and illegal debt collection practices.

CFPB v. Richard F. Mosley, Sr., et al.⁴³

The Bureau's fourth matter in 2014 involving debt collection was a lawsuit it filed in federal district court against Richard F. Moseley, Sr., Richard F. Moseley, Jr., and Christopher J. Randazzo, who control the Hydra Group, for allegedly running an illegal cash-grab scam. The lawsuit alleges that the Hydra Group used information bought from online lead generators to

⁴² Consumer Financial Protection Bureau, *Closing the Book on Colfax* (July 2014), available at <http://www.consumerfinance.gov/blog/closing-the-book-on-colfax>.

⁴³ Consumer Financial Protection Bureau, *CFPB Sues Online Payday Lender for Cash-Grab Scam* (September 2014), available at <http://www.consumerfinance.gov/newsroom/cfpb-sues-online-payday-lender-for-cash-grab-scam>.

access consumers' checking accounts to illegally deposit payday loans and withdraw fees without consent. The lawsuit also alleged that the Hydra Group used falsified loan documents to claim that the consumers had agreed to the phony online payday loans. In addition to violations of the Dodd-Frank Act, the Truth in Lending Act, and the Electronic Funds Transfer Act, the Bureau alleged that in many cases the Hydra Group sold the bogus debt to third-party debt collectors, subjecting consumers to unlawful debt collection for loans they never agreed to.

This action is still pending. At the request of the CFPB, a U.S. district court judge has temporarily ordered a halt to the operation and frozen its assets. The lawsuit also seeks to return the unlawfully obtained money to consumers and levy a fine on the company.

CFPB v. Corinthian Colleges, Inc.⁴⁴

The Bureau's fifth action related to debt collection was a suit filed in September 2014 against for-profit college chain Corinthian Colleges, Inc. Among other claims, the Bureau alleged in its complaint that Corinthian violated the FDCPA and Dodd-Frank Act by using illegal debt collection tactics to strong-arm students into paying back defaulted loans while still in school. Part of this action was resolved in February 2015 when the Bureau and the U.S. Department of Education announced more than \$480 million in forgiveness for borrowers who took out Corinthian's high-cost private student loans. The Bureau continues to litigate the remaining parts of this action

In Re DriveTime⁴⁵

The Bureau's sixth action involving debt collection was an administrative consent order against DriveTime Financial, a "buy-here pay-here" auto dealer, for making harassing debt collection calls and providing inaccurate credit information to credit reporting agencies. The Bureau found that DriveTime violated the Dodd-Frank Act by harassing borrowers at work, harassing

⁴⁴ Consumer Financial Protection Bureau, *CFPB Sues For-Profit Corinthian Colleges for Predatory Lending Scheme* (September 2014), available at <http://www.consumerfinance.gov/newsroom/cfpb-sues-for-profit-corinthian-colleges-for-predatory-lending-scheme>.

⁴⁵ Consumer Financial Protection Bureau, *CFPB Takes First Action Against 'Buy-Here, Pay-Here' Auto Dealer* (November 2014), available at <http://www.consumerfinance.gov/newsroom/cfpb-takes-first-action-against-buy-here-pay-here-auto-dealer>.

borrowers' references, and making excessive, repeated calls to wrong numbers. The Bureau also found that DriveTime's furnishing practices violated the Fair Credit Reporting Act ("FCRA").

In addition to reforming its debt collection and credit reporting practices and agreeing to inform consumers of their debt collection rights, DriveTime was ordered to pay an \$8 million civil money penalty.

CFPB, et al. v. Freedom Furniture, et al.⁴⁶

The Bureau's seventh enforcement action involving debt collection was a lawsuit filed in federal district court with the Attorneys General of North Carolina and Virginia against Freedom Stores, Inc., and related companies in which the Bureau and the states alleged that Freedom Furniture used illegal tactics to collect debts from servicemembers, including filing lawsuits in distant fora, debiting consumers' accounts without authorization, and contacting servicemembers' commanding officers to discuss their debts without obtaining adequate consent to do so.

Freedom Furniture and its owners and related companies agreed in a consent order to reform its debt collection practices and to provide over \$2.5 million in consumer redress and to pay a \$100,000 civil penalty.

5.2 FTC law enforcement actions

In recent years, to improve deterrence, the Commission has focused on bringing a greater number of cases and obtaining stronger monetary and injunctive remedies against debt collectors that violate the law. From January 1 through December 31, 2014, the FTC brought or resolved 15 debt collection cases—the highest number in any single year, including one case in which the FTC obtained a record \$90.5 million in judgments and effectively shut down more

⁴⁶ Consumer Financial Protection Bureau, *Freedom Stores to provide over \$2.5 million in refunds and penalties* (December 2014), available at <http://www.consumerfinance.gov/blog/freedom-stores-to-provide-over-2-5-million-in-refunds-and-penalties>.

than 20 collection companies with nearly 500 collectors. In several of its Section 13(b) cases,⁴⁷ 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 run the debt collection businesses.

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

5.2.1 Deceptive, unfair, and abusive collector conduct

Targeting debt collectors that engage in deceptive, unfair, or abusive conduct continues to be one of the Commission’s highest priorities. Notably, the Commission initiated or resolved actions against three abusive debt collection operations that targeted Spanish-speaking consumers.⁴⁸ The Commission also initiated or resolved actions against three “phantom debt” collectors.⁴⁹ In particular, the Commission continues to pursue debt collectors that secure payments from consumers by falsely threatening litigation or arrest, or otherwise falsely implying that they are involved in law enforcement.

In an action against a sprawling southern California debt collection enterprise that operated through dozens of shell companies and an “alphabet soup” of business names, the Commission obtained a record \$90.5 million in judgments along with lifetime bans on debt collection for the perpetrators of the scheme. In *FTC v. Asset & Capital Management Group*, the FTC alleged that the defendants purchased consumer credit card and other bank debt, then collected payment on their own behalf by, among other things, posing as process servers and falsely threatening consumers with lawsuits, wage garnishment, property seizure, and arrest. The case shuttered

⁴⁷ 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.

⁴⁸ See *FTC v. Rincon Management Services, LLC*; *FTC v. RTB Enterprises, Inc.*; and *FTC v. Centro Natural Corp.*, discussed below.

⁴⁹ See *FTC v. Williams, Scott & Associates, LLC*; *FTC v. Pinnacle Payment Systems, LLC*; and *FTC v. Centro Natural Corp.*, discussed below.

more than 20 collection boiler rooms that together employed, or had the capacity to employ, 490 collectors. The orders required the defendants to surrender assets that included real property, two luxury automobiles, and corporate funds. A court-approved redress plan is expected to return more than \$3.7 million to 100,750 consumers subjected to the debt collectors' abuses.

In *FTC v. Federal Check Processing, Inc.*, the FTC secured a preliminary injunction that halted an abusive debt collection operation, froze the operation's assets, and appointed a receiver to take over the defendants' business.⁵⁰ The FTC's complaint alleged that the defendants violated the FTC Act and the FDCPA by falsely claiming to be government officials, falsely threatening consumers with litigation or arrest, and systematically disclosing consumers' debts to their friends, family, and co-workers to coerce payment. The Commission continues to litigate the *Federal Check Processing* matter.

In *FTC v. Payday Financial, LLC*, the FTC obtained a judgment of \$967,740 against a South Dakota-based payday lending operation and its owner that the FTC charged had used unfair and deceptive tactics to collect on payday loans.⁵¹ The judgment included a \$550,000 civil penalty for violating the FTC's Trade Regulation Concerning Credit Practices ("Credit Practices Rule"), 16 C.F.R. Part 444, which prohibits lenders from requiring borrowers to consent to wage garnishment in the event of a default. The defendants also were required to disgorge \$417,740 that they previously had obtained by garnishing consumers' wages without court orders. In addition to illegally garnishing consumers' wages, the FTC had alleged that the defendants violated the FTC Act and the Electronic Funds Transfer Act, 15 U.S.C. §§ 1693-1693r, and a section of its implementing Regulation E, 12 C.F.R. § 205.10.⁵² The defendants allegedly forced consumers to resolve disputes before the Cheyenne River Sioux Tribal Court in South Dakota,

⁵⁰ *FTC v. Federal Check Processing, Inc.*, No. 1:14-cv-00122 (W.D.N.Y Mar. 25, 2014) (Stipulated Preliminary Injunction), *see also* Press Release, At FTC's Request, Court Halts Debt Collector's Allegedly Deceptive and Abusive Practices, Freezes Assets (September 23, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/03/ftcs-request-court-halts-debt-collectors-allegedly-deceptive>.

⁵¹ *FTC v. Payday Financial, LLC*, No. 3:11-cv-03017-RAL (D.S.D. April 4, 2014) (Stipulated Order for Permanent Injunction and Civil Penalties), *see also* Press Release, Payday Lenders That Used Tribal Affiliation to Illegally Garnish Wages Settle with FTC (April 11, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/04/payday-lenders-used-tribal-affiliation-illegally-garnish-wages>.

⁵² Rule has been recodified by the Bureau. This section is found at 12 C.F.R. §1005.10.

which lacked jurisdiction; attempted to obtain tribal court orders to garnish consumers' wages; and, conditioned extensions of credit to consumers on the consumers' repayment by preauthorized electronic funds transfers. Along with the monetary judgment, the order prohibits the defendants from suing any consumer in the course of collecting a debt, except to bring a countersuit to defend against a suit brought by a consumer.

In *FTC v. Goldman Schwartz, Inc.*, the FTC obtained a judgment of \$1,412,888 against a Houston, Texas-based debt collection operation, and a complete ban on future debt collection activity, along with other injunctive relief.⁵³ The FTC's complaint alleged that the defendants violated the FTC Act and the FDCPA by making false threats that consumers would be arrested and jailed, and that their children would be taken into custody; falsely claiming to be attorneys or to be working with local sheriffs' offices; disclosing debts to consumers' employers and military superiors; and collecting unauthorized late fees and attorneys' fees. The order required the defendants to surrender cash on hand, real estate, and other significant assets. The court-appointed receiver is in the process of liquidating surrendered assets and dissolving several defendant corporations. The FTC expects to receive in excess of \$700,000 that will be used to provide redress to consumers who were charged unauthorized fees. The remainder of the judgment is suspended based on an inability to pay.

