

COMMENTS TO FEDERAL TRADE COMMISSION
Submitted by the Privacy Rights Clearinghouse

December 1, 2010

Federal Trade Commission
Office of the Secretary, Room H-135 (Annex W)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
ATTN: Christopher Koegel

Submitted electronically: <https://ftcpublishcommentworks.com/ftc/deceaseddebtcollection>

**RE: FTC Statement of Policy Regarding Communications in Connection
With Collection of a Decedent's Debt**

Dear Mr. Koegel:

The Privacy Rights Clearinghouse¹ appreciates the opportunity to comment on the Federal Trade Commission's (FTC or Commission) statement of policy regarding a debt collector's attempts to collect a deceased person's debt. We address our comments as follows:

- 1. Introduction**
- 2. Complaints about Third Party Contacts**
- 3. Rights of Third Parties Contacted**
- 4. FTC Enforcement Authority**
- 5. Conclusion and Recommendations**

1. Introduction

Debt collector contacts are limited by the Fair Debt Collection Practices Act (FDCPA) to the consumer who is claimed to owe the debt, or, when the consumer is deceased, to the consumer's spouse, parent (if the consumer is a minor) guardian, executor, or administrator. Privacy for the debtor, even if deceased, and the right to be free of harassment about the debt of others is the moving force behind Congress' decision to

¹ The Privacy Rights Clearinghouse is a nonprofit consumer education and advocacy organization based in San Diego, CA, and established in 1992. The PRC advises consumers on a variety of informational privacy issues, including financial privacy, medical privacy and identity theft, through a series of fact sheets as well as individual counseling available via telephone and e-mail. It represents consumers' interests in legislative and regulatory proceedings on the state and federal levels.

www.privacyrights.org

keep collectors from contacting relatives, friends, neighbors, employers or anyone else about an individual's private business affairs.

On October 8, 2010, the FTC announced a policy regarding debt collectors' communications with third parties regarding a decedent's debt.² In this, the FTC expands the numbers of individuals a collector may contact when the debtor is deceased. This, the FTC explains, is in response to new categories of individuals with authority to settle an estate under the Uniform Probate Code (UPC) now adopted by many states. In most cases, the identity of the person designated to settle the estate will be revealed in public probate court filings. When this is not the case, the FTC's policy would allow collectors to "initiate a written or oral communication to the decedent's estate."

According to the Commission's policy statement, the agency will not commence an enforcement action against collectors who contact those other than a decedent's spouse, guardian, parent or personal representative. The policy statement makes clear that collectors must follow the FDCPA by refraining from misleading and deceptive practices.

However, the Commission says nothing about other FDCPA rights that would be available to a debtor if he or she were alive. To remedy this, the FTC should be clear that survivors, personal representatives, or others designated under UPC procedures have the same rights as the deceased, that is the right to request verification of a deceased person's debt, the right to dispute the debt, and the right to request that the collector cease contact.

We urge the Commission to reconsider this policy or at a minimum to offer guidance for individuals who may be contacted by a collector about a deceased consumer's debt. We further urge the Commission to reconsider its policy regarding no enforcement for deceased debtor contacts.

2. Complaints about Third Party Contacts

Debt collection, without a doubt, cannot be an easy job. At the same time, Congress has set the standard in the FDCPA for legitimate debts to be collected only in a fair and respectful manner without unwarranted invasions of privacy. Yet, the debt collection industry is rife with abusive practices, often involving repeated contacts with friends, neighbors, employers, even perfect strangers.

