

Summary of Panel Discussions
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October 2007 FTC Workshop on Debt Collection Issues
Day 1, October 10, 2007

The FTC recently completed a two-day workshop on debt collection issues in Washington, DC on October 10 - 11, 2007. The written submissions from the many organizations and individuals are available [online](#). Rather than summarize the written comments, this article provides the industry's first summary of the actual, verbatim panel discussions presented over the two-day workshop.

Deborah Majoras, Chair of the Federal Trade Commission, in her opening remarks stated that the purpose of the FTC workshop is to consider whether consumer protection laws kept pace with the changes that have occurred since the Fair Debt Collection Practices Act (FDCPA) was passed 30 years ago.

Numerous changes have occurred in business and society over the past 30 years:

- Many creditors are choosing to sell their uncollected accounts.
- Technological change also has had an impact on the industry.
- Innovations in the financial services marketplace gave consumers more choices including an array of options for paying for goods and services.
- With the increase in the amount of debt there has been an increase in the number seeking to collect on debts.

The FTC continues to receive more complaints about third-party debt collectors than any other single industry. The number of complaints has increased steadily reaching 70,000 in 2006. Complaints thus far in 2007 are coming in at an even greater rate.

October 10, 2007 - 9:15 a.m. - 10:30 a.m.
Overview of Changes in and Affecting the Industry

Bill Hampel, Senior Vice President for Research Analysis, Credit Union National Association provided macro view of the overall market that drives debt collection activities. He stated that "We have had a strong economy, incomes have been rising, employment is up, but the increase in debt has been so much greater than the increase in income we have this huge increase in the ration of debt to income."

He summarized that his data suggested:

- The household sector is much more exposed to consumer credit that it has ever been.
- The raw material for debt collection issues is as great as it's ever been.
- The vast majority of the increase in debt, especially the mortgage debt, is held by households in the upper half of the income distribution who have more ability to handle it.
- At best, the economy is going to slow down considerably over the next year or so if not fall into a recession which will create additional issues to deal with.

Robert M. Hunt, Senior Economist, Federal Reserve Bank of Philadelphia looked at the scope and size of the third-party collection industry. He reported that it represents about 4,500 firms and employs about 150,000 people. He noted that at least one estimate states that \$40 billion was recovered on behalf of creditors by third party collectors in recent years. In addition, they retained about \$11 billion

in commissions, with two-thirds of the revenues obtained by collecting on consumer debts.

He noted that based on ACA data, the median recovery rate is 16 percent or about \$68 on a median balance of a little less than \$450 when stated on a per account basis. The agency will retain a median of \$21 and will have median expense of \$17 per account.

Mr. Hunt stated that there are three types of changes that have affected the industry:

1) Technological advances: The cost of information technology is falling dramatically which the quality has increased equally. Credit Bureau data is better than it used to be.

2) Concentration in the industry: The number of lenders serving the consumer credit industry has consolidated quite a bit. If you look at bad credit card debt being sold, only ten buyers purchased 80 percent of that debt that was sold.

3) Sale of debt: Creditors sell a significant amount of defaulted loans. By at least one account, collections on purchased debt are about \$2 billion per year representing nearly one-fifth of the industry's revenue.

The panel consisting of Rozanne Andersen, Vice President and General Counsel, ACA International; Jean Ann Fox, Director of Consumer Protection, Consumer Federation of America and Gary E. Wood, President, Collins Financial Services, Inc., and President, DBA International turned the discussion to one of whether the purpose of the workshop and the role of the FTC are to address collection policies or credit granting policies - a sort of "chicken vs. the egg" discussion. That is, should lending practices be dealt with to reduce collection issues or are there collection practices that should be changed to reduce complaints?

One area all panelists did seem to agree on was the scarcity of reliable empirical data about debt collection and consumer debt. Another area of agreement was that the FDCPA hasn't been adjusted to deal with changes in communication. For example, many consumers only have a cell phone and that cell phone is mobile. Thus a consumer with a cell phone with a Los Angeles area code might be in New York when the call from a debt collector comes in and that call is outside the time frame it is permissible to call.

Another technology issue raised by the panel that has emerged since the enactment of the FDCPA is the electronic movement of money, which causes implications for consumers.

10:45 - 12:00 noon

Debt Collection Today: Understanding the Business

The panel consisted of representatives from in-house collectors, contingency collection agencies and law firms, and debt buyers, including panel members Mark E. Davitt, President and CEO, ConServe; Robert L. DiGennaro, Chief Executive Officer, Collins Financial Services, Inc.; Ira Leibsker, Esq., Blatt, Hasenmiller, Leibsker, and Moore LLC and President, National Association of Retail Collection Attorneys (NARCA); Robert W. Murphy, Law Office of Robert W. Murphy; and Barbara A. Sinsley, Esq., Barron, Newburger, Sinsley & Wier PLLC, and General Counsel, DBA International.