In *FTC v. National Check Registry, LLC*, an action undertaken jointly with the Attorney General of New York, the FTC and the New York Attorney General secured a preliminary injunction that halted a recidivist abusive debt collection operation, froze the operation's assets, and appointed a receiver to take over the defendants' business.⁵⁴ In the complaint, the FTC and the New York Attorney General charged the defendants with violating the FTC Act, the FDCPA, and New York state law by falsely representing to consumers that they had committed check fraud, and then threatening the consumers with arrest, wage garnishment, or litigation if the consumers did not

⁵³ *FTC v. Goldman Schwartz, Inc.*, No. 4:13-cv-00106 (S.D. Tex. May 28, 2014) (Stipulated Order for Permanent Injunction and Monetary Judgment), *see also* Press Release, FTC Puts Texas-based Operation Permanently Out of the Debt Collection Business After It Allegedly Used Deception, Insults, and False Threats against Consumers (May 19, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/05/ftc-puts-texas-based-operation-permanently-out-debt-collection>.

⁵⁴ *FTC and People of the State of New York v. National Check Registry, LLC*, No. 1:14-cv-00490-RJA (W.D.N.Y. July 10, 2014) (Stipulation to Enter Preliminary Injunction), *see also* Press Release, Court Halts Debt Collector's Operations, Freezes Assets (July 21, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/07/court-halts-debt-collectors-operations-freezes-assets>.

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 ignored prior repeated public and private enforcement efforts, including an investigation by the New York Attorney General that the defendants had resolved by entering into an Assurance of Discontinuance. The FTC and the New York Attorney General continue to litigate the *National Check Registry* matter and are also actively exploring ways to continue this fruitful partnership.

In *United States v. Credit Smart, LLC*, the FTC obtained a judgment against a Suffolk County, New York-based debt collection operation that imposed a \$1,200,000 civil penalty and provided strong injunctive relief.⁵⁵ In its complaint, the FTC charged the company with violating the FTC Act and the FDCPA by leaving pre-recorded messages for consumers that pretended to offer financial relief. The messages provided consumers with a number to call, and promised to provide information about a “Tax Season Relief Program,” a “stimulus relief package,” or a “balance transfer program.” In reality, there were no relief programs, and consumers instead were connected with defendants’ debt collectors. Once the consumer was on the phone, the FTC alleged, the defendants unlawfully attempted to collect interest that already had been waived by prior owners of the debts. The complaint also alleged that the collectors attempted to coerce payment by falsely threatening to sue the consumers, garnish their wages, or have them arrested. The order prohibits the defendants from using any false or deceptive means to collect a debt, and from otherwise violating the FDCPA. Upon payment by the defendants of \$490,000, the remainder of the civil penalty will be suspended due to their inability to pay.

In *United States v. Regional Adjustment Bureau, Inc.*, the FTC secured a \$1.5 million civil penalty for unlawful collection practices, along with strong injunctive relief.⁵⁶ The FTC’s

⁵⁵ *United States v. Credit Smart, LLC*, No. 2:14-cv-04650-LDW-GRB (E.D.N.Y. Sept. 22, 2014) (Stipulated Order for Permanent Injunction and Civil Penalty Judgment), *see also* Press Release, Debt Collectors in Memphis and New York State Settle with FTC Concerning Multiple Federal Law Violations (Aug. 7, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/08/debt-collectors-memphis-new-york-state-settle-ftc-concerning>.

⁵⁶ *United States v. Regional Adjustment Bureau, Inc.*, No. 2:14-cv-02522-JPM-tmp (W.D. Tenn. July 14, 2014) (Stipulated Order for Permanent Injunction and Civil Penalty Judgment), *see also* Press Release, Debt Collectors in Memphis and New York State Settle with FTC Concerning Multiple Federal Law Violations (Aug. 7, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/08/debt-collectors-memphis-new-york-state-settle-ftc-concerning>.

complaint charged that the company, which collects on nearly one million accounts each year, violated the FTC Act and the FDCPA by repeatedly calling consumers and accusing them of owing debts that they did not owe, contacting consumers at work while knowing that their employers did not allow the calls, making unauthorized withdrawals from consumers' bank accounts, and disclosing confidential information about debtors to third parties. The settlement prohibits the company from engaging in this unlawful conduct and further requires that whenever a consumer disputes the validity or the amount of a debt, the company must either terminate collection efforts or suspend collection until it conducts a reasonable investigation and verifies that its information about the debt is accurate and complete.

In *United States v. Consumer Portfolio Services, Inc.*, a national subprime automobile lender agreed to pay more than \$5.5 million to settle allegations that it violated the FTC Act, the FDCPA, and the Fair Credit Reporting Act's rule regarding the Duties of Furnishers of Information to Consumer Reporting Agencies ("Furnisher Rule"), 16 C.F.R. Part 660.⁵⁷ The order settling the charges requires the defendant to change its business practices to comply with applicable laws and to implement a data integrity program. The order further requires the defendant to pay a third-party professional to assess the implementation and effectiveness of the program biennially for ten years. In its complaint, the FTC alleged that the defendant violated the FTC Act and FDCPA by disclosing the existence of debts to third parties; calling consumers at work when not permitted or inconvenient; calling third parties repeatedly with the intent to harass; making unauthorized debits from consumers' bank accounts; falsely threatening car repossession; and deceptively manipulating Caller ID. The complaint also alleged that the defendant committed loan-servicing violations, including misrepresenting fees consumers owed in collection calls; improperly assessing collection fees; and, unilaterally modifying contracts to increase principal balances. Further, the complaint alleged that the defendant failed to reasonably investigate disputes about credit reports and failed to establish required policies and procedures for handling direct credit reporting disputes. The order requires the defendant to refund or adjust consumers' accounts, resulting in payment of more than \$3.5 million in redress

⁵⁷ *United States v. Consumer Portfolio Services, Inc.*, No. 8:14-cv-00819-ABC-RNB (C.D. Cal. June 11, 2014), *see also* Press Release, Auto Lender Will Pay \$5.5 Million to Settle FTC Charges It Harassed Consumers, Collected Amounts They Did Not Owe (May 29, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/05/auto-lender-will-pay-55-million-settle-ftc-charges-it-harassed>.

to consumers. The order also requires the defendant to pay a \$2 million civil penalty (\$1 million for violations of the FDCPA and \$1 million for violations of the Furnisher Rule).

5.2.2 Collection practices affecting LEP Latinos

In 2014, the Commission initiated or resolved three cases against abusive debt collection operations that targeted Spanish-speaking consumers. Along with the *Debt Collection and the Latino Community* roundtable, discussed below, these cases reflect the Commission's continued emphasis on ensuring that every community, regardless of age, race, gender, or language skills is protected from unlawful practices.

In *FTC v. Rincon Management Services, LLC*, the FTC obtained a judgment of \$23,084,885 against an abusive debt collection operation, along with a complete ban on debt collection activity and other injunctive relief.⁵⁸ The *Rincon* operation targeted Spanish-speaking consumers and others in difficult financial circumstances, and used abusive practices to coerce repayment of alleged debts that the consumers often did not owe. The FTC's complaint alleged that the defendants violated the FTC Act and the FDCPA by calling consumers and their employers, family, friends, and neighbors, and posing as process servers seeking to deliver legal papers that purportedly related to a lawsuit. The defendants' collectors then allegedly falsely told the consumers that unless they immediately paid the amounts demanded, the defendants would sue them, garnish their wages, or in some cases, arrest them. Despite partial suspension of the judgment based on the defendants' inability to pay, the Commission collected more than \$3.3 million that will be used for consumer redress.

In *FTC v. RTB Enterprises, Inc.*, the FTC obtained a judgment of \$4 million against a Houston, Texas-based debt collection operation that allegedly used abusive and deceptive tactics to coerce consumers into paying debts and unnecessary fees.⁵⁹ In its complaint, the FTC charged the

⁵⁸ *FTC v. Rincon Management Services, LLC*, No. 5:11-cv-01623-VAP-SP (C.D. Cal. Mar. 26, 2014) (Final Order for Permanent Injunction and Monetary Judgment Against Defendants Jason R. Begley and Wayne W. Lunsford), *see also* Press Release, FTC Obtains more than \$3.3 Million for Consumers; Defendants Agree to Be Permanently Banned from the Debt Collection Business (April 3, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/04/ftc-obtains-more-33-million-consumers-defendants-agree-be>.

⁵⁹ *FTC v. RTB Enterprises, Inc.*, No. 4:14-cv-01691 (S.D. Tex. June 19, 2014) (Stipulated Order for Permanent Injunction and Monetary Relief), *see also* Press Release, FTC Continues Crack Down on Deceptive Debt Collection;

defendants with violating the FTC Act and the FDCPA by using false and deceptive methods to collect more than \$1.3 million in so-called “convenience fees” and “transaction fees” from both English and Spanish-speaking consumers who authorized payments by telephone. The defendants deceived consumers into believing that they were required to pay by telephone, and that the fees were unavoidable. The defendants also allegedly falsely claimed to speak for attorneys, made false threats of litigation, and used deceptive representations to elicit personal information from consumers, to be used in future collection attempts. The order prohibits the defendants from using false, deceptive, or misleading means to collect a debt, and from otherwise violating the FDCPA. The order also requires the defendants to surrender \$100,000 and a luxury motor home, with the remainder of the judgment to be suspended due to their inability to pay.

In *FTC v. Centro Natural Corp.*, the FTC secured a preliminary injunction against a group of telemarketers that allegedly pressured and harassed consumers to settle “phantom” debts that consumers did not owe.⁶⁰ The Court froze the operation’s assets and appointed a temporary receiver to take over the defendants’ business. In its complaint, the FTC alleged 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 Telemarketing Sales Rule.⁶¹ The FTC continues to litigate the *Centro Natural* matter.

Houston-based Defendants Agree to Stop Deceptive Fees and Practices (June 25, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/06/ftc-continues-crack-down-deceptive-debt-collection-houston-based>.

⁶⁰ *FTC v. Centro Natural Corp.*, No. 14-23879-CIV (S.D. Fl. Oct. 20, 2014) (temporary restraining order), see also Press Release, FTC Takes Action to Stop Phantom Debt Scam That Targeted Spanish-Speaking Consumers Nationwide (Oct. 23, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/10/ftc-takes-action-stop-phantom-debt-scam-targeted-spanish-speaking>.

