Federal Trade Commission

Opening Remarks of Chairman Deborah Platt Majoras

"Collecting Consumer Debts: The Challenges of Change"

Wednesday, October 10, 2007

9:00am

Good morning. I would like to welcome everyone, both here at our Conference Center and in the Webcast audience. It is gratifying to see so many experts from industry, consumer groups, academia, law enforcement, and government agencies in attendance. I am especially pleased that NACARA - the North American Collection Agency Regulatory Association - scheduled its annual meeting in Washington to coincide with this workshop, enabling so many state law enforcers to be with us. The participation of such a broad range of experts will be critical in identifying debt collection problems and discussing possible solutions over the next two days. I thank you for helping to enhance the Federal Trade Commission's efforts to protect American consumers.

Consumer credit certainly has had its share of critics. In Hamlet, Lord Polonius advised his son to "neither a borrower nor a lender be."[1] Henry David Thoreau, retreating to the north woods to seek the simple life, started *Walden* by saying, "I have no doubt that some of you who read this book . . . are trying to get out of debt, a very ancient swamp."[2] Or, as a pithy 19th

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[1] William Shakespeare, *Hamlet*, Act I, Scene III, *available at* http://shakespeare.mit.edu/hamlet/full.html.

[2] Henry David Thoreau, *Walden* (1854), *available at* http://www.sacred-texts.com/phi/thoreau/walden.txt.

Century phrase put it, "He who goes a-borrowing goes a sorrowing."[3]

Notwithstanding its critics, consumer credit has become a significant tool in our modern economy. In the 20th Century, consumer credit grew rapidly as it became the common means through which consumers of limited resources were able to purchase automobiles. By 1926, two out of every three cars sold in the United States were purchased on credit.[4] Consumer credit again grew rapidly in the 1950s and 1960s with the introduction and expansion of the use of credit cards. Indeed, by the mid-1960s, poet Randall Jarrell found an apt metaphor for the pervasiveness of consumer credit in the Sistine Chapel's ceiling: "If anyone wishes to paint the genesis of things in our society, he will paint a picture of God holding out to Adam a check-book or credit card or Charge-A-Plate."[5]

Paying over time allows consumers to make purchases they could not otherwise have afforded. It permits us to get the benefits of goods and services while we are paying for them, rather than postponing these benefits until after we have saved up the purchase price. Some forms of consumer credit provide consumers with greater convenience, such as using a credit card rather than cash to make a large purchase. The lyrics from the musical *Miss Saigon*, however, may sum up best the view of consumer credit in our contemporary culture: "What's that I smell in the air? The American Dream. All yours for ten percent down. The American Dream."[6] The purchases that consumers make in pursuit of their dreams collectively provide a powerful engine for economic growth and enhanced consumer welfare.

Debt collection plays a vitally important role in our system of consumer credit. Collecting on a debt, of course, benefits individual creditors who are repaid money they are

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3 Lendol Calder, *Financing the American Dream: A Cultural History of Consumer Credit* 10 (Princeton University Press 1999).

4 Martha L. Olney, *Buy Now, Pay Later: Advertising, Credit, and Consumer Durables in the 1920's* 96 (University of North Carolina Press 1991).

5 Randall Jarrell, *A Sad Heart at the Supermarket: Essays and Fables* 66 (Atheneum Press 1962).

6 *Financing the American Dream*, *supra* n.3 at 5.

owed. Debt collection, however, has broader economic benefits. If consumers do not repay their debts, sellers will seek to increase the prices of their goods and services to cover these lost revenues. If consumers do not repay their debts, creditors will be less willing to lend money to consumers, thereby decreasing future purchases. Debt collection therefore plays a key role in keeping prices low and ensuring that consumer credit remains widely available and affordable.

Notwithstanding the benefits of debt collection, activities in the industry also have been a source of potential harm to consumers. In 1977, Congress took a hard look at debt collection practices and found that debt collection abuse by third-party debt collectors was a "widespread and serious national problem."[7] It concluded that abusive debt collection practices were contributing to personal bankruptcies, marital instability, job loss, and invasions of individual privacy.[8] This abuse took many forms, including

> obscene or profane language, threats of violence, telephone calls at unreasonable hours, misrepresentation of a consumer's legal rights, disclosing a consumer's personal affairs to friends, neighbors, or an employer, obtaining information about a consumer through false pretense, impersonating public officials and attorneys, and simulating legal process.[9]

To curtail these practices, Congress enacted the Fair Debt Collection Practices Act ("FDCPA"), establishing specific standards of conduct for the debt collection industry and directing that the FTC enforce its prohibitions.

