

# Fair Debt Collection Practices Act

CFPB Annual Report 2017

# Message from Richard Cordray



## Director of the CFPB

The year 2017 marks the fortieth anniversary of the enactment of the Fair Debt Collection Practices Act (“FDCPA”). In enacting that law, Congress found “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors” and enacted the law to put an end to such practices and assure “that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.” Much has changed in the ensuing forty years in the ways in which debt is collected and even in the types of entities engaged in debt collection. But the Act remains as important today as it was the day that it was signed into law.

The Consumer Financial Protection Bureau (“Bureau” or “CFPB”) is the only federal government agency dedicated solely to consumer financial protection. Among our important responsibilities is administering and enforcing the FDCPA. We recognize that debt collection is a necessary part of a functioning financial system. At the same time, we recognize that illegal practices have no place in the debt collection process, and that if such practices are not stopped, those collectors seeking to adhere to the law will find themselves at a competitive disadvantage. It is therefore vitally important that the protections built into the FDCPA are vigorously enforced. The Bureau is authorized to do so along with our partners at the Federal Trade Commission (“FTC”). In 2016, the Bureau and the FTC took important steps to vindicate the rights set forth in the FDCPA.

The CFPB seeks to assure compliance with the FDCPA through its Supervision program and through public enforcement actions. The CFPB is the first federal agency to have the authority to supervise non-depository institutions, including debt collectors, in the same manner that banks

and other depositories have long been examined. In 2016, our examinations of debt collectors identified a number of violations of the law, including false representations made by debt collectors to consumers, unlawful fees charged by debt collectors, and illegal disclosure of debts to third parties. CFPB examinations also found instances in which debt sellers sold accounts for collection that did not properly reflect that the accounts were discharged in bankruptcy, were fraudulent, or had already been paid. Where appropriate, the CFPB required debt collectors to provide consumer redress and undertake remedial and corrective actions.

Additionally, in 2016 the CFPB brought ten new public enforcement actions involving debt collections and continued litigation in three other such cases that had been filed previously. In the cases that were concluded in 2016, \$39 million was paid in restitution for consumers who were impacted by illegal debt collection practices and \$20 million in civil penalties.<sup>1</sup>

Likewise, as described more fully in the Report and in the FTC letter included as the Appendix, the FTC brought or resolved 12 debt collection cases in 2016, including a focus on phantom debt collection and a sweep on unlawful text messages and emails as a means of collecting debt. The CFPB also filed *amicus curiae* briefs in two appellate court FDCPA actions raising significant legal issues, and assisted the Solicitor General's office in the preparation of two *amicus* briefs that were filed in the Supreme Court in cases implicating the FDCPA. Those four cases are still pending. Additionally, three cases before federal courts of appeals in which CFPB filed *amicus* briefs in prior years were decided in 2016, two of which had been filed jointly with the FTC.

Another important tool through which the Bureau is able to protect consumers is through its Consumer Response program, which receives and processes complaints from consumers who believe they have been mistreated by debt collectors or other providers of consumer financial products or services. In 2016, as in past years, debt collection was the category in which the Bureau received the most complaints from consumers. The most common complaint involved "continued attempts to collect debt not owed." The Office of Consumer Response receives these complaints and, where appropriate, sends them to the debt collector to provide them with the opportunity to respond to or remedy the complaint and/or sends them to other agencies.

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<sup>1</sup> These figures include actions related to unlawful collection conduct in violation of the FDCPA, the Consumer Financial Protection Act of 2010 ("CFPA"), or both.

The Bureau also continues to provide a variety of resources to consumers who face debt collection attempts and to social services workers and volunteers that serve populations that may face debt collection attempts. One of these resources, “Ask CFPB,” provides answers to common questions across a number of consumer financial topics. The debt collection category continues to be one of the most viewed topics.<sup>2</sup> In 2013, the Bureau created five sample letters which consumers can use to communicate when debt collectors contact them. These letters have since been downloaded approximately 389,800 times. The Bureau also created a financial empowerment training and toolkit called *Your Money, Your Goals* for use by social services workers and other front-line staff and volunteers working with economically vulnerable consumers. This toolkit covers a variety of financial topics, including debt management and consumer financial protection. As of the end of 2016, more than 13,500 staff and volunteers in social services, legal aid, worker, and community organizations were trained on *Your Money, Your Goals*, reaching an estimated 600,000 consumers.

In enacting the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress granted the CFPB general rulemaking authority to issue regulations under the FDCPA. The Bureau commenced its rulemaking activity in 2013 by issuing an Advance Notice of Proposed Rulemaking. In July 2016, the Bureau released an Outline of Proposals Under Consideration (the “Outline”) for those who are defined as “debt collectors” under the FDCPA. At the same time, the Bureau published a Study of Third Party Debt Collection Operations, and preliminary results from the Bureau’s Survey of Consumer Views on Debt.

On August 25, 2016, the Bureau convened a panel pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). That panel, which was composed of the CFPB, Small Business Administration (SBA), and the Office of Management and Budget (OMB), obtained input from small businesses in the debt collection industry on the possible impact of debt collection rulemaking on their businesses. The Bureau is considering the feedback it received through the SBREFA panel and from other stakeholders subsequent to publication of the Outline.

At the same time, the Bureau continues to conduct research and monitor the debt collection market. In January 2017, the Bureau released two studies on the debt collection market: a white

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<sup>2</sup> The Bureau’s debt collection consumer education resources can be found at <https://www.consumerfinance.gov/consumer-tools/debt-collection/>.

paper about the Online Debt Sales market, which describes websites where charged-off consumer debts can be purchased and outlines potential consumer protection concerns that may arise in the absence of appropriate safeguards; and a groundbreaking research report on Consumer Experiences With Debt Collection, based upon the Bureau's Survey of Consumer Views on Debt.

At the CFPB, we believe in a debt collection market where consumers know their rights and are protected from harassment and deception while collectors are able to collect debts in an honest, lawful, and cost-effective manner. On the FDCPA's fortieth anniversary, we remain committed to the law's goal of protecting consumers while ensuring that debt collectors who follow the law and respect consumers are not competitively disadvantaged.

Sincerely,



Richard Cordray

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# 1. Introduction

The Consumer Financial Protection Bureau is pleased to submit to Congress its sixth 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 government enforcement responsibility for the FDCPA. The Commission’s activities during the past year are included in this report and a letter from the FTC describing them appears in the Appendix. The CFPB and the FTC work closely to coordinate debt collection enforcement actions and other matters related to debt collection.<sup>3</sup>

This report provides a background on the debt collection market; contains an overview of consumer complaints submitted to the CFPB and the FTC in 2016; summarizes the Bureau’s supervisory activities in the debt collection market; describes the Bureau’s and the Commission’s enforcement actions; describes *amicus curiae* briefs filed in cases related to the FDCPA; presents the CFPB’s and FTC’s consumer education and outreach initiatives; and discusses developments in the Bureau’s rulemaking activities and the FTC’s policy and research initiatives.

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<sup>3</sup> 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](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 an \$11.4 billion dollar industry that employs more than 130,000 people across approximately 8,500 collection agencies in the United States.<sup>4</sup> The debt collection industry affects millions of Americans. According to a recent CFPB survey of US consumers, about one-third of consumers with credit files – or about 70 million Americans – were contacted by a creditor or third-party debt collector attempting to collect a debt in the past year.<sup>5</sup> Debt collection efforts include calls, letters, filing lawsuits, and other methods to collect alleged debts from consumers.

In the course of attempting to collect debts, debt collectors must adhere to a variety of laws and regulations which govern topics as diverse as telephone communications (e.g., the Telephone Consumer Protection Act, or TCPA) and furnishing information to credit reporting agencies (e.g. the Fair Credit Reporting Act, or FCRA) as well as various state statutes. The primary law that governs the conduct of debt collectors is the FDCPA,<sup>6</sup> which establishes consumer protections in the debt collection process including the rights to dispute a debt and instruct a collector to stop communication about an alleged debt. The FDCPA prohibits debt collectors from harassing and abusing consumers and prohibits them from discussing a consumer’s debts with third parties (with some exceptions).

The law empowers the CFPB and FTC to enforce its provisions and establishes a private right of action for any person affected by a violation of the FDCPA. The FDCPA also requires the CFPB to

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<sup>4</sup> Edward Rivera at IBIS World, *Debt Collection Agencies in the US* (December 2016).

<sup>5</sup> Consumer Financial Protection Bureau. *Consumer Experiences with Debt Collection*. January 2017

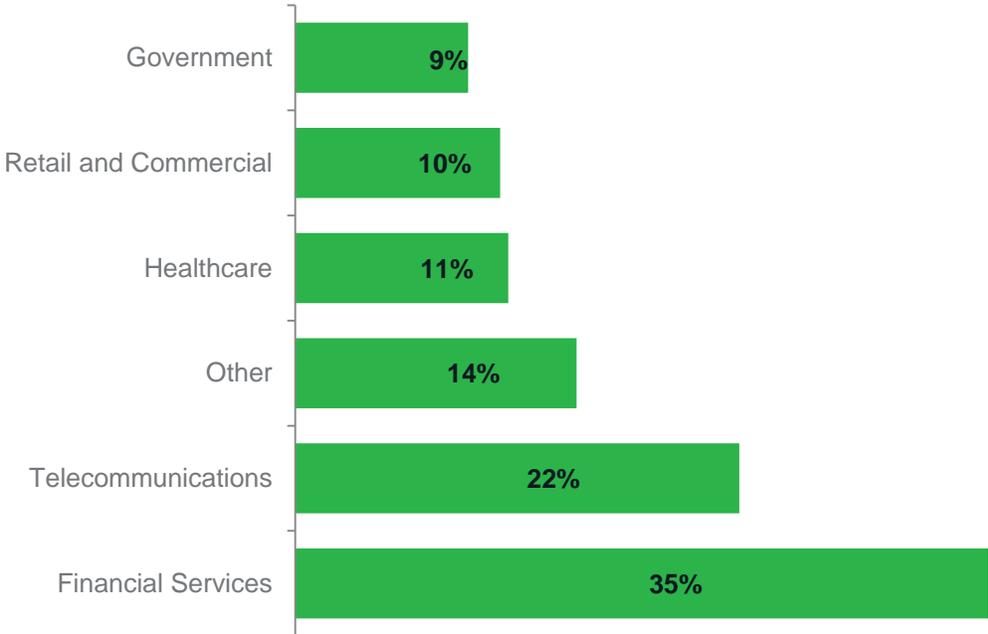
<sup>6</sup> Fair Debt Collection Practice Act. 15 U.S.C. § 1692 et. seq.

submit this report on “the administration of its functions” under the FDCPA and enables it to “obtain ... the views” of other agencies that enforce the FDCPA, such as the FTC.<sup>7</sup>

## 2.1 Industry Breakdown

Debt collectors generate most of their revenue from collections of medical debt, student loans, and financial services obligations such as credit cards, auto loans, and mortgages. Financial services are the largest source of revenue for the industry, accounting for more than a third of all debt collection revenue. However, telecommunications debt also accounts for a large share of industry revenue – more than a fifth.<sup>8</sup> Government, retail, and medical debt are also significant drivers of industry revenue.

**FIGURE 1:** DEBT COLLECTION MARKET SEGMENTS BY SHARE OF REVENUE, 2016 (IBIS WORLD)



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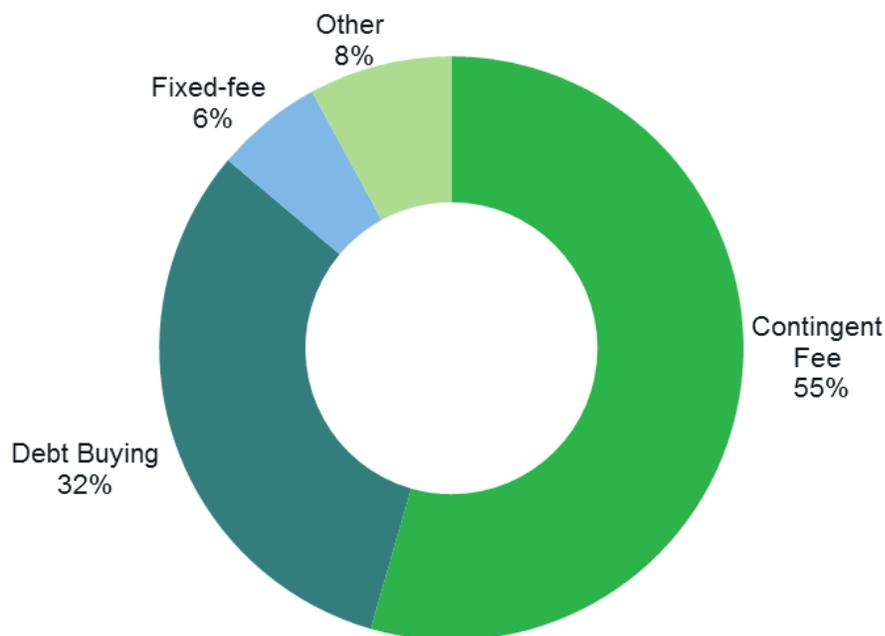
<sup>7</sup> 15 U.S.C. § 1692m

<sup>8</sup> Edward Rivera at IBIS World, *Debt Collection Agencies in the US* (December 2016).

\$6.27 billion – more than half the industry’s revenue – is generated by firms contracting with creditors to collect their debts on a contingency fee basis, meaning that the creditor and the collector each receive a share of the amount collected.

About one-third of debt collection revenue, \$3.6 billion, comes from debt buyers, who purchase accounts from the original creditor or other debt buyers and then generally seek to collect on that debt, either themselves or through contingency debt collectors.<sup>9</sup> Although they represent about one third of industry revenue, this overstates debt buyers’ share of dollars collected, since debt buyer revenue includes all amounts recovered whereas the revenue of contingency collectors includes only the share of recoveries retained by the collector.

**FIGURE 2** DEBT COLLECTION AGENCY TYPES BY SHARE OF REVENUE, 2016 (IBIS WORLD)



Due to its low fixed costs and high susceptibility to fluctuations in the supply of debt and labor costs, debt collection is a volatile industry with a large number of firms – according to some estimates, about 8,500.

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<sup>9</sup> Edward Rivera at IBIS World, *Debt Collection Agencies in the US* (December 2016).

The industry has been experiencing consolidation in recent years. According to a study by the Association of Credit and Collection Professionals, there were 25% fewer debt collection agencies in 2013 than in 2005,<sup>10</sup> despite industry revenues being slightly higher in 2013.<sup>11</sup>

## 2.2 Market Outlook

The debt collection industry is substantially impacted by the credit cycle, which determines how many charged-off debts are available to collect. As a result of increased consumer debt, especially in non-housing categories where debt collectors are most frequently employed, it appears likely that the availability of debt to collect will increase. This would be especially likely if an unfavorable change in economic circumstances made it more difficult for consumers to pay their obligations.

Consumer debt has continued to increase since 2013 and is approaching its 2008 peak. However, growth in consumer debt has been fueled primarily by increases in non-housing debt. In 2016 alone, credit card debt rose \$46 billion, or 6.3%, student debt increased by \$78 billion, or 6.3%, and auto debt rose by \$93 billion, or 8.7%.<sup>12</sup> Delinquency rates remain relatively stable, although they have not returned to their pre-crisis levels.<sup>13</sup> However, the combination of these levels of debt and an economic downturn could lead to a substantial increase in the amount of delinquent and ultimately charged-off accounts.

An increase in portfolios of delinquent debt in the event of a downturn also looks somewhat likely in auto finance. Total outstanding auto debt reached a record high in 2016<sup>14</sup>, and lending to

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<sup>10</sup> ACA International, Ernst and Young, *Impact of Third-Party Debt Collection on the National and State Economies* (2013, 2011), available at <http://www.acainternational.org/advocacy/industry-research-statistics>

<sup>11</sup> Edward Rivera at IBIS World, *Debt Collection Agencies in the US* (September 2015).

<sup>12</sup> Andrew Haughwout et al. "Just Released: Total Household Debt Nears 2008 Peak but Debt Picture Looks Much Different." *Liberty Street Economics*. Federal Reserve Bank of New York. February 16, 2017. <http://libertystreeteconomics.newyorkfed.org/2017/02/just-released-total-household-debt-nears-2008-peak-but-debt-picture-looks-much-different.html>

<sup>13</sup> Federal Reserve Bank of New York. *Quarterly Report on Household Debt and Credit*. 2016Q4. February 2017

<sup>14</sup> Federal Reserve Bank of New York. *Quarterly Report on Household Debt and Credit*. 2016Q4. February 2017

subprime consumers is at a higher level than it has been for more than a decade.<sup>15</sup> Preliminary results from a study by S&P Global Ratings suggest that net losses on subprime auto loans in the event of a comparatively mild downturn, such as the one between 1998 and 2003, would be higher than the losses that resulted from the 2009 financial crisis.<sup>16</sup> This suggests that a downturn, if one occurs, could lead to a significant number of auto deficiencies, which are in some instances are collected by third party debt collectors or sold to debt buyers.

Similarly, outstanding credit card debt continues to increase, reaching \$927 billion in the third quarter of 2016. The increase in debt in the third quarter was the largest such increase since 2007. The average indebted American household owes about \$8,000 in credit card debt.<sup>17</sup> As with auto lending, a potential downturn would likely cause a spike in delinquencies, which could ultimately increase the number of charged-off accounts available for collection.

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<sup>15</sup> Kyle Stock. *Bloomberg*. "The Next Financial Crisis Might Be in Your Driveway." February 21, 2017. Analysis of data from the Federal Reserve Bank of New York. <https://www.bloomberg.com/news/articles/2017-02-21/the-next-financial-crisis-might-be-in-your-driveway>

<sup>16</sup> William Hoffman. *Auto Finance News*. "S&P Stress Tests Show Rising Subprime Auto Losses." February 12, 2017

<sup>17</sup> Alina Comoreanu. *WalletHub*. "2016 Credit Card Debt Study: Trends & Insights." December 8, 2016

## 3. Consumer complaints

Collecting, investigating, and responding to consumer complaints are integral parts of the CFPB's work.<sup>18</sup> The CFPB's Office of Consumer Response ("Consumer Response") hears directly from consumers about the challenges they face in the marketplace, brings their concerns to the attention of companies, and assists in addressing these complaints.