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

5.2.3 Phantom debt collection

The Commission also continued its efforts to fight so-called “phantom debt collectors.” 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 three actions against phantom debt collectors in 2014: *Centro Natural Corp.* (discussed above); *Williams, Scott*; and *Pinnacle*.

In *FTC v. Williams, Scott & Associates, LLC*, the FTC secured a preliminary injunction against a debt collection operation that allegedly collected on “phantom” payday loan debts that consumers did not owe, froze the operation’s assets, and appointed a temporary receiver to take over the defendants’ business.⁶² The FTC alleged in its complaint that the defendants violated the FTC Act and the FDCPA by using a variety of false threats and abusive practices to coerce payments from consumers on debts that either the consumers did not owe or that the consumers’ lenders had not authorized the defendants to collect. The FTC further alleged that the defendants made a concerted effort to harass consumers into paying the alleged debts by falsely claiming to be law enforcement officials or attorneys, falsely threatening consumers with arrest or loss of their drivers’ licenses, using profane language, and disclosing the alleged debts to consumers’ family members and employers. The FTC continues to litigate the *Williams, Scott* matter.

Reflecting the increased interest by federal and state authorities in bringing criminal actions against abusive debt collectors, federal authorities have since filed criminal charges against the *Williams, Scott* principals. In November 2014, the United States Attorney for the Southern District of New York, along with the New York Office of the Federal Bureau of Investigation, announced the unsealing of a criminal complaint charging Williams, Scott & Associates, its owner, John Todd Williams, and six employees with conspiracy to commit wire fraud. After the FBI conducted a search of Williams, Scott & Associates’ office in Norcross, Georgia in May 2014, Williams shut down that company and opened a new debt collection business. Based on victim

⁶² *FTC v. Williams, Scott & Associates, LLC*, No. 1:14-cv-01599-HLM (N.D. Ga. June 19, 2014) (Stipulated Preliminary Injunction Order with an Asset Freeze and Other Equitable Relief), *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>.

complaints, employees of that debt collection business began making the same threats and false statements to victims.⁶³ The seven individuals have been arrested and face up to 20 years in prison.

In September 2014, in *FTC v. Pinnacle Payment Services, LLC*, a U.S. district court entered a set of stipulated permanent injunctions and judgments totaling \$9,384,628 against the defendants for violations of the FTC Act and the FDCPA.⁶⁴ The Commission had charged that the defendants, working out of offices in Cleveland and Columbus, Ohio and Atlanta, Georgia, collected and processed millions of dollars in payment for phantom debts using robocalls and voice messages that threatened legal action and arrest unless consumers responded within a few days. During phone conversations with consumers, collectors often misrepresented that the consumers would face felony fraud charges, that their bank accounts would be closed or their wages garnished, and that the collectors worked for a law enforcement agency or a law firm. In addition to the monetary judgments, the orders also contained strong injunctive relief including bans on debt collection activity.

Williams, Scott; Pinnacle; and Centro Natural were the FTC's fifth, sixth, and seventh recent cases involving allegedly fraudulent online payday-loan-related operations.⁶⁵

5.2.4 Debt brokering and consumer data integrity

In two separate cases (*FTC v. Bayview Solutions, LLC* and *FTC v. Cornerstone and Company*), the FTC obtained preliminary injunctions against debt sellers that it alleges posted the sensitive personal information of over 70,000 consumers, including bank account and credit card

⁶³ The FTC also successfully moved the court in the underlying civil action to hold the defendants in contempt for violating the preliminary injunction.

⁶⁴ *FTC v. Pinnacle Payment Sys., LLC*, No. 1:13-CV-3455 (N.D. Ga. Aug. 8, 2014) (Stipulated Final Orders for Permanent Injunction and Settlement of Claims); see also Press Release, FTC Stops Abusive Debt Collection Operation That Threatened Consumers with Legal Action and Arrest for Not Paying ‘Phantom’ Debts (Sept. 23, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/09/ftc-stops-abusive-debt-collection-operation-threatened-consumers>.

⁶⁵ Other recent FTC matters involving allegedly fraudulent online payday-loan-related operations include *Pro Credit, Inc.* (M.D. Fla. 2013), *Caprice Mktg. LLC* (N.D. Ill. 2013), *American Credit Crunchers, LLC* (N.D. Ill. 2012), and *Broadway Global Master Inc.* (E.D. Cal. 2012).

numbers, birth dates, contact information, employers' names, and information about debts that the consumers allegedly owed, on a public website.⁶⁶ The defendants in these cases allegedly exposed this sensitive information while trying to sell portfolios of past-due payday loan, credit card, and other purported debt. According to the complaints, the defendants posted their portfolios, in the form of Excel spreadsheets, on the website without encryption, appropriate redaction, or any other protection, ostensibly so that prospective purchasers could evaluate them. The FTC alleged that the spreadsheets were accessed more than 500 times by unknown visitors to the website. The preliminary injunctions in each case require the defendants to remove the consumers' information from the website, adopt appropriate data security safeguards, and notify the affected consumers of the disclosures. The FTC continues to litigate both matters.

5.3 Debt collection advocacy

5.3.1 Joint CFPB-FTC 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.

Time-Barred Debt: The Seventh Circuit's Decision in *Delgado*

Endorsing what it characterized as the “well-reasoned position” put forth by the FTC and the CFPB, in March 2014 the Seventh Circuit held that a time-limited settlement demand in a

⁶⁶ *FTC v. Bayview Solutions, LLC*, No. 1:14-cv-01830-RC (D.D.C. Nov. 3, 2014) (Stipulation to Entry of Preliminary Injunction); *FTC v. Cornerstone and Company, LLC*, No. 1:14-cv-01479-RC (D.D.C. Sept. 10, 2014) (Order for Entry of Preliminary Injunction), *see also* Press Release, FTC Alleges Debt Brokers Illegally Exposed Personal Information of Tens of Thousands of Consumers on the Internet (Nov. 12, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/11/ftc-alleges-debt-brokers-illegally-exposed-personal-information>.

consumer dunning letter seeking to recover on a time-barred debt could violate the FDCPA, even absent an explicit threat of litigation.⁶⁷

Responding to an invitation by the court, in August 2013 the Commission and the CFPB filed a joint amicus brief to present their views on the application of the FDCPA to the collection of debts barred by the statute of limitations.⁶⁸ In it, the agencies noted that several courts had previously held that a collector who sues or threatens suit on a time-barred debt violates the FDCPA. The agencies argued that, depending on the circumstances, a time-limited settlement offer could plausibly mislead a consumer to believe a debt is enforceable in court, even if the offer is unaccompanied by any clearly implied threat of litigation. Specifically, a collector violates the statute whenever its communications tend to deceive or mislead “unsophisticated consumers” into believing that a time-barred debt could be the subject of a collection suit.

The Seventh Circuit recognized that its holding conflicted with those of the Third and Eighth Circuits, both of which had required an explicit threat of litigation to establish a violation of the FDCPA. The court also explained that it did not hold that it was automatically improper for a collector to seek repayment of time-barred debts. However, it did find that the FDCPA could not bear the reading that the Third and Eighth circuits had given it. Explaining its decision, the court noted that the plain language of the FDCPA prohibits not only threatening to take actions that the collector could not take, but also the use of any false, deceptive, or misleading representation. The court postulated that a collector who stated in a dunning letter that it “could sue” on a time-barred debt, but promised to forebear, would be contravening the FDCPA by making a false representation about the legal status of that debt. The court reasoned that were it to follow the holdings of its two sister circuits, the false representation would not be actionable under the FDCPA – an anomalous result.

⁶⁷ *Delgado* was part of a consolidated opinion issued by the Seventh Circuit in two appeals that both involved the FDCPA. In the companion case, *McMahon v. LVNV Funding, LLC*, the court held that the defendant’s settlement offer to the plaintiff, which the plaintiff had rejected, did not moot the plaintiff’s class action. The Seventh Circuit held that the plaintiff, who had received a dunning letter similar to that in *Delgado* that also sought to collect on time-barred debt, could proceed with his claims.

⁶⁸ Brief of Amici Curiae, *Delgado v. Capital Mgmt. Servs., LP*, No. 13-2030 (7th Cir. Aug. 14, 2013), available at <http://www.ftc.gov/policy/advocacy/amicus-briefs/2013/08/juanita-delgado-v-capital-management-services-lp>. The court invited the Commission to file a brief because the district court, in reaching its decision, had relied on the FTC’s 2013 report entitled “The Structure and Practices of the Debt Buying Industry.”

The Seventh Circuit thus held that, because an unsophisticated consumer who read the dunning letter that the plaintiff had received could have been led to believe that the debt was enforceable, in contravention of the FDCPA, the district court correctly denied the defendant’s motion to dismiss. Explaining its decision, the Seventh Circuit stated that it was “inclined to defer to the agencies’ empirical research and expertise.” Additionally, in a footnote, it also noted that because its opinion created a conflict in the circuits by adopting the agencies’ position, it had circulated the opinion to the full court pursuant to Circuit Rule 40(e). But no judge sought to hear the case *en banc*.

Time-Barred Debt: *Buchanan* amicus brief

In a case with facts very similar to those in *Delgado*, in March 2014 the Commission joined the CFPB in filing an amicus brief in the Sixth Circuit that urged that court to find that a consumer dunning letter that contained a time-limited settlement offer could violate the FDCPA.⁶⁹ As was the case in *Delgado*, in the underlying case the defendant collector had sent the plaintiff a dunning letter that contained an offer to settle a debt upon which the statute of limitations had run. The letter transmitting the settlement offer represented that the consumer’s balance would continue to accrue “interest” and included a warning that the company was “not obligated to renew” the offer. The consumer sued, claiming that the letter violated the FDCPA’s prohibition on the use of “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”⁷⁰

The district court granted the defendant’s motion to dismiss the plaintiff’s class action complaint for failure to state a claim. The district court stated that because the statute of limitations was a “procedural device” that did not “alter the creditor’s substantive rights” or affect the “validity of the debt,” the defendant’s failure to notify the plaintiff that her debt was time-barred was not a false representation or unfair practice, and did not falsely represent the legal status of the debt. Without discussion, the district court held that as a matter of law, “even the least sophisticated consumer would not infer a threat of litigation” from the letter.

