United States Government Accountability Office

GAO

Report to Congressional Requesters

September 2009

CREDIT CARDS

Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace and Use of Technology

GAO

Accountability * Integrity * Reliability

GAO-09-748

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Highlights

Highlights of GAO-09-748, a report to congressional requesters

Why GAO Did This Study

Approximately 6.6 percent of credit cards were 30 or more days past due in the first quarter of 2009—the highest rate in 18 years. To recover delinquent debt, credit card issuers may use their own collection departments, outside collection agencies, collection law firms, or sell the debt.

GAO was asked to examine (1) the federal and state consumer protections and enforcement responsibilities related to credit card debt collection, (2) the processes and practices involved in collecting and selling delinquent credit card debt, and (3) any issues that may exist related to some of these processes and practices. To address these objectives, GAO analyzed documents and interviewed representatives from six large credit card issuers, six third-party debt collection agencies, six debt buyers, two law firms, federal and state agencies, and attorneys and organizations representing consumers and collectors.

What GAO Recommends

Congress should consider modifying FDCPA to (1) help ensure that collectors and buyers have adequate information about debt transferred and have adequate documentation to verify debts, (2) reflect technologies that were not prevalent when the act was written, and (3) provide FTC with rulemaking authority.

View GAO-09-748 or key components.
For more information, contact Alicia Cackley at (202) 512-8678 or CackleyA@gao.gov.

What GAO Found

The primary federal law governing third-party debt collection is the Fair Debt Collection Practices Act (FDCPA), which contains provisions on how collectors can communicate with consumers and prohibits collectors from using abusive, deceptive, and unfair collection practices. Some states have fair debt collection laws that provide protections additional to those of FDCPA. The Federal Trade Commission (FTC) is the primary enforcement agency for the debt collection industry; it collects consumer complaints, enforces violations of relevant laws, and undertakes consumer education efforts. Federal depository regulators oversee credit card issuers' collection practices, and various state agencies enforce state fair debt collection laws.

Collecting and selling delinquent debt involves multiple parties. Credit card issuers typically collect on accounts less than 6 months delinquent using internal collection departments or "first-party" agencies that collect under the issuer's name, and often hire third-party collection agencies or law firms to collect on older accounts. Contracts between issuers and collectors often specify the collection policies and practices used. Third-party collection agencies rely primarily on telephone calls and postal mail in their operations, but often use automated mail systems and other technologies to do so efficiently in large volume. Credit card accounts often are sold—and may be resold multiple times. Several factors influence the price of these accounts, including their age, location, and number of times previously placed for collection.

State and federal enforcement actions, anecdotal evidence, and the volume of consumer complaints to federal agencies—about such things as excessive telephone calls or the addition of unauthorized fees—suggest that problems exist with some processes and practices involved in the collection of credit card debt, although the prevalence of such problems is not known. One issue is that collection agencies and debt buyers often may not have adequate information about their accounts—sometimes leading the collector to try to collect from the wrong consumer or for the wrong amount—or may not have access to billing statements or other documentation needed to verify the debt. Further, with the advent of the debt-buying industry, accounts are frequently sold and resold, which can make verification more difficult as the owner of the debt becomes farther removed from the original creditor. Communications technologies that are ubiquitous today, such as mobile telephones, e-mail, and voice mail, were not prevalent when FDCPA was enacted in 1977. Significant uncertainty exists about how to use these technologies in compliance with the statute—for example, a debt collector may violate FDCPA if someone other than the debtor overhears a voice mail message revealing the debt collection effort. Additionally, FDCPA does not provide FTC with rulemaking authority, which has limited the agency's ability to address concerns related to the adequacy of account information, collectors' use of modern technologies, and other issues that arise in an evolving marketplace.

Contents

Abbreviations

FCRA	Fair Credit Reporting Act
FDCPA	Fair Debt Collection Practices Act
FDIC	Federal Deposit Insurance Corporation
Federal Reserve	Board of Governors of the Federal Reserve System
FTC	Federal Trade Commission
FTC Act	Federal Trade Commission Act
NACARA	North American Collection Agency Regulatory Association
NCUA	National Credit Union Administration
OCC	Office of the Comptroller of the Currency
OTS	Office of Thrift Supervision

United States Government Accountability Office
Washington, DC 20548

September 21, 2009

The Honorable Carl Levin
Chairman
The Honorable Tom Coburn, M.D.
Ranking Member
Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Claire McCaskill
United States Senate

Credit card debt has increased dramatically over the past several years and Americans had more than $838 billion in outstanding credit card debt in 2007, according to industry estimates. With the current economic recession, the rate at which consumers are falling behind on credit card debt also has increased. According to the Board of Governors of the Federal Reserve System (Federal Reserve), approximately 6.6 percent of credit cards were 30 or more days past due in the first quarter of 2009—the highest delinquency rate in 18 years. To recover delinquent debt, credit card issuers use a combination of methods, including use of their own in-house collection departments, third-party collection agencies, collection attorneys, and the sale of debt to a debt buyer. The debt collection industry recovers and returns to card issuers and other creditors billions of dollars in delinquent debt each year that would otherwise go uncollected.[1] These efforts increase the availability of consumer credit and reduce its cost.

Congress enacted the Fair Debt Collection Practices Act (FDCPA)—the primary federal legislation governing debt collection—in 1977, but the industry has changed considerably since that time. In October 2007, the Federal Trade Commission (FTC) held a workshop to learn more about the current state of debt collection and examine the adequacy of the regulatory framework used to oversee the industry. Recognizing that relatively little is known about the debt collection industry and the process

[1]This report uses “debt collection industry” to describe businesses that engage in the collection of debt for which the business is not the original creditor. The industry often refers to itself as the “accounts receivable management industry,” although that term sometimes encompasses the collection practices of original creditors as well.

through which credit card debt is recovered, you asked us to examine this process as well as other issues. Specifically, this report examines (1) the protections provided consumers under federal and state laws related to credit card debt collection, and the roles and responsibilities of federal and state agencies in enforcing these laws; (2) the processes and practices involved in collecting and selling delinquent credit card debt; and (3) any issues that may exist related to some of these processes and practices.

This report focuses on the collection of consumer credit card debt. However, because debt collection companies typically also service other forms of consumer debt (such as health care or utility), it was not always possible to separate processes and data related specifically to credit card debt. In addition, this report focuses on the largest credit card issuers—which represent about 83 percent of outstanding credit card debt—and on medium- to large-sized debt collection companies. As a result, the collection processes and practices described in this report may not be representative of smaller credit card issuers or debt collection companies. To address our first objective, we reviewed relevant federal laws, rules, and guidance and we interviewed staff from FTC and the federal depository institution regulators—the Federal Deposit Insurance Corporation (FDIC), Federal Reserve, Office of the Comptroller of the Currency (OCC), and Office of Thrift Supervision (OTS). We also reviewed selected state laws applicable to credit card debt collection, as well as two compendiums of state laws. We relied on the appropriate state officials for analysis of and information about the meaning and scope of state debt collection laws. To address our second objective, we met with officials of the six largest credit card issuers, six third-party debt collection companies, six companies that purchase credit card debt, two law firms, and industry trade groups representing these entities. We chose the companies we interviewed because their collection business included collection of credit card debt and because they ranged in size from medium to very large. These companies included some of the largest industry players, although data are not available on the share of the respective markets that they represent. We also collected and analyzed various documents from these entities, including public filings and sample contracts. We also toured the collection facilities of one card issuer and one debt collection company and observed telephone collection operations. To address our third objective, we reviewed FTC's annual reports on FDCPA from 1998 to 2009, the report and public comments deriving from FTC's 2007 workshop, and documents related to the agency's enforcement actions. We reviewed federal depository regulators' examination manuals, as well as formal and informal enforcement activity the regulators took from 1998 to 2008. We also reviewed enforcement actions taken by selected state agencies related to debt collection from January 2006 to May 2009. We analyzed all of the consumer complaint data from the depository regulators and FTC from 2004 to 2008. In addition, we reviewed various studies and reports produced by advocacy and trade organizations representing the interests of consumers and debt collection firms. We conducted interviews with representatives of relevant federal and state agencies and consumer and industry trade groups.

We conducted this performance audit from July 2008 to September 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. More information on our scope and methodology is available in appendix I.

Background

Credit card usage has grown dramatically in recent years. From 1993 to 2007, the amount charged to U.S. credit cards rose from $475 billion to more than $1.9 trillion, according to estimates from the Card Industry Directory.[2] While more than 6,000 depository institutions issue credit cards, the majority of accounts are concentrated among a small number of large banks. As shown in table 1, at the end of 2007, the top six credit card issuers accounted for about 83 percent of the outstanding credit card loans nationwide.

[2]Includes both consumer and commercial credit card charge volume. See *Card Industry Directory: The Blue Book of the Credit and Debit Card Industry in North America*, 20th ed. (Chicago, Ill., 2008). SourceMedia, the publisher of the Card Industry Directory, told us that the 20th edition is the last edition that will be published and that its information has migrated into a Web-based product called PaymentsSource.

Table 1: Six Largest Credit Card Issuers by Outstanding Credit Card Loans as of December 31, 2007

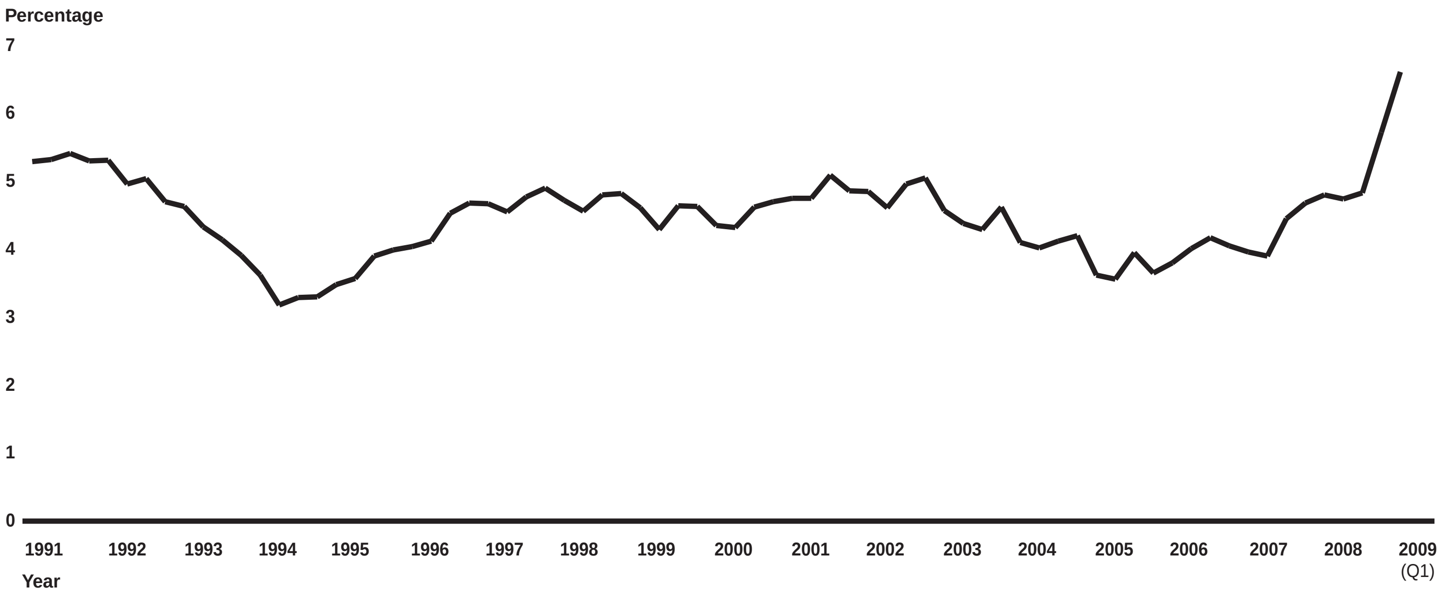
Card issuer	Outstanding loans	Percentage of total market
Citigroup Inc.	$196,811,000,000	23.5
Bank of America	183,691,119,000	22.0
JPMorgan Chase & Co.	148,391,000,000	17.7
Capital One Financial Corp.	62,432,633,000	7.5
Discover Financial Services Inc.	52,302,410,000	6.3
American Express	49,251,563,000	5.9
Total	**$692,879,725,000**	**82.9**

Source: GAO analysis of data from Card Industry Directory.

In 2008, issuers had more than $23 billion in nonsecuritized debt that was from 30 to 180 days delinquent, according to data from Call Reports.[3] As seen in figure 1, credit card delinquency rates have fluctuated over time. According to Federal Reserve data, these rates averaged about 4.4 percent from 1991 to 2007, but since that time have risen sharply to about 6.6 percent in the first quarter of 2009.

[3]FDIC-insured institutions file financial data quarterly reports, often known as "Call Reports" for banks and "Thrift Financial Reports" for thrift institutions, which provide details on income and certain financial condition information. However, these reports do not include detailed information on credit card balances that an institution may have sold to other investors through a securitization—the sale of credit card receivables as part of pools of securitized assets to investors. Credit card-issuing banks generally securitize more than 50 percent of their credit card balances.

Figure 1: Credit Card Delinquency Rates, 1991–2009 (first quarter)



Source: GAO analysis of Federal Reserve data.

Note: Delinquent loans are those past due 30 days or more and still accruing interest, as well as those in nonaccrual status.

When consumers fall more than 180 days behind on paying their credit card bills, banks "charge off" the delinquent account.[4] Charged-off loans are generally considered uncollectible—usually because of cardholder bankruptcy, death, or prolonged delinquency—and are removed from issuers' portfolios.[5] Federal Reserve data show that in the first quarter of 2008, issuers charged off $4.2 billion, which represented about 4.7 percent of their outstanding credit card debt. By contrast, in the first quarter of

[4]Bank regulatory accounting requirements state that the accounts must be charged off after 180 days of delinquency for an open-end (revolving) account or 120 days for a closed-end (installment) account. Uniform Retail Credit Classification and Account Management Policy, 65 Fed. Reg. 36903 (June 12, 2000).

[5]Fraudulent charges must be charged off within 90 days of discovery, or within the time frames generally established in the Uniform Retail Credit Classification and Account Management Policy. *Id.* at 36905.

2009, the amount charged off had increased to about $7.5 billion, which represented a charge-off rate of 7.6 percent.[6]

The debt collection industry comprises a variety of participants, including companies that specialize in the collection of debt, debt collection law firms, and debt buyers, which purchase delinquent debt for a fraction of its face value. These companies handle credit card debt as well as other forms of debt, including utility, health care, telecommunication, and automobile loans, as well as delinquent taxes. According to the U.S. Census Bureau, in 2006 more than 4,400 debt collection companies in the United States collectively employed approximately 143,000 people. Many of these companies were very small—43 percent employed 4 or fewer employees, while about 3 percent had 500 employees or more.[7] The small agencies may operate within a limited geographic range, while the largest corporations may operate in every state and internationally. The debt collection industry has experienced consolidation in recent years, largely due to mergers and acquisitions. The four largest debt collection companies represented about 10 percent of total industry revenues in 1992 and 19 percent of total industry revenues in 2002, the most recent year the Census Bureau collected this statistic.