The CFPB, which began taking consumer complaints about debt collection in July 2013, accepts complaints through its website and by telephone, mail, email, fax, and referral. Consumers submit complaints on the Bureau's website using complaint forms tailored to specific products and can also log on to a secure consumer portal to check the status of a complaint and review a company's response. When completing the complaint form, consumers provide a narrative of the events giving rise to their complaint and can elect to publish a scrubbed narrative on the Bureau's website. While on the website, consumers can chat with a live agent to get help completing a complaint form. Consumers can also call the Bureau's toll-free number to ask questions, submit a complaint, check the status of a complaint, and more.<sup>19</sup> 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.<sup>20</sup> The Bureau also uses complaints for law enforcement purposes and shares

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<sup>18</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1021(c)(2) (2010). ("Dodd-Frank Act").

<sup>19</sup> 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.

<sup>20</sup> See Dodd-Frank Act, Pub. L. No. 111-203, § 1021(c)(2), 124 Stat. 1376, 1979 (2010).

complaint data with the FTC. The FTC uses the Bureau's information, as well as complaints submitted directly to it by consumers and from other federal and state agencies, to compile consumer complaints in its Consumer Sentinel system and makes them available to federal and state law enforcement. The FTC uses consumer complaints generally to monitor the debt collection industry, select targets for investigation, and conduct preliminary analysis that, with further factual development, might reveal or help prove a law violation.

As in previous years, debt collection is the most complained about consumer financial product or service in the Bureau's complaint system. As shown in Table 1, in 2016, again the most common issue selected by consumers submitting a complaint related to debt collection is continued attempts to collect a debt that the consumer states is not owed (41%). These consumers often report that debt collectors are contacting them about debts that either have a different balance or have been fully paid. In response to these complaints, third-party debt collectors often close and return the account to their clients, while first-party collectors report that they inform the consumer about the current status of their account and make attempts to reach a resolution.

Consumers continue to submit complaints about a lack of debt verification by collectors in response to consumer disputes; in fact, this issue saw the largest percentage increase from 2015 (see Table 2). These consumers report that they were not given enough information to verify a debt. In complaints submitted against third-party collectors especially, some consumers report that they do not have enough information to verify medical debt—often stating that they believed their health insurance covered the expenses.

Consumers still commonly report issues with communication tactics used by collectors, though the number of complaints about communication tactics decreased from 2015 (see Table 2). Consumers complain about frequent or repeated calls from collectors. These consumers report that they receive multiple calls weekly or even daily. In complaints submitted against first-party collectors, some consumers report that they receive repeated calls early in their delinquency or during grace periods.

### 3.1 Number and types of complaints handled

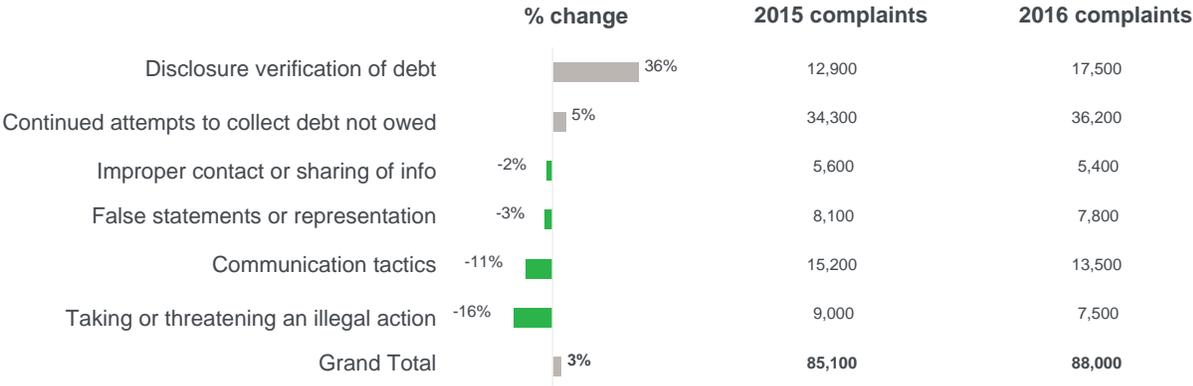
From January 1, 2016 through December 31, 2016, the CFPB handled approximately 88,000 debt collection complaints—2,900 more complaints than the prior year. These complaints include

first-party (creditors collecting on their own debts) and third-party collections. Table 1 shows the types of debt collection complaints the CFPB has handled, while Table 2 shows the change in complaint volume by issue.

**TABLE 1: DEBT COLLECTION COMPLAINTS BY ISSUE**

Primary issue	%
Continued attempts to collect debt not owed	41%
Disclosure/verification of debt	20%
Communication tactics	15%
False statements or representation	9%
Taking or threatening an illegal action	9%
Improper contact or sharing of information	6%
<b>Total debt collection complaints</b>	<b>100%</b>

**TABLE 2: CHANGE IN COMPLAINT VOLUME BY ISSUE<sup>21</sup>**



<sup>21</sup> This report is based on dynamic data and may slightly differ from other public reports.

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

As indicated in Table 1, the most common debt collection complaint is about continued attempts to collect a debt that the consumer reports is not owed. The vast majority of these consumers report that the debt is not their debt (61%) or that the debt was paid (27%), while the remaining consumers report that the debt resulted from identity theft (8%) or was discharged in bankruptcy (4%).

Issues with disclosures or providing information sufficient to verify the debt was the second-most common issue selected by consumers in their complaints (see line 2 in Table 1). If a collector is covered by the FDCPA, the law requires collectors within five days of that communication to provide consumers with a written notice informing them, among other things, of their right to dispute debts. Some consumers, however, complain that debt collectors do not provide this notice (23%). Most consumers who complain about the dispute process raise the concern that when they exercise their rights to dispute debts, collectors do not provide them with documentation that consumers believe collectors need to verify the debt (69%). The complaints related to disputed debts also reveal confusion on the part of consumers as to when and how they can dispute a debt.<sup>22</sup> Other consumers report that the company did not disclose that the communication was an attempt to collect a debt (7%).

Communication tactics used when collecting debts were the third most common issue complained about in 2016 (see line 3 of Table 1). Many of these types of complaints are about improper telephone calls. The majority of complaints about communication tactics are about frequent or repeated calls (53%). In a consumer complaint, one consumer told us that they were frustrated by the amount of calls they received about a debt they didn't understand.

*“After missing multiple calls a day from this company I finally spoke with someone. They had sent my final bill to my old address and I never got it. The person I spoke to at the company corrected my address and arranged to send out a reprint of the bill. She waved the ridiculous { \$5.00 } fee to have the bill reprinted. I let her know that I would be taking care of the bill as soon as I received it.*

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<sup>22</sup> As discussed in Section 6.1, the Bureau has developed and made available a form letter to assist consumers in disputing debts.

*Not 1 day later the calls started again.*

*I received a call this morning by a very pushy caller and was told that if I was taken off the call list without making payment arrangements my bill would go into collections. I asked why my file hadn't been updated to show that I was cooperating and s(he) said their system just doesn't show everything.*

*When I complained about their repetitive calls the caller said that legally the system could call my phone up to 6 times per day. This is harassment and also threatening by saying my bill would go into collections.*

*By their admission, even though I was cooperating, they were going to call me up to 6 times per day until my bill was paid.*

*These are unacceptable business practices.*

*Please look into the company.”*

Consumers report that collectors contact them using alternative methods, in addition to telephone calls. These methods include text messaging, emails, and social media. 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 the FDCPA's assumed convenient calling hours from 8 a.m. to 9 p.m. at the consumer's location (3%).

The majority of complaints about false statements or representations (see line 4 of Table 2) are about attempts to collect the wrong amount from the consumer (66%). In addition, consumers report that companies impersonated an attorney or a law enforcement or government official (18%), indicated the consumer committed a crime by not paying debt (13%), or indicated that the consumer should not respond to a lawsuit (2%).

Consumers also report companies taking or threatening to take an illegal action (see line 5 of Table 1). Most of these complaints are about threats to arrest or jail consumers if they do not pay (39%). Other complaints relate to lawsuits including threats to sue on a debt that is too old (29%), seizures or attempts to seize property (11%), being sued without proper notification of the lawsuit (10%), collection or attempts to collect exempt funds such as child support or unemployment

benefits (7%), or being sued in a place that is different from where the consumer lives or where the consumer signed the contract (3%).

For consumers submitting complaints about improper contact or sharing of information (see line 6 of Table 1), consumers most often report the collector talked to a third party about the debt (55%), contacted the consumer after being asked not to do so (24%), or contacted an employer after being asked not to do so (19%). 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 handled

The CFPB has sent approximately 41,400 (47%) of the about 88,000 debt collection complaints it has handled to companies for their review and response. The CFPB has also forwarded some of the remaining debt collection complaints to other regulatory agencies (38%), while other complaints were found to be incomplete (10%), or are pending<sup>23</sup> with the consumer or the CFPB (5%).<sup>24</sup>

Companies have already responded to approximately 37,000 complaints or 89% of the approximately 41,400 complaints sent to them for response. Consumers have disputed approximately 6,400 company responses (18%) to their complaints.

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

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

Company Response	#	%
Closed with explanation	28,800	70%

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<sup>23</sup> 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.

<sup>24</sup> All complaints handled by the Bureau, including those sent to other regulators, serve to inform the Bureau in its work to supervise companies, to enforce consumer financial laws, to write better rules and regulations, and to educate and engage consumers.

Closed with non-monetary relief	4,900	12%
Company did not provide a timely response	3,400	8%
Company reviewing	1,500	4%
Closed (without relief or explanation)	1,400	3%
Closed with monetary relief	400	1%
Administrative response	1,200	3%
<b>Total Complaints Sent to Companies for Response</b>	<b>41,400</b>	<b>100%<sup>25</sup></b>

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

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<sup>25</sup> Due to rounding, volume and percentages for each company response category may not add up to the total.

## 4. Bureau supervision of debt collection activities

Under the Dodd-Frank Act, the CFPB has the authority to supervise certain bank and nonbank entities that offer or provide consumer financial products or services.<sup>26</sup> In addition, for other nonbank markets for consumer financial products or services, the Bureau has the authority to supervise “larger participants” as the Bureau defines by rule. Under the Bureau’s larger participant rule for the debt collection market, the Bureau has supervisory authority over any firm with more than \$10 million in annual receipts from consumer debt collection activities.

In 2016, the Bureau’s supervision of debt collectors uncovered a number of violations of the FDCPA.<sup>27</sup>

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<sup>26</sup> Specifically, the Bureau has authority to supervise certain banks and nonbank entities in the residential mortgage, payday lending, and private education lending markets. The Bureau also has the authority to supervise nonbank entities that offer or provide consumer financial products or services where it has “reasonable cause to determine, by order, after notice to the person and a reasonable opportunity for such person to respond...that such person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or service.” 12 U.S.C. § 5514(a)(1)(C).

<sup>27</sup> 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](http://files.consumerfinance.gov/f/2012/01/GC_bulletin_12-01.pdf); see also 12 U.S.C. §§ 1821(t), 1828(x).

## 4.1 Miscoding of accounts unsuitable for sale by debt sellers

The FDCPA prohibits unfair acts or practices in connection with the collection of a debt.<sup>28</sup> During one or more examinations, examiners determined that debt sellers, as a result of widespread coding errors, sold thousands of debts that did not properly reflect that: (1) the accounts were in bankruptcy, (2) the debt sellers had concluded the debts were products of fraud, or (3) the accounts had been settled in full. The relevant accounts sold were in, or likely to be subject to, collections. Supervision concluded that this practice was unfair.

In some cases, coding failed to reflect a pending bankruptcy proceeding when the debt seller had received notice that the consumer had filed for bankruptcy. In other instances, one or more debt sellers either failed to code accounts to indicate that a fraud claim was pending or failed to code accounts to indicate that fraud had occurred. In other cases, one or more debt sellers failed to include codes indicating that the debt seller(s) had settled the relevant accounts in full. These errors caused or were likely to cause substantial injury in the form of subjecting consumers to debt collection efforts either: (1) prohibited by the automatic stay provisions of the Bankruptcy Code<sup>29</sup> or (2) on debts for which the consumer was not responsible because the relevant accounts were impacted by fraud or were settled in full. Supervision directed one or more debt sellers to redress consumers impacted by each category of the three coding errors and to enhance service provider oversight to include critical vendors performing collections and processes relating to debt sale arrangements, such as suppliers providing coding services.

## 4.2 Unlawful fees

The FDCPA limits situations where a debt collector may impose convenience fees. Under Section 808(1) of the FDCPA,<sup>30</sup> a debt collector may not collect any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law. In one or more exams, examiners observed that one or more debt collectors charged consumers a “convenience fee” to process payments by phone and online. Examiners determined that this convenience fee

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<sup>28</sup> 12 USC 5531(c); 5536(a)(1)(B).

<sup>29</sup> 11 USC 362.

<sup>30</sup> 15 USC 1692f(1).

violated Section 808(1) where the consumer's contract does not expressly permit convenience fees and the applicable state's law was silent on whether such fees are permissible. Additionally, under Section 807(2)(B) of the FDCPA,<sup>31</sup> a debt collector may not make false representations of compensation which may be lawfully received by the debt collector. Examiners determined that collectors who demanded these unlawful fees, stated that the fees were "nonnegotiable," or withheld information from consumers about other avenues to make payments that would not incur the fee after the consumer requested such information violated Section 807(2)(B) of the FDCPA.

Supervision also found that one or more debt collectors violated Section 808(1) of the FDCPA by charging collection fees in states where collection fees were prohibited or in states that capped collection fees at a threshold lower than the fees that were charged. Examiners also observed a compliance management system weakness at one or more collectors that had not maintained any records showing the relationship between the amount of the collection fee and the cost of collection.

The relevant entities have undertaken remedial and corrective actions regarding these violations; these matters remain under review by the Bureau.

## 4.3 False representations

Section 807(10) of the FDCPA prohibits debt collectors from using any false representation or deceptive means to collect a debt or obtain information concerning a consumer.<sup>32</sup> Examiners determined that one or more collectors falsely represented to consumers that a down payment was necessary in order to establish a repayment arrangement, when the collectors' policies and procedures included no such requirement.

In other cases, one or more collectors falsely represented that the only option for repayment was using a checking account, when the debt collectors' policies and procedures did not limit repayment to checking accounts.

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<sup>31</sup> 15 USC 1692e(2)(B).

<sup>32</sup> 15 USC 1692e(10).

At one or more debt collectors, examiners identified collection calls where employees purported to assess consumers' creditworthiness, credit scores, or credit reports, which were misleading because collectors could not assess overall borrower creditworthiness. Collectors also misled consumers by representing that an immediate payment would need to be made in order to prevent a negative impact on consumers' credit.

In one or more instances, examiners observed that collectors had impersonated consumers while using the relevant creditors' consumer-facing automated telephone system to obtain information about the consumer's debt. Examiners concluded that this constituted a false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

On one or more collection calls, examiners heard collectors tell consumers that the ability to settle the collection account was revoked or would expire. Examiners determined that these statements were false or were a deceptive means to collect a debt because the consumers still had the ability to settle. The relevant entities have undertaken remedial and corrective actions regarding these violations; these matters remain under review by the Bureau.

## 4.4 Communication with third parties

Section 805 of the FDCPA<sup>33</sup> prohibits debt collectors from communicating in connection with the collection of a debt with persons other than the consumer, unless the purpose is to acquire information about the consumer's location. Under Section 804 of the FDCPA,<sup>34</sup> when communicating with third parties to acquire information about the consumer's location, a collector is prohibited from disclosing the name of the debt collection company unless the third party expressly requests it.

At one or more debt collectors, examiners identified several instances where collectors disclosed the debt owed by the consumer to a third party. These third-party communications were often caused by inadequate identity verification during telephone calls. Additionally, examiners

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<sup>33</sup> 15 USC 1692c(b).

<sup>34</sup> 15 USC 1692b(1).

observed several instances where collectors identified their employers to third parties without first being asked for that information by the third party.

The relevant entities have undertaken remedial and corrective actions regarding these violations; these matters remain under review by the Bureau.

## 5. Debt collection *amicus* briefs

In the past year, the Bureau has filed briefs as *amicus curiae* (friend of the court) in four cases arising under the FDCPA. Two of these briefs were filed in the federal courts of appeals, and two of these briefs were filed in the U.S. Supreme Court through the Office of the Solicitor General. In addition, three cases in which the Bureau filed *amicus* briefs in prior years were decided in 2016.

### Collection of Protected Social Security Funds: *Arias* amicus brief

On October 26, 2016, the Bureau filed an *amicus* brief in the Second Circuit case of *Arias v. Gutman, Mintz, Baker & Sonnenfeldt, PC* to address when a debt collector violates the FDCPA in the course of garnishing money from an account containing the consumer's Social Security or other protected funds.<sup>35</sup> The consumer in this case alleged, among other things, that a debt collection law firm violated the FDCPA by telling a consumer that he could protect his Social Security benefits from forcible collection only by showing that he had not commingled his benefits with non-exempt funds. The district court dismissed the consumer's suit for failure to state a claim of either deceptive or unfair conduct in violation of the FDCPA.

The Bureau's brief argued that the consumer had stated valid deception and unfairness claims.

The brief argued that the debt collection law firm's alleged conduct was deceptive because it misrepresented what the consumer had to do to avoid garnishment of his Social Security benefits. The Bureau's brief explained that the law firm's alleged misrepresentation would violate the FDCPA because the misstatement had the capacity to discourage the consumer from fully availing himself of his legal rights. In particular, the Bureau contended that the law firm's

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<sup>35</sup> Brief of Amicus Curiae, *Arias v. Gutman, Mintz, Baker & Sonnenfeldt, PC*, No. 16-2165 (2d Cir. Oct. 28, 2016), available at <https://www.consumerfinance.gov/policy-compliance/amicus/briefs/arias-v-gutman-mintz-baker-sonnenfeldt-pc/>.

misrepresentation would have led a consumer to believe that he had to surmount a potentially daunting (but evidently fictitious) procedural hurdle to safeguard his exempt Social Security benefits from garnishment.

