



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

February 21, 2014

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 8, 2014. As your letter mentions, the Consumer Financial Protection Bureau (CFPB) is responsible for providing annual reports to Congress concerning the federal government's efforts to implement the Fair Debt Collection Practices Act (FDCPA).¹ This letter and its appendices describe the efforts the Federal Trade Commission (Commission or FTC) has taken during the past year in the debt collection arena. In the FTC's debt collection work, the CFPB has been a valuable partner, and the Commission anticipates that our partnership will become even stronger in the future. We hope that the information in this letter will assist the CFPB in preparing this year's report.

In 2013, the Commission continued with aggressive law enforcement activities to address new and troubling issues in debt collection, including text message-based debt collection and the ongoing emergence of "phantom debt collection" operations. The FTC also obtained tough and effective remedies to promote compliance with the law, including its largest civil penalty to date (\$3.2 million) against a third-party debt collector. In addition, the Commission educated consumers about their rights and businesses about their responsibilities under the FDCPA and the FTC Act,² and engaged in research and policy development activities to identify and advocate for debt collection policies and practices that advance the agency's consumer protection mission.

¹ The Dodd-Frank Act directed the CFPB to report to Congress on the federal government's implementation and administration of the FDCPA. Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. 11-203, § 1089, 124 Stat. 1376, 2092-93 (2010) (amending the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p). Before the enactment of the Dodd-Frank Act, Section 815(a) of the FDCPA, 15 U.S.C. § 1692m, required the FTC to report directly to Congress on these topics. The Commission submitted such annual reports from 1977 to 2011.

² 15 U.S.C. §§ 41-58.

I. The Commission's Debt Collection Program

The FTC's debt collection program is a three-pronged effort: (1) vigorous law enforcement; (2) education and public outreach; and (3) research and policy initiatives. Over the past year, the FTC has employed all three prongs in its effort to curb unlawful debt collection practices and protect consumers.

II. Law Enforcement Activities

The Commission is primarily a law enforcement agency, and law enforcement investigations and litigation are at the heart of the FTC's recent debt collection work. Both the FDCPA and the FTC Act authorize the Commission to investigate and take law enforcement action against debt collectors that violate those statutes.³ 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. Where a collector's violations are so egregious that a court order is necessary to halt the conduct immediately, or where consumer redress and disgorgement are more appropriate forms of monetary relief than civil penalties, the FTC generally files the action itself under Section 13(b) of the FTC Act. Where, on the other hand, preliminary injunctive relief to halt unlawful conduct is unnecessary and civil penalties are appropriate monetary relief, the FTC may refer the case to the Department of Justice.

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

A. Legal Actions

In recent years, to improve deterrence, the Commission has focused on bringing a greater number of cases and obtaining stronger monetary and injunctive remedies against debt collectors that violate the law. From January 1 through December 31, 2013, the FTC has brought or resolved nine debt collection cases—the highest number in any single year. The FTC obtained preliminary or permanent injunctive relief in seven Section 13(b) cases involving debt collection, and referred two additional cases to the Department of Justice for civil penalties. In several of its Section 13(b) cases, the Commission obtained preliminary relief that included *ex parte* temporary restraining orders with asset freezes, immediate access to business premises, and appointment of receivers to run the debt collection businesses.

³ 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. § 1692*l*. 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.

The cases discussed below represent a concerted effort by the FTC to target unlawful debt collection practices including false threats, harassment or abuse, and attempts to collect on “phantom” payday loan debts.

1. Deceptive, Unfair, and Abusive Collector Conduct

Targeting debt collectors that engage in deceptive, unfair, or abusive conduct continues to be one of the Commission’s highest priorities. In particular, the Commission continues to actively pursue debt collectors that secure payments from consumers by falsely threatening litigation or otherwise falsely implying that they are involved in law enforcement. In 2013, the Commission filed or resolved seven actions alleging deceptive, unfair, or abusive debt collection conduct.

In *FTC v. Forensic Case Management Services, Inc.*, the FTC secured substantial monetary judgments against a debt collection enterprise and a complete ban on future debt collection activity, along with other injunctive relief.⁴ The FTC’s complaint alleged that the defendants violated the FTC Act and the FDCPA through such egregious conduct as threats of physical harm, obscene and profane language, revealing consumers’ debts to third parties, and falsely threatening consumers with lawsuits, arrest, and wage garnishment. The judgments in the case exceed \$35.5 million, and despite partial suspension based on the defendants’ inability to pay, the Commission collected more than \$1.1 million for consumer redress.

In *United States v. Expert Global Solutions, Inc.*, the Commission secured a \$3.2 million civil penalty for unlawful collection practices —the highest penalty the FTC has ever obtained against a third-party debt collector.⁵ The FTC’s complaint charged that the company, operating under several business names including “NCO,” violated the FDCPA and the FTC Act by employing harassing collection calls, disclosing consumers’ debts to third parties, and continuing collection efforts without verifying debts even after consumers said they did not owe those debts. The settlement prohibits the company from engaging in this unlawful conduct and further requires that whenever a consumer disputes the validity or the amount of a debt, the company must either terminate collection efforts or suspend collection until it conducts a reasonable investigation and verifies that its information about the debt is accurate and complete.