⁶⁹ Brief of Amici Curiae, *Buchanan v. Northland Group, Inc.* No. 13-2523 (6th Cir. Mar. 5, 2014), available at http://www.ftc.gov/system/files/documents/amicus_briefs/esther-buchanan-v.northland-group-inc.no.13-2523-6th-cir./140310buchanan6cir-amicus.pdf.

⁷⁰ 15 U.S.C. § 1692e.

As in *Delgado*, the FTC and the CFPB explained in the joint brief that a debt collector who seeks payment after the statute of limitations has run on a debt may violate the FDCPA if its communication would lead the least sophisticated consumer to believe that the debt may be enforced in court. While it is well established that implicit or explicit threats to sue on time-barred debt, and actual lawsuits, violate the FDCPA, other communications that mislead consumers may also qualify. The brief explained that both overt representations as well as omissions may mislead or deceive. To avoid misleading consumers, a debt collector may be required to correct consumers' misinterpretations— even if the collector did not directly create the misimpression. In assessing whether a communication is misleading or deceptive, a court applies an “objective test” as to whether the “least sophisticated consumer” would be misled or deceived. Moreover, a court must consider the practice’s effect on unsophisticated consumers from their perspective, and it may be relevant that consumers do not know their legal rights with respect to time-barred debt. Ultimately, whether a debt collector’s letter is false, deceptive, or misleading requires “a fact-bound determination of how an unsophisticated consumer would perceive the letter.” Because the least sophisticated consumer could plausibly infer that the defendant here would or could sue if the plaintiff did not pay, the brief argued that dismissal was improper.

The Sixth Circuit heard oral argument on the matter on October 7, 2014. On January 13, 2015, the Sixth Circuit issued its ruling agreeing with the arguments proffered by the FTC and the CFPB, and reversing the decision of the district court.

“Initial Communication”: *Hernandez* amicus brief

In August 2014, the FTC joined the CFPB in filing an amicus brief in the Ninth Circuit, urging it to reject an interpretation of the phrase “initial communication” that was both overly narrow and contravened the text of, and legislative intent behind, the FDCPA.⁷¹

The FDCPA requires a collector, “[w]ithin five days after the initial communication with a consumer in connection with the collection of any debt,” to send the consumer a “validation notice” containing certain information about the consumer’s alleged debts and the consumer’s

⁷¹ Brief of Amici Curiae, *Hernandez v. Williams, Zinman & Parham, P.C.*, No. 14-15672 (9th Cir. Aug. 20, 2014), available at http://www.ftc.gov/system/files/documents/amicus_briefs/hernandez-v.williams-zinman-parham-p.c./140821briefhernandez1.pdf.

rights.⁷² In December 2011, the defendant sent the plaintiff in the underlying case a letter seeking to collect a debt that the plaintiff had allegedly incurred. That letter failed to include all of the information required by 15 U.S.C. § 1692g.

The parties filed cross-motions for summary judgment. In its motion, the defendant argued that it had no obligation to comply with § 1692g because its letter was not the “initial communication” that the plaintiff had received about the debt. Instead, it argued that the “initial communication” had come from another collector that had previously sought to collect on the same debt. The defendant contended that because that prior collector had sent the plaintiff a letter that complied with the FDCPA, and because it was a “subsequent collector” (and not the initial collector), it was under no obligation to send any further notice. Finding that the statute’s plain text only contemplated one initial communication with a debtor on a given debt, the district court agreed and granted the defendant’s motion.

In our joint brief, the FTC and the CFPB urged the Ninth Circuit to reject the district court’s interpretation, which has no basis in the statute’s text or purpose. It was noted that the phrase “initial communication” is most naturally read – and has been read by the Ninth Circuit and Congress – to refer to each debt collector’s initial communication with a consumer. Among other things, a consumer’s initial communication about a debt typically comes from the original creditor – an entity that is generally not subject to the FDCPA’s requirements. In those cases, the district court’s interpretation would render the FDCPA’s notice requirement superfluous – something Congress could not have intended. Likewise, the text of the statute requires “a debt collector” to send the notice – that is, each debt collector that attempts to collect on the debt, and is not limited to just the “initial debt collector” that attempts to collect.

It was also noted in our brief that the district court’s interpretation contravened Congress’s legislative intent. Congress enacted § 1692g to eliminate the problem of debt collectors attempting to collect the wrong amounts from the wrong consumers. To that end, Congress requires debt collectors, upon initially contacting a consumer, to provide the consumer with a validation notice containing key information about the debt and the consumer’s rights, including the amount of the debt, the identity of the original creditor, and the consumer’s rights to obtain verification of the debt or dispute it. Because debts frequently change hands, these

⁷² See 15 U.S.C. § 1692g(a) (duty to send the notice); 15 U.S.C. § 1692g(b) (required contents of notice).

protections are just as important when a new debt collector acquires a debt as they are when the first collector began collecting. The district court’s interpretation would create a loophole that would eviscerate the FDCPA. Specifically, under the district court’s reading, nothing would prevent a collector who received a request for verification from passing the debt to another collector who would then have no obligation to provide a validation notice. This practice would prevent the consumer from ever ascertaining the validity of the debt – something Congress clearly did not intend.

Because the district court’s interpretation of the FDCPA’s “initial communication” requirement contravenes both the text of the statute and the legislative intent, the FTC and the CFPB urged the Ninth Circuit to reverse and remand the case. Briefing in the case is ongoing and the Ninth Circuit has not yet scheduled oral argument.

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 informs consumers of their rights under the FDCPA and what the statute requires of debt collectors, while its business education informs debt collectors what they must do to comply with the law.

6.1 Bureau education and outreach initiatives

The Bureau creates an interactive, informative relationship between consumers and the Bureau to link consumers to information about specific financial decisions, including those relating to debt collection, and to help 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 2015, there were more than 85 debt collection questions with answers provided in Ask CFPB. Debt collection was the fourth most-viewed category. The Ask CFPB 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. For example, one segment of the debt collection FAQs addresses issues related to a survivor's obligations with respect to the debt of someone who is deceased, which may be particularly relevant to widows and widowers who may be older adults. There are also segments of the FAQs that address collection of student loans debts, as well as the rights, obligations, and specific circumstances of servicemembers and their families.

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.⁷³

Since tracking began in June 2014, the letters have been downloaded over 62,700 times—about 270 times per day on average. Of the letters, “I do not owe this debt” and “I need more information about this debt” are most popular, accounting together for over two thirds of total downloads:

⁷³ 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 3: LETTERS DOWNLOADED

Letter	% total downloads
“I do not owe this debt”	38%
“I need more information about this debt”	36%
“I want the debt collector to stop contacting me”	13%
“I want to specify how the debt collector can contact me”	10%
“I want the debt collector to only contact me through my lawyer”	3%

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. In 2014, 1,800 Social Services front-line staff were trained on *Your Money, Your Goals*, reaching an estimated 30,000 consumers. The toolkit and training, in both English and Spanish, can be accessed at www.consumerfinance.gov/your-money-your-goals.

Empowering consumers to handle their student loan debts has been and will continue to be a significant focus for the Bureau. The Bureau has released a web tool, Repay Student Debt,⁷⁴ 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 loans out of default or delinquency. Improving their performance in paying student loan debts helps borrowers to rebuild their credit, go back to

⁷⁴ Available at <http://www.consumerfinance.gov/paying-for-college/repay-student-debt/#Question-1>.

school, or buy a home.⁷⁵ 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 older consumers. Since July 2013, older consumers have submitted more than 8,700 debt collection complaints to the Bureau. In November 2014, the Bureau's Office for Older Americans published a snapshot of older Americans' debt collection complaints highlighting the most common problems consumers are reporting. The office published an accompanying blog outlining what older consumers can do about debt collection problems.⁷⁶

6.2 FTC 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 10,000 community-based organizations and national groups that order and distribute FTC information to their members, clients, and constituents. In 2014, the FTC distributed 14.8 million print publications to libraries, police

⁷⁵ 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.

⁷⁶ Consumer Financial Protection Bureau, *Four things older Americans can do about debt collection problems* (November 2014), available at <http://www.consumerfinance.gov/blog/four-things-older-americans-can-do-about-debt-collection-problems>.

departments, schools, non-profit organizations, banks, credit unions, other businesses, and government agencies. In 2014, the FTC logged about 81.7 million views of its website pages. The FTC's channel at www.youtube.com/FTCvideos houses 128 videos, which were viewed more than 459,818 times in 2014. The Consumer blogs in English⁷⁷ and Spanish,⁷⁸ reached 56,000 (English) and 26,000 (Spanish) email subscribers.

The Commission educates industry 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. In 2014, FTC staff spoke to numerous debt collection industry groups, including ACA International and Debt Buyers Association ("DBA International"). The FTC's business education resources can be found in the FTC's Business Center.⁷⁹ The Business Center logged 5 million page views in the first 11 months of 2014, and there are 40,000 email subscribers to the Business Blog.⁸⁰ 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 Appendix A to this letter.

FTC staff also regularly meets with legal services providers to discuss consumer protection issues, including the FTC's work in the debt collection arena. In 2014, FTC staff provided in-person trainings or presentations that involved debt collection issues throughout the country, including in southern California, at Joint Base Lewis McChord in Washington, and in Washington, DC. FTC staff also provided updates about the agency's debt collection work during nationwide webinars hosted by the National Association for Consumer Advocates, and by the Legal Services Corporation for its grantees. Additionally, the FTC organizes "Common Ground" conferences that bring together legal services providers and law enforcement to discuss a wide variety of consumer protection issues, including debt collection.

⁷⁷ <http://www.consumer.ftc.gov/blog>.

⁷⁸ <http://www.consumidor.ftc.gov/blog>.

⁷⁹ <http://business.ftc.gov>.

⁸⁰ <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 frequently 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, increase consumer confusion, and are not necessary.

The Bureau continues to review these comments, which provide important insight to enable the Bureau to make progress in its consideration of comprehensive federal rules for debt collection. To assist this process and to clarify responses to the ANPR, the Bureau has also met with a number of commenters in 2014.

In addition, prior to completing its review of these comments and issuing a debt collection NPRM, the Bureau may convene a panel 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 also initiated a number of research projects to better understand the collections market and its impact on consumers that 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, as well as qualitative testing including the use of focus groups and cognitive interviews to review debt collection disclosures.

With respect to the survey, the Bureau has 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 in the past and, if so, for what type of debt and whether they recognized the debt that was being collected. The information collected through this survey will be used to inform future research and potential CFPB rulemaking concerning debt collection.