The Bureau argued that the debt collection law firm's alleged conduct would also constitute unfair conduct. This is because the consumer alleged that the law firm filed a baseless pleading with the purpose of intimidating the consumer into forfeiting his right to avoid garnishment of his Social Security benefits. The Bureau argued that the district court had erred by relying on the fact that the law firm used the right procedures to file its apparently baseless objection: Timely filing and service are no substitute for a good faith, reasonable basis to act. Likewise, the Bureau explained that the existence of a potential state law remedy for the law firm's conduct did not deprive the consumer of his rights under the FDCPA.

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

## Debt Collector Letterhead: *Sheriff* amicus brief

On March 2, 2016, the Solicitor General, with the assistance of the Bureau, filed an *amicus* brief in the Supreme Court case of *Sheriff v. Gillie* to address 1) whether special counsel appointed by the attorney general of Ohio to collect debts owed to the state are exempt from the FDCPA's definition of "debt collector," and 2) whether the special counsel's use of the letterhead of the Ohio attorney general violates the FDCPA.<sup>36</sup> The FDCPA defines the term "debt collector" to include any person "who regularly collects or attempts to collect ... debts owed or due another."<sup>37</sup> But the definition specifically excludes "any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor," and "any officer or employee of ... any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties."<sup>38</sup> The special counsel argued that they were officers of the state, and thus exempt from the FDCPA. They also argued that, even if they were not exempt, they did not violate the FDCPA because, even

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<sup>36</sup> Brief of Amicus Curiae, *Sherriff v. Gillie*, No. 15-338 (U.S. Mar. 2, 2016), available at <https://www.consumerfinance.gov/policy-compliance/amicus/briefs/sheriff-gillie/>.

<sup>37</sup> 15 U.S.C. § 1692a(6).

<sup>38</sup> 15 U.S.C. § 1692a(6)(A), (C).

though their debt collection letters used the letterhead of the Ohio attorney general, the letters accurately represented their role as special counsel.

The *amicus* brief argued that the special counsel were not state officers because they did not occupy any state office, and did not exercise any portion of the state's sovereignty. Instead, their duties were defined by contracts that declared them to be independent contractors. The brief pointed out that the FDCPA draws a distinction between a creditor's use of in-house personnel to collect debts, and a creditor's use of outside contractors to perform the same function. The FDCPA applies to the latter, but not to the former. The brief argued that it would subvert the basic purpose of the FDCPA to exempt Ohio's use of independent contractors from the Act's coverage.

The brief also argued that whether the special counsel's use of the letterhead of the Ohio attorney general was "false, deceptive, or misleading" should be judged from the perspective of an "unsophisticated consumer" (also referred to as the "least sophisticated consumer"). Accordingly, summary judgment was not appropriate because a reasonable jury could conclude that the use of the letterhead violated the FDCPA. The purpose of a letterhead is to identify the sender of the letter. Thus, a jury could determine that the special counsel's use of the letterhead falsely implied that special counsel worked within the office of the Ohio attorney general, not as independent contractors. The FDCPA specifically prohibits false representations as to the source of a debt collection letter.

On May 16, 2016, the Supreme Court resolved the case in favor of the special counsel.<sup>39</sup> The Court assumed without deciding that the special counsel were not exempt from the FDCPA as officers or employees of the state. But it sided with the special counsel because it did not believe that special counsel's use of the letterhead created by false or misleading representation. "The letterhead identifies the principal – Ohio's Attorney General – and the signature block names the agent – a private lawyer hired as outside counsel to the Attorney General."<sup>40</sup> The Court held it significant that the attorney general required the special counsel to use the attorney general's letterhead. The Court also limited its decision to "special counsel" and noted that "considerations relevant to that category may not carry over to other debt-collector relationships."<sup>41</sup>

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<sup>39</sup> *Sheriff v. Gillie*, 136 S.Ct. 1594 (2016).

<sup>40</sup> *Id.* at 1601.

<sup>41</sup> *Id.* at 1601 n.5.

## Article III Standing: *Bock* amicus brief

On June 3, 2016, the Bureau filed a supplemental *amicus* brief in the Third Circuit in *Bock v. Pressler & Pressler, LLP*, to address consumers' Article III standing to bring suit under the FDCPA.<sup>42</sup> In this case, a consumer brought suit against a debt-collection law firm that filed a state-court debt-collection against him. The consumer alleged that the firm violated the FDCPA by falsely representing that an attorney was meaningfully involved in filing the action. In 2015, the Bureau and the FTC had jointly filed an *amicus* brief in the case arguing that a law firm violates the FDCPA when it files a debt-collection lawsuit without any attorney meaningfully reviewing the case first.<sup>43</sup> In the Bureau's supplemental filing in 2016, the Bureau addressed the consumer's Article III standing to bring this suit in light of the Supreme Court's decision in *Spokeo v. Robins*, 136 S. Ct. 1540 (2016). The Bureau's supplemental *amicus* brief argued that a false representation made to a consumer in violation of the FDCPA is a concrete harm sufficient to support a consumer's standing. On June 26, 2016, the Third Circuit issued an order remanding the case to the district court for a determination on the consumer's Article III standing.

## Bankruptcy Proofs of Claim: *Midland Funding* amicus brief

On December 23, 2016, the Acting Solicitor General, with the assistance of the Bureau, filed an *amicus* brief in the Supreme Court in *Midland Funding, LLC v. Johnson* to address whether a debt collector violates the FDCPA by filing an accurate proof of claim in a bankruptcy proceeding for an unextinguished time-barred debt that the creditor knows is judicially unenforceable.<sup>44</sup> The FDCPA bars a debt collector from "us[ing] any false, deceptive, or misleading representation or means in connection with the collection of any debt," and specifically bars debt collectors from

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<sup>42</sup> Supplemental Brief of Amicus Curiae, *Bock v. Pressler & Pressler, LLP*, No. 15-1056 (3d Cir. June 3, 2016), available at <https://www.consumerfinance.gov/policy-compliance/amicus/briefs/bock-v-pressler-pressler/>.

<sup>43</sup> Brief of Amici Curiae, *Bock v. Pressler & Pressler, LLP*, No. 15-1056 (3d Cir. Aug. 13, 2015), available at <https://www.consumerfinance.gov/policy-compliance/amicus/briefs/bock-pressler-pressler/>.

<sup>44</sup> Brief of Amicus Curiae, *Midland Funding, LLC v. Johnson*, No. 16-348 (U.S. Dec. 21, 2016), available at <https://www.consumerfinance.gov/policy-compliance/amicus/briefs/midland-funding-llc-v-johnson/>.

making a “false representation of . . . the character, amount, or legal status of any debt.”<sup>45</sup> The Act also provides that “[a] debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.”<sup>46</sup> Prior judicial precedent holds that a debt collector violates these prohibitions when it files a state-court collection action against a consumer on a debt for which the statute of limitations has expired.

In this case, the debt collector argued, however, that the FDCPA does not prohibit from filing a proof of claim in a consumer’s bankruptcy proceeding on debt that is known to be time-barred. The debt collector also argued that, if the FDCPA did contain that prohibition, its enforcement would be precluded by the provisions of the Bankruptcy Code.

The government’s *amicus* brief argued that the FDCPA did not permit a debt collector to knowingly file a proof of claim on time-barred debt in a consumer’s bankruptcy proceeding. The brief explained that the Bankruptcy Code does not authorize the filing of a proof of claim known to be unenforceable but, instead, contemplates that such a claim will be disallowed and provides for sanctions and other remedies for abuse of the bankruptcy process. In this context, the brief argues that debt collectors that file a proof of claim are making a representation that the filer has a good-faith basis for believing that the claim is enforceable in bankruptcy. Where that representation is false or misleading, the brief argues that the debt collector has violated the FDCPA’s prohibitions on misrepresentations and unfair debt collection practices, and that this violation can result in real harm for consumers who are undergoing the bankruptcy process.

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

### Definition of “debt”: *Franklin* case

On December 11, 2015, at the invitation of the court the Bureau and the Federal Trade Commission jointly filed an *amicus* brief in *Franklin v. Parking Revenue Recovery Services*, taking the position that an allegedly unpaid parking fee of \$1.50 and a \$45 nonpayment penalty constituted

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<sup>45</sup> 15 U.S.C. § 1692e, 1692e(2)(A).

<sup>46</sup> 15 U.S.C. § 1692f.

“debt” covered by the FDCPA.<sup>47</sup> In a decision last year, the Seventh Circuit agreed with the joint agency position.<sup>48</sup>

The court grounded its decision in the FDCPA’s definition of “debt,” which refers to an “obligation of a consumer to pay money arising out of a transaction.”<sup>49</sup> The court explained that this phrase is “a broad reference to many different types of business dealings between parties,” but includes “only those obligations that are created by the contracts the parties used to give legal force to their transaction.”<sup>50</sup> The court concluded that the payment obligations at issue were debts because they arose out of a contract between the parking lot operator and the consumer, and not out of a tort or a violation of a municipal ordinance. In reaching this conclusion and reversing the district court, the Seventh Circuit rejected the district court’s analogy comparing a consumer’s alleged failure to pay a contractual debt to theft of services, which generally do not give rise to FDCPA-covered debts.

## Non-judicial foreclosure: *Ho* case

On August 7, 2015, the Bureau filed an *amicus* brief at the invitation of the Ninth Circuit in *Ho v. ReconTrust Co., NA*, arguing that a trustee who forecloses on a deed of trust in a non-judicial action in California can qualify as a “debt collector” under the general definition of that term in the FDCPA.<sup>51</sup> In a 2-1 decision, the Ninth Circuit concluded that the trustee was not a debt collector because it was not attempting to collect money from the plaintiff, but instead was attempting to retake and resell the consumer’s secured property. The court reasoned that, in selling the property, a trustee collects money from the purchaser of the home and not money owed by the consumer, and

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<sup>47</sup> Brief of Amici Curiae, *Franklin v. Parking Revenue Recovery Servs., Inc.*, No. 14-3774 (7th Cir. Dec. 11, 2015), available at <https://www.consumerfinance.gov/policy-compliance/amicus/briefs/franklin-parking-revenue-recovery-services/>.

<sup>48</sup> *Franklin v. Parking Revenue Recovery Servs., Inc.*, 832 F.3d 741 (7th Cir. 2016)

<sup>49</sup> 15 U.S.C. 1692a(5).

<sup>50</sup> 832 F.3d at 744 (internal quotation marks omitted).

<sup>51</sup> Brief of Amicus Curiae, *Ho v. ReconTrust Company, N.A.*, No. 10-56884 (9th Cir. Aug. 7, 2015) (*Ho* Br.), available at <https://www.consumerfinance.gov/policy-compliance/amicus/briefs/ho-recontrust/>.

therefore such money does not constitute “debt” as defined under the FDCPA. The court acknowledged that its holding creates a conflict with contrary holdings of both the Fourth and Sixth Circuits.

In a dissenting opinion, Judge Korman noted that a trustee institutes a foreclosure proceeding to collect money by forcing a sale of the consumer’s secured property and, therefore, qualifies as a debt collector under the FDCPA. He also reasoned that the FDCPA does not interfere with California law in ways requiring nullification of the Act’s provisions, and that the FDCPA’s preemption provisions allow for operation of California law without the need to exclude an entire category of debt collectors from the Act.

A petition seeking rehearing by the panel or rehearing en banc is currently pending before the court.

### “Initial Communication”: *Hernandez case*

In August 2014, the FTC joined the CFPB in filing an *amicus* brief in the Ninth Circuit in *Hernandez v. Williams, Zinman & Parham, P.C.*, 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.<sup>52</sup> In July 2016, the U.S. Court of Appeals for the Ninth Circuit issued a decision in a case agreeing with that position.<sup>53</sup> The FDCPA provision requires that “a debt collector” send a debt-validation notice either “[w]ithin five days after the initial communication with a consumer in connection with the collection of any debt” or in “the initial communication” itself.<sup>54</sup> This notice triggers a thirty-day period in which consumers may dispute the debt and request information about the original creditor.<sup>55</sup> The joint *amicus* brief argued that this provision applies to each debt collector that contacts a consumer about a debt, not just the initial debt collector to collect a given debt (as the defendant argued and the district court held). Agreeing

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<sup>52</sup> Brief of Amici Curiae, *Hernandez v. Williams, Zinman & Parham, P.C.*, No. 14-15672 (9th Cir. Aug. 20, 2014), available at <https://www.consumerfinance.gov/policy-compliance/amicus/briefs/hernandez-williams-zinman-parham/>.

<sup>53</sup> *Hernandez v. Williams, Zinman & Parham PC*, 829 F.3d 1068 (9th Cir. 2016).

<sup>54</sup> 15 U.S.C. § 1692g(a).

<sup>55</sup> *Id.* § 1692g(b).

with that position, the court unanimously held that, although the text is ambiguous when read in isolation, the provision unambiguously applies to all debt collectors when it is read in light of the statutory context and purposes. In particular, the court noted that the Act uses the phrase “a debt collector” throughout the statute to impose obligations and restrictions on all debt collectors throughout the entire debt collection process, and that imposing the validation-notice requirement only on initial debt collectors as the defendant urged would create loopholes that would undermine the statute’s protections.

# 6. Enforcement

## **Enforcement**

The Bureau announced ten new law enforcement actions in 2016 related to unlawful collection conduct in violation of the FDCPA, the Consumer Financial Protection Act of 2010 (“CFPA”), or both. Some of these actions are still pending. The Bureau also continues to be in active litigation on one debt collection matter filed in 2013 and two filed in 2015. In addition to the Bureau’s public enforcement actions involving debt collection practices, the Bureau is conducting a number of non-public investigations of companies to determine whether they engaged in collection practices that violate the FDCPA or the CFPA.

In 2016, public actions involving debt collection have resulted in over \$39 million in consumer relief and over \$20 million paid into the civil penalty fund, which is used to provide relief to eligible consumers who would not otherwise get full compensation or, to the extent that is not practicable, to provide consumer education and financial literacy programs designed to help consumers.

## 6.1 CFPB law enforcement actions

### ***In the Matter of Citibank, N.A.***

(File No. 2016-CFPB-0003) (consent order entered February 23, 2016)

The Bureau took two separate actions against Citibank for illegal debt sales and debt collection practices, and two actions against Citibank’s law firms for unlawful debt collection litigation practices.

In the first action (File No. 2016-CFPB-0003), the Bureau found that Citibank provided inaccurate and inflated APR information for almost 130,000 credit card accounts it sold to debt buyers. The buyers then used the exaggerated APR in debt collection attempts. Citibank also failed to promptly forward to debt buyers approximately 14,000 customer payments totaling almost \$1 million.

Citibank was ordered to provide \$4.89 million in consumer relief and pay a \$3 million civil penalty. The CFPB's order also requires Citibank to provide certain account documentation when it sells debt, include provisions in its debts sales contracts that prohibit the resale of debt, and upon request make certain information available to consumers about the debt being sold.

***In the Matter of Citibank, N.A. et al.***

(File No. 2016-CFPB-0004) (consent order entered February 23, 2016)

***In the Matter of Solomon & Solomon***

(File No. 2016-CFPB-0005) (consent order entered February 23, 2016)

***In the Matter of Faloni & Associates*<sup>56</sup>**

(File No. 2016-CFPB-0006) (consent order entered February 23, 2016)

In the second action (File No. 2016-CFPB-0004), the CFPB found that Citibank and two of its affiliates – Department Stores National Bank and CitiFinancial Servicing, LLC –, filed altered affidavits in numerous New Jersey state court debt collection actions. In 2011, Citibank learned that at least two of its local law firms, Faloni & Associates, LLC, and Solomon & Solomon, P.C., had taken affidavits signed by Citibank employees and altered the dates of affidavits, the amount of the debt allegedly owed, or both, after the affidavits were executed. Citibank later ceased sending new accounts to the law firms and dismissed all pending actions in which the affidavits were used. The CFPB's order requires Citibank to comply with a New Jersey state court order, in which Citibank had to refund \$11 million collected from consumers and stop collection of an additional \$34 million in debts, both of which Citibank has done. Consistent with the Bureau's Responsible Business Conduct bulletin, the CFPB did not impose civil money penalties on Citibank for this violation, in light of its efforts to recompense harmed consumers. Solomon & Solomon, P.C., was ordered to pay a \$65,000 civil penalty. Faloni & Associates, LLC, was ordered to pay a \$15,000 civil penalty. In addition, the CFPB ordered Citibank to enhance its oversight and compliance management systems to ensure that its service providers, including local debt collection counsel, do not alter affidavits or file altered affidavits in court regarding the collection of consumer financial debt.

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<sup>56</sup> <http://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-citibank-to-provide-relief-to-consumers-for-illegal-debt-sales-and-collection-practices/>

***In the Matter of Pressler & Pressler, LLP, Sheldon H. Pressler and Gerard J. Felt***

(File No. 2016-CFPB- 0009) (consent order entered April 25, 2016)

***In the Matter of New Century Financial Services***<sup>57</sup>

(File No. 2016-CFPB- 0010) (consent order entered April 25, 2016)

The Bureau took action against the debt collection law firm Pressler & Pressler, LLP, two principal partners, and New Century Financial Services, Inc., a debt buyer. The Bureau found that the companies and individuals made false or empty allegations about consumer debts, filed lawsuits based on unreliable or false information, and harassed consumers with unsubstantiated court filings. The consent orders bar the companies and individuals from illegal practices that can deceive or intimidate consumers, such as filing lawsuits without determining if debts in question are valid. The orders also require the firm and the named partners to pay a \$1 million civil penalty, and New Century to pay a \$1.5 million civil penalty.

***In the Matter of TMX Finance LLC***<sup>58</sup>

(File No. 2016-CFPB-0022) (consent order entered September 26, 2016)

The Bureau took action against TMX Finance LLC, one of the nation's largest auto title loan lenders, for presenting consumers with misleading loan information and engaging in unfair in-person debt collection tactics that illegally exposed information about debts to borrowers' employers, friends, and family. The Bureau ordered TMX Finance, which operates through a host of state subsidiaries under the names TitleMax, TitleBucks, and InstaLoan, to stop abusive loan-repayment policies and intrusive visits to consumers' homes and workplaces and to pay a \$9 million civil penalty.