Because most debt collection companies are privately held, limited data exist on the debt collection industry's precise size and other attributes. However, several sources, including FTC and some industry participants and analysts, state that the industry has grown in recent years. Kaulkin Ginsberg, a firm that provides research and other services to the debt collection industry, estimated that in 2006, revenues were about $10 billion for third-party collection agencies and about $1.2 billion for law firms specializing in debt collection.[8] ACA International, a credit and collection industry trade association, commissioned an industry survey that

[6]The Federal Reserve measures charge-off rates as the value of loans removed from the books and charged against loss reserves net of recoveries as a percentage of average loans and annualized.

[7]U.S. Census Bureau, "Statistics of U.S. Businesses: 2006: NAICS 56144 - Collection Agencies."

[8]Representatives of Kaulkin Ginsberg told us they developed their estimates from discussions with industry participants as well as from financial statements and other data obtained in the firm's capacity as an industry advisor. We could not assess the reliability of Kaulkin Ginsberg's estimates, and our review of its largely qualitative and unstandardized methodology indicates that the potential for error may be large in its estimates about the overall industry.

estimated that in 2007 collection agencies recovered about $58 billion in delinquent debts, although these estimates may not have been very accurate.[9]

One significant change in the debt collection business in recent years has been the growth of debt buying. Debt buyers include firms whose business model focuses on the purchase of debt, as well as collection agencies and collection law firms who collect both on debt owned by others as well as debt they purchase and own themselves. In addition, some firms are passive debt buyers—investors that buy and resell portfolios but do not engage in actual debt collection themselves. While little comprehensive data exist on the debt-buying industry, Kaulkin Ginsberg estimated that the amount of debt purchased grew from about $57 billion in 2003 to $100 billion in 2006, with credit card debt representing about 75 percent of the 2006 total. In May 2006, an industry trade journal, Collections and Credit Risk, stated that the global debt-buying market had sales of an estimated $158 billion annually and that $100 billion of credit card debt is sold annually in the United States alone.[10]

While the exact number is not known, hundreds, and possibly thousands, of entities purchase debt, according to DBA International, a trade association for debt buyers. The debt-buying industry is highly concentrated, and according to The Nilson Report—which provides news and conducts research on consumer payment systems—10 buyers were responsible for 81 percent of all of the credit card debt purchased in fiscal year 2007.[11] Only five debt-buying firms are known to be publicly traded companies, and our review of these firms' filings with the Securities and Exchange Commission found that four of them report purchasing credit card debt. Portfolio Recovery Associates, Inc., reported it had purchased more than $32 billion, face value, of credit card debt from 1996 to 2008, representing 82 percent of its overall debt portfolio. Asset Acceptance Capital Corp. had purchased more than $22 billion in credit card debt from

[9]PricewaterhouseCoopers, LLP, *The Value of Third-Party Debt Collection to the U.S. Economy in 2007: Survey and Analysis*, June 12, 2008, study commissioned by ACA International. While the methodology of this survey was generally sound, because of the low response rate and the absence of nonresponse bias analysis, and the wide confidence intervals around key estimates due to the small number of responses, the resulting survey data may not be reliable for making precise quantitative estimates.

[10]Figures represent face value of debt sold.

[11]The Nilson Report, Issue 901, April 2008.

1999 to 2008, representing 64 percent of the face value of its debt portfolio. In addition, Encore Capital Group reported it purchased more than $201 million in credit card debt in 2008. A fourth company, Asta Funding, indicated it purchased credit card debt, but did not specify the amount.

Several Federal and State Laws Govern Fair Debt Collection, and Agencies' Oversight Roles Vary

A variety of federal and state laws address debt collection practices, and a number of federal and state agencies play a role in overseeing the debt collection industry, conducting enforcement activities, and educating consumers about debt collection.

FDCPA Is the Primary Federal Law Governing Third-party Debt Collection Practices

Congress has passed several laws that govern the practices of creditors or third parties in the collection of debt, including FDCPA, the Federal Trade Commission Act (FTC Act), and the Fair Credit Reporting Act (FCRA).

Fair Debt Collection Practices Act

The primary federal law governing third-party debt collection practices is FDCPA, which Congress enacted in 1977 in response to concerns about the practices of many debt collectors.[12] FDCPA applies to third-party debt collectors, a term that includes collection agencies that operate on a contingency basis, collection law firms, and debt buyers, but generally does not apply to original creditors collecting on their own debt.[13] According to the Senate report accompanying FDCPA, creditors were exempted because it was believed that their incentive to protect ongoing customer relationships made them less likely to engage in abusive collection practices.[14]

FDCPA prohibits debt collectors from using abusive, deceptive, and unfair debt collection practices as well as other specific practices:

[12]Pub. L. No. 90-321, title VIII, as added Pub. L. No. 95-109, 91 Stat. 874, *codified at* 15 U.S.C. §§ 1692 – 1692p.

[13]FDCPA does apply to original creditors in cases where a creditor collects its own debts using a different name that would indicate a third party is collecting its debt.

[14]S. Rep. No. 95-382, at 2 (1977).

- *Communications*. The act regulates how collectors can communicate with consumers who may owe a debt and with others associated with the consumer. For example, it prohibits a collector from informing a consumer's employer about the debt and prohibits collectors from calling before 8:00 a.m. or after 9:00 p.m. Consumers also may request that the collector cease further communication.

- *Treatment of debtor*. Debt collectors may not harass, oppress, or abuse consumers; use or threaten violence; use obscene language; or use a telephone to engage in actions intended to annoy, such as causing the telephone to ring repeatedly.

- *False or misleading representations*. Debt collectors may not misrepresent who they are, falsely represent the legal status of the debt, fail to disclose to the consumer that they are attempting to collect a debt, or imply that nonpayment is a crime.

- *Unfair practices*. The act prohibits the use of unconscionable or unfair practices, including trying to collect the wrong amount of debt; adding unauthorized fees, interest or other charges to the debt; or causing the consumer to incur collect-call telephone charges.

FDCPA also dictates the process debt collectors must use during the initial communication with the consumer and the steps a consumer can take to dispute a debt. Within 5 days of a collector's initial communication about a debt, the collector must send the consumer a written notice—a validation notice—that includes the amount of the debt, the name of the owner of the debt, and a statement informing the consumer that the debt is assumed valid unless the consumer disputes the debt in writing within 30 days. If the consumer disputes the debt within that period, the collector must cease collection efforts until the collector provides the consumer with verification of the debt.

FTC has primary government enforcement authority under FDCPA—except to the extent that this enforcement authority is given to seven other federal agencies for entities under their jurisdiction.[15] FTC has a number of

[15]15 U.S.C. § 1692l(b). These agencies are FDIC, Federal Reserve, OCC, OTS, the National Credit Union Administration, the Department of Transportation, and the Department of Agriculture. These seven agencies are authorized to enforce FDCPA under their authorities: section 8 of the Federal Deposit Insurance Act for the federal depository regulators and the Federal Credit Union Act for the National Credit Union Administration. 12 U.S.C. §1818; 12 U.S.C. § 1751 et seq.

enforcement options for those who violate FDCPA. FTC can seek a court order prohibiting defendants from engaging in conduct and requiring that they pay monetary relief, including restitution to consumers, disgorgement of ill-gotten gains, and civil penalties of $16,000 per violation.[16] FDCPA also provides consumers with a private right of action—allowing them to bring civil actions and be awarded monetary damages if collectors engage in prohibited collection practices or otherwise do not adhere to the act's requirements.

Federal Trade Commission Act

The FTC Act, enacted in 1914 and amended on numerous occasions, gives FTC the authority to prohibit and take action against unfair or deceptive acts or practices.[17] Certain practices that violate FDCPA provisions may also violate section 5 of the FTC Act, and FTC often will bring enforcement actions under both statutes in its cases against third-party debt collectors. In addition, FTC and federal depository regulators can use the FTC Act to address unfair or deceptive debt collection practices by original creditors, who are not covered by FDCPA.[18] The FTC Act also authorizes FTC to obtain a court-ordered injunction to halt the activities of any entity that it believes is violating the laws it enforces, including FDCPA.[19]

Fair Credit Reporting Act

FCRA, enacted in 1970, is designed to ensure the accuracy of information provided for "consumer reports"—reports containing information about an individual's personal and credit characteristics used to help determine eligibility for such things as credit, insurance, and employment.[20] Consumer reporting agencies assemble consumer reports using information provided by data furnishers that can include credit card issuers, debt collectors, and debt buyers. FCRA requires that these data furnishers provide accurate information to consumer reporting agencies and specifies that information about delinquent accounts generally cannot

[16]Disgorgement is having to give up profits or other gains illegally obtained. 15 U.S.C. § 45(m)(1)(a); 16 C.F.R. § 1.98(d).

[17]Pub. L. No. 63-203, ch. 311, 38 Stat. 717 (1914), *codified at* 15 U.S.C. §§ 41 – 58.

[18]Federal depository institution regulators, but not FTC, have authority to enforce the FTC Act against depository institutions. 15 U.S.C. §§ 45(a)(2), 57a(f).

[19]15 U.S.C. § 53(b).

[20]Pub. L. No. 90-321, title VI, as added Pub. L. No. 91-508, title VI, § 601, 84 Stat. 1128 (1970), codified at 15 U.S.C. §§ 1681 – 1681x.

remain on a consumer's credit report more than 7 years.[21] The act also prescribes how the date of delinquency of a consumer debt is to be calculated, as well as the process that consumer reporting agencies and data furnishers must follow when consumers dispute the accuracy of information on credit reports. In July 2009, FTC and the federal depository institution regulators issued a final rule to establish guidelines for reasonably ensuring the accuracy and integrity of consumer information reported to consumer reporting agencies and adding a new process for addressing consumer disputes.[22]

Other Federal Statutes

Provisions in other federal statutes also affect debt collection practices. The Telephone Consumer Protection Act of 1991 regulates the use of predictive dialers—a technology on which the debt collection industry relies heavily in its collections operations.[23] Subtitle A of title V of the Gramm-Leach-Bliley Act governs the collection, sharing, and safeguarding of consumers' nonpublic personal information by certain financial institutions, including creditors and debt collectors, and requires that these entities implement proper safeguards to protect the security and integrity of consumer information.[24]

In addition, a number of financial regulatory statutes grant federal depository regulators the authority to examine banks' safety and soundness, as well as compliance with applicable laws and regulations. As part of these examinations, the federal depository regulators may review credit card issuers' internal debt collection practices and their oversight of third-party debt collectors (vendors), in connection with applicable laws, regulations, or guidance.

[21] 15 U.S.C. §§ 1681c; 1681s-2(a).

[22] Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transactions Act, 74 Fed. Reg. 31484 (July 1, 2009), *to be codified at* 12 C.F.R. pts. 41 (OCC), 222 (Federal Reserve), 334 (FDIC), 571 (OTS), 717 (NCUA), and 16 C.F.R. pt. 660 (FTC). The effective date for these final rules and guidelines is July 1, 2010.

[23] 47 U.S.C. § 227. Predictive dialers are automated computer systems that determine the number of calls to make based on the time of day, the number of call-center staff logged onto the system, and the average length of time staff speak with consumers.

[24] 15 U.S.C. §§ 6801-6809.

Many States Have Their Own Fair Debt Collection Statutes

States cannot enforce FDCPA, but according to the National Consumer Law Center, most states have fair debt collection statutes of their own.[25] According to state officials we spoke with, many of the state laws largely mirror FDCPA but allow for local enforcement—however, some state laws are more expansive than FDCPA because they define "debt collector" more broadly or place additional requirements on debt collectors' conduct. Examples among four states we reviewed include the following:

- *Applicability to creditors*. Some state debt collection statutes may regulate the activities of creditors collecting their own debts, unlike FDCPA, which generally applies only to third-party collectors.[26] For example, California law expressly defines debt collector to mean "any person who, in the ordinary course of business, regularly, on behalf of himself or herself or others, engages in debt collection."[27]

- *Consumer notice requirements*. Some states may have consumer notice requirements additional to those in FDCPA. For example, California's debt collection statute among other things expressly requires third-party debt collectors to provide a specific notice to a debtor describing the debtor's rights, including notice that collectors may not harass the debtor by using threats of violence or arrest or by using obscene language.[28] The Colorado Fair Debt Collection Practices Act expressly requires collectors to provide consumers with the Web site address of the Colorado Attorney General, which contains information on the act.[29]

- *Restrictions on debt collection activities*. Some states may place restrictions on collection activities additional to the restrictions in FDCPA. For example, Massachusetts debt collection regulations state that it is an

[25]Robert J. Hobbs et. al. National Consumer Law Center, *Fair Debt Collection*, App. E , p. 731 (6th ed., 2008). FDCPA does not preempt state law as long as the state law is not inconsistent with the federal law. Explicitly, state law is not inconsistent if it provides protections greater than those of FDCPA. 15 U.S.C. § 1692n.

[26]As noted above, FDCPA does apply to a creditor collecting its own debt if the creditor uses a different name that would indicate a third party is collecting its debt. 15 U.S.C. § 1692a(6).

[27]Cal. Civ. Code § 1788.2(c) (2009), which provides further that, "[t]he term includes any person who composes and sells, or offers to compose and sell, forms, letters, and other collection media used or intended to be used for debt collection, but does not include attorney or counselor at law."

[28]Cal. Civ. Code § 1812.700(a) (2009).

[29]Colo. Rev. Stat. § 12-14-105(3)(c) (2009).

unfair or deceptive act or practice for a creditor or debt collector to call a consumer's home more than twice a week per debt or call locations other than home more than twice in 30 days.[30]

- *Private civil enforcement.* As with FDCPA, some states may allow consumers to bring civil law suits against debt collectors that violate state debt collection laws. According to one state official, such a private right of action is designed to encourage compliance with the law while minimizing the use of limited state enforcement resources. For example, Texas law expressly provides that consumers can also be granted injunctive relief that prevents a collector from continuing the unlawful harmful conduct.[31]

Debt collection also is affected by applicable state statutes of limitations, which place limits on when an issuer or debt collector can initiate legal action against a consumer for collection of a debt. According to FTC, the statute of limitations for credit card debt varies by state, but typically ranges from 3 to 10 years, and generally begins to run from the date the debt becomes delinquent. Some states may allow the statute of limitations to restart under certain circumstances—for example, in Kansas, the statute of limitations is restarted when a consumer makes a payment toward the debt or acknowledges in writing owing the debt.[32] According to FTC, courts that have addressed the issue have found it illegal to sue or threaten to sue to recover debt that is beyond the statute of limitations, often referred to as "time-barred debt." According to the National Consumer Law Center, courts have generally found that attempting to collect a time-barred debt without suing or threatening to sue does not violate FDCPA, except in the few states in which debts are extinguished at the end of the limitations period.[33]

[30]Mass. Regs. Code tit. 940, § 7.05(3)(d) (2009).

[31]Tex. Finance Code § 392.403(a)(1) (2009).

[32]Kansas law explicitly states that an action may be brought within the statutory period after a payment on, or a signed written acknowledgment of, or promise to pay the debt is made by the debtor when a consumer makes a payment toward the debt or acknowledges in writing owing the debt. Kan. Stat. Ann. § 60-520(a) (2008).

[33]See for example Wis. Stat. § 893.05 (2008), which states "[w]hen the period within which an action may be commenced on a Wisconsin cause of action has expired, the right is extinguished as well as the remedy." Robert J. Hobbs et. al. National Consumer Law Center, *Fair Debt Collection*, p. 222 (6th ed., 2008).