⁴ *FTC v. Forensic Case Mgmt. Servs., Inc.*, No. 2:11-cv-07484 (C.D. Cal. Jan. 4, 2013) (Final Judgment and Order for Permanent Injunction and Monetary Relief), *see also* Press Release, FTC Settlement Obtains Permanent Ban Against Abusive Debt Collection Operation (Jan. 17, 2013), *available at* <http://www.ftc.gov/news-events/press-releases/2013/01/ftc-settlement-obtains-permanent-ban-against-abusive-debt>.

⁵ *United States v. Expert Global Solutions, Inc.*, No. 3:13-cv-2611 (N.D. Tex. July 16, 2013) (Stipulated Order for Permanent Injunction and Monetary Judgment); *see also* Press Release, World’s Largest Debt Collection Operation Settles FTC Charges, Will Pay \$3.2 Million Penalty (July 9, 2013), *available at* <http://www.ftc.gov/news-events/press-releases/2013/07/worlds-largest-debt-collection-operation-settles-ftc-charges-will>.

In *United States v. National Attorney Collection Services, Inc.*, the Commission brought its first enforcement action involving the use of text messages to collect debts.⁶ The Commission's complaint alleged that the company sent consumers English- and Spanish-language text messages that falsely portrayed the company as a law firm and failed to disclose that it was a debt collector. The company also illegally revealed debts to consumers' family members, friends, and co-workers through the use of mailing envelopes that pictured a large arm shaking money from a consumer being held upside down. The settlement imposed a \$1 million civil penalty, requires the company to obtain consumers' express consent before contacting them by text message, and bars the company from making deceptive legal threats, falsely holding itself out to be a law firm, revealing debts to third parties, and omitting required disclosures.

The Commission also obtained an *ex parte* temporary restraining order and other extraordinary relief to shut down a debt collection enterprise permeated by unlawful conduct. In *FTC v. Asset & Capital Management Group*, a U.S. district court entered a temporary restraining order with an asset freeze, receivership, and immediate access to the business premises against a debt collector that the FTC alleged extorted payments from consumers by using false threats of lawsuits and calculated campaigns to embarrass consumers by unlawfully communicating with family members, friends, and coworkers.⁷ The FTC's complaint also alleged that the company failed to notify consumers of their right to dispute and obtain verification of their debts, and that its collectors failed to disclose the name of the company they represented, and that they were attempting to collect a debt, during calls to consumers. The Commission continues to litigate the *Asset & Capital Management* matter.

In *FTC v. Security Credit Services, LLC*, the Commission alleged that a debt collection enterprise falsely threatened consumers with lawsuits and misled consumers into paying unnecessary fees.⁸ The FTC's complaint alleges that the company violated the FTC Act and the FDCPA by deceiving consumers into using a payment method that required a substantial "convenience fee." In addition, while one defendant in this case was a law firm that in some instances sued consumers for nonpayment, the complaint alleges that the firm regularly threatened to sue consumers where it did not have the authority to do so or in jurisdictions where it was not licensed to practice law, in violation of the FDCPA. The settlement in this case stops the false threats of suit and secures nearly \$800,000 in restitution for consumers for deceptively-obtained convenience fees.

⁶ Complaint, *United States v. Nat'l Attorney Collection Servs., Inc.*, No. 2:13-cv-6212 (C.D. Cal. Aug. 23, 2013); see also Press Release, FTC Brings First Case Alleging Text Messages Were Used In Illegal Debt Collection Scheme (Sept. 25, 2013), available at <http://www.ftc.gov/news-events/press-releases/2013/09/ftc-brings-first-case-alleging-text-messages-were-used-illegal>.

⁷ *FTC v. Asset & Capital Mgmt. Grp., LLC*, No. CV13-5267 (C.D. Cal. July 24, 2013) (*ex parte* TRO); see also Press Release, At FTC's Request, Court Orders Halt to Debt Collector's Illegal Practices, Freezes Assets (Aug. 1, 2013), available at <http://www.ftc.gov/news-events/press-releases/2013/08/ftcs-request-court-orders-halt-debt-collectors-illegal-practices>.

⁸ *FTC v. Security Credit Services, LLC*, No. 1:13-cv-799 (N.D. Ga. Mar. 19, 2013) (Stipulated Final Judgment and Order for Permanent Injunction); see also Press Release, In Settlement with FTC, Debt Collectors Agree to Stop Deceiving Consumers and Pay Nearly \$800,000 (Mar. 26, 2013), available at <http://www.ftc.gov/news-events/press-releases/2013/03/settlement-ftc-debt-collectors-agree-stop-deceiving-consumers-and>.