The model of each involved in debt collection is to identify and perform triage between those individuals who cannot pay and those who can. A large portion of that effort is devoted to attempting to locate and contact the responsible party. Debt buyers tend to start with due diligence on the portfolio by examining the background and validity of the accounts.

One major difference between the models of those providing contingent collection services and debt buyers is the element of time. Debt buyers can hold on to the debts longer thereby being able to offer more convenient payment terms to the consumer.

With the exception of the legal side, much of the work is outsourced and the decision to do so is driven

by cost to collect ratio. Law firms must be meaningfully involved and so, while they will outsource back office functions (e.g. IT) they will not outsource the collection function.

"The opportunity to profit continues to increase," said Mr. Davitt, CEO of a contingency collection agency. He pointed to the opportunity to leverage technology and improve the contact time between collectors and consumers as one reason. On the legal side, Mr. Leibsker pointed out that "it's become more costly." He noted that for the client itself, court costs have gone up in most of the nation. "But I think the cost of technology, security, our processes, postage, all those factors have cost money." He pointed out that the legal community is getting a very small percentage of the debt collection business. "Yet we still need to have all those processes - auditing and security - that larger agencies have in their offices. So it becomes less profitable on the legal side."

The question of how cell phones are impacting the business of collections came up with this panel as well. The panelists pointed out that it is becoming more difficult to contact people because more and more are using cell phones and everyone asks for permission before calling a cell phone. Mr. DiGennaro stated that in the terms and conditions at the time of origination that issues and creditors are including permission to call cell phones. However, Mr. Murphy pointed out that this permission is often obtained through a credit card provider's change of terms mailing.

Training and monitoring of collectors was a major topic of discussion. Mr. Leibsker pointed out that collectors must follow the law and that he certainly isn't going to risk his license to practice law over a poorly trained or monitored collector's error.

Some ways of identifying and avoiding errors that could lead to being out of compliance include recording calls and then listening to them afterwards. It was suggested that supervisors should be walking the floor and listening to the collectors. Not only can this help avoid problem situations but supervisors can provide feedback that can improve communications with consumers and lead to resolving more accounts. Issuers also have a vested interest and want to assure themselves that collections are being handled in a compliant manner.

1:15 - 2:30 pm

Concerns about Debt Collection: Consumers' Perspective

Members of the panel were asked to state the most pressing consumer concerns about debt collection.

Rudy Cavazos Jr., Texas Regional Director of Education and Consumer Relations, Money Management International, the largest non-profit credit-counseling agency in the country, said that the continuous threat of immigration retaliation is the biggest concern he sees.

Dale W. Pittman, Law Office of Dale W. Pittman, P.C., a consumer protection attorney in Virginia sees rampant abuse in every area under the FDCPA including keeping debts on someone's credit record after a known dispute; drafting notices in such a way that distracts from a consumer's ability to understand and invoke rights under the statute; leaving offensive and illegal voice mail messages.

Mary Spector, Director, Southern Methodist University School of Law Civil Clinic and Consumer Advocacy Project routinely sees bulk filings with inadequate information about the debt. Also, although the law requires consumers to dispute debts in writing, many are finding that difficult and thus their ability to dispute debts is ineffective. Part of the problem is that many consumers do not speak or read English.

Lauren Saunders, Managing Attorney, National Consumer Law Center contended that abuses are rampant and are the norm rather than the exception. She stated that these abuses are very similar to those that prompted the enactment of the FDCPA in 1977 - abusive phone calls; threats and harassment of employers, friends and neighbors. She also felt that there is rampant abuse of the courts with attorneys going to court with nothing more than a spreadsheet with a line item about the

debtor and the debt. Suer service is rampant. Filing cases beyond the statute of limitations happens all to frequently. Finally, electronic collection methods make it easier to serve a garnishment order on banks throughout the state and garnish or at least freeze exempt social security funds.

Marla Tepper, General Counsel, New York City Department of Consumer Affairs stated that debts are not adequately documented. She also shared Ms. Saunders' concern about abuse of the court process. She encouraged the FTC to adopt regulations that would require communication in the language in which the debt has been negotiated.

In what developed into a recurring theme during the workshop, the panel was asked about documentation, specifically what is the absolute bare minimum that needs to go with a debt whether sold to a debt buyer or whether being collected by a contingency collector.