Abusive behavior is, in fact, so pervasive in the debt collection industry that Congress requires the Commission to submit an annual report to explain what the agency has done to curtail abuse and violations of the FDCPA. The Commission's most recent report to Congress identifies an array of problems encountered by consumers in dealing with debt collectors:

Such practices cause substantial consumer injury, including payment of amounts not owed, unintended waivers of rights, invasions of privacy, and emotional

² 75 Federal Register 62389, October 8, 2010, www.ftc.gov/os/fedreg/2010/october/101008deceaseddebtcollection.pdf

distress. In some circumstances, illegal collection practices can place consumers deeper in debt.

www.ftc.gov/os/2010/04/P104802fdcpa2010annrpt.pdf³

According to the FTC's latest report to Congress, the agency receives more complaints about the debt collection industry than any other industry. (2010 Annual Report, page 5) A significant number of complaints filed with the FTC involve contacts with persons other than the consumer claimed to owe the debt as well as disclosure to third parties of details about the consumer's private business. (2010 Annual Report, page 9)

Likewise, many consumers contact the PRC, through the telephone hotline or by email, to complain about abusive and repeated contacts by aggressive debt collectors.⁴ Often consumers report that collectors have contacted employers, neighbors or relatives, even when the collector knows where to find the consumer who is said to owe the debt. Complaints about debt collector contacts also come to the PRC from relatives, former roommates, even people who do not know the debtor but have a similar name or may have the telephone number the targeted consumer previously had.

The volume and kinds of complaints should be enough to alert the Commission that third party contacts by debt collectors are a major problem. When such problems exist while a consumer is still living, the problem can only get worse for survivors. Instances of contacts with third parties by collectors trying to "track down" the person with "authority to pay" the decedent's debts promises to result in a flood of unwarranted, invasive questions and unwarranted revelations of private details about a deceased's affairs.

Regrettably, the FTC's policy statement places no restrictions on who a collector might contact about a decedent's debt. The FDCPA already allows contact with spouses, parents, guardians, and administrators, those most likely to have authority to settle an estate. To prevent collectors from engaging in an aggressive, widespread inquisition of grieving survivors, distant relatives, friends, or anyone who may have known the deceased, the FTC should revise its policy to make it clear that collectors may contact *only* individuals specified by the FDCPA or otherwise identified in public probate court records as having authority to pay the decedent's debts.

3. Rights of Third Parties Contacted

Contact with an individual about a deceased person's debt creates a situation that is ripe for abuse. Obviously, the person who incurs a debt is in the best position to know whether the debt has been paid or, as sometimes happens, the collector is attempting to

³ Federal Trade Commission 2010 Annual Report, Fair Debt Collection Practices Act (2010 Annual Report)

⁴ The PRC has published a guide for consumers which discusses FDCPA rights and offers tips on dealing with debt collectors. *Debt Collection Practices: When Hardball Tactics Go Too Far*, www.privacyrights.org/fs/fs27-debtcoll.htm

collect a debt that is not even owed. It is not at all unusual for an identity theft victim to first learn about the fraud when a debt collector comes calling.

Federal law -- the FDCPA and the Fair Credit Reporting Act (FCRA) -- give consumers some rights to remedy situations where, for example, a debt is erroneously claimed or the consumer is a victim of identity theft. Personal representatives or others designated to settle a deceased person's affairs are at a great disadvantage when approached by a debt collector.

As we all know, not everyone plans to die. In an ideal world, the person designated or appointed to settle an estate would have systematically organized financial records explaining the decedent's assets and liabilities down to the last detail. But, this is seldom the case, particularly when a relatively young person dies suddenly. Even in long-time marriages, it is often the case that one spouse handles all financial matters. Upon that person's death the survivor is left struggling to piece the financial picture together.

Creditors and debt collectors have the right to seek repayment of legitimate debt, even when the debtor is deceased, as long as the contact comports with the law. The FDCPA not only prohibits abusive and deceptive practices but also gives consumers certain rights. The FTC's policy statement addresses conduct the agency expects from collectors attempting to recover the debt of a decedent. But, nowhere does the agency offer guidance for survivors or personal representatives that may be contacted by a debt collector.

Attempts to collect "old" debt are apparently on the rise.⁵ A new and thriving industry has emerged where companies buy "old" debt for pennies on the dollar. The debt claimed to be owed may date back many years, long before the seven year period the account would have fallen off the consumer's credit report. Profits are made when collectors are able to recover any amount over the minimal amount paid to purchase the debt. When margins for profit are slim, a collector may have a heightened incentive to use aggressive tactics.