Federal and State Agencies Oversee Debt Collection Practices in a Variety of Ways

A number of federal and state agencies regulate the various participants involved in debt collection and bring enforcement proceedings against violators of the law by filing and prosecuting administrative or civil actions and undertaking other consumer protection measures such as consumer and industry education.

Federal Trade Commission

FTC has primary government enforcement responsibility to oversee the debt collection industry and, in doing so, tracks consumer complaints, takes enforcement actions, and provides consumer and industry education.[34] FTC receives consumer complaints about debt collection and other matters online through its Complaint Assistant system or by telephone or in writing through its Consumer Response Center and enters these complaints into its Consumer Sentinel database. In addition, local Better Business Bureaus and state and local law enforcement authorities can also enter information into the Consumer Sentinel database regarding complaints they receive. Some federal depository regulators are also members of Consumer Sentinel and can access the database and review complaints related to institutions they oversee. FTC and other law enforcement authorities use the Consumer Sentinel database to target their investigations and guide their enforcement activities.

FDCPA and the FTC Act provide FTC with enforcement authority to investigate debt collection agencies it believes may be violating the law. As noted earlier, if FTC's investigation reveals violations of either act, the agency can file suit in federal court for injunctive relief to prevent further violations and seek restitution for consumers and disgorgement of ill-gotten gains by the collector. Alternatively, FTC can seek civil penalties and other monetary relief by requesting that the Department of Justice file suit against the collector on its behalf. FTC officials told us that the agency has focused its enforcement efforts on practices that result in the greatest harm to consumers or on cases that involve a particular legal issue it is trying to clarify. FTC officials said that to maximize the deterrent effect of its enforcement actions, they recently have been demanding greater monetary penalties and naming as defendants individual corporate officers and managers, rather than simply the company as a whole.

[34]Section 184 of the proposed Consumer Financial Protection Agency Act of 2009, H.R. 3126, 111th Cong. § 184, would create a new Consumer Financial Protection Agency, which would have primary enforcement authority for FDCPA, among other consumer protection laws. The bill was introduced on July 8, 2009, and was referred to the Committee on Financial Services and the Committee on Energy and Commerce.

FTC also undertakes consumer education efforts to inform consumers of their rights and the restrictions placed on debt collectors by FDCPA. In 2008, FTC distributed more than 110,000 English- and Spanish-language copies of the brochure "Fair Debt Collection," which seeks to describe FDCPA in plain, easily understood language.[35] FTC also issues consumer alerts on its Web site on specific debt collection issues of concern. For example, the agency issued an alert on the collection of time-barred debts shortly after it had taken an enforcement action related to that issue. FTC call center staff also seek to educate consumers who call to submit a debt collection complaint—for example, informing them of their right to obtain written verification of the debt. The agency also seeks to educate and reach out to participants in the debt collection industry by speaking at industry conferences, participating in panel discussions, and issuing FDCPA advisory opinions.

Federal Depository Regulators

The major credit card issuers are structured as depository institutions and their activities, including those related to debt collection, are therefore overseen by federal depository institution regulators. OCC oversees four of the largest consumer credit card issuers—Bank of America, Capital One, Chase, and Citibank, while FDIC oversees two other large issuers, American Express and Discover.[36] The Federal Reserve, OTS, and the National Credit Union Administration (NCUA) also oversee certain credit card issuers.[37] The depository regulators conduct examinations to evaluate the safety and soundness of their institutions and ensure compliance with federal laws and regulations, including the FTC Act and FCRA. While FDCPA does not apply directly to credit card issuers collecting on their own debts, some of the practices prohibited by the statute, if engaged in by financial institutions, may support a claim of unfair or deceptive practices in violation of the FTC Act, which is the statute on which the federal depository regulators rely in overseeing collection activities.[38]

[35] FTC updated this brochure in February 2009 and renamed it *Debt Collection FAQs: A Guide for Consumers*.

[36] An American Express savings bank that issues credit cards is overseen by OTS.

[37] The Federal Reserve also serves as the consolidated supervisor for bank holding companies, within which national banks, among certain other types of entities, may be housed.

[38] FTC lacks jurisdiction under the FTC Act over banks, thrifts, and federal credit unions.

As part of issuers' safety and soundness examinations, regulators may review the sale of credit card debt, as well as the programs issuers offer delinquent consumers to help them pay their debt, since these issues can affect the financial stability of the bank. Regulators told us they also review issuers' management and oversight of third-party vendors, including third-party debt collection agencies. If they have reason to suspect problems with these third-party debt collection relationships, they can investigate the collection agency on site at the company workplace.[39] If the regulators identify violations related to debt collection, among the possible responses could be formal enforcement actions (such as cease and desist orders, civil money penalties, removal orders, and suspension orders) or informal enforcement actions (such as memorandums of understanding and board resolutions). In addition, if appropriate, regulators can seek restitution as a remedy for violations involving unfair or deceptive debt collection practices. Like FTC, the depository regulators collect and track complaints from consumers about issuers. They use these data to focus their risk-based examinations, assess issuers' compliance with consumer protection laws and regulations, and determine the need for future regulations or educational efforts.

State Agencies

Our meetings with state regulators indicated that states vary in how they regulate debt collectors and enforce fair debt collection laws. Agencies that play a key role in overseeing debt collection can include the state's banking or finance division, office of consumer affairs, and the office of the Attorney General. Some states also have collections or licensing boards—comprising in some cases both government regulators and industry representatives—that serve as the regulatory body for debt collection agencies in the state.

Certain states require debt collection agencies doing business in the state to be licensed. State agency officials noted that some states may require debt collectors to pay a licensing fee or post a bond, and some states can suspend or revoke an agency's license if it has been found to violate state debt collection laws or otherwise violate licensing requirements. One state official also told us that licensing of debt collectors serves to keep debt collectors in compliance with state law without having to expend state resources bringing collectors to court. For example, in Colorado the Attorney General's office said that in recent years it had brought an average of about 50 to 60 administrative enforcement actions a year—

[39] One regulator told us it has never exercised this authority.

about half of which resulted in settlements and the other half resulted in the issuance of letters of admonition (censures). The office said that one or two cases have resulted in the revocation of a collector's license—but only rarely has court action been required.

Under the auspices of the North American Collection Agency Regulatory Association (NACARA), we held a group meeting with agency staff who oversee debt collection from 17 states. Many of the states represented gather and analyze consumer complaints about debt collection, often through telephone hotlines, postal mail, and online forms. States can also receive referrals from district attorneys, Better Business Bureaus, and other sources. Some states, such as Minnesota and Tennessee, review or investigate every consumer complaint received about a debt collector. Other states, the regulators told us, look collectively at complaint trends or patterns to determine if an investigation or enforcement action may be warranted. At least one state, North Dakota, conducts on-site examinations of every licensed collection agency operating in the state, either through an on-site visit or by mail. North Dakota bases its examination cycle primarily on the complaint volume received against a licensed collection agency, but examinations are still conducted even if there are no complaints received against a particular agency.

From January 2006 through May 2009, states took approximately 28 enforcement actions against debt collectors and collection attorneys for debt known to involve, or possibly involving, credit cards, according to the National Association of Attorneys General. In many of these cases state authorities said they imposed civil monetary penalties, recovered consumer funds, or enjoined the collector from engaging in further unlawful collection activities. Often, consumer complaints may serve as the trigger for taking an enforcement action—for example, Minnesota state officials told us that approximately 95 percent of such actions stemmed from individual consumer complaints.

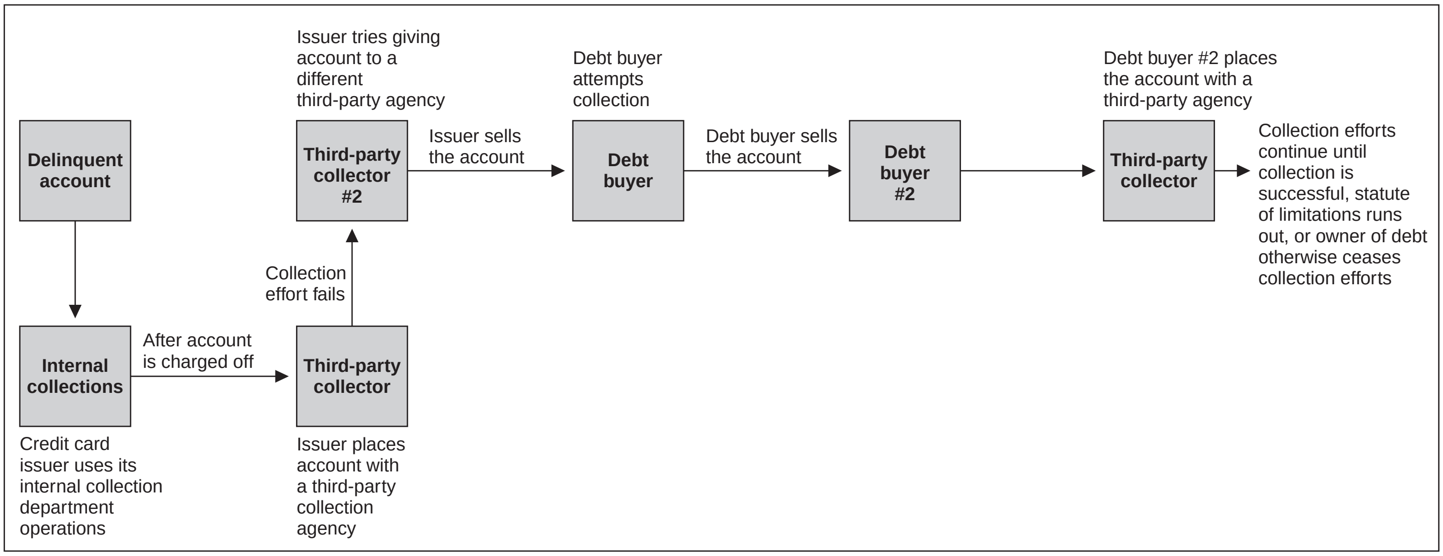
As with FTC, a number of state regulators make efforts to educate consumers about their rights under federal and state fair debt collection laws. Some states that we spoke with have developed Web sites, brochures, or videos on public access channels to educate consumers. In some states, regulators also deliver speeches and appear at conferences related to debt collection. Some states and cities incorporate debt collection issues into their broader efforts to improve consumers' financial literacy. For example, New York City's Department of Consumer Affairs addressed many debt collection issues during a weeklong "call-a-thon," from which consumers could get answers to financial questions.

States also coordinate with federal entities and among themselves. For example, to coordinate oversight responsibilities, FTC staff said they regularly communicate with state regulators and share information on industry trends and concerns. FTC also shares information with state Attorneys General and local law enforcement agencies through its Consumer Sentinel complaint database. NACARA was created in 1994 to help communicate and coordinate debt collection regulatory and enforcement efforts among member states. In some instances, several states jointly pursued enforcement actions against debt collectors. In addition, 12 NACARA member states are in the process of developing a uniform debt collector licensing application to improve the consistency of information on debt collection agencies across different states. NACARA members with whom we spoke said they have a good working relationship with FTC and have participated in FTC conferences.

Delinquent Credit Card Debt May Be Collected Internally, Outsourced, or Sold

Large credit card issuers first seek to recover delinquent debt using internal collection departments or first-party collection agencies that collect debt using the issuer's name. Issuers offer short- and long-term repayment arrangements to assist delinquent debtors. When large issuers are unable to collect these accounts, they typically send them to third-party collection agencies or collection law firms. But these creditors also can sell delinquent debt to a debt-buying firm that may, in turn, seek recovery using in-house collection, third-party collection agencies, or resale of the debt to another debt-buying firm. Figure 2 provides an illustrative example of the lifecycle of one delinquent credit card account.

Figure 2: Illustrative Example of the Lifecycle of a Sample Delinquent Credit Card Account



Source: GAO.

Credit Card Issuers Maintain Internal Collection Operations

Large credit card issuers maintain internal collection departments that attempt to recover money owed on delinquent credit card accounts.[40] Typically, these issuers use internal collection departments to contact consumers with accounts that are no more than 180 days delinquent and thus have not yet been charged off. Officials with whom we spoke at the six largest issuers have internal policies and procedures that govern their collection practices and audit departments that seek to ensure compliance with applicable laws. While FDCPA does not apply to creditors collecting on their own accounts, all of these issuers said they voluntarily use FDCPA as guidance for their internal collection activities and regularly monitor compliance with applicable state laws. Some issuers told us their collection staff undergo training programs that range in length from 2 to 10 weeks and include topics such as the company's collection policies, procedures, and technologies; negotiation skills; and compliance with applicable federal and state laws. The collection departments of five of the six largest issuers each had from 850 to 8,390 collectors. (The sixth issuer declined to provide the number of its collection employees.) The great majority of issuers' internal U.S. collection operations are based in the

[40]Recovery of debt from debtors who have died or filed for bankruptcy generally involves a different legal framework from typical debt collection and is not the focus of this report.

United States, although one issuer had a call center located in Costa Rica. Several of the large issuers we met with have recently expanded the size of their collection staff due to increases in the number of delinquent accounts; representatives of one issuer told us in February 2009 that its collection staff had increased 20 percent since late 2008.

Issuers can assist delinquent debtors experiencing financial hardship by using a short- or long-term payment arrangement to bring the account current or offering to settle a cardholder's account by accepting less than the full balance due. Temporary hardship programs can last up to 12 months and help borrowers overcome financial difficulties, such as unemployment or short-term illness, by reducing interest rates, finance charges, and fees. Programs of more than 12 months ("work out" programs) address longer-term financial hardships, such as divorce, permanent disability, or the death of a household income provider. Repayment terms for work out programs vary widely among issuers, but the federal depository regulators' guidance for credit card lending states that the programs should strive to have borrowers repay their credit card debt within 60 months.[41] Issuers may choose to "re-age" the account—or return a delinquent credit card account to current status without collecting the total amount of principal, interest, and fees that are due—if it meets certain criteria. Consumers can benefit from the re-aging of accounts because it can improve their credit reports. Federal banking guidelines exist on the frequency and circumstances under which issuers can re-age credit card accounts.[42]

Issuers Outsource Some Collection Activities

Credit card issuers can outsource debt collection to various types of collection firms. Accounts that have not been charged off are generally outsourced to first-party collection agencies and charged-off accounts are generally outsourced to third-party collection agencies or collection law

[41]For example, see Board of Governors of the Federal Reserve System Supervisory Letter SR 03-1 on Account Management and Loss Allowance Guidance (Jan. 8, 2003).

[42]Under federal depository regulators' guidelines, an account should exhibit certain criteria to be eligible for re-aging, such as the borrower having demonstrated a renewed willingness and ability to repay the loan, the account has existed for at least 9 months, and the borrower has made at least three consecutive minimum monthly payments or the equivalent cumulative amount. Issuers may not re-age an account more than once within any 12 month period and no more than twice within any 5 year period. Different limits apply to accounts that have entered into work out programs. Uniform Retail Credit Classification and Account Management Policy. 65 Fed. Reg. 36903, 36905 (June 12, 2000).

firms. Contracts between issuers and these agencies often specify the policies and procedures to be used in the collection process. An issuer can also decide to sell credit card debts and the buyer of those debts can, in turn, resell those debts to another buyer. Limited available data exist on the specific amounts of the credit card debt that issuers collect in-house, outsource, or sell because issuers generally consider this to be proprietary business information.