Finally, the FTC recently settled allegations in *FTC v. AMG Services, Inc.* that a payday lender, collecting on its own behalf, violated the FTC Act by falsely threatening to take legal action against consumers.⁹ The Commission also obtained a temporary restraining order with an asset freeze in *FTC v. Goldman Schwartz*—a case alleging that the defendant falsely threatened consumers with arrest, disclosed consumers’ debts to third parties, collected unauthorized fees, engaged in harassing and abusive conduct, failed to provide required notices, and made collection calls before 8:00 a.m. and after 9:00 p.m.¹⁰

2. Phantom Debt Collection

One of the Commission’s major consumer protection concerns is the continuing rise of so-called “phantom debt collectors.” Phantom debt collectors engage in unfair, deceptive, or abusive conduct by attempting to collect on debts that either do not exist or are not owed to the phantom debt collector. In the past year, the Commission has filed or resolved two actions against phantom debt collectors.

In September 2013, in *FTC v. Pro Credit Group, LLC*, a U.S district court entered a set of stipulated permanent injunctions and judgments totaling \$67.5 million against the defendants for violations of the FTC Act and the Commission’s Telemarketing Sales Rule, 16 C.F.R. Part 310.¹¹ The complaint alleged that the defendants, working closely with an overseas call center in India, defrauded consumers out of millions of dollars by collecting payments for debts that the consumers did not owe to them or did not owe at all. The victims of this scam include consumers who previously applied for or received loans from online payday loan companies and supplied sensitive personal financial information in the process—information that eventually made its way to the defendants. The settlements ban defendants from engaging in telemarketing, debt collection, debt relief services, and/or the sale of financial-related goods or services, depending on the individual defendant’s role in the enterprise. The settlement also includes an unsuspended judgment of approximately \$25 million against one of the individual defendants, and while monetary judgments against the other defendants were largely suspended based on inability to pay, defendants were all required to turn over cash on hand, real estate, and other significant assets.

⁹ *FTC v. AMG Services, Inc.*, No. 2:12-cv-536 (D. Nev. July 18, 2013) (Agreed Joint Motion to Enter Stipulated Order for Permanent Injunction and Judgment); *see also* Press Release, AMG Defendants Settle FTC’s Debt Collection Charges (July 22, 2013), *available at* <http://www.ftc.gov/news-events/press-releases/2013/07/amg-defendants-settle-ftc-s-debt-collection-charges>. The Commission continues to litigate other aspects of its case against AMG Services.

¹⁰ Complaint, *FTC v. Goldman Schwartz*, No. 4:13-cv-106 (S.D. Tex. Jan. 31, 2013); *see also* Press Release, FTC Action Leads to Shutdown of Texas-based Debt Collector that Allegedly Used Deception, Insults, and False Threats Against Consumers (Jan. 31, 2013), *available at* <http://www.ftc.gov/opa/2013/01/goldman.shtm>.

¹¹ *FTC v. Pro Credit Grp., LLC*, No. 8:12-cv-586 (M.D. Fla. Sept. 5, 2013) (stipulated final judgments as to all remaining defendants); *see also* Press Release, FTC Settlement Bans Defendants from Engaging in Debt Collection and Interest Rate Reduction Schemes (Sept. 10, 2013), *available at* <http://www.ftc.gov/news-events/press-releases/2013/09/ftc-settlement-bans-defendants-engaging-debt-collection-and>.

In *FTC v. Pinnacle Payment Services, LLC*, the Commission charged that defendants, working out of offices in Atlanta and Cleveland, collected and processed millions of dollars in payment for phantom debts using robocalls and voice messages that threatened legal action and arrest unless consumers responded within a few days.¹² Callers also often claimed an affiliation with a law firm or a law enforcement agency. The Commission obtained an *ex parte* temporary restraining order with an asset freeze, receivership, and immediate access against the defendants, and the court hearing the matter recently entered a preliminary injunction. *Pinnacle* is the FTC's second phantom debt collection action this year, and its fifth recent case involving allegedly fraudulent, online payday-loan-related operations.¹³ Litigation in this matter is ongoing.

B. Other Law Enforcement Activities

1. Time-Barred Debt: *Delgado* Amicus Brief

An ongoing issue in debt collection concerns the collection of debt that is beyond the applicable statute of limitations (also known as “time-barred debt”). Although a past-statute debt remains a valid obligation owed by the consumer in every state except Mississippi and Wisconsin, consumers have a dispositive affirmative defense to any legal action initiated to collect a past-statute debt.¹⁴ For this reason, as many jurisdictions have recognized, threatening to file a lawsuit to collect on a past-statute debt is a violation of the law.¹⁵

¹² *FTC v. Pinnacle Payment Sys., LLC*, No. 1:13-CV-3455 (N.D. Ga. Oct. 21, 2013) (*ex parte* TRO); see also Press Release, At the FTC's Request, Court Halts Collection of Allegedly Fake Payday Debts (Oct. 24, 2013), available at <http://www.ftc.gov/news-events/press-releases/2013/10/ftcs-request-court-halts-collection-allegedly-fake-payday-debts>.

¹³ Other recent FTC matters involving allegedly fraudulent online payday-loan-related operations include *Pro Credit, Inc.* (M.D. Fla. 2013), *Caprice Mktg. LLC* (N.D. Ill. 2013), *American Credit Crunchers, LLC* (N.D. Ill. 2012), and *Broadway Global Master Inc.* (E.D. Cal. 2012).