The Bureau is also conducting qualitative testing (focus groups, cognitive interviews, and usability testing with consumers who agreed to participate) to assess 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 changes to the type of information disclosed or the method of disclosing information might be helpful for consumers.

7.1.3 Bureau policy initiatives and outreach

The Bureau conducts research 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 on the debt collection industry.

On October 23, 2014, the Bureau and FTC co-hosted a roundtable discussion in Long Beach, CA to address concerns regarding debt collection in the Latino community. This roundtable was

held to bring together consumers, consumer advocates, industry representatives, state and federal regulators, and academics to exchange information related to debt collections and the Latino community. The Bureau's goals were to better understand how debt collection and credit reporting practices impact LEP Latinos and to raise their awareness of their rights. Knowledge gained from this roundtable experience will inform many aspects of the Bureau's supervisory, enforcement, rulemaking, and consumer education work.

On December 11, 2014, the Bureau conducted a field hearing in Oklahoma City to discuss medical debt and credit reporting practices. The hearing was held in conjunction with the release of a Bureau study of medical and non-medical collections tradelines on credit reports.⁸¹ The research showed that medical debt has a significant impact on consumer credit, as 43 million Americans have overdue medical debt on their credit reports. The CFPB is concerned that the systems for incurring, collecting, and reporting medical debt can create difficult challenges for consumers. To better address these challenges, the CFPB announced that the major consumer reporting agencies would be required to provide regular accuracy reports to the Bureau on how disputes from consumers are being handled.

During 2014, 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.

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 the FTC has collaborated with the CFPB to expand the agencies' combined outreach to the Latino community, and has provided the Bureau with input on debt collection rulemaking and guidance initiatives.

⁸¹ Consumer Financial Protection Bureau, *Consumer Credit Reports: A Study of Medical and non-Medical Collections* (December 2014), available at <http://www.consumerfinance.gov/reports/consumer-credit-reports-a-study-of-medical-and-non-medical-collections>.

7.2.1 Debt collection & the Latino community roundtable event

As mentioned above, in October 2014, the FTC and the CFPB co-hosted a roundtable in Long Beach, California, titled “Debt Collection & the Latino Community.” The roundtable brought together consumer advocates, industry representatives, state and federal regulators, and academics to exchange information on a range of issues. Topics included an overview of the Latino community and their finances; pre-litigation collection from Latino consumers; the experience of LEP Latinos in debt collection litigation; credit reporting issues among LEP Latinos; and developing improved strategies for educating and reaching out to LEP Latinos about debt collection.⁸²

⁸² Additional information about the Roundtable is available at <http://www.ftc.gov/news-events/events-calendar/2014/10/debt-collection-latino-community-roundtable>.

8. Conclusion

The Bureau will continue to develop its debt collection program in 2015, and will work actively to protect consumers from unfair, deceptive, abusive, and other unlawful conduct of some debt collectors. The Bureau looks forward to performing this work in close cooperation with the FTC.

APPENDIX A



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

Office of the Secretary

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 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 2014, the Commission continued with 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:

- filed 10 new cases against 56 new defendants;
- resolved 9 cases and obtained nearly \$140 million in judgments,² \$16.5 million of which the Commission has been able to collect to date;
- banned 47 companies and individuals that engaged in serious and repeated violations of law from ever working in debt collection again;

¹ 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.

² These figures includes cases filed and resolved in 2014, as well as cases filed in previous years but resolved in 2014.

- filed two joint amicus briefs with the CFPB on key debt collection issues; and
- co-hosted with the CFPB a day-long roundtable exploring issues related to the collection of debts from Latino consumers.³

The FTC’s work this year focused particularly on: (1) egregious collection practices, including “phantom debt collection”; (2) the security of consumer data in the buying and selling of debts; and (3) protecting limited-English-proficiency (“LEP”) consumers from unlawful collection practices. In addition, the Commission educated consumers about their rights and businesses about their responsibilities under the FDCPA and the FTC Act,⁴ and engaged in research and policy development activities to identify and advocate for debt collection policies and practices that advance the agency’s consumer protection mission.

I. The Commission’s Debt Collection Program

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.

II. 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 authorize the Commission to investigate and take law enforcement action against debt collectors that violate those statutes.⁵ 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 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 appropriate monetary relief, the FTC may refer the case to the Department of Justice.

³ 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 180 companies and individuals who engaged in unlawful collection practices, banning 63 from the industry, and securing over \$220 million in judgments.

⁴ FDCPA, 15 U.S.C. § 1692 –1692p; FTC Act, 15 U.S.C. §§ 41-58.

⁵ 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. § 1692l. 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.

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

A. Legal Actions

In recent years, to improve deterrence, the Commission has focused on bringing a greater number of cases and obtaining stronger monetary and injunctive remedies against debt collectors that violate the law. From January 1 through December 31, 2014, the FTC brought or resolved 15 debt collection cases—the highest number in any single year, including one case in which the FTC obtained a record \$90.5 million in judgments and effectively shut down more than 20 collection companies with nearly 500 collectors. 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 run the debt collection businesses.

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

1. Deceptive, Unfair, and Abusive Collector Conduct

Targeting debt collectors that engage in deceptive, unfair, or abusive conduct continues to be one of the Commission’s highest priorities. Notably, the Commission initiated or resolved actions against three abusive debt collection operations that targeted Spanish-speaking consumers.⁶ The Commission also initiated or resolved actions against three “phantom debt” collectors.⁷ In particular, the Commission continues to pursue debt collectors that secure payments from consumers by falsely threatening litigation or arrest, or otherwise falsely implying that they are involved in law enforcement.

In an action against a sprawling southern California debt collection enterprise that operated through dozens of shell companies and an “alphabet soup” of business names, the Commission obtained a record \$90.5 million in judgments along with lifetime bans on debt collection for the perpetrators of the scheme. In *FTC v. Asset & Capital Management Group*, the FTC alleged that the defendants purchased consumer credit card and other bank debt, then collected payment on their own behalf by, among other things, posing as process servers and falsely threatening consumers with lawsuits, wage garnishment, property seizure, and arrest. The case shuttered more than 20 collection boiler rooms that together employed, or had the capacity to employ, 490 collectors. The orders required the defendants to surrender assets that included real property, two luxury automobiles, and corporate funds. A Court-approved redress plan is

⁶ See *FTC v. Rincon Management Services, LLC*; *FTC v. RTB Enterprises, Inc.*; and *FTC v. Centro Natural Corp.*, discussed below.

⁷ See *FTC v. Williams, Scott & Associates, LLC*; *FTC v. Pinnacle Payment Systems, LLC*; and *FTC v. Centro Natural Corp.*, discussed below.

expected to return more than \$3.7 million to 100,750 consumers subjected to the debt collectors' abuses.

In *FTC v. Federal Check Processing, Inc.*, the FTC secured a preliminary injunction that halted an abusive debt collection operation, froze the operation's assets, and appointed a receiver to take over the defendants' business.⁸ The FTC's complaint alleged that the defendants violated the FTC Act and the FDCPA by falsely claiming to be government officials, falsely threatening consumers with litigation or arrest, and systematically disclosing consumers' debts to their friends, family, and co-workers to coerce payment. The Commission continues to litigate the *Federal Check Processing* matter.

In *FTC v. Payday Financial, LLC*, the FTC obtained a judgment of \$967,740 against a South Dakota-based payday lending operation and its owner that the FTC charged had used unfair and deceptive tactics to collect on payday loans.⁹ The judgment included a \$550,000 civil penalty for violating the FTC's Trade Regulation Concerning Credit Practices ("Credit Practices Rule"), 16 C.F.R. Part 444, which prohibits lenders from requiring borrowers to consent to wage garnishment in the event of a default. The defendants also were required to disgorge \$417,740 that they previously had obtained by garnishing consumers' wages without court orders. In addition to illegally garnishing consumers' wages, the FTC had alleged that the defendants violated the FTC Act and the Electronic Funds Transfer Act, 15 U.S.C. §§ 1693-1693r, and its implementing Regulation E, 12 C.F.R. § 205.10. The defendants allegedly forced consumers to resolve disputes before the Cheyenne River Sioux Tribal Court in South Dakota, which lacked jurisdiction; attempted to obtain tribal court orders to garnish consumers' wages; and, conditioned extensions of credit to consumers on the consumers' repayment by preauthorized electronic funds transfers. Along with the monetary judgment, the order prohibits the defendants from suing any consumer in the course of collecting a debt, except to bring a countersuit to defend against a suit brought by a consumer.

In *FTC v. Goldman Schwartz, Inc.*, the FTC obtained a judgment of \$1,412,888 against a Houston, Texas-based debt collection operation, and a complete ban on future debt collection activity, along with other injunctive relief.¹⁰ The FTC's complaint alleged that the defendants violated the FTC Act and the FDCPA by making false threats that consumers would be arrested

⁸ *FTC v. Federal Check Processing, Inc.*, No. 1:14-cv-00122 (W.D.N.Y Mar. 25, 2014) (Stipulated Preliminary Injunction), *see also* Press Release, At FTC's Request, Court Halts Debt Collector's Allegedly Deceptive and Abusive Practices, Freezes Assets (Sept. 23, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/03/ftcs-request-court-halts-debt-collectors-allegedly-deceptive>.

⁹ *FTC v. Payday Financial, LLC*, No. 3:11-cv-03017-RAL (D.S.D. April 4, 2014) (Stipulated Order for Permanent Injunction and Civil Penalties), *see also* Press Release, Payday Lenders That Used Tribal Affiliation to Illegally Garnish Wages Settle with FTC (April 11, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/04/payday-lenders-used-tribal-affiliation-illegally-garnish-wages>.

¹⁰ *FTC v. Goldman Schwartz, Inc.*, No. 4:13-cv-00106 (S.D. Tex. May 28, 2014) (Stipulated Order for Permanent Injunction and Monetary Judgment), *see also* Press Release, FTC Puts Texas-based Operation Permanently Out of the Debt Collection Business After It Allegedly Used Deception, Insults, and False Threats against Consumers (May 19, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/05/ftc-puts-texas-based-operation-permanently-out-debt-collection>.

and jailed, and that their children would be taken into custody; falsely claiming to be attorneys or to be working with local sheriffs' offices; disclosing debts to consumers' employers and military superiors; and collecting unauthorized late fees and attorneys' fees. The order required the defendants to surrender cash on hand, real estate, and other significant assets. The court-appointed receiver is in the process of liquidating surrendered assets and dissolving several defendant corporations. The FTC expects to receive in excess of \$700,000 that will be used to provide redress to consumers who were charged unauthorized fees. The remainder of the judgment is suspended based on an inability to pay.