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<sup>57</sup> <http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-halt-illegal-debt-collection-practices-lawsuit-mill-and-debt-buyer/>

<sup>58</sup> <http://www.consumerfinance.gov/about-us/newsroom/cfpb-fines-titlemax-parent-company-9-million-luring-consumers-more-costly-loans/>

***In the Matter of Navy Federal Credit Union***<sup>59</sup>

(File No. 2016-CFPB-0024) (consent order entered on October 11, 2016)

The Bureau took action against Navy Federal Credit Union for subjecting its members, which include active-duty military, retired servicemembers, and their families, to unlawful debt collection practices. The Bureau found that Navy Federal falsely threatened legal action and wage garnishment, falsely threatened to contact commanding officers to pressure servicemembers to repay, misrepresented the credit consequences of falling behind on a loan, and illegally froze members' access to their accounts. In the consent order, the credit union agreed to correct its debt collection practices, pay approximately \$23 million in redress to victims, and pay a \$5.5 million civil penalty.

***CFPB, et al. v. MacKinnon, et al.***<sup>60</sup>

(W.D.N.Y. Case 1:16-cv-00880) (complaint filed November 2, 2016)

In partnership with the New York Attorney General, the Bureau filed a lawsuit in a federal district court against the leaders of a massive debt collection scheme based out of Buffalo, N.Y. The lawsuit alleges Douglas MacKinnon and Mark Gray operate a network of companies – Northern Resolution Group LLC, Enhanced Acquisitions LLC, and Delray Capital LLC – that harass, threaten, and deceive millions of consumers across the nation into paying inflated debts or amounts they may not owe. The Bureau is seeking to shut down this illegal operation and to obtain compensation for victims and a civil penalty against the companies and partners. This action is still pending.

***In the Matter of: Moneytree, Inc.***<sup>61</sup>

(File No. 2016-0028) (consent order entered on December 16, 2016)

The Bureau took action against Moneytree, Inc., a financial services company that offers payday loans and check-cashing services, for misleading consumers regarding the cost of tax-refund

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<sup>59</sup> <http://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-navy-federal-credit-union-pay-285-million-improper-debt-collection-actions/>

<sup>60</sup> <http://www.consumerfinance.gov/about-us/newsroom/cfpb-and-new-york-attorney-general-file-lawsuit-against-illegal-nationwide-debt-collection-scheme/>

<sup>61</sup> <http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-moneytree-deceptive-advertising-and-collection-practices/>

check-cashing services, withdrawing money from consumers' bank accounts without required preauthorization, and misrepresenting the company's ability to repossess consumer vehicles when attempting to collect overdue unsecured loans. In the consent order, the company agreed to cease its illegal conduct, provide over \$255,000 in redress to consumers, and pay a \$250,000 civil penalty.

## 6.2 Continuation of pre-2016 matters

### ***CFPB v. CashCall, Inc., et al.***<sup>62</sup>

(C.D.Cal. File CV 15-7522-JFW (RAOx) (complaint filed December 16, 2013 in D. Mass. No. 1:13-cv-13167; order denying defendants' motion for judgment on the pleadings entered on December 30, 2015; order granting plaintiff's motion for partial summary judgment entered on August 31, 2016; order granting defendants' motion for certification of interlocutory appeal and stay entered on January 3, 2017).

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

In August 2016, the district court granted the Bureau's motion for partial summary judgment and denied the defendants' summary judgment motion. The Court's ruling resolves all issues of liability in the Bureau's favor, and leaves open only the issues of relief, penalty, and injunction. In January 2017, the district court granted defendants' motion for certification of interlocutory appeal and stay. This action is still pending.

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<sup>62</sup> <http://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-cashcall-for-illegal-online-loan-servicing/>

***CFPB v. Universal Debt & Payment Solutions, LLC, et al.***<sup>63</sup>

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

On April 7, 2015, the Bureau obtained a preliminary injunction that froze the assets and enjoined unlawful conduct related to a phantom debt collection scheme. The Bureau's suit against a group of seven debt collection agencies, six individual debt collectors, four payment processors, and a telephone marketing service provider alleges violations of the FDCPA and the CFPA's prohibition on unfair and deceptive acts and practices, and providing substantial assistance to unfair or deceptive conduct. The complaint alleges that the individuals, acting through a network of corporate entities, used threats and harassment to collect debt that is not payable to those attempting to collect it. The complaint alleges that the debt collectors' misconduct was facilitated and substantially assisted by payment processors and a telephone service provider, which were also named as defendants in the lawsuit. This action is still pending.

***CFPB v. NDG Financial Corp., et al.***<sup>64</sup>

(S.D. N.Y. No.1:15-cv-05211-CM) (complaint filed July 31, 2015; amended complaint filed December 11, 2015; order denying defendants' motion to dismiss entered on December 2, 2016; order denying defendants' motions for reconsideration and certification for interlocutory appeal entered on December 19, 2016).

In December 2015, the Bureau filed an amended complaint against the NDG Financial Corporation, nine of its affiliates, and four individual defendants for engaging in unfair, deceptive, and abusive practices relating to its payday lending enterprise. The amended complaint alleges that the enterprise, which has companies located in Canada and Malta, originated, serviced, and collected payday loans that consumers were not obligated to repay under state licensing and usury rules, represented that U.S. federal and state laws did not apply to the Defendants or the payday loans, and secured repayment using unfair and deceptive collections practices, all in violation of the CFPA. The Bureau also named twelve corporations and individuals affiliated with NDG as

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<sup>63</sup> <http://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-participants-in-robo-call-phantom-debt-collection-operation/>

<sup>64</sup> <http://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-offshore-payday-lender/>

relief defendants, alleging that they received funds via the aforementioned practices to which they were not legally entitled. On December 2, 2016, the Court denied all defendants' motions to dismiss based on lack of personal jurisdiction and failure to state a claim. This action is still pending.

## 6.3 FTC law enforcement actions

From January 1 through December 31, 2016, the FTC brought or resolved 12 debt collection cases. In several of its Section 13(b) cases, the Commission obtained preliminary relief that included *ex parte* temporary restraining orders with asset freezes, immediate access to business premises, and appointment of receivers to take over the debt collection businesses.

The Commission's recent efforts to protect consumers from deceptive and abusive debt collection practices culminated in Operation Collection Protection. This initiative, which the FTC began in 2015, was the first coordinated federal-state-local enforcement initiative targeting illegal debt collection. The nationwide crackdown included over 165 actions by more than 70 federal, state, and local law enforcement and regulatory authorities against collectors who used illegal tactics such as harassing phone calls and false threats of litigation or arrest.<sup>65</sup> Participants in the initiative continue to work closely together to share information and coordinate actions. The FTC's actions, involving (1) phantom debt collection, (2) collection via unlawful text messages and emails, (3) other FDCPA and FTC Act violations, and (4) Fair Credit Reporting Act violations, are discussed below.

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<sup>65</sup> See, e.g., Press Release, FTC and Federal, State and Local Law Enforcement Partners Announce Nationwide Crackdown Against Abusive Debt Collectors (Nov. 4, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/11/ftc-federal-state-local-law-enforcement-partners-announce>; Press Release, FTC and State Law Enforcement Partners Announce More Actions and Results in Continuing Crackdown Against Abusive Debt Collectors (Jan. 7, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/01/ftc-state-law-enforcement-partners-announce-more-actions-results>; Press Release, FTC and Illinois Attorney General Halt Chicago-Area Operation Charged with Collecting and Selling Phantom Payday Loan Debts (Mar. 30, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/03/ftc-illinois-attorney-general-halt-chicago-area-operation-charged>; Press Release, FTC Actions: Debt Collectors Banned from Debt Collection Business (Sept. 7, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/09/ftc-actions-debt-collectors-banned-debt-collection-business>; Blog Post, A Debt Collection Round-up (Dec. 27, 2016), available at <https://www.consumer.ftc.gov/blog/debt-collection-round>; Blog Post, Collection Protection reflection (Dec. 30, 2016), available at [https://www.ftc.gov/news-events/blogs/business-blog/2016/12/collection-protection-reflection?utm\\_source=govdelivery](https://www.ftc.gov/news-events/blogs/business-blog/2016/12/collection-protection-reflection?utm_source=govdelivery).

### 6.3.1 Phantom Debt Collection

The Commission has continued its efforts to fight “phantom debt collection” this year. Phantom debt collectors engage in unfair, deceptive, or abusive conduct by attempting to collect on debts that either do not exist or are not owed to the phantom debt collector. The Commission initiated or resolved three actions involving phantom debt collection in 2016: *SQ Capital LLC*, *Stark Law LLC*, and *Kelly S. Brace*. *SQ Capital* and *Stark Law* are the first two cases brought by the FTC against operations for allegedly selling fake debt portfolios. This past year, the Commission also returned money to thousands of consumers who were targeted by the phantom debt schemes in *Centro Natural Corp.* and *Broadway Global Master Inc.*

In December, the Commission charged *SQ Capital* with selling portfolios of fake payday loan debts that debt collectors used to get people to pay on debts they did not owe.<sup>66</sup> According to the complaint, the defendants’ fake portfolios listed social security numbers and bank account numbers of real consumers, but falsely claimed that the purported borrowers had failed to repay debts they never owed, to lenders who did not make these loans.<sup>67</sup> The complaint also alleges that the defendants did not have the authority to sell debts of the lenders they named. At the FTC’s request, a federal court entered a preliminary injunction halting this operation pending litigation.

In March, the FTC partnered with the Illinois Attorney General to shut down a Chicago-area operation that allegedly threatened and intimidated consumers to collect phantom payday loan debts they did not owe, or did not owe to the defendants.<sup>68</sup> The *Stark Law* defendants allegedly

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<sup>66</sup> *FTC v. Joel Jerome Tucker*, 2:16-cv-082816 (D. Kan. Dec. 16, 2016) (Complaint); see also Press Release, FTC Charges Defendants with Selling Fake Payday Loan Debt Portfolios (Jan. 9, 2017), available at <https://www.ftc.gov/news-events/press-releases/2017/01/ftc-charges-defendants-selling-fake-payday-loan-debt-portfolios>.

<sup>67</sup> To add credibility to some of the fake loans in their portfolios, the defendants used the name of a purported lender associated with another Commission law enforcement action, *FTC v. AMG Services*, 2:12-cv-00536 (D. Nev. Sept. 30, 2016) (Order). In September 2016, a federal court ordered the defendants in the *AMG* payday lending scheme to pay a record \$1.3 billion for deceiving and illegally charging consumers undisclosed and inflated fees. *Id.*; see also Press Release, U.S. Court Finds in FTC’s Favor and Imposes Record \$1.3 Billion Judgment Against Defendants Behind *AMG* Payday Lending Scheme (Oct. 4, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/10/us-court-finds-ftcs-favor-imposes-record-13-billion-judgment>.

<sup>68</sup> *FTC v. Stark Law, LLC*, No. 1:16-cv-3463 (N.D. Ill. Mar. 21, 2016) (Complaint); see also Press Release, FTC and Illinois Attorney General Halt Chicago-Area Operation Charged with Collecting and Selling Phantom Payday Loan Debts (Mar. 30, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/03/ftc-illinois-attorney-general-halt-chicago-area-operation-charged>.

called consumers and demanded immediate payment for supposedly delinquent loans, often armed with consumers' sensitive personal and financial information. Defendants also allegedly threatened consumers with lawsuits or arrest, deceptively held themselves out as a law firm with authority to sue and obtain substantial judgments against delinquent consumers, and disclosed debts to relatives, friends and co-workers. As in *SQ Capital*, the complaint also charged defendants with unlawfully selling portfolios of fake debt to other debt collectors in violation of the FTC Act. The court entered an *ex parte* temporary restraining order (and later a preliminary injunction) with an asset freeze, appointment of a receiver, and injunctive relief prohibiting the defendants from selling fake debt portfolios or from making the misrepresentations at issue in this case. Litigation continues in this matter.

In *Brace*, the FTC and New York Attorney General successfully resolved their litigation against another phantom debt collection scheme. The complaint in this case, filed in October 2015, alleged that the defendants attempted to collect on payday debts they knew were bogus.<sup>69</sup> According to the complaint, the defendants bought payday loans supposedly owed to a company that repeatedly told them to stop collection efforts because the debts were fabricated, and ignored consumers' evidence that they had never authorized a payday loan. The defendants allegedly employed other deceptive and abusive tactics to get consumers to pay, including false threats of lawsuits and arrest. The Court granted – over the defendants' objections – the plaintiffs' request to enter a temporary restraining order halting their operations, and, shortly thereafter, entered a stipulated preliminary injunction. In the summer of 2016, the FTC and the New York AG secured a stipulated final order banning the defendants from the debt collection business, prohibiting other deceptive claims, and imposing a judgment of more than \$18.4 million, which was partially suspended based on inability to pay.<sup>70</sup> The plaintiffs also secured an order against a relief defendant imposing a partially-suspended \$418,000 judgment.

In addition to the law enforcement actions above, this past year the Commission also returned funds to consumers who lost money to phantom debt collection operations previously stopped by

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<sup>69</sup> *FTC and State of New York v. Brace*, No. 1:15-cv-00875-RJA (W.D.N.Y. Oct. 5, 2015) (Complaint).

<sup>70</sup> *FTC and State of New York v. Brace*, No. 1:15-cv-00875-RJA (W.D.N.Y. Aug. 18, 2015) (Stipulated Order), *see also* Press Release, FTC Action: Debt Collector Banned from Collection Business (Aug. 24, 2016), *available at* <https://www.ftc.gov/news-events/press-releases/2016/08/ftc-action-debt-collector-banned-collection-business>.

the FTC. In November 2016, the agency mailed 3,446 checks totaling more than \$830,000 to consumers in the *Centro Natural Corp.* matter.<sup>71</sup> The Commission had secured stipulated orders banning defendants from debt collection or telemarketing, after alleging that they targeted thousands of Spanish-speaking consumers with unlawful tactics to collect on fake debts and to coerce consumers into purchasing goods that they did not want.<sup>72</sup> In April, the Commission mailed 1,701 checks totaling more than \$596,000 to consumers who lost money to the fraudulent scheme in *Broadway Global Master Inc.*<sup>73</sup> The agency had previously secured a stipulated order banning this operation from the debt collection business because of allegations that it harassed consumers into paying phantom debts.<sup>74</sup>

### 6.3.2 The FTC's *Messaging for Money Sweep*: Debt Collection Via Unlawful Text Messages and Emails

The Commission has also continued its efforts to pursue schemes that use deceptive, threatening or otherwise unlawful text messages or emails to target consumers. In 2015, the Commission launched a law enforcement sweep, called “Messaging for Money,” to stop three operations engaged in such practices. This past year, the FTC won summary judgment in one of those cases (*The Primary Group Inc.*), and successfully resolved the charges against nine of the defendants in the other two matters (*Premier Debt Acquisitions LLC* and *Unified Global Group, LLC*).

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<sup>71</sup> Press Release, FTC Returns Money to Victims of Debt Collection Scheme (Nov. 14, 2016), *available at* <https://www.ftc.gov/news-events/press-releases/2016/11/ftc-returns-money-victims-debt-collection-scheme>.

<sup>72</sup> *FTC v. Centro Natural Corp.*, No. 14-cv-23879 CMA (S.D. Fla. June 30, 2015) (Stipulated Order); *see also* Press Release, FTC Action Puts an End to Fraudulent Debt Collection Scheme that Targeted Spanish-Speaking Consumers (July 8, 2015), *available at* <https://www.ftc.gov/news-events/press-releases/2015/07/ftc-action-puts-end-fraudulent-debt-collection-scheme-targeted>.

<sup>73</sup> Press Release, FTC Returns Money to Consumers Harmed by Scam That Collected Millions in Phantom Payday Loan Debts (Apr. 6, 2016), *available at* <https://www.ftc.gov/news-events/press-releases/2016/04/ftc-returns-money-consumers-harmed-scam-collected-millions>.

<sup>74</sup> *FTC v. Broadway Global Master Inc.*, No. 2:12-cv-0855 JAM GGH (E.D. Cal. Sept. 10, 2015) (Stipulated Order); *see also* Press Release, FTC Action Stops Scammers Who Collected Millions in Phantom Payday Loan Debts (Sept. 16, 2015), *available at* <https://www.ftc.gov/news-events/press-releases/2015/09/ftc-action-stops-scammers-who-collected-millions-phantom-payday>.

In June 2016, the court in *The Primary Group* matter granted the FTC’s summary judgment request on all counts against an unlawful debt collection operation.<sup>75</sup> The court found that, as alleged by the Commission, these defendants deceived consumers using text messages, emails, and phone calls that falsely threatened consumers with arrest or lawsuits if they did not make debt collection payments. The court also found that they unlawfully contacted consumers’ friends, family members, and employers; withheld information consumers needed to confirm or dispute debts; and did not identify themselves as debt collectors, as required by law.<sup>76</sup> The court permanently banned two defendants from debt collection activities and imposed a judgment of \$980,000.

The Commission successfully resolved *Premier Debt Acquisitions* in January 2016 by securing a stipulated order banning the defendants from debt collection activities and imposing a judgment of \$2,229,756, which was partially suspended.<sup>77</sup> The complaint alleged that defendants impersonated law enforcement and government officials, falsely threatened consumers with a lawsuit or arrest, and falsely threatened to charge some consumers with criminal fraud, garnish their wages, or seize their property.<sup>78</sup> In text messages, the defendants allegedly claimed they would sue consumers and threatened to seize consumers’ possessions unless they paid. In voicemails, the defendants also allegedly falsely claimed that a “uniformed officer” was on the way to consumers’ homes. In addition to banning the defendants from the debt collection industry, the order prohibits them from making misrepresentations about other financial products or services.

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<sup>75</sup> *FTC v. The Primary Group*, No. 1:15-cv-1645 (N.D. Ga. May 19, 2016) (Order Granting Summary Judgment); see also Press Release, FTC Action: Debt Collector Banned from Debt Collection Business (June 16, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/06/ftc-action-debt-collector-banned-debt-collection-business>.