First-party Collection Agencies

Some credit card issuers use "first-party" collection agencies to supplement their in-house collection operations for delinquent accounts that have not yet been charged off. First-party collection agencies use the name of the issuer when contacting consumers and may not be subject to FDCPA. These agencies typically are paid on a fee-for-service rather than contingency basis. Using first-party collection agencies gives issuers additional flexibility to manage fluctuations in the workload and resources of their internal collection operations. Because first-party collectors use the issuers' name and are collecting from current customers, there is an emphasis on preserving the relationship with the consumer and mitigating the negative perception that consumers can have about their accounts being forwarded to collection. Some issuers also mentioned that their first-party collection agencies are required to adhere to the same standards as their internal collection departments.

Third-party Collection Agencies

If an issuer's internal efforts to collect on accounts have been unsuccessful or the accounts are more than 180 days delinquent and have been charged off, the issuer may choose to place the account with a third-party agency (also known as a contingency agency). Third-party collection agencies are generally paid on commission based on a percentage of the amount recovered, with the percentage being higher for debts that are older or otherwise harder to collect. Third-party agencies typically use their own names when communicating with debtors and are subject to FDCPA, as well as any relevant state laws. The length of time that accounts are placed with these agencies can vary, but can range from several weeks to several months or years. The agencies generally return uncollected accounts to the issuer at the end of the placement period, at which time issuers sometimes place the account with a different collection agency. Some third-party collection agencies focus on recovering credit card debt, while other agencies specialize in recovering other types of debt, such as telecommunications or health care, although these companies may collect credit card debt as well. Officials of one large credit card issuer told us it had contracts with 15 to 20 different third-party collection agencies, while another issuer had contracts with 20 such agencies, and a third issuer with more than 50 agencies. Some of the issuers explained that they choose their collection agencies selectively to avoid legal or reputation risks and to maintain customer relationships. For example, they may review companies' records of legal compliance, data security practices, and number of Better Business Bureau complaints.

Before an issuer provides a portfolio of credit card accounts to a third-party company for collection, it "scrubs" the portfolio to remove accounts for which the debtor has died, filed for bankruptcy, previously settled the debt, or disputed its validity, according to several issuers with whom we met. Several collection companies told us that when they receive a portfolio from an issuer or another collection company, they typically conduct a scrub of their own, including checking the accuracy and completeness of names, addresses, telephone numbers, and other information to ensure the account is valid for collection. Collection companies can use customized models to help determine the best collection strategy for the portfolio. These models assess the likelihood of payment and can help determine payment or settlement terms that the debtor should be offered.

The collection process begins when the collection company initiates contact with the debtor either by telephone or in writing. In general, FDCPA requires collectors to provide a consumer with notice of their rights under the law, called a validation notice, within 5 days of initial contact with the debtor, although we spoke with officials from one agency that sends the notice almost immediately.[43] If a debtor cannot be located, companies often use locator methods, such as "skip tracing"—the practice of searching national telephone directories, credit reports, tax assessor and voter registration records, and other sources, as well as contacting employers, friends, and family members of the debtor. Collection companies sometimes use the services of third-party vendors that specialize in skip tracing.

Third-party debt collection efforts rely primarily on a combination of telephone and postal mail contacts. Several large debt collection

[43]FTC staff guidance has indicated that if the debt collector's first communication with the consumer is oral (e.g., a telephone conversation), the debt collector may make the required disclosure at that time and need not send a written notice. However, if the notice is not included in the initial communication with the consumer, the notification must be provided in writing within 5 days after the initial communication in connection with the collection of any debt. See FTC Statements of General Policy or Interpretation Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. 50097, 50108 (Dec. 13, 1988) and 15 U.S.C. 1692g(a).

companies have multiple call centers—for example, one large collection company told us it operates about 125 call centers throughout the United States and overseas and employs about 15,000 collectors. Technology fundamentally has changed the practice of debt collection. We toured a call center at one third-party collection company and observed that collectors had on-screen access to detailed information about debtors and their financial histories. The software systems used for collection can also allow supervisors to monitor the collection activities of staff. Software applications also help manage collectors' workflows and can help ensure compliance with federal and state law. Predictive dialers and other telephone technology improve efficiency by reducing the wait time for collection staff. For example, predictive dialing systems can be programmed not to call consumers earlier, later, or more frequently than permitted by FDCPA or applicable state law. One large agency told us it recently designed a proprietary voice recognition system that tries to recognize when collectors engage in inappropriate behavior, such as speaking with an abusive tone or using profanity. Word processing and automated mail sorting systems allow debt collectors to send customized mass mailings relatively inexpensively. Some collection agencies contract with third-party vendors to handle the design and mailing of their customized FDCPA-compliant letters.

Officials at the 12 third-party collection companies and debt buyers with whom we spoke required their collectors to participate in training programs that ranged in length from 1 to 4 weeks. Topics can include debt collection techniques, negotiation skills, compliance with applicable law, and use of desktop technologies. Some collection companies told us they periodically retest their staff and provide additional training to respond to changes to any applicable state fair debt collection law. While compensation plans can vary among companies, the incomes of collection staff are typically some combination of hourly wage and a commission based on their performance in recovering debts.

With the authorization of their creditor clients, collection companies can offer a variety of repayment plans to debtors, which may include installment payments (that is, fixed monthly payments) or settlements for less than the amount due. If applicable, and authorized by their creditor clients, companies can also elect to discount interest and fees that have accumulated on the account. Options for methods of payment have expanded in recent years and now include electronic fund transfers, debit cards, and credit cards. Contracts between issuers and collection agencies often specify the policies and procedures to be used during the collection process. According to issuers and collection agencies we met with, this can include details on how and when cardholders may be contacted, options that can be offered for repayment and settlement, and how consumer disputes are to be addressed. For example, several issuers required collection agencies to forward disputed accounts to them for investigation. Several issuers also told us that contracts typically include data security requirements and provisions allowing issuers to monitor and audit the collection agency. For example, large issuers sometimes have access to the internal communications systems of the third-party agencies, allowing them to listen to live collection calls from a remote location. Issuers also said they conduct regular audits of their collection vendors, which include reviews of data security, financial records, and compliance with applicable law and any policies specified by the issuer. While contracts usually specify how long the account will be placed with the agency, some collection agencies told us that early termination is allowed if the agency is not meeting compliance or performance standards.

Collection Law Firms

Collection law firms specialize in collecting debts. The National Association of Retail Collection Attorneys stated in a June 2007 comment letter to FTC that about 5 percent of delinquent accounts (including credit card accounts) are referred to collection law firms for possible litigation, typically after collection efforts by internal and third-party collectors have failed. One issuer we spoke with places certain accounts with a collection law firm as soon as the issuer determines that a delinquent debtor has the ability to pay. Collection law firms involved in the recovery of debt are generally paid by contingency fee and receive a set percentage of debt recovered.[44] In addition to using collection law firms, officials of some issuers and third-party collection companies told us they also maintained their own legal staff to litigate collection cases.

Many collection law firms use traditional collection methods, such as telephone calls and letters, before starting litigation. These firms may collect on various types of debt, such as installment loans, credit card, automobile, or medical debt. Some of these firms also purchase portfolios of debt. Issuers and debt collection agencies may also contract with a network of collection law firms to facilitate the filing of lawsuits against debtors in multiple states. Collection attorneys and law firms are subject

[44]In addition to taking legal action for the recovery of debt on behalf of creditors, some firms also provide more traditional legal services for creditors, such as representing clients in bankruptcy filings, against class action lawsuits, or in the sale of debt portfolios. These services are typically billed on an hourly basis rather than paid through a contingency fee, according to firms with which we spoke.

to FDCPA, although some states may exempt collection attorneys from state debt collection laws under certain circumstances.

Credit Reporting

Issuers and other data furnishers, such as collection agencies, can furnish data and information about debtor accounts to consumer reporting agencies, which maintain up-to-date, account-level information on consumer credit histories that is used to help make important decisions about individuals, such as eligibility for credit, employment, or housing. Federal law requires consumer reporting agencies and all data furnishers to take responsibility for ensuring the accuracy of account information being reported.

Furnishing data to consumer reporting agencies is optional. While all of the issuers we met with chose to furnish data to consumer reporting agencies, some issuers, third-party collection agencies, and collection law firms may choose not to. Contracts for collection services generally stipulate each party's responsibility for credit reporting. For example, four of the six large issuers told us that their contracts with collection agencies generally stipulate that the issuer rather than the collection agency retains responsibility for furnishing account data to consumer reporting agencies. Collection companies collecting on their own debts may choose to furnish data as a collection tool—consumers may be motivated to repay their debts to avoid damaging their credit records. One stakeholder told us that those companies that choose not to furnish account data may, among other things, want to limit their exposure to liability related to FCRA compliance.

Consumer reporting agencies and the great majority of data furnishers use a standard data format, known as Metro 2, to help ensure consistency and accuracy in the reporting of information. The original Metro format was developed in the mid-1970s and by 1996, more than 95 percent of all data were furnished using this format. The Metro 2 format was introduced in 1997. It requires furnishers to provide more specific and complete information—such as the full account number and other fields that further identify the account—to improve accuracy and completeness. Consumers can dispute information in their credit reports related to delinquent credit card accounts by contacting the issuer, debt collector, or consumer reporting agency by telephone, mail, or online. Data furnishers, such as card issuers or debt collectors, must investigate disputes they receive from consumer reporting agencies and send the results back to the agency. The consumer reporting agency has 30 days to complete its investigation and, if necessary, update the consumer's credit report. Data furnishers and consumer reporting agencies can use a Web-based automated system called e-Oscar to transmit information regarding consumer disputes.

Credit Card Debt Often Is Sold and Resold

Issuers often sell portfolios of delinquent credit card debt to debt-buying companies. By selling accounts, issuers trade the longer-term cash flows of collection agency recoveries for the short-term proceeds of a sale to recover some of their losses. Credit card accounts can be resold multiple times. Five of the six large issuers with which we spoke currently sell at least some of their delinquent credit card debt to debt buyers. The issuer that does not currently sell its debt told us it had done so in the past but stopped 5 years ago because it believes its internal collection strategies and outsourcing to third-party collectors yield better results. Reputation risk can also be a factor in the decision to sell debts since issuers have limited control over the debt collection practices of new owners of the debt. Because the price issuers receive when they sell credit card debt has declined in recent years, at least one issuer told us it had reduced its sale of such debt—it sold 659,000 accounts with a face value of $3.6 billion in 2008, as compared with 750,000 accounts with a face value of $5.4 billion in 2006. Another issuer told us that in 2009 it sold approximately 6.6 percent of the inventory of charged-off debt it had accrued since 2001, which had been the year of its most recent prior sale of debt. In addition, one issuer told us that it had sold a small percentage of its charged-off debts from 2007 to 2009. Two other issuers declined to provide us with data on their sale of credit card debt because they considered this information proprietary.

Some debt-buying companies may purchase portfolios of debt that they collect on themselves, while other debt buyers may outsource all of their collections to third-party collection agencies or law firms. According to the trade association DBA International, debt buyers that do not collect on their own debt (sometimes called "passive" debt buyers) are generally not subject to FDCPA since they take no action to collect on the debt and do not communicate with the consumer. Portfolios of credit card accounts can be sold through public or Web-based auctions or through direct placements arranged by buyers and sellers. A portfolio of debts can be sold in bulk for an agreed-upon price or in a "forward flow" arrangement in which sellers agree to sell a steady volume of accounts for a specified period of time. Forward flow contracts provide sellers with a predictable stream of revenue for their charged-off accounts.

In addition, sales of credit card debt can be made through debt brokers—firms that facilitate the transaction between buyer and seller but never themselves attempt to collect on the debt. These firms charge a fee that may range from 6 to 8 percent of the portfolio's purchase price. One industry publication reported that in 2007 the top three debt brokers—National Loan Exchange, Garnet Capital Advisors, and LoanTrade—had managed a total of $17 billion in credit card sales.[45] We spoke with an official at one of these three debt brokers, who explained its process for brokering the sale of a portfolio of credit card debt: A financial institution contacts the broker with information on the debt portfolio it wishes to sell and the broker analyzes the portfolio and studies market conditions to determine an appropriate price for the portfolio. The broker then describes the portfolio in a detailed memo that is marketed to perhaps 200 potential buyers. A smaller number of interested buyers will receive further information and conduct their own analysis of the portfolio. On behalf of the seller, the broker will then offer the debt portfolio either through a sealed bidding process or an online auction.

Sellers and buyers conduct due diligence before making a bid or completing a transaction, which can include a review of the other party's policy and procedures regarding collection operations, compliance with applicable state and federal laws, and professional references. Some credit card issuers told us they sell accounts only to debt buyers with which they are familiar because of concerns about reputation risk; one of these issuers requires buyers to be certified annually to be eligible to purchase its accounts. Similarly, on the debt buyer side, some buyers require the seller to complete a survey to provide them with more information about the accounts being sold.

According to several industry stakeholders we spoke with, when preparing a portfolio for sale, a debt seller generally scrubs the accounts to remove those in which the debtor has died, filed for bankruptcy, settled the debt, or alleged fraud or identity theft. Prior to bidding on a credit card portfolio, debt buyers typically do their own reviews and scrubs of the accounts, according to DBA International. They may also review the portfolio's contents to determine the potential return on investment and if the strategies required to collect on the accounts would be consistent with the buyer's operations. According to ACA International's industry guidance, once a bid has been accepted and a transaction completed, certain documents, such as a bill of sale and a list of the accounts sold, may be used to legally document transfer of ownership.

[45]The Nilson Report, Issue 901, April 2008.

According to several industry stakeholders, as well as industry guidance published by ACA International, contracts for sales of debt portfolios can typically include provisions that specify the nature and extent of the account data that will be provided to the buyer, as well as the buyer's access to account media—for example, credit card applications and billing statements—or other documentation. Some contracts can include "buy-back" and "put-back" rights, which allow buyers and sellers to remove and receive remuneration for certain accounts, such as those involving evidence of fraud or deceased debtors. The contracts also may include indemnification provisions—for example, holding the first buyer responsible for any liability incurred as a result of the actions of a subsequent buyer. Some contracts also may limit the terms under which the buyer can resell the accounts. For example, one issuer with which we spoke prohibits its debt buyers from reselling the accounts for 1 year after purchase. Another issuer requires the debt buyer to receive its approval to resell the accounts, noting that the criteria for selecting the secondary buyer must be similar to that used by the issuer.

The price of a credit card portfolio is largely driven by certain key characteristics—most notably, the age of the debt and the number of times it has previously been placed for collection with a third-party agency. For example, accounts that are 91 days to 6 months past due and never previously placed for collection generally receive the highest prices, while older accounts and those previously placed for collection typically receive far lower prices. Some stakeholders told us that the geographic location of accounts can also affect pricing since state laws on debt collection, statutes of limitation, and other issues can affect the ability to recover on the accounts. For example, one debt broker told us that prices may be lower in states that prohibit the garnishment of wages in debt collection judgments. The debt broker added that the issuer's underwriting criteria, the average account balance, and the amount of documentation available all can affect the price of a portfolio.