Ms. Saunders stated that the debt collector must have certain information before beginning collection efforts, including at a "core minimum":

- Proof of indebtedness by the consumer
- Signed contract
- Date the debt was incurred
- Date of last payment
- Identify of original credit as known to the consumer
- Amount of principle
- Itemization of all interest, fees or other charges added by original credit and subsequent holders
- Chain of title as the debt is sold

She believes that additional information should be provided before a debt can be sold or assigned, including:

- Any defenses to the debt
- All related communications
- Any validation requests and responses
- Any settlements that have been reached
- Whether the debt is beyond the statute of limitations
- Whether the consumer has been represented by an attorney and the attorney contact information
- Whether the consumer has informed the collector that a time or place is inconvenient for communication
- Whether the debt has been discharged or listed in bankruptcy
- Any illness or disability claim by the consumer
- Any known or claimed violation of the FDCPA

Ms. Spector suggested, and Ms. Tepper agreed, that one way to strengthen the Act would be to require that all information be disclosed at the onset and not simply if requested by the consumer. Rather, there should be an affirmative duty to provide that information in the initial communication by the debt collector. Ms. Tepper went on to state that once a debt is disputed the consumer should automatically receive a letter from the debt collector indicated the fact of the dispute so that the debtor has confirmation of that process.

Mr. Cavazos recommended that the communication described by Ms. Tepper, when sent to the Latino community, should be in Spanish. He pointed out that there are a number of different Spanish languages and to it is important that to standardize these forms, "somewhere middle of the road" so that everyone could understand.

A question posed to the panel related to allow consumers to opt-in to a particular method of contact or range of methods of contact at the initiation of a credit relationship. The panel was categorically opposed, as exemplified by Ms. Tepper's comment, "Absolutely not. You can bury anything you want into a contract at the outset. These are contracts of adhesion and people don't understand it, they don't read it and they don't have any choice. I can't think of anything more terrible."

She also noted that her group's concern would be that communication not be allowed to facilitate more contacts. Mr. Saunders said "primarily, we see communication being used as a means of harassment." "We fear that opening up more technology just gives you more avenues to harass somebody." Similar opposition was expressed about calls to cellular phones by debt collectors. The panel was in favor of retaining mail as the primary method of communication.

A number of concerns related to abuse of the courts were expressed. Ms. Saunders reiterated her position that "you should not be able to file a lawsuit in court or before an arbitrator unless you certify that you possess the basic information you need to prosecute that debt in a form admissible in court." Ms. Tepper expressed concern about improper service and in particular not using process servers that are licensed and making sure they are complying with the rules for serving process properly. Finally, she expressed concern about debt collectors pursuing exempt funds.

The panel expressed concern about electronic collections including not requiring written authorization from the consumer before debt collectors access bank accounts electronically.

Certain populations seem particularly at risk for abuse by debt collectors including the elderly, disabled and students.

2:30 - 3:45 pm

Concerns about Debt Collection: Collectors' Perspective

Each member of the collectors panel was asked about the most pressing issue faced by debt collectors.

Stacey J. Schacter, President, Portfolio Operations, OSI Portfolio Services, Inc., representing DBA International, said that the industry longs for uniformity on compliance matters as the "maze of state regulations and court cases can be difficult to understand." He also stated that access to social security numbers is crucial to correct debtor verification.

Robert Markoff, Esq., Baker, Miller, Markoff & Krasny, LLC, and President-elect, National Association of Retail Collection Attorneys stated that NARCA has a concern with "meaningful involvement." "Why should an attorney be expected to interrogate a client relating to a claim? Non-lawyer collectors simply accept the accounts and send their letters. A purpose of sending out the initial FDCPA notice is to determine whether or not there is a dispute. Therefore, the concept that an attorney must be meaningfully involved in the presentation and preparation of a demand letter has no place in the FDCPA," he commented. He opined that the FDCPA should not apply to any aspects of courtroom procedure. Further, venue is another area of concern for attorneys enforcing judgments.

Richard M. Leibert, Esq., Hunt, Leibert, Jacobson, P.C., and President, United States Foreclosure Network (USFN) stated that representation of mortgage holders in foreclosure proceedings is very different from representation of unsecured creditors in the collection of unsecured debts. USFN is seeking either FTC draft model Safe Harbor letters or an amendment to the definition of debt collector to exclude attorneys who pursue debtors through litigation or similar legal practices.

Lawrence A. Laskey, Vice President and Counsel, Van Ru Credit Corporation stated his believe that the application of 20th century laws to 21st century technology impairs debt collectors' ability to promote efficiency, to communicate through the means consumers use and prefer, to provide consumers with information they need and amicably resolve their debts.