<sup>76</sup> *FTC v. The Primary Group*, No. 1:15-cv-1645 (N.D. Ga. May 11, 2015) (Complaint); see also Press Release, FTC Halts Three Debt Collection Operations That Allegedly Threatened and Deceived Consumers via Illegal Text Messages (May 21, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-halts-three-debt-collection-operations-allegedly-threatened>.

<sup>77</sup> *FTC v. Premier Debt Acquisitions LLC*, No. 1:15-cv-00421-FPG (W.D.N.Y. Jan. 7, 2016) (Order); see also Press Release, FTC and State Law Enforcement Partners Announce More Actions and Results in Continuing Crackdown Against Abusive Debt Collectors (Jan. 7, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/01/ftc-state-law-enforcement-partners-announce-more-actions-results>.

<sup>78</sup> *FTC v. Premier Debt Acquisitions LLC*, No. 1:15-cv-00421-FPG (W.D.N.Y. May 11, 2015) (Complaint); see also Press Release, FTC Halts Three Debt Collection Operations That Allegedly Threatened and Deceived Consumers via Illegal Text Messages (May 21, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-halts-three-debt-collection-operations-allegedly-threatened>.

In *FTC v. Unified Global Group*, the FTC secured an approximately \$27 million judgment and significant injunctive relief in a settlement with four defendants involved in an abusive debt collection operation. The FTC's complaint against *Unified Global Group*<sup>79</sup> alleged that the defendants sent texts to trick consumers into calling them back. The texts included false statements such as, "YOUR PAYMENT DECLINED WITH CARD \*\*\*\*\_\*\_\*\_\*\_\*\_\*-5463 . . . CALL 866.256.2117 IMMEDIATELY," even though consumers had never arranged to make payments to the defendants. The defendants also allegedly used deceptive emails and calls that threatened arrest and civil lawsuits, and unlawfully contacted consumers' friends, families, and co-workers about the supposed debts. In August 2016, the court entered a stipulated order banning the settling defendants from all debt collection activities and imposing a judgment of approximately \$27 million, which was partially suspended because of their inability to pay.<sup>80</sup> Litigation continues against the sole remaining defendant.

### 6.3.3 Other Actions to Halt FDCPA and FTC Act Violations

In addition to the cases described above, the FTC successfully resolved five other actions in 2016 to protect consumers from unlawful collection practices: (1) *Federal Check Processing*; (2) *Commercial Recovery Systems*; (3) *Warrant Enforcement Division*; (4) *AFS Legal Services*; and (5) *BAM Financial*. In the first two cases, the FTC secured summary judgment wins against the defendants. The FTC also continued litigating *Vantage Point Services*, filing a motion for summary judgment and securing additional preliminary relief against a defendant.

In *FTC v. Federal Check Processing Inc.*, the court granted the Commission's request for summary judgment against a Buffalo, New York-based debt collection scheme.<sup>81</sup> The district court adopted

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<sup>79</sup> *FTC v. Unified Global Group, LLC*, 15-cv-422-W (W.D.N.Y. May 11, 2015) (Complaint); see also Press Release, FTC Halts Three Debt Collection Operations That Allegedly Threatened and Deceived Consumers via Illegal Text Messages (May 21, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-halts-three-debt-collection-operations-allegedly-threatened>.

<sup>80</sup> *FTC v. Unified Global Group, LLC*, 15-cv-422-W (W.D.N.Y. Aug. 26, 2016) (Order); see also Press Release, FTC Actions: Debt Collectors Banned from Debt Collection Business (Sept. 7, 2016) available at <https://www.ftc.gov/news-events/press-releases/2016/09/ftc-actions-debt-collectors-banned-debt-collection-business>.

<sup>81</sup> *FTC v. Federal Check Processing, Inc.*, No. 1:14-cv-00122 (W.D.N.Y. Oct. 13, 2016) (Judgment and Permanent Injunction); see also Press Release, FTC Wins Summary Judgment Against Buffalo, NY-based Abusive Debt Collectors;

the magistrate judge's recommendation and report that found that defendants had 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.<sup>82</sup> The court had previously entered an *ex parte* temporary restraining order, followed by a stipulated preliminary injunction, to halt this abusive debt collection operation. The final order bans the defendants from the debt collection industry and requires them to pay a nearly \$11 million judgment.

In *United States v. Commercial Recovery Systems, Inc.*, a case that the FTC referred to the Department of Justice for prosecution, the court entered summary judgment against two defendants in an unlawful debt collection operation. The court found that the debt collectors had "repeatedly and routinely violated the FDCPA . . . in multiple ways, by making blatantly false representations for the purpose of intimidating consumers into paying debts."<sup>83</sup> Among other things, the court found that their routine threats to sue consumers were "patently false," and further that they falsely impersonated attorneys and threatened to seize or garnish consumers' property or wages. The court banned the two defendants from debt collection, and will determine the civil penalty amount to impose on one of them, the president of the company.<sup>84</sup> Additionally, the government secured a stipulated final order against the remaining individual defendant subjecting him to the same ban and imposing a \$496,000 civil penalty judgment (partially suspended due to an inability to pay).<sup>85</sup>

In January 2016, the Commission also successfully resolved its action in *Warrant Enforcement Division*. The FTC's complaint in this matter alleged that the defendants, while under contract to

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Defendants Banned from Collection Business (Oct. 31, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/10/ftc-wins-summary-judgment-against-buffalo-ny-based-abusive-debt>.

<sup>82</sup> *FTC v. Federal Check Processing, Inc.*, No. 1:14-cv-00122 (W.D.N.Y. Mar. 25, 2014) (Complaint), 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>.

<sup>83</sup> *United States v. Commercial Recovery Sys., Inc.*, No. 4:15-cv-36 (E.D. Tex. Apr. 7, 2016) (Memorandum Opinion and Order).

<sup>84</sup> *United States v. Commercial Recovery Sys., Inc.*, No. 4:15-cv-36 (E.D. Tex. Apr. 18, 2016) (Order); see also Press Release, FTC Action: Debt Collector Banned from Collection Business (Sept. 22, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/09/ftc-action-debt-collector-banned-collection-business>.

<sup>85</sup> *United States v. Commercial Recovery Sys., Inc.*, No. 4:15-cv-36 (E.D. Tex. Sept. 21, 2016) (Order)

collect overdue utility bills, traffic tickets, court fines, and other debts for local governments in Texas and Oklahoma, sent consumers letters and postcards containing false or unsubstantiated threats of arrest that appeared to come from a municipal court.<sup>86</sup> The FTC charged that the false and unsubstantiated threats made to collect municipal court debts violated the FTC Act, and those made to collect utility debts violated both the FTC Act and the FDCPA. Under a stipulated order for permanent injunction, the defendants are prohibited from misrepresenting any material fact in collecting debts, including that failure to pay a debt will result in the consumer being arrested or jailed, having their vehicle impounded, or being unable to renew their driver's license.<sup>87</sup> The order also imposed a \$194,888 judgment that was suspended based on the defendants' inability to pay.

Similarly, the Commission secured a final order in its suit against *AFS Legal Services*, resolving charges that the defendants impersonated investigators and law enforcement, and threatened to arrest, jail, and sue consumers if they did not pay debts.<sup>88</sup> According to the FTC's complaint, filed in October 2015, the defendants often had consumers' personal information – such as social security and bank account numbers – that caused consumers to believe that the calls and associated threats were legitimate.<sup>89</sup> The collectors also allegedly made harassing calls and contacted relatives, friends, and co-workers about consumers' debts. The stipulated final order, entered in August 2016, bans the defendants from debt collection activities and imposes a judgment of more than \$4.4 million, the amount consumers lost to this scheme.

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<sup>86</sup> *FTC v. Municipal Recovery Servs. Corp.*, No. 15-CV-04064-N (N.D. Tex. Dec. 24, 2015) (Complaint).

<sup>87</sup> *FTC v. Municipal Recovery Servs. Corp.*, No. 15-CV-04064-N (N.D. Tex. Jan. 29, 2016) (Order); *see also*, Press Release, FTC and State Law Enforcement Partners Announce More Actions and Results in Continuing Crackdown Against Abusive Debt Collectors (Jan. 7, 2016), *available at* <https://www.ftc.gov/news-events/press-releases/2016/01/ftc-state-law-enforcement-partners-announce-more-actions-results>.

<sup>88</sup> *FTC v. Nat'l Payment Processing LLC*, No. 1:15-cv-3811-AT (N.D. Ga. Aug. 29, 2016) (Order); *see also* Press Release, FTC Actions: Debt Collectors Banned from Debt Collection Business (Sept. 7, 2016), *available at* <https://www.ftc.gov/news-events/press-releases/2016/09/ftc-actions-debt-collectors-banned-debt-collection-business>.

<sup>89</sup> *FTC v. Nat'l Payment Processing LLC*, No. 1:15-cv-3811-AT (N.D. Ga. Oct. 30, 2015) (Complaint).

In July 2016, the FTC also successfully resolved its suit against *BAM Financial*, banning the defendants from the debt collecting business and securing other important relief.<sup>90</sup> The FTC's complaint, filed in October 2015, alleged that the defendants bought consumer debts and collected payment by deceptively threatening consumers with lawsuits, wage garnishment, and arrest, and by impersonating attorneys or process servers.<sup>91</sup> According to the complaint, the defendants also unlawfully disclosed debts to, or harassed, third parties; failed to identify themselves as debt collectors; and failed to notify consumers of their right to receive verification of the purported debts. At the FTC's request, the court entered a temporary restraining order that prohibited the defendants from violating the FDCPA and the FTC Act, froze the defendants' assets, and appointed a receiver. The stipulated final order bans them from debt collection activities and imposes a \$4,802,646 judgment, to be partially suspended upon the surrender of certain assets based on defendants' inability to pay.

The FTC continues to work with the New York Attorney General in a joint action against *Vantage Point*, a Buffalo, New York-based debt collection scheme. According to the complaint filed in 2015, defendants' collectors posed as a law firm, process servers, or even government agents – misrepresenting to consumers that they had committed a crime and would be arrested and jailed.<sup>92</sup> The complaint further alleges that the defendants made similar claims about consumers to their co-workers, friends, and family members. At the request of the FTC and the New York AG, the court entered a preliminary injunction to halt the unlawful practices. In 2016, the plaintiffs requested that the court enter summary judgment against the defendants, and that motion is currently pending. The plaintiffs also sought and obtained a second *ex parte* temporary restraining

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<sup>90</sup> *FTC v. BAM Fin'l, LLC*, No. 8:15-cv-01672-JVS-DFM (C.D. Cal. July 11, 2016) (Order); see also Press Release, FTC Action: Abusive Debt Collectors Banned from Collection Business (July 14, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/07/ftc-action-abusive-debt-collectors-banned-collection-business>.

<sup>91</sup> *FTC v. BAM Fin'l, LLC*, No. 8:15-cv-01672-JVS-DFM (C.D. Cal. Oct. 19, 2015) (Complaint); see also Press Release, FTC and Federal, State and Local Law Enforcement Partners Announce Nationwide Crackdown Against Abusive Debt Collectors (Nov. 4, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/11/ftc-federal-state-local-law-enforcement-partners-announce>.

<sup>92</sup> *FTC and State of New York v. Vantage Point Services, LLC*, No. 1:15-cv-00006-WMS (W.D.N.Y. Jan. 5, 2015) (Complaint); see also Press Release, FTC, New York Attorney General Crack Down on Abusive Debt Collectors (Feb. 26, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/02/ftc-new-york-attorney-general-crack-down-abusive-debt-collectors>.

order and preliminary injunction against one of the individual defendants for operating another debt collection scheme in violation of the first preliminary injunction.

### 6.3.4 Action to Halt Fair Credit Reporting Act Violations by a Debt Collector

In May 2016, in the *Credit Protection Association* matter – referred to the Department of Justice for prosecution – the court entered a stipulated final order against a debt collector for alleged violations of the Fair Credit Reporting Act’s (FCRA) Furnisher Rule.<sup>93</sup> Specifically, the complaint alleged that the defendant debt collector lacked adequate policies and procedures to handle consumer disputes regarding information the company provided to credit reporting agencies.<sup>94</sup> The complaint also alleged that the company did not have a policy requiring notice to consumers of the outcomes of investigations about disputed information and that, in numerous instances, consumers were not informed whether information they disputed had been corrected. The stipulated final order requires the defendant to pay \$72,000 in civil penalties and put in place policies and procedures that comply with the requirements of the FCRA and the Furnisher Rule. The company will also be required to follow the Rule’s requirements related to conducting dispute investigations and informing consumers of their outcome.

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<sup>93</sup> 15 U.S.C. §§ 1681-1681x (FCRA); Duties of Furnishers of Information to Consumer Reporting Agencies (Furnisher Rule), 16 C.F.R. § 660, *recodified as* Duties of Furnishers of Information, 12 C.F.R. § 1022, subpart E.

<sup>94</sup> *U.S. v. Credit Protection Association*, 3:16-cv-01255-D (N.D. Tex. May 9, 2016) (Complaint and Order); *see also* Press Release, Debt Collector Settles FTC Charges It Violated Fair Credit Reporting Act (May 9, 2016), *available at* <https://www.ftc.gov/news-events/press-releases/2016/05/debt-collector-settles-ftc-charges-it-violated-fair-credit>.

# 7. 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, as well as to the general population and to financial educators. The CFPB's financial education is focused on encouraging consumers to ask questions, make plans, and take action in their financial lives to reach their own life goals.

Similarly, the FTC's FDCPA program also involves extensive education and public outreach efforts. The FTC's consumer education initiative informs consumers of their rights under the FDCPA and what the statute requires of debt collectors, while its business education initiative informs debt collectors what they must do to comply with the law.<sup>95</sup>

## 7.1 Bureau education and outreach initiatives

The Bureau seeks to provide consumers with information about specific financial decisions, including those relating to debt collection. One of the Bureau's initiatives is Ask CFPB, an interactive online tool that helps consumers find short, clear, unbiased, authoritative answers to a wide variety of their financial questions.

Ask CFPB for debt collections was initiated in October 2012. As of January 2017, debt collection was one of the two most-viewed categories in Ask CFPB. The Ask CFPB questions and answers on

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<sup>95</sup> Available at <https://www.consumer.ftc.gov/articles/0149-debt-collection>; <https://www.ftc.gov/tips-advice/business-center/credit-and-finance>.

debt collection address a wide range of issues under the FDCPA, including the meaning of specific terms, consumers’ rights, and debt collectors’ obligations. Ask CFPB provides practical tips to consumers regarding steps they can take to exercise their rights under the FDCPA as well as to manage their debts.<sup>96</sup>

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 want to stop all communication from debt collectors; and (5) consumers who have hired an attorney with respect to the debt matter.<sup>97</sup> These letters are available in English and Spanish.

Since tracking began in June 2014, the letters have been downloaded over 389,800 times as of the end of 2016. Of the letters, “I need more information about this debt” and “I do not owe this debt” are the most popular, accounting together for over two thirds of total downloads:

**TABLE 4: DOWNLOADS OF CFPB’S COLLECTION-RELATED LETTERS**

Letter	% total downloads
“I need more information about this debt”	42%
“I do not owe this debt”	34%
“I want to specify how the debt collector can contact me”	10.5%
“I want the debt collector to stop contacting me”	9.8%
“I want the debt collector to only contact me through my lawyer”	3.7%

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<sup>96</sup> This material is at: <http://www.consumerfinance.gov/consumer-tools/debt-collection/>

<sup>97</sup> 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>.

In addition to online resources for consumers, the Bureau has developed numerous print publications and brochures on financial topics including debt collection, which consumers and organizations can download or order in bulk free of charge. In 2015, the Bureau added the brochure “Know Your Rights When a Debt Collector Calls,” in both English and Spanish, as well as a version tailored specifically to servicemembers, informing them of their unique rights. The Bureau distributed 120,705 of the English version and 41,558 of the Spanish version throughout FY 2016.

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 and volunteers working with economically vulnerable consumers. The modularized toolkit covers a variety of financial topics, including debt management and consumer financial protection. The module on dealing with debt provides an overview of the FDCPA, resources, and tools to help consumers better manage their debts. As of the end of 2016, more than 13,500 staff and volunteers in social services, legal aid, worker, and community organizations were trained on *Your Money, Your Goals*, reaching an estimated 600,000 consumers. The toolkit and training, in both English and Spanish, can be accessed at [www.consumerfinance.gov/your-money-your-goals](http://www.consumerfinance.gov/your-money-your-goals). The Bureau is developing stand-alone “action handbooks” on specific financial topics contained in the toolkit. These resources focus on actionable content, and they are shorter and easier for staff in human service organizations to use with the people they serve. The first in the series, “Behind on Bills,” contains tools and tips to help consumers better align their income and expenses, steps to consider if they experience a shortfall, and information on options for responding to debt collectors.

Empowering consumers to manage their student loan debts has been and will continue to be a significant focus for the Bureau. The Bureau developed and continues to maintain web tools designed to help students and families make more informed decisions about paying for college and repaying their student loans. Our Repay Student Debt<sup>98</sup> tool can provide help for borrowers who have fallen behind on their student loan payments. The tool has helped borrowers understand their options, communicate effectively with their loan servicer or debt collector, and work to

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<sup>98</sup> Available at <http://www.consumerfinance.gov/paying-for-college/repay-student-debt/>.

bring their student loans out of default or delinquency. Improving borrower's performance in paying student loan debts helps them to rebuild their credit, go back to school, or buy a home.<sup>99</sup>

In 2016, the Bureau partnered with the Department of Education to launch a new initiative to develop a student loan *Payback Playbook* – a set of streamlined, personalized disclosures that provide a plain-language explanation of repayment options available to borrowers with federal student loans.<sup>100</sup> The Bureau provided the Education Department with a revised set of disclosures, informed by user testing and public feedback from more than 3,400 consumers, servicers, advocates and other stakeholders.<sup>101</sup> The Education Department plans to make the *Payback Playbook* disclosures available as part of its ongoing work to enhance consumer protections for student loan borrowers.<sup>102</sup> Increased knowledge of repayment options may help some consumers pay on time and thus stay out of debt collection.

