



## Consumer Protection/FTC / Financial Services Litigation ADVISORY ■

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### **What Do the CFPB's and FTC's 2020 Debt Collection Activity Forecast for 2021?**

By Kathleen Benway, Kelley Barnaby, and Laura Komarek

On March 22, 2021, the Consumer Financial Protection Bureau (CFPB) released its [2020 annual report](#) to Congress on the administration of the Fair Debt Collection Practices Act (FDCPA). The CFPB's annual report follows the Federal Trade Commission's (FTC) [annual letter](#) to the CFPB regarding the FDCPA, publicly released on March 19, 2021. The annual report highlights both agencies' efforts to protect and provide debt collection relief to consumers, particularly in light of the ongoing COVID-19 pandemic and resulting economic hardship.

#### **Overview of the CFPB's 2020 Activities**

The annual report incorporates debt collection activity by the CFPB and FTC in 2020. It includes a report of complaints, supervision activity surrounding debt collection activities, participation in debt collection litigation, FTC and CFPB enforcement actions, outreach initiatives, and policy initiatives.

This past year saw a 10 percent uptick in debt-collection-related complaints reported to the CFPB. Debt collection was one of the most pervasive consumer complaint topics in 2020; nearly one in six complaints related to debt collection.

Through supervisory examinations, the CFPB identified several FDCPA violations: (1) false litigation threats and misrepresentations about litigation; (2) falsely implying that debt could be reported to credit reporting companies; and (3) false representations by debt collectors that they are a credit reporting company. The CFPB also conducted numerous COVID-19 prioritized assessments in response to the pandemic. The goal of the prioritized assessment was to "obtain real-time information" from a broad spectrum of entities operating in areas of elevated risk due to the pandemic. Through these assessments, the CFPB identified delays in processing administrative wage garnishment suspensions, resulting in improper contacts by debt collectors. There were also payment processing delays for debt payments.

Through two amicus briefs filed in 2020, the CFPB promoted its position on the itemization on debt statements following charge off. The Seventh Circuit was persuaded by the CFPB's argument that "an accurate itemization of a debt does not mislead consumers about the possibility of future interest or fees." In the Third Circuit, the CFPB argued that the Seventh Circuit's opinion should be followed.

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The CFPB brought four public enforcement actions related to purported violations of the FDCPA. It has resolved two of these actions, resulting in nearly \$15.2 million in civil monetary penalties and \$80,000 in consumer redress. The CFPB also announced that it is conducting a number of nonpublic investigations of companies to determine whether their debt collection practices violate the FDCPA or the Consumer Financial Protection Act.

Given the elevated risk of consumer harm due to pandemic-related issues and stresses, the CFPB was proactive in outreach on debt collection issues. The CFPB, along with state and federal partners, published guidance to help consumers navigate housing, student loans, and federal relief options; manage their finances; and get answers to other pressing financial questions that are especially pertinent given the COVID-19 pandemic. This included an interactive online educational tool known as "Ask CFPB," which helps consumers, in both English and Spanish, get answers to their financial questions and has received nearly 2 million views and downloads.

The CFPB also continued its research, marketing monitoring, and outreach efforts and published the results of its quantitative online survey of over 8,000 respondents to test several versions of disclosures to support the understanding of time-barred debt and revival that helped inform the CFPB's final rules on debt collection that were issued in the last quarter of 2020. In October 2020, the CFPB issued a final rule focused in large part on debt collection communications. In December 2020, the CFPB finalized a second rule focused in large part on debt collection disclosures.

## Overview of the FTC's 2020 Activities

Investigation and litigation were at the heart of the FTC's debt collection work in 2020. Last year, the FTC either filed or resolved seven debt collection cases against nearly 40 defendants, resulting in \$26 million in judgments.

In conjunction with three other federal agencies, and partners in more than 15 states, the FTC also led Operation Corrupt Collector, which was a nationwide federal-state law enforcement sweep and outreach initiative targeting phantom debt collection, where the debt may have been entirely fabricated, and abusive and threatening debt collection practices. Operation Corrupt Collector led to over 50 legal challenges to some of the most predatory and egregious debt collection tactics. As part of Operation Corrupt Collector, the FTC released a new online dashboard that provides a state-by-state breakdown of consumer debt collection complaints received through the FTC's Consumer Sentinel Network.

In 2020, the FTC also initiated its first federal action to combat unlawful "debt parking," which is when a company reports a purported debt to credit reporting agencies without first communicating with the consumer about the debt. The consumer only finds out the purported debt exists when his or her credit report is accessed when buying a car or home, opening a credit card, or seeking employment. The case was resolved in November 2020 and included a monetary judgment of over \$24 million.

In 2020, the FTC received more than 85,000 reports from consumers related to debt collection. Similar to the CFPB, the FTC continued to disseminate educational materials and resources to consumers, in both English and Spanish, about the FDCPA, including specific information on phantom debt collection to help consumers avoid falling victim to these predatory practices.



## Key Takeaways

Under a new Administration and in light of the ongoing COVID-19 pandemic and the resulting economic hardship on many Americans, the CFPB and FTC will be active regulators. The acting director of the CFPB has stated that he is prioritizing “relief for consumers facing hardship due to COVID-19 and the related economic crisis.” We anticipate the CFPB’s efforts will include continued monitoring for violations of the FDCPA, particularly in markets that pose a heightened risk and opportunity for consumer harm due to pandemic-related issues, such as housing or collection of student loans. We also anticipate that the FTC will continue to target debt collections, including those that misuse consumers’ personal information, and expect to see more enforcement actions against debt collectors, particularly those that engage in unlawful debt parking. We expect the FTC will continue its coordinated efforts with nationwide federal-state law enforcement agencies. If Rohit Chopra’s nomination to CFPB director is confirmed, coordination between the FTC and CFPB can be expected all the more, providing coordinated deployment of resources in a heightened regulatory environment.

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