In *FTC v. National Check Registry, LLC*, an action undertaken jointly with the Attorney General of New York, the FTC and the New York Attorney General secured a preliminary injunction that halted a recidivist abusive debt collection operation, froze the operation's assets, and appointed a receiver to take over the defendants' business.¹¹ In the complaint, the FTC and the New York Attorney General charged the defendants with violating the FTC Act, the FDCPA, and New York State law by falsely representing to consumers that they had committed check fraud, and then threatening the consumers with arrest, wage garnishment, or litigation if the consumers 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 ignored prior repeated public and private enforcement efforts, including an investigation by the New York Attorney General that the defendants had resolved by entering into an Assurance of Discontinuance. The FTC and the New York Attorney General continue to litigate the *National Check Registry* matter and are also actively exploring ways to continue this fruitful partnership.

In *United States v. Credit Smart, LLC*, the FTC obtained a judgment against a Suffolk County, New York-based debt collection operation that imposed a \$1,200,000 civil penalty and provided strong injunctive relief.¹² In its complaint, the FTC charged the company with violating the FTC Act and the FDCPA by leaving pre-recorded messages for consumers that pretended to offer financial relief. The messages provided consumers with a number to call, and promised to provide information about a "Tax Season Relief Program," a "stimulus relief package," or a "balance transfer program." In reality, there were no relief programs, and consumers instead were connected with defendants' debt collectors. Once the consumer was on the phone, the FTC alleged, the defendants unlawfully attempted to collect interest that already had been waived by prior owners of the debts. The complaint also alleged that the collectors attempted to coerce payment by falsely threatening to sue the consumers, garnish their wages, or have them arrested. The order prohibits the defendants from using any false or deceptive means

¹¹ *FTC and People of the State of New York v. National Check Registry, LLC*, No. 1:14-cv-00490-RJA (W.D.N.Y. July 10, 2014) (Stipulation to Enter Preliminary Injunction), *see also* Press Release, Court Halts Debt Collector's Operations, Freezes Assets (July 21, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/07/court-halts-debt-collectors-operations-freezes-assets>.

¹² *United States v. Credit Smart, LLC*, No. 2:14-cv-04650-LDW-GRB (E.D.N.Y. Sept. 22, 2014) (Stipulated Order for Permanent Injunction and Civil Penalty Judgment), *see also* Press Release, Debt Collectors in Memphis and New York State Settle with FTC Concerning Multiple Federal Law Violations (Aug. 7, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/08/debt-collectors-memphis-new-york-state-settle-ftc-concerning>.

to collect a debt, and from otherwise violating the FDCPA. Upon payment by the defendants of \$490,000, the remainder of the civil penalty will be suspended due to their inability to pay.

In *United States v. Regional Adjustment Bureau, Inc.*, the FTC secured a \$1.5 million civil penalty for unlawful collection practices, along with strong injunctive relief.¹³ The FTC's complaint charged that the company, which collects on nearly one million accounts each year, violated the FTC Act and the FDCPA by repeatedly calling consumers and accusing them of owing debts that they did not owe, contacting consumers at work while knowing that their employers did not allow the calls, making unauthorized withdrawals from consumers' bank accounts, and disclosing confidential information about debtors to third parties. The settlement prohibits the company from engaging in this unlawful conduct and further requires that whenever a consumer disputes the validity or the amount of a debt, the company must either terminate collection efforts or suspend collection until it conducts a reasonable investigation and verifies that its information about the debt is accurate and complete.

In *United States v. Consumer Portfolio Services, Inc.*, a national subprime automobile lender agreed to pay more than \$5.5 million to settle allegations that it violated the FTC Act, the FDCPA, and the Fair Credit Reporting Act's rule regarding the Duties of Furnishers of Information to Consumer Reporting Agencies ("Furnisher Rule"), 16 C.F.R. Part 660.¹⁴ The order settling the charges requires the defendant to change its business practices to comply with applicable laws and to implement a data integrity program. The order further requires the defendant to pay a third-party professional to assess the implementation and effectiveness of the program biennially for ten years. In its complaint, the FTC alleged that the defendant violated the FTC Act and FDCPA by disclosing the existence of debts to third parties; calling consumers at work when not permitted or inconvenient; calling third parties repeatedly with the intent to harass; making unauthorized debits from consumers' bank accounts; falsely threatening car repossession; and deceptively manipulating Caller ID. The complaint also alleged that the defendant committed loan-servicing violations, including misrepresenting fees consumers owed in collection calls; improperly assessing collection fees; and, unilaterally modifying contracts to increase principal balances. Further, the complaint alleged that the defendant failed to reasonably investigate disputes about credit reports and failed to establish required policies and procedures for handling direct credit reporting disputes. The order requires the defendant to refund or adjust consumers' accounts, resulting in payment of more than \$3.5 million in redress to consumers. The order also requires the defendant to pay a \$2 million civil penalty (\$1 million for violations of the FDCPA and \$1 million for violations of the Furnisher Rule).

¹³ *United States v. Regional Adjustment Bureau, Inc.*, No. 2:14-cv-02522-JPM-tmp (W.D. Tenn. July 14, 2014) (Stipulated Order for Permanent Injunction and Civil Penalty Judgment), *see also* Press Release, Debt Collectors in Memphis and New York State Settle with FTC Concerning Multiple Federal Law Violations (Aug. 7, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/08/debt-collectors-memphis-new-york-state-settle-ftc-concerning>.

¹⁴ *United States v. Consumer Portfolio Services, Inc.*, No. 8:14-cv-00819-ABC-RNB (C.D. Cal. June 11, 2014), *see also* Press Release, Auto Lender Will Pay \$5.5 Million to Settle FTC Charges It Harassed Consumers, Collected Amounts They Did Not Owe (May 29, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/05/auto-lender-will-pay-55-million-settle-ftc-charges-it-harassed>.

2. Collection Practices Affecting LEP Latinos

In 2014, the Commission initiated or resolved three cases against abusive debt collection operations that targeted Spanish-speaking consumers. Along with the *Debt Collection and the Latino Community* roundtable, discussed below, these cases reflect the Commission’s continued emphasis on ensuring that every community, regardless of age, race, gender, or language skills is protected from unlawful practices.

In *FTC v. Rincon Management Services, LLC*, the FTC obtained a judgment of \$23,084,885 against an abusive debt collection operation, along with a complete ban on debt collection activity and other injunctive relief.¹⁵ The *Rincon* operation targeted Spanish-speaking consumers and others in difficult financial circumstances, and used abusive practices to coerce repayment of alleged debts that the consumers often did not owe. The FTC’s complaint alleged that the defendants violated the FTC Act and the FDCPA by calling consumers and their employers, family, friends, and neighbors, and posing as process servers seeking to deliver legal papers that purportedly related to a lawsuit. The defendants’ collectors then allegedly falsely told the consumers that unless they immediately paid the amounts demanded, the defendants would sue them, garnish their wages, or in some cases, arrest them. Despite partial suspension of the judgment based on the defendants’ inability to pay, the Commission collected more than \$3.3 million that will be used for consumer redress.

In *FTC v. RTB Enterprises, Inc.*, the FTC obtained a judgment of \$4 million against a Houston, Texas-based debt collection operation that allegedly used abusive and deceptive tactics to coerce consumers into paying debts and unnecessary fees.¹⁶ In its complaint, the FTC charged the defendants with violating the FTC Act and the FDCPA by using false and deceptive methods to collect more than \$1.3 million in so-called “convenience fees” and “transaction fees” from both English and Spanish-speaking consumers who authorized payments by telephone. The defendants deceived consumers into believing that they were required to pay by telephone, and that the fees were unavoidable. The defendants also allegedly falsely claimed to speak for attorneys, made false threats of litigation, and used deceptive representations to elicit personal information from consumers, to be used in future collection attempts. The order prohibits the defendants from using false, deceptive, or misleading means to collect a debt, and from otherwise violating the FDCPA. The order also requires the defendants to surrender \$100,000 and a luxury motor home, with the remainder of the judgment to be suspended due to their inability to pay.

¹⁵ *FTC v. Rincon Management Services, LLC*, No. 5:11-cv-01623-VAP-SP (C.D. Cal. Mar. 26, 2014) (Final Order for Permanent Injunction and Monetary Judgment Against Defendants Jason R. Begley and Wayne W. Lunsford), *see also* Press Release, FTC Obtains more than \$3.3 Million for Consumers; Defendants Agree to Be Permanently Banned from the Debt Collection Business (April 3, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/04/ftc-obtains-more-33-million-consumers-defendants-agree-be>.

¹⁶ *FTC v. RTB Enterprises, Inc.*, No. 4:14-cv-01691 (S.D. Tex. June 19, 2014) (Stipulated Order for Permanent Injunction and Monetary Relief), *see also* Press Release, FTC Continues Crack Down on Deceptive Debt Collection; Houston-based Defendants Agree to Stop Deceptive Fees and Practices (June 25, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/06/ftc-continues-crack-down-deceptive-debt-collection-houston-based>.

In *FTC v. Centro Natural Corp.*, the FTC secured a preliminary injunction against a group of telemarketers that allegedly pressured and harassed consumers to settle “phantom” debts that consumers did not owe.¹⁷ The Court froze the operation’s assets and appointed a temporary receiver to take over the defendants’ business. In its complaint, the FTC alleged 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 Telemarketing Sales Rule.¹⁸ The FTC continues to litigate the *Centro Natural* matter.

3. Phantom Debt Collection

The Commission also continued its efforts to fight so-called “phantom debt collectors.” 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 three actions against phantom debt collectors in 2014: *Centro Natural Corp.* (discussed above); *Williams, Scott*; and *Pinnacle*.