Debt collection is also a significant issue facing the servicemember population. In April 2016, the Office for Servicemember Affairs released its semiannual complaint snapshot that provides an overview of complaints submitted by servicemembers, veterans, and their family members during 2015.<sup>103</sup> The report highlighted the most common problems these consumers are reporting. Debt collection complaints continue to be the largest category of complaints from the military community, and as of December 2016, they remain the largest complaint category, comprising 45 percent of total complaints from military consumers.

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<sup>99</sup> 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.

<sup>100</sup> Available at <http://www.consumerfinance.gov/payback-playbook/>

<sup>101</sup> <http://www.consumerfinance.gov/about-us/blog/your-feedback-helped-us-update-our-payback-playbook-prototype/>

<sup>102</sup> <https://blog.ed.gov/2016/04/a-new-vision-for-serving-student-loan-borrowers/>

<sup>103</sup> Available at <http://www.consumerfinance.gov/reports/complaints-received-from-servicemembers-veterans-and-their-families-2011-2014/>; [http://files.consumerfinance.gov/f/201511\\_cfpb\\_snapshot-of-servicemember-complaints.pdf](http://files.consumerfinance.gov/f/201511_cfpb_snapshot-of-servicemember-complaints.pdf).

In September 2016, the Office of Servicemember Affairs hosted a web forum on the various resources and tips military personnel can use to help them better communicate with debt collectors if they should find themselves having trouble managing their debts. The forum describes how servicemembers can use the Bureau’s sample debt collection letters.

## 7.2 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 16,000 community-based organizations and national groups that order and distribute FTC information to their members, clients, and constituents. In 2016, the FTC distributed 15.5 million print publications to libraries, police departments, schools, non-profit organizations, banks, credit unions, other businesses, and government agencies. In 2016, the FTC logged more than 43 million views of its business and consumer education website pages. The FTC’s channel at [YouTube.com/FTCvideos](https://www.youtube.com/FTCvideos) houses 144 videos, which were viewed more than 603,306 times in 2016. A new video — [Fraud Affects Every Community: Debt Collection](#) — tells the first-person story of a veteran who was contacted by a debt collector. The consumer blogs in [English](#)<sup>104</sup> and [Spanish](#)<sup>105</sup> reached 159,825 (English) and 44,835 (Spanish) email subscribers, and regularly serve as source material for local and national news stories.

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

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<sup>104</sup> <http://www.consumer.ftc.gov/blog>.

<sup>105</sup> <http://www.consumidor.ftc.gov/blog>.

Spanish speakers make to the FTC and offer practical tips to help detect and stop common scams. People ordered more than 45,125 copies of the *Cobradores De Deuda* (Debt Collectors) fotonovela in 2016.

The Commission also educates industry members by developing and distributing business education materials, delivering speeches, blogging, participating in panel discussions at industry conferences, and providing interviews to general media and trade publications. The FTC's business education resources can be found in its online [Business Center](#).<sup>106</sup> The Business Center logged more than 3.4 million page views in 2016, and there are more than 58,000 email subscribers to the [Business Blog](#).<sup>107</sup> 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 service providers, consumer advocates, and people who work in immigrant, Native American, Latino, Asian, and African American communities to discuss consumer protection issues, including the FTC's work in the debt collection arena. As discussed further below, the Commission hosted several public workshops examining such issues this past year. The FTC also hosted five Ethnic Media Roundtables around the country in 2016, bringing together law enforcement, community organizations, consumer advocates and members of the ethnic media to discuss how consumer protection issues — including debt collection — affect their communities.

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<sup>106</sup> <http://business.ftc.gov/>.

<sup>107</sup> <http://business.ftc.gov/blog>.

# 8. 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. 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.

## 8.1 Bureau rulemaking and research

### 8.1.1 Bureau research projects

The Bureau is engaged in several research projects to better understand the debt collection market and its impact on consumers, which will help inform the development of rules. These research projects include:

- i. a consumer survey to obtain quantitative data about consumers' experiences with debt and debt collection;
- ii. consumer testing to learn about the effectiveness of debt collection disclosures;
- iii. a qualitative survey of debt collectors to understand the operational costs of collecting debt and how these vary across debt collection firms; and
- iv. a report on online debt sales markets.

The Bureau released findings from its Survey of Consumer Views on Debt in January 2017.<sup>108</sup> The survey results substantially expand the understanding of debt collection in the United States by providing the first comprehensive and nationally representative data on consumers' experiences and preferences related to debt collection. The survey asked consumers about their experiences, if any, with debt collectors over the past year. Some key findings of the survey are discussed below in a separate section of this chapter (8.1.4).

The Bureau is also conducting consumer testing to assess, among other things, the effectiveness of certain disclosures to be provided by debt collectors, including: (1) information about the debt and its owner; (2) that a communication is from a debt collector and that the information the debt collector receives from consumers will be used to collect the debt; (3) a consumer's legal rights in responding to debt collectors, including a consumer's ability to dispute a debt; and (4) information about how a debt's age affects a collector's ability to sue the consumer. The FDCPA currently requires that collectors provide some of this information to consumers during or within five days of the initial communication as part of a "validation notice". Consumer testing provides insight into consumers' understanding of debt collection disclosures. The Bureau can use this knowledge to assess whether consumers' understanding would be increased by improving the information the disclosure conveys or the way this information is provided.

To better understand debt collector costs, the Bureau conducted a qualitative survey of debt collection firms, and the Bureau released a report on this survey in July 2016.<sup>109</sup> The study included a written questionnaire completed by 60 debt collection firms and phone interviews with more than 30 debt collection firms and vendors to the collections industry. The study provides the Bureau with a baseline understanding of the operational costs of debt collection firms, which the Bureau can use to anticipate and gauge the likely effects of any potential regulations on the debt collection industry.

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<sup>108</sup> <http://www.consumerfinance.gov/data-research/research-reports/consumer-experiences-debt-collection-findings-cfpbs-survey-consumer-views-debt/> The Bureau released some preliminary findings from this survey in July 2016. See Appendix B of CFPB, "Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking" (July 28, 2016), available at [http://files.consumerfinance.gov/f/documents/20160727\\_cfpb\\_Outline\\_of\\_proposals.pdf](http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf).

<sup>109</sup> [http://files.consumerfinance.gov/f/documents/Third\\_Party\\_Debt\\_Collection\\_Operations\\_Study\\_embargoed.pdf](http://files.consumerfinance.gov/f/documents/Third_Party_Debt_Collection_Operations_Study_embargoed.pdf).

The Bureau published a report<sup>110</sup> in January 2017 that described findings from a review of 298 portfolios of charged-off debt that were offered for sale on three online marketplaces between January of 2015 and August of 2015. Together, these portfolios were advertised as containing the information of more than 1.2 million consumer accounts. The Bureau reviewed debt listings, including advertised asking price, number of accounts, face value, age, and number of prior placements. The report described the characteristics of portfolios available for purchase on these marketplaces and noted that online debt sales, if combined with questionable practices that have been highlighted at some other websites by the FTC, may permit private personal information to be acquired cheaply and easily by anyone online.

### 8.1.2 FDCPA Rulemaking

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.

During 2014, the Bureau began carefully evaluating the responses to the ANPR. On July 28, 2016, the Bureau published an Outline of Proposals Under Consideration (the “Outline”) in preparation for a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel. The Outline addressed proposals under consideration for those who are defined as “debt collectors” under the FDCPA.<sup>111</sup>

On August 25, 2016, the Bureau convened a panel pursuant to the SBREFA composed of the CFPB, Small Business Administration (SBA), and the Office of Management and Budget (OMB) to obtain input from small businesses in the debt collection industry on the possible effect of debt collection rulemaking on their businesses. The Bureau is considering the feedback it received through the SBREFA panel and from other stakeholders subsequent to publication of the Outline. Additionally, the Bureau, among other things, is actively engaged in research, as described above in Section 8.1.1.

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<sup>110</sup> Consumer Financial Protection Bureau. “Market Snapshot: Online Debt Sales.” January 2017.  
<https://www.consumerfinance.gov/data-research/research-reports/market-snapshot-online-debt-sales/>

<sup>111</sup> The outline can be found at <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-considers-proposal-overhaul-debt-collection-market/>

### 8.1.3 Market monitoring and outreach

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

During 2016, CFPB staff spoke at both regional and national events on the topic of debt collection. The CFPB also held meetings with many consumer groups, industry groups, vendors, and government officials to better understand consumers' experiences with debt collection, as well as how the market and industry function.

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

### 8.1.4 Survey of Consumer Views on Debt

This section presents select findings of the Survey of Consumer Views on Debt (“survey”)<sup>112</sup> which was conducted by the Consumer Financial Protection Bureau between December 2014 and March 2015. The survey results substantially expand the understanding of debt collection in the United States by providing the first comprehensive and nationally representative data on consumers' experiences and preferences related to debt collection.

The sample for the Survey of Consumer Views on Debt was selected from credit records maintained by one of the top three nationwide credit repositories, and the survey data were adjusted for differences in response rates for different types of consumers. As a result, estimates from the survey are representative of U.S. consumers with a credit report. The survey asked consumers about their experiences, if any, with debt collectors over the past year. For consumers

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<sup>112</sup> Available at [http://files.consumerfinance.gov/f/documents/201701\\_cfpb\\_Debt-Collection-Survey-Report.pdf](http://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf)

who had such an experience, the survey captured detail on the debt for which they were most recently contacted.<sup>113</sup>

The prevalence of collections-related contact disputes and lawsuits by consumers varies by consumer characteristics. About one-in-three consumers with a credit record (32 percent) indicated that they had been contacted by at least one creditor or collector trying to collect one or more debts during the year prior to the survey. Most consumers who were contacted about a debt in collection (72 percent) reported that they had been contacted about two or more debts.

Consumers with relatively low incomes were more likely to report having experienced debt collection efforts in the prior year. About half of consumers (52 percent) with (self-reported) annual household income less than \$20,000 reported that they had been contacted about repaying a debt in collection; this share falls to just 16 percent for those with income of \$70,000 or more (Table 5).

**TABLE 5:** DISTRIBUTION OF THE NUMBER OF DEBTS CONSUMERS WERE CONTACTED ABOUT, BY ANNUAL HOUSEHOLD INCOME (PERCENT)

<b>Annual household income</b>	<b>None</b>	<b>One debt</b>	<b>Two or more</b>
Less than \$20,000	48	14	38
\$20,000-\$39,999	58	8	33
\$40,000-\$69,999	70	10	20
\$70,000 or more	84	5	11

In contrast to the differences in the share of consumers contacted about a debt in collection, the shares of consumers who reported having been contacted about multiple debts are generally similar by income. Among consumers who said they had been contacted about a debt in collection, the fraction of consumers contacted about multiple debts ranged between 67 percent and 80 percent across the four groups. Consumers between the ages of 35 and 49 were most likely to say they were contacted about a debt in collection (Table 6). By comparison, it was less common for consumers age 62 or older to report having been contacted about a debt collection; although even within this age segment 19 percent reported having been contacted about a debt in collection. The

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<sup>113</sup> Specifically, the survey asked about consumers’ experiences with debt collection in the period since January 2014, roughly one year before the survey was conducted

pattern by age may reflect, in part, the fact that debt holdings similarly peak among households with a head in their mid-30s to mid-40s.<sup>114</sup>

**TABLE 6: DISTRIBUTION OF THE NUMBER OF DEBTS CONSUMERS WERE CONTACTED ABOUT BY AGE (PERCENT)**

<b>Age</b>	<b>None</b>	<b>One debt</b>	<b>Two or more</b>
Less than 35	66	8	26
35–49	58	9	33
50–61	65	11	24
62 or older	81	7	12

Table 7 reports findings by consumers’ self-reported race and ethnicity. Consumers are categorized as either white or non-white for race and, separately, are categorized as Hispanic or non-Hispanic for ethnicity.<sup>115</sup>

More than 40 percent of non-white consumers reported having been contacted about a debt in collection, compared with 29 percent of white consumers. Hispanic consumers were more likely than non-Hispanic consumers to report having been contacted about a collection (39 percent and 31 percent, respectively). These and other differences across groups may stem from factors that are correlated with demographic characteristics, and disentangling these potential factors is beyond the scope of this report.<sup>116</sup>

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<sup>114</sup>According to the 2013 Survey of Consumer Finances, the share of families with any debt is greatest for families with a head between the ages of 35 and 44, and these families have the second-highest median amount of debt (conditional on having any). See [http://www.federalreserve.gov/econresdata/scf/files/scf2013\\_tables\\_internal\\_real.xls](http://www.federalreserve.gov/econresdata/scf/files/scf2013_tables_internal_real.xls).

<sup>115</sup> The non-white category includes individuals who self-identified alone or in combination as: Black or African American; American Indian or Alaska Native; Asian; or Native Hawaiian or other Pacific Islander. The white category comprises those who self-identified as white alone.

<sup>116</sup> For example, the estimated difference for whites compared with non-whites narrows by roughly one-quarter when comparing consumers with similar incomes in a regression framework.

**TABLE 7: DISTRIBUTION OF THE NUMBER OF DEBTS CONSUMERS WERE CONTACTED ABOUT BY RACE AND ETHNICITY (PERCENT)**

<b>Consumer characteristic</b>	<b>None</b>	<b>One debt</b>	<b>Two or more</b>
<b>Race</b>			
White	71	7	21
Non-white	56	13	31
<b>Ethnicity</b>			
Hispanic	61	9	30
Non-Hispanic	69	9	23

Past-due medical bills, credit cards, past-due telecommunications bills, and student loans were among the most frequently cited debts consumers were contacted about. The prevalence of contacts about credit cards, student loans, and past-due telecommunications bills in collection differed across demographic and credit-score groups. In contrast, the shares of consumers who were contacted about past-due medical bills were more comparable across income levels, credit scores, and ages.

According to the survey, consumers were also contacted about debts they believed were in error. More than half of consumers (53 percent) who were contacted about a debt in collection in the past year indicated that the debt was not theirs, was owed by a family member, or was for the wrong amount. Roughly one-quarter (27 percent) of consumers who were contacted about a debt in collection reported having disputed a debt with their creditor or collector in the past year.

## 8.2 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 – both through public workshops and the FTC’s input to the CFPB on debt collection rulemaking and guidance initiatives.

In 2016, the FTC organized four Common Ground conferences at which law enforcement, consumer advocates, and community members discussed consumer protection issues, including debt collection, and encouraged consumers to report problems to the FTC. In December 2016, the

Commission also held a workshop, “The Changing Consumer Demographics,” which brought together law enforcement, consumer groups and researcher participants to discuss how to combat unlawful practices – including illegal debt collection activities – that impact specific consumer populations as the country’s demographics change.

Additionally, the FTC also continues to work closely with the CFPB to coordinate efforts to protect consumers from unfair, deceptive, and abusive debt collection practices.<sup>117</sup> 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.

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<sup>117</sup> 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 (“MOU”) 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>. The agencies reauthorized the MOU in May 2015 for a three-year term. See <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-cfpb-reauthorize-memorandum-understanding>.

# APPENDIX: LETTER FROM THE FTC



Office of the Secretary

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

February 13, 2017

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 5, 2017. As the letter mentions, the Consumer Financial Protection Bureau (CFPB) is responsible for providing annual reports to Congress concerning the federal government's efforts to implement the Fair Debt Collection Practices Act (FDCPA).<sup>118</sup> 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. We hope that the information in this letter will assist the CFPB in preparing this year's report.

In 2016, the Commission continued its aggressive law enforcement activities against abusive, unfair, and deceptive debt collection practices. Among other things, the FTC:

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<sup>118</sup> 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, 2009-93 (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.

- filed or resolved 12 cases against 61 defendants, and obtained nearly \$70 million in judgments;<sup>119</sup>
- banned 44 companies and individuals that engaged in serious and repeated violations of law from ever working in debt collection again<sup>120</sup>; and
- secured successful summary judgment decisions in three litigated matters, resulting in orders banning defendants from the debt collection industry.<sup>121</sup>

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.

## **I. 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<sup>122</sup> authorize the Commission to investigate and take law enforcement action against debt collectors that violate those statutes.<sup>123</sup> 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, 15 U.S.C. § 45(m). 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

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<sup>119</sup> These figures include cases filed and resolved in 2016, as well as cases filed in previous years but resolved in 2016.

<sup>120</sup> As a complement to all of the debt collection law enforcement cases that the FTC has brought over the years, in 2015 the FTC began publishing a list of every individual and company that the agency has sued that has been banned from the debt collection industry. This list, located at <https://www.ftc.gov/enforcement/cases-proceedings/banned-debt-collectors>, is a valuable resource to help law-abiding collection industry professionals avoid doing business with these defendants, as well as to help state debt collection licensing officials and law enforcers better protect consumers. Currently, the list includes over 135 banned individuals and companies.

<sup>121</sup> 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 250 companies and individuals who engaged in unlawful collection practices, banning 139 from the industry, and securing over \$419 million in judgments.

<sup>122</sup> FDCPA, 15 U.S.C. § 1692-1692p; FTC Act, 15 U.S.C. §§ 41-58.

<sup>123</sup> 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. § 1692i. 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.

itself under Section 13(b) of the FTC Act. In other circumstances, the FTC may refer the case to the Department of Justice.

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

## **I. Legal Actions**

From January 1 through December 31, 2016, the FTC brought or resolved 12 debt collection cases. In several of its Section 13(b) cases, the Commission obtained preliminary relief that included *ex parte* temporary restraining orders with asset freezes, immediate access to business premises, and appointment of receivers to take over the debt collection businesses.

The Commission's recent efforts to protect consumers from deceptive and abusive debt collection practices culminated in Operation Collection Protection. This initiative, which the FTC began in 2015, was the first coordinated federal-state-local enforcement initiative targeting illegal debt collection. The nationwide crackdown included over 165 actions by more than 70 federal, state, and local law enforcement and regulatory authorities against collectors who used illegal tactics such as harassing phone calls and false threats of litigation or arrest.<sup>124</sup> Participants in the initiative continue to work closely together to share information and coordinate actions. The FTC's actions, involving (1) phantom debt collection, (2) collection via unlawful text messages and emails, (3) other FDCPA and FTC Act violations, and (4) Fair Credit Reporting Act violations, are discussed below.