Limited publicly available data exist on the exact prices of credit card portfolios. As shown in table 2, Kaulkin Ginsberg estimated that in January 2009, accounts that were up to 6 months delinquent and had not been placed with a collection agency typically sold for an estimated 5½-7½ cents for each dollar of face value. Older debt typically sold for much less—for example, accounts that were more than 2 years delinquent or had been previously placed with two collection agencies sold for an estimated 1-2 cents for each dollar of face value. Prices for all types of delinquent credit card debt have declined significantly in recent years, which Kaulkin Ginsberg attributes largely to a weakening economic environment that has reduced consumers' ability to repay debts and reduced buyers' willingness to pay as much for underperforming assets.

Table 2: Estimated Price Ranges for Credit Card Debt, Per Dollar of Account Face Value, March 2007 and January 2009

Type of debt	March 2007	January 2009
Fresh: 91 days to 6 months past due and never placed with a collection agency	$0.12 - $0.17	$0.055 - $0.075
Primary: 6 to 12 months past due and never placed with a collection agency	$0.08 - $0.12	$0.035 - $0.05
Secondary: 12 to 24 months past due and/or previously placed with 1 collection agency	$0.055 - $0.09	$0.02 - $0.03
Tertiary: More than 2 years past due and/or previously placed with 2 collection agencies	$0.03 - $0.05	$0.01 - $0.02
Quad: More than 3 years past due and/or previously placed with 3 collection agencies	$0.01 - $0.025	$0.004 - $0.01

Source: Kaulkin Ginsberg, InsideARM.

Note: The definitions in this table for fresh, primary, secondary, tertiary, and quad debt are those used by Kaulkin Ginsberg, but these definitions can vary across the debt collection industry.

After a debt buyer purchases a portfolio of accounts it has similar options as an issuer in choosing how to collect on the accounts. It can choose to collect or litigate using internal resources, contract the collection of the account to a third-party agency or law firm, or resell the accounts, or a portion of them, to a secondary buyer. The resale of debt has increased in recent years, according to Kaulkin Ginsberg, and debt can be resold multiple times. One debt buyer estimated that almost half of all credit card accounts purchased directly from original creditors eventually are resold. As with the original sale of a debt portfolio, resale can occur through a public auction, directly between debt buyers, or through a debt broker serving as intermediary. The extent to which debt buyers resell their debt depends to some extent on their business model. "Passive" debt buyers do not attempt to collect debts directly, but rather resell or outsource everything they purchase to collection agencies or law firms. Other debt buyers purchase portfolios, attempt collection for a certain period, and then resell accounts for which collection was not successful. Several industry stakeholders with whom we spoke noted that a debt buyer's due diligence becomes especially important for portfolios that have been sold multiple times because fraud or inaccurate account data can be more prevalent in these accounts.

Certain Issues Exist about Some Debt Collection Practices and FDCPA Does Not Address Some Changes That Have Occurred in Technology and the Marketplace

State and federal enforcement actions, anecdotal evidence, and the volume of consumer complaints to federal agencies—about such things as excessive telephone calls or the addition of unauthorized fees—suggest that problems exist with some processes and practices involved in the collection of credit card debt, although the prevalence of such problems is not known. FDCPA, which was enacted in 1977, does not reflect certain changes that have occurred since that time with regard to modern technology and the debt collection marketplace.

Issuers' In-house Collection Operations Have Been the Source of Complaints, but Regulators Have Identified Relatively Few Serious Problems

The federal depository regulators—FDIC, Federal Reserve, OCC, and OTS—and FTC track consumer complaints related to issuers' in-house debt collection practices.[46]

Complaints about Issuers

As shown in table 3, during 2004-2008, the depository regulators received an average of about 2,000 complaints per year about the credit card debt collection practices of the institutions they supervise. These complaints constituted, on average, about 12 percent of all complaints that the depository regulators received about credit cards and 4 percent of complaints received about any topic during that time frame. FTC does not track whether complaints are related specifically to credit card debt, but during the same 5-year period it received about 22,400 complaints annually about original creditors' overall debt collection practices. Our review of FTC complaint data indicates that roughly 25 percent of the complaints

[46]We did not include the NCUA in the scope of our review of consumer complaints because officials told us that credit unions represent a very small share of the credit card market.

FTC received about debt collection were complaints about original creditors (as opposed to third-party collectors). However, data were not available on the extent to which the consumer complaints were against larger versus smaller creditors.

Table 3: Number of Consumer Complaints Received by Federal Depository Regulators and FTC, 2004-2008

	Federal Depository Institution Regulators			FTC
Year	Total number of consumer complaints received	Total number of credit card complaints received	Total number of credit card FDCPA complaints received	Total number of debt collection complaints about original creditors
2004	44,328	15,229	2,257	20,588
2005	47,714	16,579	1,954	23,637
2006	43,319	13,502	1,625	21,465
2007	49,727	17,064	1,641	20,095
2008	63,024	19,023	2,434	26,615

Source: GAO analysis of FDIC, Federal Reserve, FTC, OCC, and OTS data.

FDIC and OTS complaint data showed that common allegations in complaints received about issuers included attempts to collect debt not owed and inappropriate practices such as excessive telephone calls or harassment. Among the most common complaints that FTC received about creditor debt collection were excessive telephone calls, creditors misrepresenting the amount or legal status of a debt, the addition of unauthorized fees and interest to accounts, and telephone calls from creditors looking for other individuals. However, consumer complaints may not be a reliable indicator of the extent of problems that may be occurring, for several reasons. Many consumers who experience problems with debt collection likely do not complain to any government agency—in many cases because they may not know to which agency to complain or because they do not know that their rights have been violated. Additionally, FTC has noted that a complaint does not necessarily indicate that a violation of law has occurred—either because the complaint is inaccurate or, if accurate, does not represent an actual violation.

Enforcement Actions against Issuers

As discussed earlier, federal depository regulators conduct examinations of the entities they supervise and may take formal or informal enforcement actions when they find noncompliance with applicable laws and regulations. From 1999 to 2008, OCC, OTS, and Federal Reserve did not find any problems in their bank examinations related to credit card debt collection that resulted in a formal enforcement action. FDIC took formal enforcement action during that time frame against three issuers related, among other things, to their oversight of CompuCredit Corporation, a third-party vendor used to market, service, and collect debt on some of the issuers' credit card accounts.[47] The issuers themselves were not alleged to have engaged in improper debt collection, but they were each found to have had inadequate compliance systems to conduct proper oversight of CompuCredit, which was accused of engaging in deceptive collection practices.[48] The issuers entered into a consent agreement, in which they agreed to a cease and desist order and to pay restitution and civil money penalties, without admitting or denying the alleged violations.[49]

Depository regulators also can take informal enforcement actions—such as commitment letters, memorandums of understanding, and board resolutions—when they find weaknesses that are more technical in nature, but for which corrective action still is needed. From 1999 through 2008, OCC told us it took one informal enforcement action against an issuer that related to credit card debt collection, and the Federal Reserve, FDIC, and OTS told us they did not take any.

In addition to the enforcement actions taken by the federal depository regulators, in the late 1990s FTC reached settlements with four department stores related to the collection practices of their private-label

[47]FDIC issued cease and desist orders in the following cases: *In the Matter of Columbus Bank and Trust Company, Columbus, Georgia*, FDIC Nos. 08-033b and 08-034k (June 9, 2008); *In the Matter of First Bank & Trust, Brookings, South Dakota*, FDIC Nos. 07-228b and 07-260k (Mar. 26, 2009); and *In the Matter of First Bank of Delaware, Wilmington, Delaware*, FDIC Nos. 07-256b and 07-257k (Oct. 9, 2008).

[48]*In the Matter of CompuCredit Corporation Atlanta, Georgia*, FDIC Nos. 08-139b and 08-140k (Dec. 19, 2008). FDIC issued a cease and desist order in the case.

[49]Columbus Bank and Trust Company agreed to pay a total of $9.9 million in civil penalties and restitution; First Bank & Trust agreed to pay a total of $285,000 in civil penalties and restitution; First Bank of Delaware agreed to pay $1.04 million; and CompuCredit Corporation agreed to pay civil penalty of $2.4 million and restitution of not less than $100 million.

credit cards.[50] FTC alleged that the stores had induced cardholders who filed for bankruptcy protection to "reaffirm" their credit card accounts and falsely represented that these "reaffirmation agreements" would be filed with the bankruptcy courts.[51] The resulting consent agreements with the four department stores ensured that at least $183 million would be returned to consumers whose debts had been collected illegally.

The Department of Justice's U.S. Trustee Program has taken one enforcement action against an issuer related to credit card debt collection. In November 2008, the program settled with Capital One for allegedly collecting on credit card debts that had been discharged in bankruptcy, which is a violation of the U.S. Bankruptcy Code.[52] According to the Trustee Program, Capitol One did not have effective procedures for identifying customers who had filed for bankruptcy. As a result, the issuer had improperly filed proof of claims in approximately 5,600 cases when it knew or should have known that the debt had been discharged, and the issuer improperly collected approximately $340,000 from debtors' Chapter 13 bankruptcy estates nationwide in violation of federal bankruptcy law.

[50]*In the Matter of Sears, Roebuck and Co.*, FTC No. C-3786 (Feb. 20, 1998) (relevant consent agreement reserved a right for FTC to file another action if the settlement in a separate class action suit totaled less than $100 million); *In the Matter of Montgomery Ward Credit Corporation, and General Electric Capital Corp.*, FTC No. C-3839 (Dec. 11, 1998) (relevant consent agreement reserved a right for FTC to intervene in related lawsuits if aggregate settlement amounts therein were less than $60 million); *In the Matter of The May Department Stores Company*, FTC No. C-3848 (Jan. 20, 1999) (relevant consent agreement required the company to refund at least $15 million to consumers who, having had their credit card account debts discharged in bankruptcy proceedings, continued to make payments or faced illegal collection efforts); and *In the Matter of Federated Department Stores, Inc.*, FTC No. C-3893 (Aug. 20, 1999) (relevant consent agreement ensured that the company made full refunds totaling up to $8 million to consumers who, having had their account debts discharged in bankruptcy proceedings, continued to make payments or faced illegal collection efforts). The issuance of private-label cards by retail stores has declined in popularity in the current credit card market. It is more common today for such stores to have an agreement with a large bank to issue cards in their name.

[51]Bankruptcy filers may voluntarily reaffirm—that is, agree to pay—certain debts with creditor firms in an effort to retain assets. However, the U.S. Bankruptcy Code requires that such agreements be filed with the bankruptcy courts, and in the case of debtors not represented by legal counsel, reaffirmation agreements must be approved by the court. 11 U.S.C. § 524(c). FTC alleged that these stores did not file the agreements or the bankruptcy courts did not approve them and, therefore, the agreements were unenforceable and the stores unfairly collected many of these debts.

[52]*Galley v. Capital One Bank (USA), N.A.*, No. 06-12142-JNF (Bankr. E.D. Mass. 2008).

The scope of this report is largely on the debt collection practices of the very largest credit card issuers—all of which are federally supervised banks—but it should be noted that concern about debt collection practices has often focused on the smaller, subprime credit card issuers. Representatives of the National Consumer Law Center told us that subprime issuers, which are often small, local banks, have been very aggressive in their debt collection efforts, and a report by the center alleged that some high-fee subprime card issuers frequently employ abusive debt collection practices.[53] FDIC staff told us that to the extent that debt collection abuses occur, they may be more common among smaller issuers, particularly subprime issuers, since large issuers tend to have more compliance resources and may be more mindful of the collection practices they use since they are sensitive to preserving their reputations in a mature credit card marketplace. Data on the proportion of consumer complaints on debt collection practices that were made against larger versus smaller issuers are not readily available.

Some consumer group representatives have raised concerns about some issuers'—including large issuers—debt collection practices, such as the use of arbitration in resolving debt collection matters. Cardmember agreements sometimes require that disputes about a cardholder's account be handled through arbitration, a form of alternative dispute resolution in which disputes are resolved by an independent arbitrator, rather than by a judge in a formal court. Some consumer advocates expressed concern that requiring arbitration is unfair because they believe the arbitration system can be biased against consumers. A September 2007 report by Public Citizen that reviewed arbitration cases in California found that business entities prevailed in about 94 percent of debt collection cases.[54] In July 2009, the Minnesota Attorney General announced that it had reached a settlement with the National Arbitration Forum—the country's largest administrator of credit card and consumer collections arbitrations—in which the company agreed to permanently stop administering arbitrations involving consumer debt. The representatives of the large issuers with whom we spoke said that they rarely or never engage in arbitration involving delinquent or charged-off accounts.

[53]National Consumer Law Center, *Fee Harvesters: Low-Credit, High-Cost Cards Bleed Consumers* (Boston, Mass., November 2007).

[54]Public Citizen, *How Credit Card Companies Ensnare Consumers* (Washington, D.C., September 2007). Public Citizen examined 33,948 National Arbitration Forum arbitration filings in California, nearly all of which related to collection matters.

Some Debt Collection Industry Practices Have Been the Source of Much Concern, but the Extent of Problems Is Unknown

No comprehensive data exist on the extent to which abusive practices may be occurring among third-party debt collectors and debt buyers. Nevertheless, FTC, state agencies, and consumer groups have expressed concerns in recent years that abusive practices are occurring. Although the extent of problems is not known, several indicators—primarily complaint data, government enforcement actions, private lawsuits, and anecdotal evidence—suggest they may not be uncommon.

Complaints about Third-party Collectors

FTC receives more complaints about the debt collection industry than it does any other specific industry. In 2008, the agency received about 79,000 complaints on third-party debt collectors, which represented almost 19 percent of all consumer complaints it received on any topic. These figures are for complaints related to the collection of any debt—not just credit card debt—because FTC does not track complaints by type of debt. Complaints about debt collection have increased in recent years and grew 34 percent from 2004 through 2008. Our analysis of FTC complaint data found that the most common complaints from 2004 through 2008 related to debt collectors were, in order of prevalence, (1) misrepresentation of the amount or legal status of a debt; (2) excessive telephone calls; (3) telephone calls from collectors looking for other individuals; (4) use of obscene, profane, or abusive language; and (5) threatening to sue if payment was not made.

The Better Business Bureau, which also collects consumer complaints, reported receiving about 16,000 complaints about debt collection companies in 2008. These companies represented the sixth most common source of complaints received during 2005-2008. Some state agencies also collect consumer complaints about debt collection practices. The National Association of Attorneys General found that debt collection complaints were the number one topic of complaints received by state Attorneys General in 2008. Representatives from three state agencies also told us that they receive more complaints about the debt collection industry than any other topic.

As noted earlier, complaint data may not be an accurate gauge of the extent of problems. One debt collection industry representative noted that because of the nature of their work, it is unsurprising that large numbers of people have grievances with them. Moreover, consumers' complaints are not always valid. Industry representatives also point out that the number of complaints against the debt collection industry represents a very small fraction of the more than 1 billion consumer contacts the industry makes each year. Furthermore, increases in consumer complaints may result, in part, from the ease with which technologies such as the

Internet allow consumers to file a complaint. These effects would tend to overstate the number of actual problems; on the other hand, consumer complaints are self-reported and there are likely to be a number of complaints that are unreported.

