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Recommendations to the Federal Trade Commission on Fair Debt Collection

The debt collection industry has consistently been the number one subject of consumer complaints to the FTC. Complaints have skyrocketed from 13,950 in 2000 to 69,204 in 2006 – a 500% increase in just six years. Complaints jumped again disproportionately in 2007, going up to 70,951 and rising from 19.9% to 20.8% of the consumer complaints received by the FTC.

The FTC Should Issue a Strong Report on the 2007 Debt Collection Workshop Addressing the Major Deficiencies in Fair Debt Collection. The FTC has yet to issue its report on the two-day workshop it held last year on debt collection abuses. NCLC participated in the workshop and submitted detailed recommendations to address multiple systemic problems (summarized below).¹ The workshop – though heavily biased towards industry speakers – revealed a wide range of problems. The FTC has yet to issue a report, and the FTC’s annual report to Congress will also be due in the early Spring. A new approach is all the more urgent today as abuses in mortgage, credit card and other lending and the collapsing economy push more Americans into the hands of debt collectors. The advent and continuing rapid growth of the debt buyer industry has also exacerbated debt collection abuses and cry out for reform.

The FTC Should Undertake an Aggressive Enforcement Program Against Debt Collection Abuses. Unfair debt collection practices occur routinely as part of the business model of the offending industry members. No amount of private enforcement can curtail these abuses, particularly in light of the lack of private injunctive relief and other limits on remedies. That job can only be performed by public enforcement, as an essential partner to private enforcement. The FTC must make the political and resource commitment necessary to rein in the collection industry. Currently, routine FDCPA noncompliance by collection industry leaders has actually enabled and emboldened an industry whose unsavory culture already predisposes it to excess.

The FTC needs to complete its work. Whether by statutory or commentary changes, FTC Act rulemaking, general counsel’s opinions, or enforcement actions, the FTC needs to address the following issues:

No debt collection activity should be permitted unless the collector possesses basic information to verify the debt and to resolve disputes meaningfully.

- No collection activity without proof of indebtedness by the consumer, date of the debt, identity of the original creditor, and itemization of all fees, charges and payments;
- Collectors should respond to verification requests by a reasonable investigation responsive to the consumer’s specific dispute.

¹ Our comments are available at:

http://www.nclc.org/issues/debt_collection/content/June07NCLC_NACA_FTC_Comments.pdf.



- The creditor and each subsequent holder of the debt must retain and pass on to the next holder all communications from the consumer concerning the debt and information about all known disputes and defenses.
- Before seeking a judicial or arbitration judgment, debt collectors should certify that they possess admissible evidence of the essential facts concerning the debt and hold any license required by state law.

Consumers need protection from unfettered electronic access to their accounts. Consumers need stronger rights to stop or dispute electronic payments and remotely created checks. Collectors should obtain written permission before accessing a consumer's financial account.

Collection of ancient, time-barred debts should be prohibited, and certainly should not be conducted deceptively. Collectors make rampant, unlawful threats of litigation that they have no intent or legal right to pursue. Statutes of limitations exist because of the inherent unfairness of pursuing stale claims after memories are records are lost. These statutes should extend to non-litigation collection activities. At a minimum, collectors should be required to disclose to the consumer that the debt is time barred and that the consumer cannot be sued.

Reforms are needed against certain creditor and collector practices:

- Better protections are needed to stop abusive practices like deceptive settlement agreements, putting old debt on new credit cards, and cross collection by refund anticipation lenders.
- Banks should be prohibited from freezing or permitting garnishment of exempt funds.
- Payday lenders should be barred from check holding and other abusive collection methods.
- Protections are needed against abuses by mortgage servicers.
- Entry of a default judgment should never preclude redress of a FDCPA violation.

The FDCPA needs critical updates to ensure its effectiveness. The following amendments will help consumers receive the protections that Congress originally intended:

- Consumers need notice of their right to cease communications and should be able to exercise the right orally.
- Consumers should be able to record abusive telephone calls.
- The initial communication should identify the original creditor and itemize fees and interest.
- Collectors cannot plead ignorance of the law as a "mistake."
- Consumers need effective remedies including injunctive relief and damages and class relief adjusted for inflation.