### **1. Phantom Debt Collection**

The Commission has continued its efforts to fight “phantom debt collection” this year. Phantom debt collectors engage in unfair, deceptive, or abusive conduct by attempting to collect on debts that either do not exist or are not owed to the phantom debt collector. The Commission

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<sup>124</sup> See, e.g., Press Release, FTC and Federal, State and Local Law Enforcement Partners Announce Nationwide Crackdown Against Abusive Debt Collectors (Nov. 4, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/11/ftc-federal-state-local-law-enforcement-partners-announce>; Press Release, FTC and State Law Enforcement Partners Announce More Actions and Results in Continuing Crackdown Against Abusive Debt Collectors (Jan. 7, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/01/ftc-state-law-enforcement-partners-announce-more-actions-results>; Press Release, FTC and Illinois Attorney General Halt Chicago-Area Operation Charged with Collecting and Selling Phantom Payday Loan Debts (Mar. 30, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/03/ftc-illinois-attorney-general-halt-chicago-area-operation-charged>; Press Release, FTC Actions: Debt Collectors Banned from Debt Collection Business (Sept. 7, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/09/ftc-actions-debt-collectors-banned-debt-collection-business>; Blog Post, A Debt Collection Round-up (Dec. 27, 2016), available at <https://www.consumer.ftc.gov/blog/debt-collection-round>; Blog Post, Collection Protection reflection (Dec. 30, 2016), available at [https://www.ftc.gov/news-events/blogs/business-blog/2016/12/collection-protection-reflection?utm\\_source=govdelivery](https://www.ftc.gov/news-events/blogs/business-blog/2016/12/collection-protection-reflection?utm_source=govdelivery).

initiated or resolved three actions involving phantom debt collection in 2016: *SQ Capital LLC*, *Stark Law LLC*, and *Kelly S. Brace*. *SQ Capital* and *Stark Law* are the first two cases brought by the FTC against operations for allegedly selling fake debt portfolios. This past year, the Commission also returned money to thousands of consumers who were targeted by the phantom debt schemes in *Centro Natural Corp.* and *Broadway Global Master Inc.*

In December, the Commission charged *SQ Capital* with selling portfolios of fake payday loan debts that debt collectors used to get people to pay on debts they did not owe.<sup>125</sup> According to the complaint, the defendants' fake portfolios listed social security numbers and bank account numbers of real consumers, but falsely claimed that the purported borrowers had failed to repay debts they never owed, to lenders who did not make these loans.<sup>126</sup> The complaint also alleges that the defendants did not have the authority to sell debts of the lenders they named. At the FTC's request, a federal court entered a preliminary injunction halting this operation pending litigation.

In March, the FTC partnered with the Illinois Attorney General to shut down a Chicago-area operation that allegedly threatened and intimidated consumers to collect phantom payday loan debts they did not owe, or did not owe to the defendants.<sup>127</sup> The *Stark Law* defendants allegedly called consumers and demanded immediate payment for supposedly delinquent loans, often armed with consumers' sensitive personal and financial information. Defendants also allegedly threatened consumers with lawsuits or arrest, deceptively held themselves out as a law firm with authority to sue and obtain substantial judgments against delinquent consumers, and disclosed debts to relatives, friends and co-workers. As in *SQ Capital*, the complaint also charged defendants with unlawfully selling portfolios of fake debt to other debt collectors in violation of the FTC Act. The court entered an *ex parte* temporary restraining order (and later a preliminary injunction) with an asset freeze, appointment of a receiver, and injunctive relief prohibiting the defendants from selling fake debt portfolios or from making the misrepresentations at issue in this case. Litigation continues in this matter.

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<sup>125</sup> *FTC v. Joel Jerome Tucker*, 2:16-cv-082816 (D. Kan. Dec. 16, 2016) (Complaint); see also Press Release, FTC Charges Defendants with Selling Fake Payday Loan Debt Portfolios (Jan. 9, 2017), available at <https://www.ftc.gov/news-events/press-releases/2017/01/ftc-charges-defendants-selling-fake-payday-loan-debt-portfolios>.

<sup>126</sup> To add credibility to some of the fake loans in their portfolios, the defendants used the name of a purported lender associated with another Commission law enforcement action, *FTC v. AMG Services*, 2:12-cv-00536 (D. Nev. Sept. 30, 2016) (Order). In September 2016, a federal court ordered the defendants in the *AMG* payday lending scheme to pay a record \$1.3 billion for deceiving and illegally charging consumers undisclosed and inflated fees. *Id.*; see also Press Release, U.S. Court Finds in FTC's Favor and Imposes Record \$1.3 Billion Judgment Against Defendants Behind *AMG* Payday Lending Scheme (Oct. 4, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/10/us-court-finds-ftcs-favor-imposes-record-13-billion-judgment>.

<sup>127</sup> *FTC v. Stark Law, LLC*, No. 1:16-cv-3463 (N.D. Ill. Mar. 21, 2016) (Complaint); see also Press Release, FTC and Illinois Attorney General Halt Chicago-Area Operation Charged with Collecting and Selling Phantom Payday Loan Debts (Mar. 30, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/03/ftc-illinois-attorney-general-halt-chicago-area-operation-charged>.

In *Brace*, the FTC and New York Attorney General successfully resolved their litigation against another phantom debt collection scheme. The complaint in this case, filed in October 2015, alleged that the defendants attempted to collect on payday debts they knew were bogus.<sup>128</sup> According to the complaint, the defendants bought payday loans supposedly owed to a company that repeatedly told them to stop collection efforts because the debts were fabricated, and ignored consumers' evidence that they had never authorized a payday loan. The defendants allegedly employed other deceptive and abusive tactics to get consumers to pay, including false threats of lawsuits and arrest. The Court granted – over the defendants' objections – the plaintiffs' request to enter a temporary restraining order halting their operations, and, shortly thereafter, entered a stipulated preliminary injunction. In the summer of 2016, the FTC and the New York AG secured a stipulated final order banning the defendants from the debt collection business, prohibiting other deceptive claims, and imposing a judgment of more than \$18.4 million, which was partially suspended based on inability to pay.<sup>129</sup> The plaintiffs also secured an order against a relief defendant imposing a partially-suspended \$418,000 judgment.

In addition to the law enforcement actions above, this past year the Commission also returned funds to consumers who lost money to phantom debt collection operations previously stopped by the FTC. In November 2016, the agency mailed 3,446 checks totaling more than \$830,000 to consumers in the *Centro Natural Corp.* matter.<sup>130</sup> The Commission had secured stipulated orders banning defendants from debt collection or telemarketing, after alleging that they targeted thousands of Spanish-speaking consumers with unlawful tactics to collect on fake debts and to coerce consumers into purchasing goods that they did not want.<sup>131</sup> In April, the Commission mailed 1,701 checks totaling more than \$596,000 to consumers who lost money to the fraudulent scheme in *Broadway Global Master Inc.*<sup>132</sup> The agency had previously secured a

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<sup>128</sup> *FTC and State of New York v. Brace*, No. 1:15-cv-00875-RJA (W.D.N.Y. Oct. 5, 2015) (Complaint).

<sup>129</sup> *FTC and State of New York v. Brace*, No. 1:15-cv-00875-RJA (W.D.N.Y. Aug. 18, 2015) (Stipulated Order), *see also* Press Release, FTC Action: Debt Collector Banned from Collection Business (Aug. 24, 2016), *available at* <https://www.ftc.gov/news-events/press-releases/2016/08/ftc-action-debt-collector-banned-collection-business>.

<sup>130</sup> Press Release, FTC Returns Money to Victims of Debt Collection Scheme (Nov. 14, 2016), *available at* <https://www.ftc.gov/news-events/press-releases/2016/11/ftc-returns-money-victims-debt-collection-scheme>.

<sup>131</sup> *FTC v. Centro Natural Corp.*, No. 14-cv-23879 CMA (S.D. Fla. June 30, 2015) (Stipulated Order); *see also* Press Release, FTC Action Puts an End to Fraudulent Debt Collection Scheme that Targeted Spanish-Speaking Consumers (July 8, 2015), *available at* <https://www.ftc.gov/news-events/press-releases/2015/07/ftc-action-puts-end-fraudulent-debt-collection-scheme-targeted>.

<sup>132</sup> Press Release, FTC Returns Money to Consumers Harmed by Scam That Collected Millions in Phantom Payday Loan Debts (Apr. 6, 2016), *available at* <https://www.ftc.gov/news-events/press-releases/2016/04/ftc-returns-money-consumers-harmed-scam-collected-millions>.

stipulated order banning this operation from the debt collection business because of allegations that it harassed consumers into paying phantom debts.<sup>133</sup>

## 2. The FTC's *Messaging For Money Sweep*: Debt Collection Via Unlawful Text Messages And Emails

The Commission has also continued its efforts to pursue schemes that use deceptive, threatening or otherwise unlawful text messages or emails to target consumers. In 2015, the Commission launched a law enforcement sweep, called "Messaging for Money," to stop three operations engaged in such practices. This past year, the FTC won summary judgment in one of those cases (*The Primary Group Inc.*), and successfully resolved the charges against nine of the defendants in the other two matters (*Premier Debt Acquisitions LLC* and *Unified Global Group, LLC*).

In June 2016, the court in *The Primary Group* matter granted the FTC's summary judgment request on all counts against an unlawful debt collection operation.<sup>134</sup> The court found that, as alleged by the Commission, these defendants deceived consumers using text messages, emails, and phone calls that falsely threatened consumers with arrest or lawsuits if they did not make debt collection payments. The court also found that they unlawfully contacted consumers' friends, family members, and employers; withheld information consumers needed to confirm or dispute debts; and did not identify themselves as debt collectors, as required by law.<sup>135</sup> The court permanently banned two defendants from debt collection activities and imposed a judgment of \$980,000.

The Commission successfully resolved *Premier Debt Acquisitions* in January 2016 by securing a stipulated order banning the defendants from debt collection activities and imposing a judgment of \$2,229,756, which was partially suspended.<sup>136</sup> The complaint alleged that defendants

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<sup>133</sup> *FTC v. Broadway Global Master Inc.*, No. 2:12-cv-0855 JAM GGH (E.D. Cal. Sept. 10, 2015) (Stipulated Order); see also Press Release, FTC Action Stops Scammers Who Collected Millions in Phantom Payday Loan Debts (Sept. 16, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/09/ftc-action-stops-scammers-who-collected-millions-phantom-payday>.

<sup>134</sup> *FTC v. The Primary Group*, No. 1:15-cv-1645 (N.D. Ga. May 19, 2016) (Order Granting Summary Judgment); see also Press Release, FTC Action: Debt Collector Banned from Debt Collection Business (June 16, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/06/ftc-action-debt-collector-banned-debt-collection-business>.

<sup>135</sup> *FTC v. The Primary Group*, No. 1:15-cv-1645 (N.D. Ga. May 11, 2015) (Complaint); see also Press Release, FTC Halts Three Debt Collection Operations That Allegedly Threatened and Deceived Consumers via Illegal Text Messages (May 21, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-halts-three-debt-collection-operations-allegedly-threatened>.

<sup>136</sup> *FTC v. Premier Debt Acquisitions LLC*, No. 1:15-cv-00421-FPG (W.D.N.Y. Jan. 7, 2016) (Order); see also Press Release, FTC and State Law Enforcement Partners Announce More Actions and Results in Continuing Crackdown

impersonated law enforcement and government officials, falsely threatened consumers with a lawsuit or arrest, and falsely threatened to charge some consumers with criminal fraud, garnish their wages, or seize their property.<sup>137</sup> In text messages, the defendants allegedly claimed they would sue consumers and threatened to seize consumers' possessions unless they paid. In voicemails, the defendants also allegedly falsely claimed that a "uniformed officer" was on the way to consumers' homes. In addition to banning the defendants from the debt collection industry, the order prohibits them from making misrepresentations about other financial products or services.

In *FTC v. Unified Global Group*, the FTC secured an approximately \$27 million judgment and significant injunctive relief in a settlement with four defendants involved in an abusive debt collection operation. The FTC's complaint against *Unified Global Group*<sup>138</sup> alleged that the defendants sent texts to trick consumers into calling them back. The texts included false statements such as, "YOUR PAYMENT DECLINED WITH CARD \*\*\*\*\_\*\*\*\*\_\*\*\*\*\_5463 . . . CALL 866.256.2117 IMMEDIATELY," even though consumers had never arranged to make payments to the defendants. The defendants also allegedly used deceptive emails and calls that threatened arrest and civil lawsuits, and unlawfully contacted consumers' friends, families, and co-workers about the supposed debts. In August 2016, the court entered a stipulated order banning the settling defendants from all debt collection activities and imposing a judgment of approximately \$27 million, which was partially suspended because of their inability to pay.<sup>139</sup> Litigation continues against the sole remaining defendant.

### 3. Other Actions To Halt FDCPA And FTC Act Violations

In addition to the cases described above, the FTC successfully resolved five other actions in 2016 to protect consumers from unlawful collection practices: (1) *Federal Check Processing*; (2) *Commercial Recovery Systems*; (3) *Warrant Enforcement Division*; (4) *AFS Legal Services*; and (5) *BAM Financial*. In the first two cases, the FTC secured summary judgment wins against the defendants. The FTC also continued litigating *Vantage Point Services*, filing a motion for summary judgment and securing additional preliminary relief against a defendant.

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Against Abusive Debt Collectors (Jan. 7, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/01/ftc-state-law-enforcement-partners-announce-more-actions-results>.

<sup>137</sup> *FTC v. Premier Debt Acquisitions LLC*, No. 1:15-cv-00421-FPG (W.D.N.Y. May 11, 2015) (Complaint); see also Press Release, FTC Halts Three Debt Collection Operations That Allegedly Threatened and Deceived Consumers via Illegal Text Messages (May 21, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-halts-three-debt-collection-operations-allegedly-threatened>.

<sup>138</sup> *FTC v. Unified Global Group, LLC*, 15-cv-422-W (W.D.N.Y. May 11, 2015) (Complaint); see also Press Release, FTC Halts Three Debt Collection Operations That Allegedly Threatened and Deceived Consumers via Illegal Text Messages (May 21, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-halts-three-debt-collection-operations-allegedly-threatened>.

<sup>139</sup> *FTC v. Unified Global Group, LLC*, 15-cv-422-W (W.D.N.Y. Aug. 26, 2016) (Order); see also Press Release, FTC Actions: Debt Collectors Banned from Debt Collection Business (Sept. 7, 2016) available at <https://www.ftc.gov/news-events/press-releases/2016/09/ftc-actions-debt-collectors-banned-debt-collection-business>.

In *FTC v. Federal Check Processing Inc.*, the court granted the Commission’s request for summary judgment against a Buffalo, New York-based debt collection scheme.<sup>140</sup> The district court adopted the magistrate judge’s recommendation and report that found that defendants had 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.<sup>141</sup> The court had previously entered an *ex parte* temporary restraining order, followed by a stipulated preliminary injunction, to halt this abusive debt collection operation. The final order bans the defendants from the debt collection industry and requires them to pay a nearly \$11 million judgment.

In *United States v. Commercial Recovery Systems, Inc.*, a case that the FTC referred to the Department of Justice for prosecution, the court entered summary judgment against two defendants in an unlawful debt collection operation. The court found that the debt collectors had “repeatedly and routinely violated the FDCPA . . . in multiple ways, by making blatantly false representations for the purpose of intimidating consumers into paying debts.”<sup>142</sup> Among other things, the court found that their routine threats to sue consumers were “patently false,” and further that they falsely impersonated attorneys and threatened to seize or garnish consumers’ property or wages. The court banned the two defendants from debt collection, and will determine the civil penalty amount to impose on one of them, the president of the company.<sup>143</sup> Additionally, the government secured a stipulated final order against the remaining individual defendant subjecting him to the same ban and imposing a \$496,000 civil penalty judgment (partially suspended due to an inability to pay).<sup>144</sup>

In January 2016, the Commission also successfully resolved its action in *Warrant Enforcement Division*. The FTC’s complaint in this matter alleged that the defendants, while under

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<sup>140</sup> *FTC v. Federal Check Processing, Inc.*, No. 1:14-cv-00122 (W.D.N.Y Oct. 13, 2016) (Judgment and Permanent Injunction); see also Press Release, FTC Wins Summary Judgment Against Buffalo, NY-based Abusive Debt Collectors; Defendants Banned from Collection Business (Oct. 31, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/10/ftc-wins-summary-judgment-against-buffalo-ny-based-abusive-debt>.

<sup>141</sup> *FTC v. Federal Check Processing, Inc.*, No. 1:14-cv-00122 (W.D.N.Y Mar. 25, 2014) (Complaint), 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>.

<sup>142</sup> *United States v. Commercial Recovery Sys., Inc.*, No. 4:15-cv-36 (E.D. Tex. Apr. 7, 2016) (Memorandum Opinion and Order).

<sup>143</sup> *United States v. Commercial Recovery Sys., Inc.*, No. 4:15-cv-36 (E.D. Tex. Apr. 18, 2016) (Order); see also Press Release, FTC Action: Debt Collector Banned from Collection Business (Sept. 22, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/09/ftc-action-debt-collector-banned-collection-business>.

<sup>144</sup> *United States v. Commercial Recovery Sys., Inc.*, No. 4:15-cv-36 (E.D. Tex. Sept. 21, 2016) (Order)

contract to collect overdue utility bills, traffic tickets, court fines, and other debts for local governments in Texas and Oklahoma, sent consumers letters and postcards containing false or unsubstantiated threats of arrest that appeared to come from a municipal court.<sup>145</sup> The FTC charged that the false and unsubstantiated threats made to collect municipal court debts violated the FTC Act, and those made to collect utility debts violated both the FTC Act and the FDCPA. Under a stipulated order for permanent injunction, the defendants are prohibited from misrepresenting any material fact in collecting debts, including that failure to pay a debt will result in the consumer being arrested or jailed, having their vehicle impounded, or being unable to renew their driver's license.<sup>146</sup> The order also imposed a \$194,888 judgment that was suspended based on the defendants' inability to pay.