¹⁴ California has recently gone further with regard to debt buyers, prohibiting them from filing suit or initiating arbitration if the applicable statute of limitations on their claim has expired. Fair Debt Buying Practices Act, CAL. CIV. CODE §§ 1788.56 (West 2014).

¹⁵ See *United States v. Asset Acceptance LLC*, 8:12-cv-182 (M.D. Fla. Jan. 30, 2012) (stipulated order in case alleging that debt buyer failed to disclose that debts were too old to be legally enforceable); *Baptist v. Global Holding & Inv. Co., LLC*, CIV No. 04-CV-2365 (DGT), 2007 WL 1989450, at *5-6 (E.D.N.Y. July 9, 2007) (finding threat to sue on time-barred debt was a deceptive practice that violated Section 807 of the FDCPA); *Kimber v. Fed. Fin. Corp.*, 668 F. Supp. 1480, 1489 (M.D. Ala. 1987) (holding that a threat to sue on a time-bared debt violated Section 807 of the FDCPA because the collector “implicitly represented that it could recover in a lawsuit, when it fact it cannot properly do so”). Several states also require debt buyers and/or debt collectors to provide a disclosure when collecting on time-barred debts. See, e.g., Fair Debt Buying Practices Act, CAL. CIV. CODE §§ 1788.52-.64 (West 2014); 940 MASS. CODE REGS. 7.07(24) (2014); N.M. CODE R. § 12.2.12.9 (LexisNexis 2014); see also FTC, REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION 25-28 (2010) [hereinafter REPAIRING A BROKEN SYSTEM], available at <http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf>.

In the 2011 case *United States v. Asset Acceptance, LLC*, the Commission alleged that, in attempting to collect on debts that it knew or should have known were time-barred, Asset Acceptance created the misleading impression that it could sue consumers if they did not pay.¹⁶ The Commission alleged that Asset Acceptance's failure to disclose to consumers that it could not legally sue them if they did not pay was a deceptive practice violating Section 5 of the FTC Act. In a stipulated settlement to remedy this alleged violation, Asset Acceptance agreed to disclose that it will not sue to collect on any debt that it knows or should know is time-barred.

In August 2013, the Commission and the CFPB filed a joint amicus brief in response to an invitation from the Seventh Circuit to present the Commission's views on the application of the FDCPA to the collection of debts barred by the statute of limitations.¹⁷ In the underlying case, a debt collector sent the plaintiff a dunning letter with a limited-time offer to settle a time-barred debt. The plaintiff's ensuing class-action suit against the debt collector contends that this letter violates the FDCPA's prohibition on the use of "any false, deceptive, or misleading representation or means in connection with the collection of any debt."¹⁸ The collector moved to dismiss the suit, arguing that, as a matter of law, the letter could not have violated the FDCPA because it was not an explicit or implied threat to sue.

The joint brief notes that several courts have previously held that a collector who sues or threatens suit on a time-barred debt violates the FDCPA, and argues that, depending on the circumstances, a time-limited settlement offer could plausibly mislead a consumer to believe a debt is enforceable in court even if the offer is unaccompanied by any clearly implied threat of litigation. The brief makes clear that a debt collector may seek voluntary payment of a time-barred debt without violating the FDCPA, even if its collection communications are silent as to the statute of limitations. The brief argues, however, that actual or threatened litigation is not a necessary predicate for an FDCPA violation in the context of time-barred debt; rather, a debt collector violates the statute whenever its communications tend to deceive or mislead "unsophisticated consumers" into believing that a time-barred debt could be the subject of a collection suit.

The Seventh Circuit heard oral argument on the matter in September 2013, but has not yet issued a decision.

¹⁶ *United States v. Asset Acceptance, LLC*, No. 8:12-cv-182 (M.D. Fla. Jan. 31, 2012) (order entering consent decree); see also Press Release, Under FTC Settlement, Debt Buyer Agrees to Pay \$2.5 Million for Alleged Consumer Deception (Jan. 30, 2012), available at <http://www.ftc.gov/opa/2012/01/asset.shtm>.

¹⁷ Brief of Amici Curiae, *Delgado v. Capital Mgmt. Servs., LP*, No. 13-2030 (7th Cir. Aug. 14, 2013), available at <http://www.ftc.gov/policy/advocacy/amicus-briefs/2013/08/juanita-delgado-v-capital-management-services-lp>. The court invited the Commission to file a brief because the district court, in reaching its decision, had relied on the FTC's 2013 report entitled "The Structure and Practice of the Debt Buying Industry."

¹⁸ FDCPA § 807, 15 U.S.C. § 1692e.