Christopher G. Wunder, President and CEO, Receivables Outsourcing, Inc., and President, ACA International pointed out that despite the increase in complaints filed with the FTC about debt collectors, a study conducted by the National Council of Better Business Bureaus found that of over 280,000 inquiries regarding collection agencies, only 14,322 were classified as actual complaints. Further, 85 percent of the complains were resolved to the satisfaction of the consumer regarding collection agencies. This compares very favorably to the 72.5 percent satisfaction rate for all other industries combined. He stated that ACA International suggested three primary areas of change to the FTC:

- An agreement with third party dispute resolution process to allow for responsible reporting, investigation and resolution of complaints.
- Federal pre-emption for the FDCPA effectively making it the law of the land.
- FDCPA should allow creditors, consumers and collection agencies to make full use of current communication technologies including Internet, e-mail and cell phones.

Commenting on documentation, Mr. Schacter noted that debt buyers will always try and get as much information as they can. "Information normally results in a higher collection rate," she said. Requiring the level of documentation suggested by Ms. Saunders in the prior panel, however, would be a waste of resources. Mr. Markoff noted that less than one percent of all their claims have any dispute relating to documentation.

In support of being able to use cell phones or e-mail to communicate with consumers, Mr. Schacter pointed out that only postal mail that doesn't travel with the individual. Cell phones are portable and the number doesn't change even when you move. Same thing for e-mail addresses. She pointed out that "if you can't get that right part contact, you're left with very few alternatives to collect. Therefore you have to sue."

Mr. Leibert pointed that no one is suggesting scrapping the use of postal mail. Rather, "we're talking about additional methods of reaching the consumer. Additional opportunities to resolve a matter," he said.

4:00 - 5:15pm

The Role of Creditors in Debt Collection

Training is an important tool in staying in compliance. Most creditors provide training in a classroom environment and it addresses FDCPA and internal systems. Bev Evancic, Vice President, Resource Management Services, Inc. suggested including more financial training for collectors including creating personal budgets so they could have a better appreciation for the real life situations of the consumers they are contacting. Anthony G. Looney, Director, Customer Revenue - Collections, Atmos Energy Corporation said that after formal classroom training, his collectors spend a week "nesting" with an established employee before they are set loose to collect on their own.

Ms. Evancic noted that consumers frequently ask about credit bureau and credit rating issues. Some creditors defer those questions to a separate unit of experts rather than have collectors attempt to respond.

Ira Rheingold, Executive Director, National Association of Consumer Advocates, questioned whether compensation plans encourage collectors to do whatever they can to collect those debts. Ms. Evancic noted that in her experience, creditors tend to compensate by salary or hourly rate rather than commission. However, she noted that contingency compensation is more common with third party agencies because of the significantly different circumstances. It may be the first contact with the consumer in several months and at a later stage of delinquency. Coupling authority to negotiate payment arrangements and encouraging those arrangements early in the delinquency leads to a higher probability that debtors will continue making payments.

When selecting third party collectors, due diligence of an up close and personal nature is important. Ms. Evancic says the onsite visit is "very, very important because you can just feel the energy." As to compliance, "listening to collectors [they] forget you're there quickly and go into a normal stream of business. They don't act differently." Mr. Looney also endorses the personal visit so that [I] see that his values of customer service and production align with ours." He also recommends getting and contacting references. Mr. Looney expects that collectors "abide by the law, act ethically and treat our customers...with dignity and respect."

As noted on prior panels, there is only a nominal obligation on the part of the debt collector when called upon to verify the debt. Cary L. Flitter, Esq., Lundy, Flitter, Beldecos & Berger, P.C. stated that "verification involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed." All that a collector needs to do is go back to the seller of the debt and ask "Is this Sam Jones? And is it \$1,000 that he owes?" If the answers are "yes" then verification is complete and collection efforts can be resumed. He contended that debt collectors should be required to furnish documentation upon request that responds to the particulars of the dispute. "You would be stunned [at] how hard it is to get that," he contended.

Documentation was discussed during most panels and this was no exception. Kathleen M. Pierce, Managing Counsel - Business Centers, Ford Motor Credit Company LLC reported that they have records of account history, image documents including contracts, any extensions, past repossession notices, etc. Ms. Evancic said from an agency standpoint they to see at least the prior three months worth of collection activity; last payment amount; location information and open communication with someone at the creditor.

So-called "junk fees" added to the original debt was a hot topic of discussion by the panel. Fees such as overlimit fees on interest, late charges, finance charges, attorney fees, etc. are all added on resulting in tripling or quadrupling the original debt once it makes it from the creditor to third party collectors to one or more debt buyers.

Failure to mark a file as disputed when disputed by the consumer should be an unfair debt collection practice under the FDCPA. This concept was raised during this panel was broached by several others over the two days.

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