Enforcement Actions against Third-party Collectors

Since FDCPA was enacted in 1977, FTC has taken at least 60 enforcement actions alleging violations related to debt collection.[55] We analyzed the 24 actions initiated in 1998-2008 against collection companies and found that 13 of them involved or may have involved the collection of credit card debt (as opposed to other forms of debt).[56] In these actions, FTC alleged violations of FDCPA and/or the FTC Act, which included, among other activities, harassing and abusing consumers, communicating with the consumers' employers and co-workers about their debts, threatening to initiate lawsuits or criminal actions against consumers if they failed to pay, and failing to notify consumers of their right to dispute and obtain verification of their debts. FTC reached a settlement agreement with the defendant in all 13 cases, and penalties included requiring collectors and debt buyers to pay civil monetary penalties and return wrongfully collected funds to consumers. In some cases, FTC also required debt collection agencies to develop procedures to address the alleged abusive practices. For example, one collection agency had to develop a comprehensive consumer complaint and resolution program and implement a training program that had to be approved by FTC.

Examples of FTC's actions against third-party debt collection companies include the following:

- In March 2004, FTC alleged that Capital Acquisitions & Management—a debt buyer that purchases credit card debt—violated FDCPA by threatening and harassing numerous consumers to get them to pay debts they did not owe or that were beyond the statute of limitations.[57] According to FTC, the firm bought lists of debts that were outdated and frequently contained no documentation about the original debt and in

[55]The number of FTC enforcement actions should not be seen as a proxy for the extent of problems or violations in the law in any given industry.

[56]Three of these 24 enforcement actions specified credit card debt, 10 did not specify the type of debt collected, and 11 clearly involved debt other than credit card debt, such as mortgage and payday loans.

[57]*United States v. Capital Acquisitions & Management Corp.*, No. 04 C 50147 (N.D. Ill. filed Mar. 24, 2004).

many cases inadequate information about the original debtor. In its press release, FTC alleged that the firm made efforts to find people with the same name in the same geographic area and tried to collect the debts from them, whether or not they were the actual debtor. The firm would tell these consumers that they were legally obligated to pay the debt and, if they failed to, could be arrested, jailed, or have their property seized, FTC alleged. Capital Acquisitions & Management settled with FTC in March 2004, without admitting liability for any matter alleged in the complaint, and paid a civil penalty of $300,000. In the 8 months following the settlement, FTC reported receiving more than 2,000 consumer complaints against the firm and filed another complaint about the firm's practices. A second enforcement action against this company and other named defendants resulted in a $1 million judgment as equitable monetary relief and permanently barred the corporate defendants and some of the company's management from engaging in debt collection activities.[58]

- In June 2008, FTC alleged that Jefferson Capital Systems, LLC, a debt collection company, and CompuCredit Corporation violated the FTC Act and Jefferson Capital Systems, LLC also violated FDCPA by engaging in deceptive marketing and abusive collection practices.[59] According to FTC, the firms marketed a preapproved credit card to consumers with charged-off debt, telling them that their old debt balance immediately would be transferred to the new credit card and reported as paid in full to consumer reporting agencies. However, consumers who accepted the offer immediately were enrolled in a debt repayment plan and did not receive a credit card until they paid 25 to 50 percent of their charged-off debt. Additionally, FTC alleged that Jefferson Capital used obscene or profane language in debt collection and caused telephones to ring or engaged persons in telephone conversation repeatedly with the intent to annoy, abuse, or harass. The settlement prohibited Jefferson Capital from engaging in the alleged conduct and required it to comply with FDCPA.

- In November 2008, FTC settled with the debt collection agency Academy Collection Service, Inc. and its owner for $2.25 million, which FTC said was the largest civil penalty FTC assessed in a debt collection action.[60]

[58] *FTC v. Capital Acquisitions & Management Corp.*, No. 04 C 7781 (N.D. Ill. filed Apr. 11, 2005).

[59] *FTC v. CompuCredit Corp.*, No. 1:08-CV-1976 (N.D. Ga. Dec. 19, 2008) (stipulated order without the defendants admitting liability for any violation alleged in the complaint).

[60] *United States v. Academy Collection Service, Inc.*, No. 2:08-cv-01576-KJD-GWF (D Nev. Nov. 19, 2008). Defendants did not admit to the matters alleged in the complaint.

Academy's collectors allegedly engaged in false threats of wage garnishment, arrest, and legal action; communicated with third parties about consumers' debts; and called consumers at their workplace when employers prohibited such calls. Other practices included unauthorized withdrawals from consumers' bank accounts and the early deposit of consumers' postdated payment checks. According to its press release, FTC also alleged that Academy dismissed consumers' complaints without sufficient investigation or did not properly discipline collectors who were found to have violated FDCPA. In addition to the civil money penalty, FTC also required Academy to make certain disclosures, such as consumers' right to have the company stop contacting them about their debt.

FTC also has taken enforcement actions against debt collection companies for allegedly violating FCRA by reporting inaccurate information to consumer reporting agencies. In 2000, FTC alleged that Performance Capital Management maintained old, inaccurate information and failed to report disputes to consumer reporting agencies. The consent decree settling this action imposed a civil penalty of $2 million, which was waived because of the company's poor financial condition.[61] In 2004, FTC alleged that NCO Group reported accounts using incorrect delinquency dates, which can cause negative information to remain on a consumer's credit report beyond the 7-year reporting period permitted under FCRA. NCO Group paid a $1.5 million civil penalty to settle FTC's charges.[62]

State Enforcement Actions and Private Lawsuits

While comprehensive data on state actions are not available, our analysis of information provided by the National Association of Attorneys General found at least 60 enforcement actions were taken by state attorneys general against debt collection companies from January 2006 through May 2009, of which 28 involved or may have involved the collection of credit card debt. These actions alleged a variety of illegal debt collection practices, such as deducting money from consumers' bank accounts without authorization, operating in states without proper licenses, and refusing or failing to provide consumers with proof of their debts. Generally, state attorneys general either negotiated a settlement with the debt collection company or brought a court action against the company. Settlements included penalties such as refunds to consumers, cancellation

[61] *United States v. Performance Capital Management, Inc.*, No. 2-01-cv-01047TJH-E (C.D. Cal. 2001) (consent agreement without adjudication of any issue of fact or law and without defendants admitting liability or fault).

[62] *United States v. NCO Group, Inc.*, No 04-2041 (E.D. Pa. 2004) (consent decree without adjudication of any issue of fact or law and without defendants admitting liability).

of consumers' debts, civil penalties, and injunctive relief aimed at preventing future collection violations.

Among these state enforcement actions were the following:

- In 2006, the Massachusetts Office of the Attorney General settled with a debt collection law firm for allegations of unfair debt collection practices that violated state and federal debt collection laws. According to the state's office, representatives of the firm, among other violations, used obscene language, harassed and embarrassed consumers, exceeded the number of permissible calls, placed calls to consumers at improper hours, disclosed debts to persons other than the consumer, and failed to provide proof of the validity of debts. Under the settlement, the firm is required to pay a total of $75,000, including $20,000 in consumer restitution, and agreed to implement new policies and procedures.
- In 2007, the Office of the Illinois Attorney General sued a debt buyer for violations of the Illinois Consumer Fraud and Deceptive Business Practices Act. According to the Illinois office, the company used abusive practices to attempt to collect on time-barred debts more than 10 years old, debts that had been discharged in bankruptcy, and debts that had been settled. Additionally, the company allegedly refused or failed to provide proof of debts, illegally contacted consumers' family members and workplaces, and withdrew money without authorization from consumers' bank accounts. Under the stipulated final judgment, the company paid $100,000 to the state.

As noted earlier, FDCPA provides consumers with a private right of action, allowing them to bring civil actions against debt collectors that violate its provisions and be awarded monetary damages. The Senate report that accompanied FDCPA indicates that Congress intended these private lawsuits to provide an important incentive to debt collection companies to comply with the act. While the exact number of private lawsuits for violations of FDCPA is not known, representatives of the debt collection industry told us that such suits were relatively common. The FDCPA Case Listing Service, LLC—a private firm that tracks such litigation—reported that 5,383 cases were filed against collection agencies, collection law firms, and debt buyers in U.S. District Court in 2008 for alleged violations of FDCPA. A representative of the firm noted that this figure does not include FDCPA lawsuits filed in state courts, of which there are also believed to be a substantial number.

While consumers' private right of action can provide an incentive for debt collectors to comply with FDCPA, representatives of the debt collection industry told us that many of the FDCPA lawsuits filed are for what they consider to be technical violations of the statute that have caused no actual harm to the debtor. For example, the National Association of Retail Collection Attorneys believes that a significant burden has been placed upon debt collectors that have been forced to defend FDCPA suits that claim that the collectors' validation notice is somehow confusing or misleading. Industry officials told us they believe that some consumer attorneys file FDCPA lawsuits largely for their own personal gain, taking advantage of the attorneys' fees awarded under FDCPA for attorneys who prevail against collection agencies. Representatives of several debt collection companies told us that in many instances they choose to settle FDCPA cases even when they believe they have done no wrong to avoid the expense of bringing the cases to trial.

FDCPA provides that collectors that violate the law are liable to an individual consumer for any actual damages suffered by the consumer, plus any additional damages allowed by the court, not to exceed $1,000 per violation. The court also may award reasonable attorneys' fees to a consumer who prevails in the action. Damages for class actions are set at the lesser of $500,000 or 1 percent of the debt collector's net worth. In its 2009 workshop report, FTC proposed that Congress, at a minimum, update these damages to reflect inflation since 1977.[63] Some consumer attorneys with whom we spoke said the amounts were too low to serve as a meaningful deterrent for collection companies. In contrast, one industry representative expressed the view that the amounts paid for attorney fees often far exceed the damage award to the consumer, particularly for technical violations of FDCPA that, in their view, caused no actual consumer harm.

Debt Collection Litigation

FTC's workshop report noted that lawsuits seeking to collect on credit card debt are usually filed in state court and, depending on the amount of the debt, may be filed either in small claims court or civil court of general jurisdiction. Courts typically apply state contract law to decide collection cases and use state rules of civil procedure and local court rules, the report noted, and state rules of civil procedure require that after filing the debt collector serve the debtor with notice of the action, which can

[63]FTC, *Collecting Consumer Debts: The Challenges of Change: A Workshop Report* (Washington, D.C., February 2009).

include the date and time the debtor must appear in court. If the debtor does not appear in court to respond to the lawsuit, the judge can generally enter a default judgment in favor of the creditor. Once the owner of a debt receives a favorable judgment, the owner can generally collect on that judgment or award, and in some states can seek to put a lien on the debtor's property or garnish the debtor's wages or bank accounts.

While no national figures are readily available on the number of debt collection lawsuits filed in the United States—involving credit card or any other form of debt—the numbers are widely recognized to be very large. FTC's 2009 workshop report noted that the majority of cases on many state court dockets on any given day are debt collection cases. A report by the Urban Justice Center estimated that in 2006, 320,000 debt collection cases were filed just in New York City's Civil Court.[64] In Chicago's Cook County Circuit Court, more than 119,000 civil debt collection lawsuits were pending as of June 2008, according to a review by the Chicago Tribune. State officials in Ohio told us that municipal court judges there handle as many as 1,000 debt collection cases per week. A review by the Boston Globe found that at least 60 percent of small claims cases filed in Massachusetts in 2005 were filed by debt collectors. Consumer groups, attorneys, and FTC all acknowledge that the number of these state court cases has increased in recent years and is putting a strain on the state court systems. Kaulkin Ginsberg and the National Association of Retail Collection Attorneys have noted that the growth of the debt-buying industry has resulted in increases in collection lawsuits because entities that purchase delinquent debt often use collection law firms as their primary tool for recovery.

FTC's workshop report highlighted concerns related to the prevalence of default judgments in debt collection litigation. For example, in Cook County, Illinois, it is estimated that debt collectors obtained a default judgment in more than 45 percent of debt collection lawsuits filed in 2007. The Urban Justice Center estimated that 80 percent of the debt collection cases it reviewed for 2006 in New York City resulted in default judgments. When a consumer does not show up in court to respond to the suit, a default judgment generally may be entered against them. Consumer advocates and consumer attorneys have raised concerns that debt collectors often file suits with weak evidence supporting the alleged debt,

[64]Urban Justice Center, *Debt Weight: The Consumer Credit Crisis in New York City and Its Impact on the Working Poor* (New York, N.Y., October 2007).

knowing that most likely the consumer will not appear in court and they will receive a default judgment. Moreover, advocates say consumers often do not appear to contest a debt collection lawsuit because they have not been properly served with notice of the lawsuit.[65] In response to concerns about the number of default judgments, representatives of the debt collection industry say that in many debt collection cases, defendants may legitimately owe the debt but do not appear in court because they want to avoid the associated costs of offering a defense that they know will be unsuccessful.

Other Concerns

Representatives of the National Consumer Law Center, the National Association of Consumer Advocates, Consumer Union, and attorneys at legal aid clinics have stated that they have observed a number of other debt collection practices that raise concern. Because there is limited information about the extent to which these practices occur, most of the evidence remains anecdotal.

- *Collection of debt discharged in bankruptcy*. Under the federal Bankruptcy Code, creditors are prohibited from taking any form of collection action on debts discharged in bankruptcy, including legal action and communications with the debtor, such as telephone calls and letters.[66] As noted earlier, federal agencies have reached settlement with companies alleged to have engaged in collection activities on discharged debt. In addition, at least one debt buyer we identified purchases discharged bankruptcy debt. There may be instances in which debts that have been initially designated as discharged can later become collectable—such as cases where the courts discover additional assets that can be divided among creditors or where debtors may choose to repay discharged debts out of a sense of moral duty. However, some consumer representatives have expressed concerns that the purchase and sale of discharged debt may foster improper collection practices.

[65] A party in a civil action is generally served (delivered) legal papers in lawsuits, either by mail or by a professional process server or a government official, such as a deputy sheriff, marshal, or constable. According to a press release, in April 2009, the New York State Attorney General filed criminal charges and a civil suit against a legal process server and its chief executive officer and president for allegedly failing to provide proper legal notification to thousands of New York residents facing debt-related lawsuits. See Office of the New York State Attorney General, "Attorney General Cuomo Announces Arrest of Long Island Business Owner for Denying Thousands of New Yorkers Their Day in Court," http://www.oag.state.ny.us/media_center/2009/apr/apr14a_09.html (accessed July 1, 2009).

[66] 11 U.S.C. § 524.

- *Collection of time-barred debt.* As noted earlier, while it is generally illegal to sue or threaten to sue to recover debt that is beyond the statute of limitations (time-barred debt), FDCPA does not prohibit other attempts to collect on such debt, such as through telephone calls or letters. Some consumer advocates have reported to FTC that some collectors still make false threats of suit or actually sue on time-barred debts—and in some cases obtain a default judgment on time-barred debts from consumers who may be unaware that a collector may not lawfully sue on debt over a certain age. FTC addressed this issue in a recent roundtable it held in August 2009 on debt collection litigation and arbitration issues. FTC plans to hold two other roundtables on these issues later this year.

- *Revival of time-barred debt.* Some consumer attorneys have also reported that some debt collectors have used unlawful tactics in an attempt to revive a time-barred debt—that is, to extend the time available to sue a debtor if the statute of limitations has past or is approaching. Consumer representatives have alleged that some companies have unjustly sought to extend the limitations period by altering a debt's recorded delinquency date or by persuading consumers to make a very small payment or making unauthorized payments in the debtor's name.