2. Scope of FDCPA Coverage: Sykes Amicus Brief

In November 2013, the Commission joined the CFPB in filing an amicus brief in the Second Circuit urging the Court to find that false communications or other deceptive or unfair conduct in connection with the collection of debt is actionable under the FDCPA even if it occurs as part of a legal pleading.¹⁹ In the underlying case, class-action plaintiffs allege that the defendants, who regularly sued consumers for non-payment of debt, knew or should have known that their process servers frequently failed to serve the consumers with notice of suit. When consumers did not respond to these lawsuits, defendants allegedly sought default judgments by submitting affidavits swearing they had personal knowledge that process had been served. Plaintiffs' suit claims that defendants' debt collection practices amount to the knowing authorization of false affidavits to mislead the courts and the consumers, and that such practices violate the FDCPA's prohibition against deceptive or unfair collection methods. In response, defendants contend that the FDCPA does not apply to "communications made either to third parties not affiliated with the debtors that the statute seeks to protect, or in circumstances otherwise having no chance of debtor deception."

In our joint amicus brief, the Bureau and the Commission make clear that the FDCPA broadly prohibits deceptive and unfair collection practices in any form. The brief argues that false affidavits in debt collection suits are directed at consumers, since defendant-consumers are required to be served with such affidavits and since it is the consumers who are ultimately injured by this fraud on the court. Even assuming *arguendo*, however, that defendants' misconduct was directed at the court and not consumers, the FDCPA does not provide any textual basis for excluding conduct that is only meant to deceive or mislead a state court or other party. The brief points to 15 U.S.C. Section 1692e of the Act, which states that "[a] debt collector may not use *any* false, deceptive, or misleading representation or means *in connection with* the collection of any debt" (emphasis added), as well as to Section 1692f, which prohibits collectors from using "unfair or unconscionable means to collect or attempt to collect any debt" without limitation.²⁰ The brief asks the Court to "apply the text of the FDCPA as Congress has written it, without limiting its plain scope based on defendants' incorrect assessment of the Act's purposes," and "accordingly reject defendants' attempt to read into the Act a blanket immunity for conduct that is 'directed at' third parties."

The Second Circuit heard oral argument on the matter on February 7, 2014, but has not yet issued a decision.

¹⁹ Brief of Amici Curiae, *Sykes v. Mel S. Harris & Assocs. LLC*, No. 13-2742 (2d Cir. Nov. 13, 2013), available at <http://www.ftc.gov/policy/advocacy/amicus-briefs/2013/11/sykes-v-mel-s-harris-associates-llc>.

²⁰ FDCPA §§ 807, 808, 15 U.S.C. §§ 1692e, 1692f.

3. Required Remote Tribal Arbitration: Jackson Amicus Brief

The Commission has taken a particular interest in stemming the consumer harm that can flow from unlawful arbitration tactics. In its recent report on protecting consumers in debt collection litigation and arbitration, the Commission noted that mandatory pre-dispute arbitration clauses have become increasingly common in consumer contracts for goods and services. The Commission emphasized that such arbitration should be permitted only if creditors provide consumers with meaningful choice as to whether their disputes will be arbitrated, and that any arbitration should be conducted with an emphasis on making it more likely that consumers can appear and participate.²¹

In *FTC v. Payday Financial, LLC*, the Commission continues to litigate against online payday lenders that regularly file collection actions against borrowers in remote tribal courts, alleging that this practice is deceptive and unfair in violation of Section 5 of the FTC Act.²² Though the FTC's case against Payday Financial challenges the defendants' litigation practices as opposed to arbitration practices, the Commission learned a great deal about the defendants' arbitration practices during discovery. In July 2012, during the pendency of the Commission's *Payday Financial* litigation, a private action involving the same defendants and similar charges reached the Court of Appeals for the Seventh Circuit. In September 2013, in response to an invitation from the Seventh Circuit, the Commission filed an amicus brief expressing its views on the validity of the *Payday Financial* defendants' arbitration clauses, which purport to require borrowers to resolve all payday loan-related disputes through arbitration conducted on a reservation of the Cheyenne River Sioux Tribe in South Dakota.²³

The amicus brief revisits the FTC's contention that suing consumers in a remote tribal court that lacks jurisdiction is an unfair collection practice under Section 5 of the FTC Act, and then examines how the factors that make this practice unfair under Section 5 may support a similar conclusion in the class action litigation: that requiring tribal arbitration of consumer disputes is unconscionable. In its analysis, the Commission notes that the remoteness of the tribal forum²⁴ imposes disproportionate financial and informational burdens on financially-distressed consumers, effectively pressuring them to abandon legal claims or defenses—a

²¹ REPAIRING A BROKEN SYSTEM at iv-v, 40-41.

²² Amended Complaint, *FTC v. Payday Fin., LLC*, No. 3:11-cv-3017 (D.S.D. Mar. 7, 2012); *see also* Press Release, FTC Charges That Payday Lender Illegally Sued Debt-Burdened Consumers in South Dakota Tribal Court Without Jurisdiction (Mar. 7, 2012), available at <http://www.ftc.gov/news-events/press-releases/2012/03/ftc-charges-payday-lender-illegally-sued-debt-burdened>.

²³ Brief of Amicus Curiae, *Jackson v. Payday Fin., LLC*, No. 12-2617 (7th Cir. Sept. 13, 2013), available at <http://www.ftc.gov/policy/advocacy/amicus-briefs/2013/09/deborah-jackson-v-payday-financial-llc>.