In *FTC v. Williams, Scott & Associates, LLC*, the FTC secured a preliminary injunction against a debt collection operation that allegedly collected on “phantom” payday loan debts that consumers did not owe, froze the operation’s assets, and appointed a temporary receiver to take over the defendants’ business.¹⁹ The FTC alleged in its complaint that the defendants violated the FTC Act and the FDCPA by using a variety of false threats and abusive practices to coerce payments from consumers on debts that either the consumers did not owe or that the consumers’ lenders had not authorized the defendants to collect. The FTC further alleged that the defendants made a concerted effort to harass consumers into paying the alleged debts by falsely claiming to be law enforcement officials or attorneys, falsely threatening consumers with arrest or loss of their drivers’ licenses, using profane language, and disclosing the alleged debts to consumers’ family members and employers. The FTC continues to litigate the *Williams, Scott* matter.

¹⁷ *FTC v. Centro Natural Corp.*, No. 14-23879-CIV (S.D. Fl. Oct. 20, 2014) (temporary restraining order), *see also* Press Release, FTC Takes Action to Stop Phantom Debt Scam That Targeted Spanish-Speaking Consumers Nationwide (Oct. 23, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/10/ftc-takes-action-stop-phantom-debt-scam-targeted-spanish-speaking>.

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

¹⁹ *FTC v. Williams, Scott & Associates, LLC*, No. 1:14-cv-01599-HLM (N.D. Ga. June 19, 2014) (Stipulated Preliminary Injunction Order with an Asset Freeze and Other Equitable Relief), *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>.

Reflecting the increased interest by federal and state authorities in bringing criminal actions against abusive debt collectors, federal authorities have since filed criminal charges against the *Williams, Scott* principals. In November 2014, the United States Attorney for the Southern District of New York, along with the New York Office of the Federal Bureau of Investigation, announced the unsealing of a criminal complaint charging Williams, Scott & Associates, its owner, John Todd Williams, and six employees with conspiracy to commit wire fraud. After the FBI conducted a search of Williams, Scott & Associates' office in Norcross, Georgia in May 2014, Williams shut down that company and opened a new debt collection business. Based on victim complaints, employees of that debt collection business began making the same threats and false statements to victims.²⁰ The seven individuals have been arrested and face up to 20 years in prison.

In September 2014, in *FTC v. Pinnacle Payment Services, LLC*, a U.S. district court entered a set of stipulated permanent injunctions and judgments totaling \$9,384,628 against the defendants for violations of the FTC Act and the FDCPA.²¹ The Commission had charged that the defendants, working out of offices in Cleveland and Columbus, Ohio and Atlanta, Georgia, collected and processed millions of dollars in payment for phantom debts using robocalls and voice messages that threatened legal action and arrest unless consumers responded within a few days. During phone conversations with consumers, collectors often misrepresented that the consumers would face felony fraud charges, that their bank accounts would be closed or their wages garnished, and that the collectors worked for a law enforcement agency or a law firm. In addition to the monetary judgments, the orders also contained strong injunctive relief including bans on debt collection activity.

Williams, Scott; Pinnacle; and Centro Natural were the FTC's fifth, sixth, and seventh recent cases involving allegedly fraudulent online payday-loan-related operations.²²

4. Debt Brokering and Consumer Data Integrity

In two separate cases (*FTC v. Bayview Solutions, LLC* and *FTC v. Cornerstone and Company*), the FTC obtained preliminary injunctions against debt sellers that it alleges posted the sensitive personal information of over 70,000 consumers, including bank account and credit card numbers, birth dates, contact information, employers' names, and information about debts

²⁰ The FTC also successfully moved the court in the underlying civil action to hold the defendants in contempt for violating the preliminary injunction.

²¹ *FTC v. Pinnacle Payment Sys., LLC*, No. 1:13-CV-3455 (N.D. Ga. Aug. 8, 2014) (Stipulated Final Orders for Permanent Injunction and Settlement of Claims); *see also* Press Release, FTC Stops Abusive Debt Collection Operation That Threatened Consumers with Legal Action and Arrest for Not Paying 'Phantom' Debts (Sept. 23, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/09/ftc-stops-abusive-debt-collection-operation-threatened-consumers>.

²² Other recent FTC matters involving allegedly fraudulent online payday-loan-related operations include *Pro Credit, Inc.* (M.D. Fla. 2013), *Caprice Mktg. LLC* (N.D. Ill. 2013), *American Credit Crunchers, LLC* (N.D. Ill. 2012), and *Broadway Global Master Inc.* (E.D. Cal. 2012).

that the consumers allegedly owed, on a public website.²³ The defendants in these cases allegedly exposed this sensitive information while trying to sell portfolios of past-due payday loan, credit card, and other purported debt. According to the complaints, the defendants posted their portfolios, in the form of Excel spreadsheets, on the website without encryption, appropriate redaction, or any other protection, ostensibly so that prospective purchasers could evaluate them. The FTC alleged that the spreadsheets were accessed more than 500 times by unknown visitors to the website. The preliminary injunctions in each case require the defendants to remove the consumers' information from the website, adopt appropriate data security safeguards, and notify the affected consumers of the disclosures. The FTC continues to litigate both matters.

B. Other Law Enforcement Activities

1. Time Barred Debt: The Seventh Circuit's Decision in *Delgado*

Endorsing what it characterized as the “well-reasoned position” put forth by the FTC and the CFPB, in March 2014 the Seventh Circuit held that a time-limited settlement demand in a consumer dunning letter could violate the FDCPA, even absent an explicit threat of litigation.²⁴

Responding to an invitation by the court, in August 2013 the Commission and the CFPB filed a joint amicus brief to present their views on the application of the FDCPA to the collection of debts barred by the statute of limitations.²⁵ In it, the agencies noted that several courts had previously held that a collector who sues or threatens suit on a time-barred debt violates the FDCPA. The agencies argued that, depending on the circumstances, a time-limited settlement offer could plausibly mislead a consumer to believe a debt is enforceable in court, even if the offer is unaccompanied by any clearly implied threat of litigation. Specifically, a collector violates the statute whenever its communications tend to deceive or mislead “unsophisticated consumers” into believing that a time-barred debt could be the subject of a collection suit.

²³ *FTC v. Bayview Solutions, LLC*, No. 1:14-cv-01830-RC (D.D.C. Nov. 3, 2014) (Stipulation to Entry of Preliminary Injunction); *FTC v. Cornerstone and Company, LLC*, No. 1:14-cv-01479-RC (D.D.C. Sept. 10, 2014) (Order for Entry of Preliminary Injunction), *see also* Press Release, FTC Alleges Debt Brokers Illegally Exposed Personal Information of Tens of Thousands of Consumers on the Internet (Nov. 12, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/11/ftc-alleges-debt-brokers-illegally-exposed-personal-information>.

²⁴ *Delgado* was part of a consolidated opinion issued by the Seventh Circuit in two appeals that both involved the FDCPA. In the companion case, *McMahon v. LVNV Funding, LLC*, the court held that the defendant's settlement offer to the plaintiff, which the plaintiff had rejected, did not moot the plaintiff's class action. The Seventh Circuit held that the plaintiff, who had received a dunning letter similar to that in *Delgado* that also sought to collect on time-barred debt, could proceed with his claims.

²⁵ Brief of Amici Curiae, *Delgado v. Capital Mgmt. Servs., LP*, No. 13-2030 (7th Cir. Aug. 14, 2013), available at <http://www.ftc.gov/policy/advocacy/amicus-briefs/2013/08/juanita-delgado-v-capital-management-services-lp>. The court invited the Commission to file a brief because the district court, in reaching its decision, had relied on the FTC's 2013 report entitled “The Structure and Practices of the Debt Buying Industry.”

The Seventh Circuit recognized that its holding conflicted with those of the Third and Eighth Circuits, both of which had required an explicit threat of litigation to establish a violation of the FDCPA. The court also explained that it did not hold that it was automatically improper for a collector to seek repayment of time-barred debts. However, it did find that the FDCPA could not bear the reading that the Third and Eighth circuits had given it. Explaining its decision, the court noted that the plain language of the FDCPA prohibits not only threatening to take actions that the collector could not take, but also the use of any false, deceptive, or misleading representation. The court postulated that a collector who stated in a dunning letter that it “could sue” on a time-barred debt, but promised to forebear, would be contravening the FDCPA by making a false representation about the legal status of that debt. The court reasoned that were it to follow the holdings of its two sister circuits, the false representation would be not be actionable under the FDCPA – an anomalous result.

The Seventh Circuit thus held that, because an unsophisticated consumer who read the dunning letter that the plaintiff had received could have been led to believe that the debt was enforceable, in contravention of the FDCPA, the district court correctly denied the defendant’s motion to dismiss. Explaining its decision, the Seventh Circuit stated that it was “inclined to defer to the agencies’ empirical research and expertise.” Additionally, in a footnote, it also noted that because its opinion created a conflict in the circuits by adopting the agencies’ position, it had circulated the opinion to the full court pursuant to Circuit Rule 40(e). But no judge sought to hear the case *en banc*.

2. Time-Barred Debt: *Buchanan* amicus brief

In a case with facts very similar to those in *Delgado*, in March 2014 the Commission joined the CFPB in filing an amicus brief in the Sixth Circuit that urged that court to find that a consumer dunning letter that contained a time-limited settlement offer could violate the FDCPA.²⁶ As was the case in *Delgado*, in the underlying case the defendant collector had sent the plaintiff a dunning letter that contained an offer to settle a debt upon which the statute of limitations had run. The letter transmitting the settlement offer represented that the consumer’s balance would continue to accrue “interest” and included a warning that the company was “not obligated to renew” the offer. The consumer sued, claiming that the letter violated the FDCPA’s prohibition on the use of “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”²⁷

The district court granted the defendant’s motion to dismiss the plaintiff’s class action complaint for failure to state a claim. The district court stated that because the statute of limitations was a “procedural device” that did not “alter the creditor’s substantive rights” or affect the “validity of the debt,” the defendant’s failure to notify the plaintiff that her debt was time-barred was not a false representation or unfair practice, and did not falsely represent the

²⁶ Brief of Amici Curiae, *Buchanan v. Northland Group, Inc.* No. 13-2523 (6th Cir. Mar. 5, 2014), available at http://www.ftc.gov/system/files/documents/amicus_briefs/esther-buchanan-v.northland-group-inc.no.13-2523-6th-cir./1403105buchanan6cir-amicus.pdf.

²⁷ 15 U.S.C. § 1692e.

legal status of the debt. Without discussion, the district court held that as a matter of law, “even the least sophisticated consumer would not infer a threat of litigation” from the letter.