Surely, a living person would know whether the debt had been paid or was not his or her debt at all. But, a surviving relative or personal representative, often without complete records, would likely not have the necessary information to assess the validity of the debt, particularly one that dates back many years. Wanting to "do the right thing," this would make the survivor an easy target for unscrupulous collectors.

To reduce the likelihood that survivors, personal representatives and others may become targets of unscrupulous debt collectors, the FTC should require collectors who contact others about a decedent's debt to give notice that the person contacted has:

- (1) the right to request verification of the debt;
- (2) the right to dispute the debt; and
- (3) the right have the collector cease contact.

⁵ See e.g. *Dealing with Old Debt*, Lucy Lazarony, 2004, www.bankrate.com/brm/news/cc/20040116a1.asp.

Further, the FTC should publish guidance on its web site specifically for survivors or others who may be called upon to settle an estate.

4. FTC Enforcement Authority

The FTC's October 8, 2010, policy statement says that the agency will not enforce the contact limitations of the FDCPA for contacts related to a decedent's debt. This is a very troubling precedent and one that is likely to have unintended consequences. The FTC's position in this matter both discourages consumer complaints and encourages harassment by an industry that is known for overly aggressive tactics.

Instead of publically stating it will not enforce certain provisions of the FDCPA, the FTC should do what it always does. The FTC, as the agency with the authority to enforce the FDCPA, always has the discretion *not* to file an enforcement action. After investigating consumer complaints and all other information pointing to an abuse, the FTC may make the decision not to file an enforcement action. However, the agency should not, in this case, forego its authority to investigate reported abuses or to file an enforcement action in an appropriate case.

The FTC's action in this matter discourages consumers from complaining, even about the most egregious behavior. Complaints filed by consumers are one of the most effective tools the Commission has in assessing abuses in any industry.

The importance of consumer complaints to the Commission's mission cannot be overstated. The Commission recognizes this in its most recent FDCPA report to Congress:

The FDCPA requires the FTC to report on the level of industry compliance with the law. Historically, the FTC has received much of its information about the conduct of debt collectors directly from complaints consumers file with the FTC and from its enforcement work. The FTC uses complaints for general monitoring of the industry, target selection, and preliminary analysis that might, with further factual development, reveal or help prove a law violation.

2010 Annual Report, page 3,

<http://www.ftc.gov/os/2010/04/P104802fdcpa2010annrpt.pdf>

With this reporting mechanism from the public, the agency might initiate an investigation, bringing an enforcement action or even report to Congress that new legislation is needed to address newly reported abuses within the business community. Indeed, in a situation such as this, the agency should want, through consumer complaints, to monitor the effect of this recent policy.

The FTC should encourage rather than discourage consumers from complaining about abusive practices. It is entirely within the realm of possibility that the FTC's decision to expand allowed contacts in the case of a deceased will prompt unscrupulous collectors to

tell a decedent's friends, relatives or others that there is no reason to complain because the FTC has said it would not listen.

5. Conclusion and Recommendations

There is no dispute that creditors have the right to repayment of legitimate debt, even when the person who incurred the debt is deceased. The FDCPA and state probate laws adopted under the UPC give creditors and debt collectors numerous categories of individuals to contact about a decedent's debt. The FTC's policy should be restated to allow contact about a decedent's debt only with individuals specified by the FDCPA or identified in public probate court records.

We urge the FTC to reconsider its position of forgoing enforcement in any case. This is particularly important when it involves an industry so closely associated with abusive practices as documented in numerous consumer complaints.

We also urge the Commission to require collectors who initiate contacts about a decedent's debt to advise those contacted that they have the same FDCPA rights as the deceased to (1) request verification of the debt; (2) dispute the debt; and (3) demand that the collector cease contacts about the debt.

The FTC should also publish guidance on its website for survivors and personal representatives who may be contacted by a debt collector.

We appreciate the opportunity to comment in this important matter.

Sincerely,

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