COMMENTS *of AARP*
on the
FEDERAL TRADE COMMISSION's

Statement of Policy Regarding Communications in Connection with Collection of a Decedent's Debt
or
Deceased Debt Collection Policy Statement

December 1, 2010

Via Electronic Submission

As the leading organization representing the interests of older people, AARP appreciates the opportunity to submit written comments to the FTC's recently proposed debt collection policy, addressing the collection of decedent's debts under the Fair Debt Collection Practices Act (FDCPA).[1]

AARP strongly opposes the proposed suggestion that an unobligated survivor may be contacted by a debt collector regarding collection of a decedent's debt. This proposal is a major step backward, particularly for older people. In light of the tidal wave of complaints regarding debt collection received by the FTC and state attorneys general every year for the last ten years – more than any other industry[2] – it is imperative that the FTC correct the guidance to ensure it complies with the statutory language and protects the people the FDCPA was designed to protect.

The FTC guidance should strongly protect unobligated survivors from contacts and attempts to collect a decedent's debts in light of emerging and disturbing trends related to collection of decedent's debts. Debt collectors are keenly aware that survivors are particularly vulnerable after the death of their loved one.[3] Indeed, specialized debt collection agencies with a focus on the collection of decedents' debts

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[1] 75 Fed. Reg. 62389 (Oct. 8, 2010), also available at www.FTC.gov .

[2] News Release, *Top 10 List of Consumer Complaints for 2008*, (Aug. 31, 2009), http://www.naag.org/top-10-list-of-consumer-complaints-for-2008-aug.-31-2009.php; Federal Trade Commission, *Annual Report 2009: Fair Debt Collection Practices Act* 4, available at http://www.ftc.gov/os/2009/02/P094804fd cpareport.pdf. Complaints about third-party debt collectors and in-house collectors in 2008 totaled 104,661 complaints and accounted for 25.2% of all complaints the FTC received.

[3] *See* Chris Serres, *Death Won't Stop These Debt Collectors,* Star Tribune, (Sept. 22, 2010) (Hounded series: A new breed of collector is targeting the still-grieving family members of people who have died without paying their bills).

have sprung up in the last decade or two.[4] Databases and tracking systems of probate cases have been developed to serve creditors.[5] Collectors encourage decedent's creditors to use the time of grieving to establish a customer relationship with the decedent's survivors in order to recover on the debt from the estate.[6]

The Proposal Will Seriously Harm Older People

Unfortunately, what is proposed will facilitate debt collectors contacting unobligated relatives and friends of decedents -- in direct violation of the FDCPA's explicit restrictions on such contacts -- and using that contact as an opportunity to persuade the relatives to pay the decedent's debts out of their own funds.

Older people are extremely vulnerable to abuses by debt collectors. Many older people fear they will lose their home or go to jail for not paying debts.[7] Whether the abusive tactic involves convincing the survivor to honor the memory of their loved one, using guilt, providing misinformation, or simply suggesting that the debt must be paid, bereaved relatives and friends are particularly sensitive and vulnerable.[8]

Older people living alone are often targets of abusive collection tactics because they may be socially isolated, particularly after the death of a spouse or loved one.[9] They are also more easily upset by an abusive telephone call; indeed, the stress from harassing tactics can actually threaten their health. The effects of abusive debt collection practices are more keenly felt by people on fixed or limited incomes, such as retirees and low income people. Because the death of a spouse can have a significant adverse impact on household wealth, surviving unobligated spouses may be unable to meet even their basic food, shelter, and medical needs, let alone pay debts they are not obligated to pay.

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[4] *Id*.; *see* Phillips and Cohen at www.phillips-cohen.com/ : Probate Finder OnDemand at www.probatefinder.com; Forte, LLC at www.fortedatasolutions.com ; DCM Services at www.dcmservices.com.

[5] *See* Probate Finder OnDemand at www.probatefinder.com .

[6] *See* Forte, "From CRM to DCRM: A Multi-Generational Approach to Customer Relationships" pp. 3,5,6 (2009), available at www.fortedatasolutions.com/whitepaper.php .

[7] *See* Donna S. Harkness, *When Over-The-Limit is Over The Top: Addressing The Adverse Impact of Unconscionable Consumer-Credit Practices on the Elderly*, 16 Elder L.J. 1, 3-4 [2008]; Matthew W. Ludwig, *Abuse, Harassment, and Deception: How the FDCPA is Failing America's Elderly Debtors*, 1 Elder L.J. 135, 135-37, 151-56 (2008).

[8] *See* Sid Kirchheimer, *A Dead Debt? Bill collectors prey on grieving families*, AARP Bulletin (Mar. 2, 2009), available at http://www.aarp.org/money/scams-fraud/info-02-2009/a_dead_debt_.html.

[9] *See, e.g.*, Charles Duhigg, "*Bilking the Elderly with a Corporate Assist,*" N.Y. Times at A1 (May 20, 2007).