Debts May Not Always Be Adequately Verified

Having adequate information is a key element in ensuring a fair and efficient system for collecting debt. According to FTC and other stakeholders, collection agencies and debt buyers sometimes may not have adequate information about their accounts and may not always have access to documentation needed to verify the debt.

Amount of Information Transferred to Collection Companies Varies

The flow of information plays an important role in the process of debt collection. Credit card issuers provide their third-party collection agencies with information about the debtor—including name, address, telephone number, date of birth, Social Security number, and employer—and about the debt itself, including account number, balance, date of first delinquency, and date of charge off. Additional information that may be provided by issuers includes the last date of payment; a breakout of the principal, interest, and fees that compose the amount due; monthly payment date; minimum payment amount; and any notes describing the issuer's internal collection efforts on the account. Some issuers allow third-party agencies to access account information through the issuer's own data system during the collection process.

FTC, state agencies, consumer advocates, and others have expressed concerns that debt collection companies sometimes have inadequate information about the accounts for which they are collecting—increasing the likelihood that the collector reaches the wrong consumer or tries to collect the wrong amount. Consumer groups and others note that this problem appears to be most acute when debt is sold and the transfer of information between seller and buyer may not be complete. It is common for a debt buyer to receive only a computerized summary of the issuers' business records, and the specific account data transferred to a debt buyer varies with each sale. Problems with the sufficiency of data that are transferred can be exacerbated when accounts are sold multiple times, and there are numerous areas in which account integrity could be compromised, according to industry data specialists with whom we spoke. For example, important account information—such as results of disputed account investigations, consumer complaints about billing errors, and information on settlement agreements and identity theft—may not always be transferred to debt buyers.

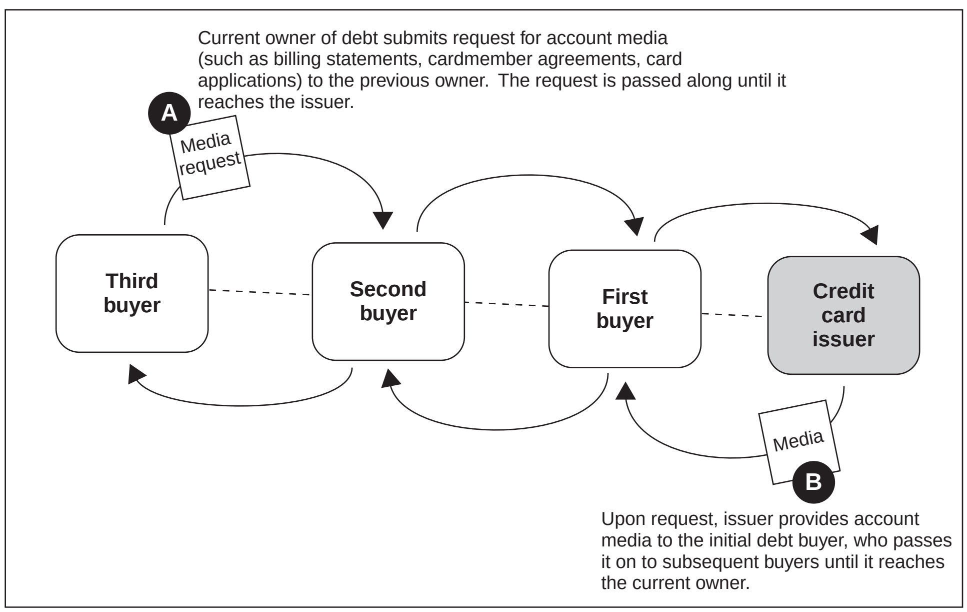
To help improve information flows, FTC's 2009 workshop report proposed that Congress modify FDCPA to require that the initial validation notices provided to consumers include three additional pieces of information. First, the agency recommended that validation notices notify consumers of two significant rights they have under FDCPA: the right to have collection efforts suspended prior to debt verification and the right to require collectors to cease contact upon written request.[67] Second, FTC recommended that validation notices include the name of the original creditor. FTC and consumer groups have noted that this would benefit consumers as well as collectors by making it easier for consumers to recognize their debts when they have been sold to a debt buyer under a different name than that of the original creditor. Third, FTC recommended that validation notices include not just the total amount of the debt, but also an itemization of principal, interest, and fees, which it said would allow consumers to determine if any charges being demanded by a debt collector were erroneous or subject to dispute.

A related area of concern has been the availability of account media—that is, billing statements, credit card agreements, card applications, or other

[67]Specifically, FTC's workshop report recommended that validation notices be required to inform consumers of their rights under (1) section 809(b) of FDCPA, which provides that if a consumer disputes a debt or requests verification of the debt in writing within 30 days of receiving the validation notice, the debt collector must suspend collection efforts until it obtains verification of the debt and mails it to the consumer; and (2) section 805(c) of FDCPA, which requires debt collectors to cease contacting a consumer about a debt if the consumer requests it in writing. 15 U.S.C. §§ 1692c(c) and 1692g(b).

items that help substantiate the validity of the debt. Contracts between issuers and debt buyers usually specify the terms of the account media provided to the buyer. For example, in our discussions with issuers and debt buyers and our review of sample contracts, we found that oftentimes, buyers will have the right to request media either for a certain period of time subsequent to the purchase of a portfolio or for a certain number of accounts in the portfolio. Debt buyers may use such media to support a lawsuit or to address a consumer dispute. Some contracts between primary debt buyers and secondary debt buyers provide that if the secondary debt buyers request account media, the primary debt buyers will attempt to obtain them from the original creditor. Similarly, contracts between secondary debt buyers and tertiary debt buyers provide that the tertiary buyer can request media from the secondary buyer—which then requests them from the primary buyer, which requests them from the issuer (see fig. 3).

Figure 3: How Account Information Is Passed among Debt Buyers



Source: GAO.

This process can be problematic because if any company in the chain fails to respond (or goes out of business), it can be difficult to obtain the media needed to document and verify an account. The credit and collection industry trade association ACA International has suggested that Congress require by statute that creditors and debt buyers maintain specific account documentation until the time they sell, forward, or assign a debt to another entity, at which time the documentation would be required to be made available to that entity.

Some industry representatives have noted that improving information flows in the debt collection process would have costs as well as benefits. For example, they note that requirements for maintaining and transferring media (such as credit card agreements) for all accounts would impose financial costs to creditors and collectors. Moreover, industry representatives say that the need for account media is relatively rare—for example, one collection attorney estimated that such media from issuers or previous debt buyers would be relevant to fewer than 1 percent of his firm's collection disputes. In addition, representatives of the credit card industry have said that the transfer of more account information can raise privacy and data security concerns—for example, by allowing more parties to hold sensitive account information there may be an increased risk for data breaches and identity theft. While these issues would need to be considered, FTC and consumer advocates maintain that it remains important nonetheless to find ways to better ensure that debt collectors have adequate information about the accounts for which they are collecting.

Adequacy of Verification Has Been a Concern

FDCPA requires that, if a consumer disputes the validity of a debt in writing, the debt collection agency must provide the consumer with documented verification of the debt.[68] However, the statute does not precisely set out what constitutes verification of the debt. Collection companies' policies for responding to requests for verification vary. In many cases, contracts between issuers and collection agencies stipulate how the agency responds to requests for verification. FTC, consumer advocates, and state agencies have said that, in practice, many debt collectors and debt buyers do very little to verify debts that consumers dispute. In particular, they say that the verification provided by debt buyers sometimes consists of little more than a written statement that the amount being demanded is what the creditor claims is owed. Collection agencies' ability to provide adequate documentation to verify a debt may be limited if they do not have access to account media, as is sometimes the case.

[68]DBA International stated that, in practice, many debt buyers provide verification to consumers who dispute a debt even when the dispute is oral or is not received within the 30-day period required under FDCPA.

Debt collection industry representatives claim that considerable confusion exists about what constitutes adequate verification under FDCPA, and collectors largely have had to rely on case law. In one key case, the Fourth Circuit of the U.S. Court of Appeals found in 1999 that while the debt collector must obtain verification from the creditor for the amount demanded, the collector is not required to keep detailed files of the alleged debt.[69] To clarify and improve the debt verification process, FTC's 2009 workshop report proposed that FDCPA be amended to require debt collection agencies to conduct reasonable investigations that are responsive to the specific disputes consumers have raised. FTC points out that such a requirement would be comparable to the "reasonable investigation" standards for addressing consumer disputes that are imposed by FCRA and Regulation Z, which implements the Fair Credit Billing Act.[70] FTC officials told us that what constitutes a reasonable investigation would depend on the specific facts of the dispute, including the type of debt and the cost of obtaining information. Some debt collection industry participants say that because the circumstances of a dispute can vary, any new statute or implementing regulations should avoid requiring a specific checklist of items required for verifying a debt. However, in general, FTC, consumer representatives, and industry participants agree that clarification is needed on what constitutes adequate verification of a debt under FDCPA.

Most Stakeholders Believe That FDCPA Needs Updating

FDCPA was enacted in 1977. While some sections have been amended, it has not been substantially revised to reflect changes that have occurred in technology and in the debt collection marketplace. Most stakeholders involved in the process of debt collection with whom we spoke—representing consumers, state and federal agencies, credit card issuers, debt collectors, and debt buyers—have expressed support for updating FDCPA.

FDCPA Does Not Address Some Key Modern Technologies

Communication technologies that are ubiquitous today—mobile telephones, e-mail, caller identification, answering machines, and fax machines—were not prevalent when FDCPA was enacted in 1977. Collection companies sometimes have faced difficulties in trying to use these technologies while remaining in compliance with the act:

[69] *Chaudhry v. Gallerizzo*, 174 F.3d 394, 406 (4th Cir. 1999).

[70] 15 U.S.C. §§ 1681s-2, 1666: Regulation Z, 12 C.F.R. § 226.13(f) (2009).

- *Answering machines and voice mail.* FDCPA requires that a collection agency identify itself as such to a debtor and also not state that a debtor owes any debt to any other party who might answer the telephone.[71] A debt collector may violate FDCPA if the collector leaves a message on a consumer's answering machine or voice mail that fails to disclose that the collector is calling in an attempt to collect a debt. However, the debt collector may also violate FDCPA if someone other than the debtor overhears a telephone recording revealing the debt collection effort. One court acknowledged the difficulty a debt collector has in complying with all of the provisions of FDCPA at the same time when leaving voice mail, and inferred that debt collectors may need to reach debtors by postal mail, in-person contact, or by speaking directly to them via telephone instead of using voice mail.[72]

- *Mobile telephones.* FDCPA restricts the hours in which debt collectors can call consumers and prohibits collectors from imposing additional telephone charges on consumers. However, because mobile telephone users may not be, at a given time, in the geographic location indicated by the telephone's area code, debt collectors calling a mobile telephone cannot be certain they are calling within the permitted hours. Furthermore, unlike users of land lines, mobile telephone users often incur charges of some sort whenever they receive a call.

- *Caller identification.* When debt collectors call consumers who have caller identification on their telephones, the collectors may be disclosing their names and telephone numbers, which could be construed as a violation of FDCPA if a third party sees that a debt collector is calling. However, some stakeholders have questioned if conveying false or blocked information through caller identification would be a violation of FDCPA's and the FTC Act's prohibitions on making a false or misleading representation, as well as FDCPA's prohibition of making telephone calls without meaningful disclosure of the caller's identity.

- *E-mail and faxes.* Debt collection agencies have been reluctant to use e-mail and faxes to communicate with debtors because of the risk that someone other than the debtor may read the transmission, which could violate FDCPA's prohibition on disclosure to third parties.

[71] 15 U.S.C. §§ 1692c(b), 1692e(11).

[72] *Berg v. Merchants Ass'n Collection Div., Inc.*, 586 F. Supp. 2d 1336, 1344 (S.D. Fla. 2008).

- *Predictive dialers.* Predictive dialers—which are used heavily in the debt collection industry to efficiently manage high call volumes—sometimes can result in inadvertent hang-ups or dead air, which could be a violation of FDCPA's prohibition on causing a telephone to ring repeatedly with intent to annoy, abuse, or harass a consumer.[73]

Because FDCPA does not address these technologies, collectors often have had to rely on case law to determine their appropriate use, and this has created challenges for debt collection industry participants wanting to comply with the law. In a comment letter to FTC, ACA International stated that "[c]onflicting court decisions make it challenging to comply with all applicable laws" and that without guidance on the application of FDCPA to these new methods of communication, debt collectors are without a reference point to assess the legality of using these technologies to communicate with consumers. Similarly, the National Association of Retail Collection Attorneys noted in a comment letter that "conflicting court decisions have made regulatory compliance a guessing game, rather than a predictable endeavor."

FTC Lacks Rulemaking Authority for FDCPA

FDCPA requires FTC to provide Congress with an annual report describing its FDCPA enforcement efforts and provide any recommendations for statutory changes. However, FDCPA does not authorize FTC or any other agency to issue rules to implement the act.[74] The legislative history of the act indicates that rulemaking authority was not provided to any agency because the relevant committee regarded the legislation as comprehensive and believed it would fully address all collection abuses.[75] However, because no administrative agency can promulgate rules for FDCPA, limited means exist for clarifying ambiguities or filling gaps in the statute and addressing issues that arise as technology and the marketplace evolve. As we have seen, the advent of the debt-buying industry has created new challenges with regard to information flows that were not envisioned when FDCPA was drafted. FTC officials noted that if FDCPA were amended to require collectors to respond to consumer disputes with reasonable verification measures, a rulemaking would be the appropriate method for determining what constitutes a

[73]15 U.S.C. § 1962d(5).

[74]15 U.S.C. § 1692l(d) specifically prohibits FTC and other agencies from promulgating rules concerning the collection of debts by debt collectors.

[75]S. Rep. No. 95-382, at 6 (1977).

"reasonable" verification process. Similarly, FTC and some industry representatives note that rulemaking authority would allow the agency to address current and future technologies in the marketplace.

Representatives of some consumer groups and state agencies told us that they support providing FTC with rulemaking authority for FDCPA. Among debt collection trade associations, the National Association of Retail Collection Attorneys has supported giving FTC rulemaking authority, which it says would help resolve potentially conflicting court interpretations and help ensure industry compliance. ACA International has not explicitly called for amending FDCPA to give FTC rulemaking authority, but has recommended that FTC "make regulatory changes" as it deems necessary. Officials from DBA International, a trade association for debt buyers, told us it had not taken a position on FTC rulemaking authority. FTC already has rulemaking authority to implement other consumer protection statutes—for example, the agency issued the Telemarketing Sales Rule in 1995, revised in 2003, to respond to changes in telephone technologies and the marketplace. FTC has issued four FDCPA "advisory opinions," which protect debt collectors from liability for actions taken in good faith reliance on the opinions.[76] In addition, FTC staff have issued a commentary on FDCPA and also have issued a number of "staff opinions," but the commentary and these opinions are not legally binding and have not always carried much weight in the courts, according to FTC staff. As a result, debt collectors have often had to rely on case law—which they note has sometimes been ambiguous or contradictory—in interpreting how to comply with FDCPA, and there has been no regulatory process to help address the changing marketplace for debt collection.