²⁴ The defendants in this action do not lend either to members of the Cheyenne River Sioux tribe or to residents of South Dakota, and thus all borrowers are non-members of the tribe and reside outside of South Dakota.

substantial injury to those consumers. In addition, false, inconsistent, and confusing representations in the arbitration clauses undermine borrowers' ability to understand these provisions, making such injury not reasonably avoidable by the consumer. The Commission concluded that these issues, taken together, could contribute to a finding that the arbitration clauses are both procedurally and substantively unconscionable.

The Seventh Circuit has not yet conducted oral arguments on the issues addressed by the Commission's brief.

4. Medical Debt Collection: Accretive Health, Inc. Closing Letter

The Commission also continues to be concerned about collection tactics that pressure consumers into abandoning their rights under the FDCPA. A practice that recently exemplified this concern is on-site medical debt collection, whereby debt collectors seek payments from consumers while they are receiving treatment at a medical facility.

The Commission recently reviewed evidence that Accretive Health, Inc. ("Accretive") employed debt collectors to collect defaulted debts in hospital emergency rooms and other sensitive hospital areas. While staff ultimately closed its investigation of Accretive, the Division of Financial Practices issued a letter highlighting some of the concerns raised by on-site medical debt collection.²⁵ For example, collection attempts in such circumstances may deter consumers from seeking necessary medical care because consumers fear that they will be confronted with debts that they do not have the means to pay. Some consumers may even fear that the hospital may withhold necessary treatment unless payments are made. Such collection attempts also could interfere with the provision of medical treatment, either by delaying treatment while the collection attempt is made, or by adding additional emotional stress for the patient. Moreover, consumers are not normally well-positioned in such circumstances to evaluate the validity of the alleged debt and their financial ability to make any payments. For example, consumers will not normally have access to their paperwork and records, or the status of their financial resources, while awaiting medical treatment in an emergency room. Thus, debt collectors or other entities that engage in this activity may violate the FDCPA and the FTC Act.

The Commission staff closed its investigation of Accretive because, while there was evidence that Accretive had used unlawful debt collection practices in the state of Minnesota, staff's investigation had yielded very little evidence that such tactics were employed by Accretive in other parts of the country. In deciding not to recommend enforcement action against Accretive at this time, FTC staff noted that Accretive already has been banned from collection activity in Minnesota pursuant to a \$2.5 million settlement with the state's Attorney General.

²⁵ Letter from FTC's Division of Financial Practices to counsel for Accretive Health, Inc. (Dec. 31, 2013), *available at* http://www.ftc.gov/sites/default/files/documents/closing_letters/fair-debt-collection-practices-act/131231fairdebtclubokletter.pdf.

III. Education and Public Outreach

The second prong of the Commission's debt collection program is education and public outreach. Consumer education informs consumers of their rights under the FDCPA and what the statute requires of debt collectors. Business education informs debt collectors what they must do to comply with the law. The FTC also engages in public outreach to enhance legal services providers' understanding of debt collection issues.

The Commission educates consumers through English and Spanish print and online materials, one-on-one guidance, blog posts, and speeches and presentations. To maximize its outreach efforts, FTC staff works with an informal network of about 10,000 community-based organizations and other interest groups that order FTC products and distribute FTC information to their members, clients, and constituents. Most of the 10 million or so print publications the FTC distributes each year are disseminated through these trusted local partners, which include libraries, police departments, schools, non-profit organizations, banks, credit unions and other corporations, and government agencies. Staff offers instructions on how to share FTC materials by linking, reprinting, and co-branding. In addition, the FTC logs more than 28 million accesses of its publications online every year. The FTC's channel at [YouTube.com/FTCVideos](https://www.youtube.com/FTCVideos) houses more than 80 videos, which were viewed nearly one million times in 2013.

This past year, the Commission supplemented its distribution of information by launching its Financial Educators Site.²⁶ The site addresses personal finance topics, including: credit and debt; saving and shopping; housing; work and school; and automobiles. Users are encouraged to share our resources with students, friends, family, coworkers, and neighbors, and to print, copy, post, and link to the materials freely.

The Commission educates industry by developing and distributing business education materials, delivering speeches, participating in panel discussions at industry conferences, and providing interviews to general media and trade publications. 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.

As part of the FTC's Legal Services Collaboration project, FTC staff regularly meets with legal services providers to discuss various consumer protection issues, including the FTC's work in the debt collection arena. In 2013, FTC staff provided in-person trainings or presentations that involved debt collection issues throughout the country, including in Austin, Edison (NJ), Lansing (MI), San Francisco, Seattle, and Washington, DC. FTC staff also provided updates about the agency's debt collection work during nationwide webinars hosted by the National Association for Consumer Advocates in March, August, and November of 2013, and in a webinar hosted by the Legal Services Corporation for its grantees in November. Additionally, the FTC organizes "Common Ground" conferences that bring together legal services providers and law enforcement to discuss a wide variety of consumer protection issues,

²⁶ *Financial Educators*, FTC, <http://www.consumer.ftc.gov/features/feature-0022-financial-educators>.

including debt collection. The agency has held 21 Common Ground conferences over the past several years in cities around the country.