The FTC proposal does not adequately protect survivors, and in fact is directly contrary to the protections provided by the FDCPA. Worse, the FTC proposal comes at a time when older people increasingly are experiencing unmanageable debt loads,[10] leading to them having the highest rate of bankruptcy filings of any age group. Current economic conditions, growing debt burdens, and the rising rate of home foreclosures put older people at greater risk of harm. Given that more debt will likely be taken to the grave under these conditions, it is all the more important to strengthen -- not erode -- the protections provided to survivors.[11]

Moreover, collectors and debt buyers attempt to secure payment for debts that can be years old and forgotten (or never incurred at all, but the transactions took place so long ago the consumer is unsure). They have a strong profit incentive to seek to collect debts deemed uncollectible by the original creditor and which may not be owed at all. As difficult as it is for alleged debtors to defend against such claims, it is even harder for unobligated survivors.[12]

The FDCPA Strictly Prohibits Contacts with Unobligated Relatives, Friends, and Neighbors

Contrary to the proposed policy, the clear language of the FDCPA forbids debt collectors from contacting unobligated survivors except to locate the representative of the decedent's estate. The FDCPA clearly states: "… a debt collector may not communicate, in connection with the collection of any debt, with *any person* other than the consumer..."[13] The FDCPA was written to strongly protect unobligated friends, neighbors, and relatives of consumers as well as the people obligated on the debt.[14]

The FTC proposal assumes, without examination, that the bereaved, unobligated, widow or widower may be contacted as a "spouse," even though a widow or widower is no longer a "spouse" at that point. The marriage terminates at the death of a spouse.[15] The plain meaning of the FDCPA makes it clear that contact with a

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[10] An increasing number of older people -- from 7.3% in 2004 to 9.9% in 2007 -- have debt payments that exceed 40% of their income, and this increase is especially acute for older age groups (EBRI Notes, *Debt of the Elderly and Near Elderly, 1992–2007*, Vol. 30, No. 10. p.9 (Oct. 2009), available at http://www.ebri.org/pdf/notes pdf/EBRI_Notes_10-Oct09.DebtEldly.pdf).

[11] *See* Serres, *supra,* n. 3.

[12] *Id*.

[13] 15 U.S.C. § 1692c(b) (emphasis added).

[14] *See* National Consumer Law Center, Inc., Fair Debt Collection § 4.5 (6th Ed. 2008).

[15] *See* e.g. 52 Am. Jur. 2d Marriage § 8 ("Thus, under American law all valid marriages continue in force during the joint lives of the parties or until divorce or annulment; marriage cannot be revoked at the will of the parties, and is terminable only by death or

"surviving spouse" who is not obligated to pay a debt is not permitted.[16] Instead, Congress specifically addressed collections against decedent estates by explicitly authorizing debt collectors to contact the "administrator" or "executor" of the deceased's estate.[17] Congress did not, however, authorize contact with a surviving spouse.[18] Indeed, contact with the unobligated spouse of a living debtor is permitted only as an explicit exception to the contact rule by virtue of § 1692c(d) ("For the purpose of this section, the term 'consumer' includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.").

While the FDCPA permits debt collectors to contact unobligated survivors in order to obtain the contact information of the representative of the decedent's estate, 15 U.S.C. § 1692b, the debt collector may not contact unobligated survivors at all if it has the contact information for the estate's representative. The proposed guidance, which implies that a debt collector may approach unobligated survivors of the deceased and be permitted to persuade them to assume the deceased's debt, defies the plain language and structure of the FDCPA.

Thus, the FTC guidance should clearly state that the debt collector should only communicate with the attorney of the executor or administrator once the debt collector has knowledge of legal representation.[19] Moreover, this protection should be extended to prohibit any contact after the collector becomes aware that the estate is represented by anyone recognized by state law.

FTC Should Clarify That Debt Collectors May Not Imply Unobligated Survivors Should Assume Debts Of Decedent

AARP strongly supports the FTC's proposal to require debt collectors to affirmatively disclose to any representative of the estate who is contacted by the collector that they have no legal obligation to pay the decedent's debts out of their own funds, including their funds received from the decedent outside of probate, such as

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presumption of death, or by a judicial decree of divorce, dissolution, or annulment.") (Footnotes omitted).

[16] A survivor who was a cosigner or account holder[16] of a credit card, on the other hand, would be obligated and could be contacted by the debt collector directly and asked for payment. "Authorized users" of credit card accounts are generally not contractually responsible for the account and in some states responsible at most for their own charges.

[17] 15 U.S.C. § 1692c(d).

[18] Hundreds of sections of the U.S. Code use the term "surviving spouse." See e.g 10 U.S.C. § 1447(q) (military pensions); 26 U.S.C. § 2(a)(1) (Internal Revenue Code); 38 U.S.C. § 101(3) (veterans' benefits); 42 U.S.C. § 402(g)(1) (Social Security benefits).

[19] 15 U.S.C. § 1692c(a)(2).

jointly owned property.[20] The FTC should go further and state that debt collectors may not imply that the representative should personally assume the decedent's debt or accept payment from the representative's funds. To do so violates § 1692c(b)'s clear prohibition against collecting debts from unobligated parties.

AARP also strongly supports the FTC proposal clarifying that appealing to the "purported moral obligation to pay the debt" would be considered a violation of 15 U.S.C. § 1692d prohibiting abuse and the FTC Act.[21] In support of this protection, AARP strongly opposes the FTC proposal to allow a debt collector calling for contact information for the estate to reveal to unobligated survivors that the debt collector is calling about the decedent's debt. Section 1692b(2) of the FDCPA clearly prohibits mentioning the debt in the pursuit of contact information. Permitting a debt collector to discuss the debt with the survivor opens the door to collection abuses and seriously undermines the FDCPA.

Conclusion

AARP appreciates the opportunity to provide comments relating to collection of decedent's debts. AARP strongly opposes the proposal to permit debt collectors to contact the decedent's unobligated survivors or to disclose the contact as relating to the collection of a debt. AARP strongly supports the FTC's proposal to require debt collectors affirmatively to disclose to any representative of the estate that they have no legal obligation to pay the decedent's debts out of their own funds and the affirmation that a collector appealing to the "purported moral obligation to pay the debt" violates the FDCPA. AARP also urges systemic improvements to protect people from abusive collections by addressing the underlying wide-spread industry practices that encourage abusive collections.

[20] *Id.* at 62394.
[21] *Id.*