Conclusions

The rise in credit card delinquencies and charge offs that has accompanied the current economic recession has focused new attention on the practices of creditors and third-party companies in collecting on delinquent credit card debt. FDCPA, enacted in 1977, has been an important tool in addressing unfair third-party debt collection practices, but it has not kept up with the evolving marketplace or with changes in technology, and FTC has previously recommended that Congress make certain changes to the statute. We believe that in at least three areas,

[76] 15 U.S.C. §1692k(e).

FDCPA would benefit from modification to provide needed clarity for industry and to enhance consumer protections.

First, FDCPA is limited in addressing problems associated with information flows. With the advent of debt buying has come the repeated resale of accounts—making it more difficult to verify debts and obtain appropriate documentation as credit card accounts get further from their original owner. FDCPA does not, for example, address the account information that should be provided when a debt is sold nor does it address the procedures and information that constitute "verification" of the debt. Statutory changes to better address these issues could help ensure that participants in the debt collection industry have clear guidelines on what information they must provide to each other and to consumers, and could help reduce instances where collectors seek payment from an incorrect party or for an incorrect amount.

Second, because FDCPA was enacted prior to the advent of technologies such as mobile telephones, e-mail, and voice mail, its provisions on communicating with consumers are outdated. This has resulted in considerable ambiguity and confusion on using these technologies in compliance with the law, and collection companies have been reluctant to use some modern technologies. Statutory changes to ensure technology issues are addressed could benefit both industry and consumers, allowing the industry to more efficiently conduct its operations and consumers to receive information expeditiously and with appropriate protections. Finally, because FTC does not have rulemaking authority under FDCPA, there is no regulatory process to keep up with an evolving marketplace and changes in technology. With rulemaking authority, FTC could better regulate the practices of debt collectors and ensure that consumers are protected from unfair and abusive practices.

Matter for Congressional Consideration

To help ensure that the debt collection system better protects consumers without unduly burdening the legitimate process of collection, Congress should consider modifying the Fair Debt Collection Practices Act to account for changes in the marketplace that have occurred in recent years. Among such modifications, Congress should consider, in particular, options for modifying FDCPA to

- help ensure that debt collectors and debt buyers have adequate information about the debts transferred and adequate documentation to verify the debts they seek to collect from consumers,

- reflect technologies that were not prevalent when the act was originally enacted, and

- provide FTC with the authority to issue rules to implement the act.

Agency Comments

We provided a draft of this report to FDIC, Federal Reserve, FTC, OCC, and OTS for comment. FDIC, Federal Reserve, FTC, and OTS provided technical comments that we incorporated as appropriate. In addition, FDIC and FTC provided written responses, which are reprinted in appendixes II and III, respectively. In its response, FDIC noted that it takes seriously its responsibilities to enforce consumer protection laws and regulations related to debt collection and that it has taken formal enforcement actions and assessed civil money penalties against financial institutions to address noncompliance with these laws and regulations. In FTC's response, it noted that its February 2009 workshop report, *Collecting Consumer Debts: The Challenge of Change*, concurred with our view that Congress should consider amending FDCPA to give FTC the authority to issue implementing rules.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the report date. At that time, we will provide copies to other interested congressional committees, as well as the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Comptroller of the Currency, and the Acting Director of the Office of Thrift Supervision. In addition, the report will be available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-8678 or cackleya@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.

Alicia Puente Cackley
Director, Financial Markets and
Community Investment

Appendix I: Objectives, Scope, and Methodology

Our report objectives were to examine (1) the protections provided consumers under federal and state laws related to credit card debt collection, and the roles and responsibilities of federal and state agencies in enforcing these laws; (2) the processes and practices involved in collecting and selling delinquent credit card debt; and (3) any issues that may exist related to some of these processes and practices. The focus of our report was on the collection of consumer credit card debt as opposed to other forms of debt. However, because collection agencies may collect on multiple kinds of debt, it was not always possible to isolate debt collection processes related specifically to credit card debt. We indicate in the report whether data that we present are specific to credit card debt or may include other types of debt. Our report also focuses on the largest credit card issuers and debt collection companies that ranged in size from medium to very large; therefore, the collection processes and practices described in this report may not be representative of smaller credit card issuers or debt collection companies.

To address our first objective, we reviewed and analyzed relevant federal laws, rules, and guidance and we interviewed officials from the Federal Trade Commission (FTC) and the federal depository institution regulators—Board of Governors of the Federal Reserve System (Federal Reserve), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), and the National Credit Union Administration. We reviewed the procedures the federal regulators use in their bank examinations to review issuers' debt collection policies and practices. We also reviewed two compendiums that summarized state laws applicable to debt collection—the National Consumer Law Center's Fair Debt Collection and Collection Actions legal practice guides and ACA International's Guide to State Collection Laws and Practice. We did not conduct our own review of all state fair debt collection statutes, but we did review the statutes of selected states—California, Colorado, Massachusetts, and Texas—which we selected because they included provisions that differed in some ways from the Fair Debt Collection Practices Act. We interviewed staff with the office of the attorney general in these four states and relied upon them for the analysis of and information about the meaning and scope of their state debt collection laws. In addition, we conducted a group interview, coordinated by the National Association of Attorneys General, with staff from the office of the attorney general of 15 additional states who chose to participate. We also met with staff from state and local agencies responsible for regulating the collection industry in a group meeting that was coordinated by the North American Collection Agency Regulatory Association to learn about state and local agencies' activities, roles, and responsibilities. Seventeen of the group's 24 U.S. members elected to participate in this meeting.

To address our second objective, we interviewed representatives of the six largest credit card issuers as measured by total outstanding credit card loans, as of December 31, 2007, in the Card Industry Directory.[1] These issuers, which represented about 83 percent of total outstanding U.S. credit card debt, were American Express, Bank of America, Capital One Financial Corp., Citigroup Inc., Discover Financial Services Inc., and JPMorgan Chase & Co. We reviewed the internal collection department policies of one issuer and the internal collection training materials used by three issuers, as well as several sample contracts between issuers and debt collection agencies and between issuers and debt buyers. We also reviewed the Securities and Exchange Commission filings of selected issuers and publicly held debt collection companies. In addition, we met with six third-party debt collection agencies, six companies that purchase credit card debt, one law firm that specializes in debt collection, and one collection attorney. We chose these entities because some or a significant portion of their business included the collection or purchase of credit card debt and because they ranged in size from medium to very large. These companies included some of the largest industry players, although data are not available on the share of the respective markets that they represent. We made several attempts to meet with at least one small debt collection agency—fewer than 20 employees—but were unsuccessful in gaining the cooperation of any such companies that we contacted. Additionally, we met with trade associations that included ACA International (which represents creditors, third-party collection agencies, collection attorneys, and debt buyers), DBA International (which represents debt buyers), the National Association of Retail Collection Attorneys, the American Bankers Association, and the Consumer Data Industry Association (which represents consumer reporting agencies). We also reviewed the guidance and other information that ACA International provides to its members. Finally, we toured the collection facilities of one card issuer and one large debt collection agency and listened in on a number of calls to consumers made by collections staff.

To address our third objective, we reviewed FTC's annual reports to Congress on the Fair Debt Collection Practices Act from 1998 to 2009, as

[1] *Card Industry Directory: The Blue Book of the Credit and Debit Card Industry in North America*, 20th ed. (Chicago, Ill., 2008).

well as its consumer education materials and other relevant documents. We also reviewed the transcript, report, and public comments resulting from the workshop on debt collection that FTC hosted in October 2007.[2] We obtained and analyzed consumer complaint data from 2004 to 2008 that FTC maintains in its Consumer Sentinel database. Additionally, we reviewed all of the enforcement actions that FTC filed against debt collection agencies from 1998 to 2008 and examined their associated complaints, press releases, consent orders and agreements, and permanent injunctions. We did not include cases that clearly did not involve debt specific to credit cards. However, sometimes the type of debt involved could not be determined from the documents, and in those cases we included the case but specified that it was not known if credit card debt was involved. We also received information from the Department of Justice's U.S. Trustee Program on its role in taking enforcement action related to the collection of credit card debt in cases involving bankruptcy filings. In addition, we collected and analyzed data from FDIC, Federal Reserve, OCC, and OTS on consumer complaints submitted in 2004-2008 related to credit card issuers' debt collection activities. We also gathered information from these agencies on the informal and formal enforcement actions, if any, they had taken against issuers for violations identified during bank examinations in 1999-2008. We reviewed bank examination reports and relevant documents associated with enforcement actions, such as orders to cease and desist. We did not gather complaint data or information on enforcement actions from the National Credit Union Administration because officials told us credit unions represent a very small share of the credit card market. To assess the reliability of FTC's Consumer Sentinel database as well as the consumer complaint data provided by the four federal depository regulators, we reviewed these data for obvious errors in consistency and completeness and we interviewed agency staff responsible for maintaining the data. We determined that the data were sufficiently reliable for the purposes of this report. However, complaint data may both over- and underestimate the number of actual problems in the industry because complaints may not be accurate or they may not represent a law violation. Consumer complaints are also self-reported and there are likely to be a number of complaints that are unreported.

[2]Federal Trade Commission, *Collecting Consumer Debts: The Challenges of Change: A Workshop Report* (Washington, D.C., February 2009).

We identified enforcement actions related to debt collection at the state level by reviewing the National Association of Attorneys General's biweekly Consumer Protection Reports from January 2006 through May 2009, which compile information on state and federal enforcement of consumer protection laws, legislative initiatives, and consumer education efforts. These reports may not be representative of all state attorney general enforcement actions because they are a compilation of press releases from their offices' Web sites, not all of which may publish such press releases. To the extent feasible, we identified those enforcement actions related to credit card debt and, as available, reviewed related press releases and other documents. We also reviewed and analyzed consumer complaint data related to debt collection agencies that had been collected by the national Better Business Bureau and the National Association of Attorneys General. We reported these data because they provided information relevant to our review, but we did not test the reliability of these data because they appeared to corroborate FTC's consumer complaint data. We also reviewed studies and reports by consumer organizations, such as the Urban Justice Center and Public Citizen, related to debt collection. In addition, we met with attorneys who represent consumers in debt collection cases and with representatives of consumer organizations, including the National Consumer Law Center, Consumers Union, and the National Association of Consumer Advocates.

Because the debt collection industry is mostly composed of privately held companies, the amount of publicly available data about the industry is limited. To identify information on the industry, we conducted a literature search and we talked with a researcher from the Federal Reserve Bank of Philadelphia and officials from ACA International and DBA International, as well as other industry participants. We reviewed two industry surveys commissioned by ACA International, as well as reports published by Kaulkin Ginsberg and the Nilson Report. To determine the reliability of industry data in the Kaulkin Ginsberg reports, we interviewed company representatives about their methodology. They told us their estimates are developed from discussions with industry participants, financial statements, and other data obtained in the firm's capacity as an industry advisor. We could not assess the reliability of the firm's data, but our review of its methodology indicates that their data may not be representative of the entire debt collection industry. Officials from the Nilson Report declined our request to discuss the methodology used in their reports. We reviewed the descriptions of the survey methodologies contained in the ACA reports and determined that while their methodology was generally sound, because of the low response rate and the absence of nonresponse bias analysis, and the wide confidence intervals around key estimates due to the small number of responses, the resulting survey data may not be reliable for making precise quantitative estimates. However, we report some of the results from these reports because limited other publicly available sources of such data exist. During the course of our review, we also found several companies on the Internet that said they provided debt collection industry research and statistics for a fee, but we did not pursue these because their methodology suggested they faced potentially severe risks to reliability.

We conducted this performance audit from July 2008 to September 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Federal Deposit Insurance Corporation

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990
Division of Supervision and Consumer Protection

September 1, 2009

Mr. Richard J. Hillman
Managing Director, Financial Markets
and Community Investment
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. Hillman:

The FDIC has reviewed the U.S. Government Accountability Office (GAO) report titled ***CREDIT CARDS: Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace and Use of Technology*** (GAO-09-748). We appreciate the opportunity to discuss with your team the strengths and weaknesses of the regulatory framework for credit card debt collection practices.

The FDIC takes seriously its responsibilities to enforce consumer protection laws and regulations, including those that implement the Fair Debt Collection Practices Act, the Federal Trade Commission Act, and the Fair Credit Reporting Act. As indicated in this GAO report, the FDIC has issued formal enforcement actions and assessed civil money penalties to address instances of financial institution noncompliance with these consumer protection laws and regulations.

Thank you for the opportunity to review and comment on the GAO report.

Sincerely,

Sandra L. Thompson
Director

Appendix III: Comments from the Federal Trade Commission

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

Office of the Secretary

September 2, 2009

Alicia Puente Cackley
Director, Financial Markets and Community Investment
United States Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Ms. Cackley:

The Government Accountability Office ("GAO") recently forwarded for the Federal Trade Commission's ("FTC" or "Commission") review and comment a draft of a GAO report entitled *CREDIT CARDS: Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace* (GAO-09-748). The Commission staff has provided GAO with information about the FTC's debt collection program in connection with the preparation of the draft report, and the Commission appreciates the opportunity to have assisted GAO in its work. The Commission also appreciates having this chance to provide views about the recommendations set forth in the draft report.

The draft report recommends that Congress consider modifying the FDCPA to account for changes in the debt collection marketplace that have taken place in recent years. In particular, the draft report recommends that Congress amend the Fair Debt Collection Practices Act ("FDCPA") to give the FTC the authority to issue implementing rules. The draft report explains that, because the Commission does not have rulemaking authority under the FDCPA, there is no regulatory process to keep up with an evolving marketplace and changes in technology. With rulemaking authority, according to the draft report, the FTC would be more effective in protecting consumers from the unfair, deceptive, and abusive practices of debt collectors.

In a report issued earlier this year, the Commission as well recommended that Congress amend the FDCPA to give the Commission the authority to issue implementing rules. Federal Trade Commission, *Collecting Consumer Debts: The Challenges of Change: A Workshop Report* (Feb. 2009) ("FTC Debt Collection Workshop Report"). Similar to the views expressed in the draft report, the Commission stated:

> Many of the complex issues arising in contemporary debt collection could be addressed with enhanced consideration and expertise if they were resolved through a process of seeking comment, researching particular issues, and proposing and revising necessary and appropriate regulations. Making changes periodically through such a process would help ensure that the law

Alicia Puente Cackley – Page 2

> continues to further Congress's intent to protect consumers from abusive, deceptive, and unfair debt collection practices, while also ensuring that debt collectors who refrain from such practices are not competitively disadvantaged.
>
> The Commission therefore believes that consumers and debt collectors would benefit if the agency were given the authority to issue rules to implement the FDCPA.

FTC Debt Collection Workshop Report at 70. The FTC is pleased that the GAO draft report likewise recognizes that consumers and collectors would benefit if the Commission had the authority to issue rules to implement the FDCPA, and, therefore, recommends that Congress amend the law to give the FTC that authority.

By direction of the Commission.

Donald S. Clark

Donald S. Clark
Secretary

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Alicia Puente Cackley, (202) 512-8678 or cackleya@gao.gov

Staff Acknowledgments

In addition to the contact named above, Jason Bromberg (Assistant Director), Anthony Bova, Christine Houle, Tiffani Humble, Marc Molino, Carl Ramirez, Linda Rego, and Barbara Roesmann made key contributions to this report.

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