Over the next two days, we will consider whether consumer protection laws have kept pace with the changes that have occurred since the FDCPA was enacted thirty years ago. It goes without saying that the world is a very different place now than it was in 1977. Consumer debt levels have risen dramatically over the past thirty years. Tremendous innovation in the financial services marketplace has given consumers far more choices, including an array of options they can use to pay for goods and services. In turn, these innovations may have affected

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[7] S. Rep. No. 95-382 [hereinafter Senate Report], at 2 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1696.

[8] FDCPA § 802, 15 U.S.C. § 1692.

[9] Senate Report at 2.

the willingness and ability of consumers to borrow money.

The debt collection industry has changed substantially, too. With the increase in the amount of consumer debt has come a corresponding increase in the number of companies seeking to collect these debts. The types of businesses holding and collecting on debts also has evolved. Many creditors certainly continue to collect their own debts and, if in-house collection efforts are unsuccessful, retain third-parties to collect for them. But many creditors today choose to sell their uncollected accounts to collectors known as “debt buyers,” who then attempt to collect the debts themselves or hire agencies or law firms to collect.

Technological change also has had an impact on the debt collection industry. Debt collectors have a long history of adapting innovations to become more efficient in their collections. For example, debt collectors were among the first businesses in the United States to use printed forms.[10] In 1788, Samuel Barrett, a Boston justice of the peace, began using forms to notify consumers that he would sue them unless they paid up. The forms had blanks for the names of the creditor and consumer, their places of residence, the type of and amount of the debt, and the length of time remaining before suit would be filed. The efficiency of these printed forms combined with the specter of debtors’ prison caused many consumers to decide that their better course was to pick up and move to the American frontier. Indeed, this happened so frequently in late 18th Century America that “gone to Kentucky” became a euphemism for migrating west to avoid debt collectors.

Later in our history, technological developments would make it more affordable for collectors to make long-distance calls to consumers. Now collection calls are far more efficient because of the introduction of automatic and predictive dialers. In addition, advances in hardware and software have enabled debt collectors to create and use information in extensive databases for better profiling and tracking. And, of course, the emergence of the Internet over the past decade has opened up a world of new possibilities for communication and has facilitated

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[10] Ihatedebt.com, The History of Debt Collection: Getting Automated, http://www.ihatedebt.com (last visited Sept. 21, 2007).

instantaneous processing of payments on debts.

Given the changes in the industry that have occurred since the FDCPA was passed, this is an opportune time to assess whether changes are needed to improve the Commission's consumer protection efforts. Significantly, the FTC continues to receive more complaints about third-party debt collectors than about any other single industry. The number of these complaints has been increasing steadily for a number of years, reaching nearly 70,000 in 2006. An initial evaluation indicates that we are receiving complaints at an even faster rate to date in 2007 than we did in 2006. Complaints about third-party collectors also have increased each year as a percentage of all FTC complaints. Of course, not all consumer complaints indicate a violation of the law. But the large absolute number of complaints and the trend over time in the number of these complaints warrant a hard look at the current state of debt collection. I anticipate that the robust and informed debate over the next two days will identify current problems as well as possible solutions that would enhance consumer protection without unduly burdening debt collectors.

In the meantime, the FTC continues to use law enforcement, consumer education, and the promotion of industry self-regulation to fulfill our consumer protection mission. Recent cases demonstrate that the Commission will use all of the weapons in our law enforcement arsenal to combat unlawful debt collection practices. We will pursue tough remedies, including disgorgement of ill-gotten gain, consumer redress, and civil penalties, in appropriate circumstances. In cases of egregious violations of the FTC Act or the FDCPA, the FTC will seek immediate injunctive relief in federal court and, where appropriate, asset freezes and the appointment of receivers.