As in *Delgado*, the FTC and the CFPB explained in the joint brief that a debt collector who seeks payment after the statute of limitations has run on a debt may violate the FDCPA if its communication would lead the least sophisticated consumer to believe that the debt may be enforced in court. While it is well established that implicit or explicit threats to sue on time-barred debt, and actual lawsuits, violate the FDCPA, other communications that mislead consumers may also qualify. The brief explained that both overt representations as well as omissions may mislead or deceive. To avoid misleading consumers, a debt collector may be required to correct consumers’ misinterpretations— even if the collector did not directly create the misimpression. In assessing whether a communication is misleading or deceptive, a court applies an “objective test” as to whether the “least sophisticated consumer” would be misled or deceived. Moreover, a court must consider the practice’s effect on unsophisticated consumers from their perspective, and it may be relevant that consumers do not know their legal rights with respect to time-barred debt. Ultimately, whether a debt collector’s letter is false, deceptive, or misleading requires “a fact-bound determination of how an unsophisticated consumer would perceive the letter.” Because the least sophisticated consumer could plausibly infer that the defendant here would or could sue if the plaintiff did not pay, the brief argued that dismissal was improper.

The Sixth Circuit heard oral argument on the matter on October 7, 2014. On January 13, 2015, the Sixth Circuit issued its ruling agreeing with the arguments proffered by the FTC and the CFPB, and reversing the decision of the district court.

3. “Initial Communication”: *Hernandez* amicus brief

In August 2014, the FTC joined the CFPB in filing an amicus brief in the Ninth Circuit, urging it to reject an interpretation of the phrase “initial communication” that was both overly narrow and contravened the text of, and legislative intent behind, the FDCPA.²⁸

The FDCPA requires a collector, “[w]ithin five days after the initial communication with a consumer in connection with the collection of any debt,” to send the consumer a “validation notice” containing certain information about the consumer’s alleged debts and the consumer’s rights.²⁹ In December 2011, the defendant sent the plaintiff in the underlying case a letter seeking to collect a debt that the plaintiff had allegedly incurred. That letter failed to include all of the information required by 15 U.S.C. § 1692g.

²⁸ Brief of Amici Curiae, *Hernandez v. Williams, Zinman & Parham, P.C.*, No. 14-15672 (9th Cir. Aug. 20, 2014), available at http://www.ftc.gov/system/files/documents/amicus_briefs/hernandez-v.williams-zinman-parham-p.c./140821briefhernandez1.pdf.

²⁹ See 15 U.S.C. § 1692g(a) (duty to send the notice); 15 U.S.C. § 1692g(b) (required contents of notice).

The parties filed cross-motions for summary judgment. In its motion, the defendant argued that it had no obligation to comply with § 1692g because its letter was not the “initial communication” that the plaintiff had received about the debt. Instead, it argued that the “initial communication” had come from another collector that had previously sought to collect on the same debt. The defendant contended that because that prior collector had sent the plaintiff a letter that complied with the FDCPA, and because it was a “subsequent collector” (and not the initial collector), it was under no obligation to send any further notice. Finding that the statute’s plain text only contemplated one initial communication with a debtor on a given debt, the district court agreed and granted the defendant’s motion.

In our joint brief, the FTC and the CFPB urged the Ninth Circuit to reject the district court’s interpretation, which has no basis in the statute’s text or purpose. As we noted, the phrase “initial communication” is most naturally read – and has been read by the Ninth Circuit and Congress – to refer to each debt collector’s initial communication with a consumer. Among other things, a consumer’s initial communication about a debt typically comes from the original creditor – an entity that is generally not subject to the FDCPA’s requirements. In those cases, the district court’s interpretation would render the FDCPA’s notice requirement superfluous – something Congress could not have intended. Likewise, the text of the statute requires “a debt collector” to send the notice – that is, each debt collector that attempts to collect on the debt, and is not limited to just the “initial debt collector” that attempts to collect.

We also noted in our brief that the district court’s interpretation contravened Congress’s legislative intent. Congress enacted § 1692g to eliminate the problem of debt collectors attempting to collect the wrong amounts from the wrong consumers. To that end, Congress requires debt collectors, upon initially contacting a consumer, to provide the consumer with a validation notice containing key information about the debt and the consumer’s rights, including the amount of the debt, the identity of the original creditor, and the consumer’s rights to obtain verification of the debt or dispute it. Because debts frequently change hands, these protections are just as important when a new debt collector acquires a debt as they are when the first collector began collecting. The district court’s interpretation would create a loophole that would eviscerate the FDCPA. Specifically, under the district court’s reading, nothing would prevent a collector who received a request for verification from passing the debt to another collector who would then have no obligation to provide a validation notice. This practice would prevent the consumer from ever ascertaining the validity of the debt – something Congress clearly did not intend.

Because the district court’s interpretation of the FDCPA’s “initial communication” requirement contravenes both the text of the statute and the legislative intent, the FTC and the CFPB urged the Ninth Circuit to reverse and remand the case. Briefing in the case is ongoing and the Ninth Circuit has not yet scheduled oral argument.

III. 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 10,000 community-based organizations and national groups that order and distribute FTC information to their members, clients, and constituents. In 2014, the FTC distributed 14.8 million print publications to libraries, police departments, schools, non-profit organizations, banks, credit unions, other businesses and government agencies. In 2014, the FTC logged about 81.7 million views of its website pages. The FTC’s channel at YouTube.com/FTCVideos houses 128 videos, which were viewed more than 459,818 times in 2014. The Consumer blogs in [English](#)³⁰ and [Spanish](#),³¹ reached 56,000 (English) and 26,000 (Spanish) email subscribers.

The Commission educates industry 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. In 2014, FTC staff spoke to numerous debt collection industry groups, including ACA International (The Association of Credit and Collection Professionals) and DBA International. The FTC’s business education resources can be found in the FTC’s [Business Center](#).³² The Business Center logged 5 million page views in the first 11 months of 2014, and there are 40,000 email subscribers to the [Business Blog](#).³³ 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 Appendix A to this letter.

FTC staff also regularly meets with legal services providers to discuss consumer protection issues, including the FTC’s work in the debt collection arena. In 2014, FTC staff provided in-person trainings or presentations that involved debt collection issues throughout the country, including in southern California, at Joint Base Lewis McChord in Washington, and in Washington, DC. FTC staff also provided updates about the agency’s debt collection work during nationwide webinars hosted by the National Association for Consumer Advocates, and by the Legal Services Corporation for its grantees. Additionally, the FTC organizes “Common

³⁰ <http://www.consumer.ftc.gov/blog>

³¹ <http://www.consumidor.ftc.gov/blog>

³² <http://business.ftc.gov/>

³³ <http://business.ftc.gov/blog>

Ground” conferences that bring together legal services providers and law enforcement to discuss a wide variety of consumer protection issues, including debt collection.

IV. 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 collaborated with the CFPB to expand the agencies’ combined outreach to the Latino community, and has provided the Bureau with input on debt collection rulemaking and guidance initiatives.

A. Debt Collection & the Latino Community Roundtable Event

In October 2014, the FTC and the CFPB co-hosted a roundtable in Long Beach, California, to examine how debt collection and credit reporting issues affect Latino consumers, especially those who have limited English proficiency. The event, titled “Debt Collection & the Latino Community,” brought together consumer advocates, industry representatives, state and federal regulators, and academics to exchange information on a range of issues. Topics included an overview of the Latino community and their finances; pre-litigation collection from Latino consumers; the experience of LEP Latinos in debt collection litigation; credit reporting issues among LEP Latinos; and developing improved strategies for educating and reaching out to LEP Latinos about debt collection.³⁴

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.³⁵ 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 continued to consult with CFPB staff on their rulemaking efforts. FTC staff 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.

³⁴ Additional information about the Roundtable is available at <http://www.ftc.gov/news-events/events-calendar/2014/10/debt-collection-latino-community-roundtable>.

³⁵ 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>.

V. 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 assistance, please contact James Reilly Dolan, Associate Director, Division of Financial Practices, at (202) 326-3292.

By direction of the Commission.


Donald S. Clark
Secretary

Appendix A
Debt Collection Information 2014

Title	Page Views^{36]}		Print distribution	
	English	Spanish	English	Spanish
<i>Consumer Information</i>				
<u>Coping with Debt</u>	189,229	24,157	89,650	13,575
<u>Debt Collection</u>	581,290	18,059	76,800	
<u>Debt Collection Arbitration</u>	125,681	331	24,675	
<u>Debts and Deceased Relatives</u>	66,941	8,472		
<u>Fake Debt Collectors</u>	84,491	497		
<u>Garnishing Federal Benefits</u>	38,900	914		
<u>Identity Theft and Debt Collection</u>	22,345	446		
<u>Settling Credit Card Debt</u>	94,415	43		
<u>Statement of Rights for Identity Theft Victims</u>	13,832	418		
<u>Stop Calls and Letters from a Debt Collector</u>	29,854	665		
<u>Time-Barred Debts</u>	139,772	4,487		
<i>Video</i>				
<u>Dealing with Debt Collectors</u>	17,546	2,118		
<u>Helping Victims of Identity Theft</u>	2,145			

³⁶ Page view numbers include pages viewed on FTC websites, but not pages viewed when non-FTC sites download and re-post FTC content.

Business Information				
The Fair Debt Collection Practices Act	7,220		114,941	
Video				
Debt Collection			893	221

One-stop resource pages:

- [Consumer Advocates](#)
- [Financial Educators](#)

Blog Posts for Consumers:

- [Debt brokers expose sensitive financial info](#)
- [Spanish speaking consumers conned out of \\$2 million](#)
- [FTC to abusive debt collectors: You're outta business!](#)
- [When is debt collection illegal?](#)
- [Stop a debt collector's empty threats](#)
- [Is that debt collector for real?](#)
- [When is debt collection illegal?](#)
- [A call to collect, loaded with lies](#)
- [FTC puts the brakes on national subprime auto lender](#)

Blog Posts for Business:

- [Buying or selling debts? 7 steps for keeping data secure](#)
- [Debt collection double feature](#)
- [Hat trick? FTC charges violations in auto loan servicing, debt collection, credit reporting](#)
- [What's a 4-letter word for "FTC advice for derelict debt collectors"?](#)
- [Not another lawyer joke](#)
- [Corporate officers: Don't assume you're Inc.-ognito](#)
- [Needle and threats](#)