Similarly, the Commission secured a final order in its suit against *AFS Legal Services*, resolving charges that the defendants impersonated investigators and law enforcement, and threatened to arrest, jail, and sue consumers if they did not pay debts.<sup>147</sup> According to the FTC's complaint, filed in October 2015, the defendants often had consumers' personal information – such as social security and bank account numbers – that caused consumers to believe that the calls and associated threats were legitimate.<sup>148</sup> The collectors also allegedly made harassing calls and contacted relatives, friends, and co-workers about consumers' debts. The stipulated final order, entered in August 2016, bans the defendants from debt collection activities and imposes a judgment of more than \$4.4 million, the amount consumers lost to this scheme.

In July 2016, the FTC also successfully resolved its suit against *BAM Financial*, banning the defendants from the debt collecting business and securing other important relief.<sup>149</sup> The FTC's complaint, filed in October 2015, alleged that the defendants bought consumer debts and collected payment by deceptively threatening consumers with lawsuits, wage garnishment, and arrest, and by

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<sup>145</sup> *FTC v. Municipal Recovery Servs. Corp.*, No. 15-CV-04064-N (N.D. Tex. Dec. 24, 2015) (Complaint).

<sup>146</sup> *FTC v. Municipal Recovery Servs. Corp.*, No. 15-CV-04064-N (N.D. Tex. Jan. 29, 2016) (Order); *see also*, Press Release, FTC and State Law Enforcement Partners Announce More Actions and Results in Continuing Crackdown Against Abusive Debt Collectors (Jan. 7, 2016), *available at* <https://www.ftc.gov/news-events/press-releases/2016/01/ftc-state-law-enforcement-partners-announce-more-actions-results>.

<sup>147</sup> *FTC v. Nat'l Payment Processing LLC*, No. 1:15-cv-3811-AT (N.D. Ga. Aug. 29, 2016) (Order); *see also* Press Release, FTC Actions: Debt Collectors Banned from Debt Collection Business (Sept. 7, 2016), *available at* <https://www.ftc.gov/news-events/press-releases/2016/09/ftc-actions-debt-collectors-banned-debt-collection-business>.

<sup>148</sup> *FTC v. Nat'l Payment Processing LLC*, No. 1:15-cv-3811-AT (N.D. Ga. Oct. 30, 2015) (Complaint).

<sup>149</sup> *FTC v. BAM Fin'l, LLC*, No. 8:15-cv-01672-JVS-DFM (C.D. Cal. July 11, 2016) (Order); *see also* Press Release, FTC Action: Abusive Debt Collectors Banned from Collection Business (July 14, 2016), *available at* <https://www.ftc.gov/news-events/press-releases/2016/07/ftc-action-abusive-debt-collectors-banned-collection-business>.

impersonating attorneys or process servers.<sup>150</sup> According to the complaint, the defendants also unlawfully disclosed debts to, or harassed, third parties; failed to identify themselves as debt collectors; and failed to notify consumers of their right to receive verification of the purported debts. At the FTC's request, the court entered a temporary restraining order that prohibited the defendants from violating the FDCPA and the FTC Act, froze the defendants' assets, and appointed a receiver. The stipulated final order bans them from debt collection activities and imposes a \$4,802,646 judgment, to be partially suspended upon the surrender of certain assets based on defendants' inability to pay.

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<sup>150</sup> *FTC v. BAM Fin'l, LLC*, No. 8:15-cv-01672-JVS-DFM (C.D. Cal. Oct. 19, 2015) (Complaint); *see also* Press Release, FTC and Federal, State and Local Law Enforcement Partners Announce Nationwide Crackdown Against Abusive Debt Collectors (Nov. 4, 2015), *available at* <https://www.ftc.gov/news-events/press-releases/2015/11/ftc-federal-state-local-law-enforcement-partners-announce>.

The FTC continues to work with the New York Attorney General in a joint action against *Vantage Point*, a Buffalo, New York-based debt collection scheme. According to the complaint filed in 2015, defendants' collectors posed as a law firm, process servers, or even government agents – misrepresenting to consumers that they had committed a crime and would be arrested and jailed.<sup>151</sup> The complaint further alleges that the defendants made similar claims about consumers to their co-workers, friends, and family members. At the request of the FTC and the New York AG, the court entered a preliminary injunction to halt the unlawful practices. In 2016, the plaintiffs requested that the court enter summary judgment against the defendants, and that motion is currently pending. The plaintiffs also sought and obtained a second *ex parte* temporary restraining order and preliminary injunction against one of the individual defendants for operating another debt collection scheme in violation of the first preliminary injunction.

#### **4. Action To Halt Fair Credit Reporting Act Violations By A Debt Collector**

In May 2016, in the *Credit Protection Association* matter – referred to the Department of Justice for prosecution – the court entered a stipulated final order against a debt collector for alleged violations of the Fair Credit Reporting Act's (FCRA) Furnisher Rule.<sup>152</sup> Specifically, the complaint alleged that the defendant debt collector lacked adequate policies and procedures to handle consumer disputes regarding information the company provided to credit reporting agencies.<sup>153</sup> The complaint also alleged that the company did not have a policy requiring notice to consumers of the outcomes of investigations about disputed information and that, in numerous instances, consumers were not informed whether information they disputed had been corrected. The stipulated final order requires the defendant to pay \$72,000 in civil penalties and put in place policies and procedures that comply with the requirements of the FCRA and the Furnisher Rule. The company will also be required to follow the Rule's requirements related to conducting dispute investigations and informing consumers of their outcome.

## **II. Other Law Enforcement Activities: Amicus Curiae Briefs**

The FTC also periodically submits briefs as *amicus curiae* in federal court cases around the country on important debt collection issues. Even when the FTC is not a plaintiff or a defendant in

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<sup>151</sup> *FTC and State of New York v. Vantage Point Services, LLC*, No. 1:15-cv-00006-WMS (W.D.N.Y. Jan. 5, 2015) (Complaint); see also Press Release, FTC, New York Attorney General Crack Down on Abusive Debt Collectors (Feb. 26, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/02/ftc-new-york-attorney-general-crack-down-abusive-debt-collectors>.

<sup>152</sup> 15 U.S.C. §§ 1681-1681x (FCRA); Duties of Furnishers of Information to Consumer Reporting Agencies (Furnisher Rule), 16 C.F.R. § 660, *recodified as* Duties of Furnishers of Information, 12 C.F.R. § 1022, subpart E.

<sup>153</sup> *U.S. v. Credit Protection Association*, 3:16-cv-01255-D (N.D. Tex. May 9, 2016) (Complaint and Order); see also Press Release, Debt Collector Settles FTC Charges It Violated Fair Credit Reporting Act (May 9, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/05/debt-collector-settles-ftc-charges-it-violated-fair-credit>.

private FDCPA cases, courts often seek and rely on the Commission’s expertise in debt collection issues. This is yet another way for the FTC to protect consumers from unlawful practices and ensure consistency and logic in the development of federal debt collection law and policy.

Since Congress passed the Dodd-Frank Act, the FTC has often partnered with the CFPB on these *amicus* briefs. This past year, the Ninth Circuit and the Seventh Circuit adopted favorable interpretations of the FDCPA in two cases in which the FTC and CFPB had filed joint *amicus* briefs: *Hernandez v. Williams, Zinman & Parham* and *Franklin v. Parking Revenue Recovery Servs. Inc.* In both cases, the courts reaffirmed the Act’s broad applicability and significant protections for consumers.

### 1. “Initial Communication”: *Hernandez Amicus Brief*

In 2014, the FTC joined the CFPB in filing an *amicus* brief in the Ninth Circuit *Hernandez* matter regarding the meaning of the phrase “initial communication” in the FDCPA.<sup>154</sup> Section 1692g of the FDCPA requires “a debt collector” to send the consumer a “validation notice” containing certain information about the consumer’s alleged debts and the consumer’s rights “[w]ithin five days after the initial communication with a consumer in connection with the collection of any debt.”<sup>155</sup> 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,” 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 doing so, the district court joined one side of a split among several district courts.

In our joint brief, the FTC and CFPB urged the Ninth Circuit to reject the district court’s interpretation. As we noted, the use of the general articles in the phrases “*the* initial communication” from “*a* debt collector” are most naturally read to refer to *each* subsequent debt collector’s initial communication with a consumer.<sup>156</sup> We also noted in our brief that the district

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<sup>154</sup> 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](http://www.ftc.gov/system/files/documents/amicus_briefs/hernandez-v.williams-zinman-parham-p.c./140821briefhernandez1.pdf).

<sup>155</sup> See 15 U.S.C. § 1692g(a) (duty to send the notice); 15 U.S.C. § 1692g(b) (required contents of notice).

<sup>156</sup> Our brief observed that interpreting the statute as applying only to the initial communication by the initial collector leads to a logical inconsistency because, typically, that initial communication with a consumer regarding a debt comes

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.

In July 2016, the Ninth Circuit reversed the decision of the district court, becoming the first Court of Appeals to issue a published opinion on this portion of § 1692g. It held that, “[a]pplying well-established tools of statutory interpretation and construing the language in § 1692g(a) in light of the context and purpose of the FDCPA, . . . the phrase ‘the initial communication’ refers to the first communication sent by any debt collector, including collectors that contact the debtor after another collector already did.”<sup>157</sup> The court found that this interpretation is clear when read in the context of the FDCPA as a whole.<sup>158</sup> The court also agreed that this interpretation is supported by the FDCPA’s declared purpose to protect consumers from abusive collection practices – in this case, by ensuring that consumers get updated information about debts and opportunities to verify them when their debts change hands.<sup>159</sup>

## 2. Unpaid Parking Charges As “Debts”: *Franklin Amicus* Brief

In 2015, responding to an invitation from the Seventh Circuit, the FTC and CFPB submitted a joint *amicus* brief urging the court to reverse a district court ruling that unpaid parking fees are not “debts,” as that term is defined in the FDCPA.<sup>160</sup> The case arose out of a class action complaint alleging that a collection company hired by a private parking lot operator to collect unpaid parking fees and nonpayment penalties sent dunning letters to consumers that violated the FDCPA. The defendants moved for summary judgment, which the district court granted. The court found that the charges were a “fine” and not the byproduct of a “transaction.” Thus, the court reasoned, the sum the defendants were attempting to collect was not a “debt,” as that term is defined in the FDCPA, so the prohibitions of the Act did not apply to the defendants’ dunning letters.

Our joint brief explained that the district court erred. The agencies noted that, in enacting the FDCPA, Congress broadly defined “debt” to mean “any obligation . . . to pay money arising out of

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from a creditor, an entity not subject to the FDCPA. If “initial communication” was read to mean this very first communication, and only this communication, then the FDCPA would not apply at all.

<sup>157</sup> *Hernandez v. Williams, Zinman & Parham PC*, 829 F.3d 1068, 1070 (9th Cir. July 20, 2016).

<sup>158</sup> *Id.* at 1072.

<sup>159</sup> *Id.* at 1078.

<sup>160</sup> Brief of *Amici Curiae, Franklin v. Parking Revenue Recovery Servs. Inc.*, No. 14-3774 (7th Cir. Dec. 11, 2015), available at [https://www.ftc.gov/system/files/documents/amicus\\_briefs/franklin-et-al-v.parking-revenue-recovery-services-inc./p082105\\_parking\\_revenue\\_amicus\\_brief\\_7th\\_cir\\_14-3774.pdf](https://www.ftc.gov/system/files/documents/amicus_briefs/franklin-et-al-v.parking-revenue-recovery-services-inc./p082105_parking_revenue_amicus_brief_7th_cir_14-3774.pdf).

a [consumer] transaction.” 15 U.S.C. § 1692a(5). The brief argued that the critical term “transaction,” which Congress left undefined, is a broad reference to many different types of consensual business dealings. It further argued that parking in a lot that was open to the public for a stated fee constituted a “transaction,” similar to many other commercial dealings in which consumers engage daily. Because the fees that the debt collector sought “ar[ose] out of” that transaction, the charges were “debts” and the collection of those debts was governed by the FDCPA.

In August 2016, the Seventh Circuit issued a decision reversing the district court, holding that the unpaid parking fees and nonpayment penalties at issue in this matter constitute “debts” within the meaning of the FDCPA.<sup>161</sup> Thanking the FTC and CFPB for their assistance, the Seventh Circuit adopted the agencies’ analysis that these fees and penalties are, in fact, obligations arising out of consumer “transactions” under the FDCPA.

## **II. EDUCATION AND PUBLIC OUTREACH**

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

The Commission reaches tens of millions of consumers through English and Spanish print and online materials, blog posts, and speeches and presentations. To maximize its outreach efforts, FTC staff works with an informal network of about 16,000 community-based organizations and national groups that order and distribute FTC information to their members, clients, and constituents. In 2016, the FTC distributed 15.5 million print publications to libraries, police departments, schools, non-profit organizations, banks, credit unions, other businesses, and government agencies. In 2016, the FTC logged more than 43 million views of its business and consumer education website pages. The FTC’s channel at [YouTube.com/FTCvideos](https://www.youtube.com/FTCvideos) houses 144 videos, which were viewed more than 603,306 times in 2016. A new video — [Fraud Affects Every Community: Debt Collection](#) — tells the first-person story of a veteran who was contacted by a debt collector. The consumer blogs in [English](#)<sup>162</sup> and [Spanish](#)<sup>163</sup> reached 159,825 (English) and 44,835 (Spanish) email subscribers, and regularly serve as source material for local and national news stories.

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

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<sup>161</sup> *Franklin v. Parking Revenue Recovery Servs. Inc.*, 832 F.3d 741 (7<sup>th</sup> Cir. Aug. 10, 2016).

<sup>162</sup> <http://www.consumer.ftc.gov/blog>.

<sup>163</sup> <http://www.consumidor.ftc.gov/blog>.

complaints Spanish speakers make to the FTC and offer practical tips to help detect and stop common scams. People ordered more than 45,125 copies of the *Cobradores De Deuda* (Debt Collectors) fotonovela in 2016.

The Commission also educates industry members by developing and distributing business education materials, delivering speeches, blogging, participating in panel discussions at industry conferences, and providing interviews to general media and trade publications. The FTC's business education resources can be found in its online [Business Center](#).<sup>164</sup> The Business Center logged more than 3.4 million page views in 2016, and there are more than 58,000 email subscribers to the [Business Blog](#).<sup>165</sup> 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 service providers, consumer advocates, and people who work in immigrant, Native American, Latino, Asian, and African American communities to discuss consumer protection issues, including the FTC's work in the debt collection arena. As discussed further below, the Commission hosted several public workshops examining such issues this past year. The FTC also hosted five Ethnic Media Roundtables around the country in 2016, bringing together law enforcement, community organizations, consumer advocates and members of the ethnic media to discuss how consumer protection issues — including debt collection — affect their communities.

### **III. 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 – both through public workshops and the FTC's input to the CFPB on debt collection rulemaking and guidance initiatives.

In 2016, the FTC organized four Common Ground conferences at which law enforcement, consumer advocates, and community members discussed consumer protection issues, including debt collection, and encouraged consumers to report problems to the FTC. In December 2016, the Commission also held a workshop, "The Changing Consumer Demographics," which brought together law enforcement, consumer groups and researcher participants to discuss how to combat unlawful practices – including illegal debt collection activities – that impact specific consumer populations as the country's demographics change.

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<sup>164</sup> <http://business.ftc.gov/>.

<sup>165</sup> <http://business.ftc.gov/blog>.

Additionally, the FTC also continues to work closely with the CFPB to coordinate efforts to protect consumers from unfair, deceptive, and abusive debt collection practices.<sup>166</sup> 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.

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<sup>166</sup> 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 (“MOU”) 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>. The agencies reauthorized the MOU in May 2015 for a three-year term. See <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-cfpb-reauthorize-memorandum-understanding>.

#### **IV. 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 Malini Mithal, Acting Associate Director, Division of Financial Practices, at (202) 326-2972.

By direction of the Commission.

Donald S. Clark  
Secretary

## Appendix A

### Debt Collection Information 2016

Title	Page Views <sup>167]</sup>		Print distribution	
	English	Spanish	English	Spanish
Consumer Information				
<a href="#">Coping with Debt</a>	116,850	14,949	86,825	14,275
<a href="#">Debt Collection</a>	358,796	41,809	124,825	
<a href="#">Debt Collection Arbitration</a>	12,706	660	22,125	
<a href="#">Debt Collectors</a> (Spanish)				45,125
<a href="#">Debts and Deceased Relatives</a>	65,746	29,546		
<a href="#">Fake Debt Collectors</a>	55,542	1,855		
<a href="#">Garnishing Federal Benefits</a>	25,986	1,745		
<a href="#">Settling Credit Card Debt</a>	102,404	4,679		
<a href="#">Managing Debt: What to Do</a>	4,717	1,017	72,950	11,850
<a href="#">Identity Theft Letter to a Debt Collector</a>	2,047	55		
<a href="#">Time-Barred Debts</a>	94,764	32,712		
Video				
<a href="#">Dealing with Debt Collectors</a>	5,370	519		
<a href="#">Helping Victims of Identity Theft</a>	1,163			
<a href="#">Fraud Affects Every Community: Debt Collection</a>	12,977			

Title	Page Views		Print Distribution	
	English	Spanish	English	Spanish
Business Information				
<a href="#">The Fair Debt Collection Practices Act</a>	34,077		11,580	
Video				
<a href="#">Debt Collection</a>	431	76		

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<sup>167</sup> Page view numbers include pages viewed on FTC websites, but not pages viewed when non-FTC sites download and re-post FTC content.

## **Consumer Blog Posts**

[Fraud affects every community: debt collection](#)

[A year in debt collection](#)

[How to stop calls from debt collectors](#)

[The FTC's Debt Collection Hall of Shame has some new inductees](#)

[Bogus debts, bogus collections](#)

[A debt collection round-up](#)

[Closing time for fake debt collector](#)

[Avoid a debt relief scam](#)

## **Video**

[Fraud Affects Every Community: Debt Collection](#)

## **Business Blog Posts**

[Collection Protection reflection](#)

[BAM banned from debt collection](#)

[Debt collectors: You may "like" social media and texts, but are you complying with the law?](#)

[Disguise the limit: FTC sues debt collectors who claimed official affiliation](#)

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