For example, earlier this year, the Commission alleged FTC Act and FDCPA violations against a Florida debt collection agency, Rawlins & Rivera.[11] The Commission's complaint charges that Rawlins routinely misrepresented to consumers that they faced immediate legal action and wage garnishment, and that they could spend time in jail if they failed to pay the

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[11] *FTC v. Rawlins & Rivera, Inc.*, No. 6:07-CV-146-ORL (M.D. Fla. Jan. 31, 2007)(complaint), *available at* http://www.ftc.gov/os/caselist/0623139/070202cmp0623139.pdf.

defendants promptly. The Commission quickly secured a preliminary injunction that – among other things – bars the company from making false or misleading representations, and from engaging in abusive or harassing conduct, when contacting consumers to collect a debt. The litigation continues.

The Commission recently secured its largest restitution award ever in a debt collection case. In 2003, the Commission filed a complaint alleging that National Check Control and Check Investors, Inc., had violated Section 5 of the FTC Act and the FDCPA.[12] The defendants falsely threatened consumers with arrest and criminal and civil prosecution to extract payment from them for bad checks plus exorbitant and illegal fees. In 2005, the federal district court granted the FTC's motion for summary judgment and ordered that the defendants pay $10.2 million in restitution.[13] Last month, the U.S. Court of Appeals for the Third Circuit affirmed the lower court's decision, including the $10.2 million judgment.[14] The restitution amount in National Check Control demonstrates that those who engage in unlawful debt collection may have to pay a steep price for their harmful conduct.

In addition to its aggressive law enforcement efforts, the FTC encourages industries to undertake self-regulatory initiatives to address consumer protection concerns. Self-regulation can encourage voluntarily compliance with the law through the adoption of industry standards that meet or exceed legal requirements and educating industry members as to what must be done to comply with these standards, which is especially important in an industry experiencing rapid growth.

In this regard, I want to recognize the ACA International Board of Directors for recently

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[12] *FTC v. Check Investors, Inc.*, No. 03-2115 (JWB) (D.N.J. May 12, 2003) (complaint), *available at* http://www.ftc.gov/os/caselist/0623139/070202cmp0623139.pdf.

[13] *FTC v. Check Investors, Inc.*, No. 03-2115 (JWB) (D.N.J. July 18, 2005) (final order), *available at* http://www.ftc.gov/os/caselist/checkinvestors/050728ordercheckenforcement.pdf.

[14] *FTC v. Check Investors, Inc.*, 2007 U.S. App. LEXIS 21296 (3d Cir. Sept. 6, 2007).

revising its Code of Ethics to enhance the protections that its members afford to consumers.[15] This is a promising development. And, I would note, this week the Commission issued an advisory opinion supporting one new requirement in ACA's Code of Ethics. The Code would require debt collectors who are ACA members to notify consumers who disputed a debt in writing if they have ceased their collection efforts, and the FTC's advisory opinion concluded that debt collectors providing such a notice would not violate the FDCPA.

The final prong of the Commission's debt collection consumer protection strategy is effective consumer education. The FTC recognizes that for the FDCPA to be fully effective, consumers must be aware of their rights. Through a variety of consumer education initiatives, the FTC provides consumers with materials that summarize the FDCPA's provisions so that consumers can exercise their rights. FTC staff also do personal outreach at community events, schools, and military bases to disseminate information about the rights of debtors. Well-informed individuals can protect themselves better from unscrupulous debt collectors and may contribute valuable information to our consumer complaint database, enabling the FTC and other law enforcers to track trends and target egregious actors for law enforcement.

The agenda for the sessions to be held today and tomorrow is ambitious, and promises to spur vigorous debate and constructive dialogue. We are eager to engage in this dialogue with you, and, in an effort to ensure that the record is as complete as possible, we will be accepting additional comments through November 9th. We look forward to identifying solutions that adequately protect consumers without unduly burdening debt collectors in performing their important role in our economy. I thank you all again for coming, and, without further ado, I am pleased to introduce Tom Pahl, an Assistant Director in our Division of Financial Practices, who will be the moderator of our first session.

Thank you.

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[15] The revised Code of Ethics and Operations is available at http://www.acainternational.org/images/10758/aaodeofethics.pdf