Finally, the FTC worked with ChildFocus, Inc. and the Annie E. Casey Foundation to help produce the free guide, *Youth and Credit: Protecting the Credit of Youth in Foster Care*.²⁷ This guide discusses credit issues facing the more than 26,000 children in the United States who age out of foster care every year. In 2011, Congress passed legislation to help people in foster care better protect their credit. Now, when foster children turn 16, child welfare agencies are required to get their annual credit reports. The legislation also requires agencies to help children clear up their credit, including debt collection issues resulting from identity theft, so they can better launch their lives as independent young adults. One of the over-arching goals of the guide is youth empowerment: using this opportunity to help young people understand what credit is, why it is important to their future financial stability, and how bad credit can derail their goals. It also gives adults some tools to help children if their identity has been stolen, including resources to help them identify charged-off debts and fix credit fraud and errors.

IV. Research and Policy Development Activities

The third prong of the Commission's debt collection program is research and policy initiatives. In the past year, the FTC has continued to monitor and evaluate the debt collection industry and its practices. Specifically, as described below, the FTC has collaborated with the CFPB to examine the role of data integrity in debt collection, and has provided the Bureau with input on debt collection rulemaking and guidance initiatives.

A. Life of a Debt Roundtable Event

Building on the findings of the Commission's seminal study of the debt buying industry,²⁸ the FTC and the CFPB convened a group of consumer advocates, credit issuers, collection industry members, state and federal regulators, and academics to discuss the flow of consumer data throughout the debt collection process. This joint event, entitled *Life of a Debt: Data Integrity in Debt Collection* and held in June 2013,²⁹ was open to the public and focused on several aspects of information flow in debt collection, including: (1) the amount of documentation and other information currently available to different types of collectors and at different points in the debt collection process; (2) the information needed to verify and substantiate debts; (3) the costs and benefits of providing consumers with additional disclosures about their debts and debt-related rights; and (4) information issues relating to pleading and judgment in debt collection litigation.

²⁷ This guide is available online at <http://www.aecf.org/~media/Pubs/Topics/Child%20Welfare%20Permanence/Other/YouthandCredit/YouthandCredit.pdf>.

²⁸ FTC, THE STRUCTURE AND PRACTICES OF THE DEBT BUYING INDUSTRY (2013), available at <http://www.ftc.gov/reports/structure-practices-debt-buying-industry>.

²⁹ Additional information about this event is available on the FTC's website at <http://www.ftc.gov/news-events/events-calendar/2013/06/life-debt-data-integrity-debt-collection>.

The insights gained through the workshop have been and will continue to be valuable in the FTC's law enforcement investigations and litigation in the debt collection area. In addition, the Commission anticipates that these insights will be instrumental in the CFPB's ongoing and future efforts to administer and enforce the FDCPA and other laws implicated by debt collection data integrity.

B. Debt Collection Rulemaking

The FTC also works closely with the CFPB to coordinate efforts to protect consumers from unfair, deceptive, and abusive debt collection practices.³⁰ 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. Most recently, the FTC has been actively consulting with the CFPB on the Advance Notice of Proposed Rulemaking ("ANPR"), which was published by the Bureau in November 2013. In this role, the FTC drew on its decades of experience in the debt collection arena to provide analysis and insight to the CFPB as it formulated the ANPR. We look forward to continuing to work with the CFPB on this rulemaking and other efforts to further our common goal of protecting consumers from unlawful debt collection tactics.

V. Conclusion

The Commission hopes that the information contained in this letter will assist the CFPB in its annual report to Congress about its administration of the FDCPA. The FTC looks forward to continuing to cooperate and coordinate with the CFPB on consumer protection issues relating to debt collection. If any other information would be useful or if you wish to request additional assistance, please contact James Reilly Dolan, Associate Director, Division of Financial Practices, at (202) 326-3224.

By direction of the Commission.

Donald S. Clark
Secretary

³⁰ The Dodd-Frank Act directs the FTC and the CFPB to coordinate their law enforcement activities and promote consistent regulatory treatment of consumer financial products and services, including debt collection. *See* Dodd-Frank Act, Pub. L. 111-203, 124 Stat. 1376 § 1024(c)(3) (July 21, 2010). In January 2012, the FTC and CFPB entered into a memorandum of understanding that supplements the requirements of the Dodd-Frank Act and creates a strong and comprehensive framework for coordination and cooperation. Memorandum of Understanding Between the Consumer Financial Protection Bureau and the Federal Trade Commission, January 2012, *available at* <http://www.ftc.gov/sites/default/files/attachments/press-releases/federal-trade-commission-consumer-financial-protection-bureau-pledge-work-together-protect-consumers/120123ftc-cfpb-mou.pdf>.

Appendix A
Debt Collection Educational Material Distribution in 2013

Consumer or Business Educational Material	Offline Distribution		Online Access ³¹	
	English	Spanish	English	Spanish
Consumer Education: Brochures				
Coping with Debt	75,350	12,250	167,105	1,673
Debt Collection	69,350	3,800	438,899	16,694
Debt Collection Arbitration	25,700	N/A	10,041	524
Consumer Education: Articles on consumer.ftc.gov (Online Only)				
Debts and Deceased Relatives	N/A	N/A	29,524	3,719
Fake Debt Collectors	N/A	N/A	45,120	593
Garnishing Federal Benefits	N/A	N/A	19,556	633
Identity Theft and Debt Collection	N/A	N/A	13,309	640
Settling Credit Card Debt	N/A	N/A	79,264	3,660
Statement of Rights for Identity Theft Victims	N/A	N/A	11,221	501
Stop Calls and Letters from a Debt Collector	N/A	N/A	14,336	657
Time-Barred Debts	N/A	N/A	85,778	4,914
Consumer Education: Video (Online Only)				
Dealing with Debt Collectors	N/A	N/A	16,874	3,970
Helping Victims of Identity Theft	N/A	N/A	6,027	N/A
Bookmarks				
Dealing with Debt	38,100	N/A	1,631	N/A
Business Education: Brochures				
The Fair Debt Collection Practices Act	1,217	N/A	2,980	N/A
Business Education: Video (Online Only)				
Debt Collection	N/A	N/A	6,959	N/A

³¹ Online access numbers only include access through September 2013, and do not include access to materials that are downloaded from FTC channels and reposted on outside websites.

Additional Debt Collection Educational Material³²

Consumer Education

Blog Posts:

- [The jig is up for bogus debt collection and rate reduction operations](#)
- [Haunted by Phantom Debt?](#)
- [A Text Twist on Debt Collection](#)
- [FTC Launches its New Financial Educators Site where Everything is FREE!](#)
- [Facing Debt Collection? Know Your Rights](#)
- [Shining a Light on the Consumer Debt Industry](#)
- [World's Largest Debt Collector Pays the Price for Harassing Consumers](#)
- [A Little Credit](#)
- [You Owe Me Money](#)
- [FTC to Debt Collectors: Play by the Rules!](#)

Consumer.gov articles (also available in Spanish):

- [Managing Debt: What It Is; What To Know; What To Do](#)

Just For You microsites:

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

Business Education

Blog Posts:

- [When a data oops becomes an uh-oh](#)
- [Phantom of the owe-pera](#)
- [DONT VIOL8 FDCPA. K? THX](#)

³² Distribution statistics are not available for these materials.

Appendix B
Debt Collection Complaints Received Directly by the FTC³³

Year	2013	2012
Total Debt Collection ("DC") Complaints	73,211	125,136
DC Complaints as Percentage of All FTC Complaints	17.0%	24.1%
Total Third-Party DC Complaints	60,485	102,783
Third-Party DC Complaints as Percentage of All FTC Complaints	14.0%	19.8%
Total In-House DC Complaints	12,726	22,353
In-House DC Complaints as Percentage of All FTC Complaints	2.9%	4.3%

³³ The Term "All FTC Complaints" refers to all industry-specific complaints received by the FTC in a given calendar year. It excludes identity theft and Do Not Call Registry complaints.

Appendix C
Debt Collection Complaints by FDCPA Complaint Category

FDCPA Complaint Category	Total 2013 Complaints	Percentage of 2013 FDCPA Complaints	2013 Category Rank	Total 2012 Complaints	Percentage of 2012 FDCPA Complaints	2012 Category Rank
Repeated Calls	23,582	39.0%	1	37,543	36.5%	2
Misrepresent Debt Character, Amount, or Status	23,068	38.1%	2	39,993	38.9%	1
Falsely Threatens Illegal or Unintended Act	20,627	34.1%	3	30,470	29.6%	3
No Written Notice	17,502	28.9%	4	26,139	25.4%	4
Falsely Threatens Arrest, Property Seizure	16,882	27.9%	5	24,062	23.4%	5
Fails to Identify as Debt Collector	11,941	19.7%	6	17,873	17.4%	6
Repeated Calls to Third Parties	10,026	16.6%	7	16,679	16.2%	7
Improperly Calls Debtor at Work	9,761	16.1%	8	14,482	14.1%	8
Uses Obscene, Profane, or Abusive Language	8,652	14.3%	9	13,329	13.0%	9
Reveals Debt to Third Party	8,571	14.2%	10	12,272	11.9%	10
Refuses to Verify Debt After Written Request	6,361	10.5%	11	9,814	9.5%	11
Collects Unauthorized Fees, Interest, or Expenses	5,605	9.3%	12	9,034	8.8%	12
Calls Before 8:00 a.m., after 9:00 p.m., or at Inconvenient Times	4,656	7.7%	13	8,166	7.9%	13
Calls Debtor After Getting "Cease Communication" Notice	2,906	4.8%	14	4,928	4.8%	14
Uses or Threatens Violence	2,502	4.1%	15	3,312	3.2%	15