

CFPB and FTC Issue Annual Reports on the Fair Debt Collection Practices Act

March 21, 2012

The FTC and CFPB have issued reports on their FDCPA enforcement actions and other FDCPA related activities in 2011. The FTC previously had responsibility for issuing annual reports on FDCPA enforcement but the Dodd-Frank Wall Street Reform and Consumer Protection Act transferred reporting responsibility to the CFPB. The CFPB, however, has only just begun its program to administer and enforce the FDCPA. Thus, the FTC styled its report as a letter, dated March 13, 2012, to the CFPB and outlined its recent enforcement activities, while the CFPB's report, released March 20, 2012, focused on its initial steps.

The FTC's letter reported on seven debt collection cases that it brought or resolved, including settlements obtained in its two recent civil penalty cases. The FTC's letter also discussed its recent efforts against companies collecting debts related to payday loans and collectors engaging in egregious debt collection practices. In addition to enforcement activities, the letter discussed the FTC's policy statement regarding decedent's debts, its amicus briefs arguing against a class action settlement in the *Vassale v. Midland Funding, LLC* case and urging the Supreme Court to deny certiorari in *Fein, Such, Kahn & Shephard, PC v. Allen* after the Third Circuit rejected the law firm's argument that communications to a consumer's attorney are categorically excluded from the FDCPA.

Notably, the FTC also addressed "gag clauses" in private FDCPA settlements. Stating that Commission staff "recently have become aware that many collectors appear to be routinely including provisions in settlement agreements with consumers that prohibit the consumers from cooperating with or sharing information with the FTC and other law enforcement agencies," the FTC's letter stated regardless of enforceability in the courts, the "mere presence" of gag clauses may deter consumers from "providing critical information to the FTC...about possible unlawful debt collector conduct." As a result, the FTC "believes that gag clauses should not be included in private FDCPA settlements."

The CFPB's report outlined the launch of its consumer complaint collection system and described the trend of complaints received by the FTC, noting that complaints about debt collection remains higher than any other specific industry and that complaints about third-party debt collectors rose both in absolute terms and as an overall percentage of complaints. The CFPB's report discussed its supervision program, which will include many creditors who collect their own debts or hire third party debt collectors, their service providers for collection services, and, once the CFPB's "larger participant" rule is finalized, larger nonbank debt collectors. The report states that the examination process "will be an ongoing process of pre-examination scoping and review of information, data analysis, onsite examinations, and regular communications with supervised entities, as well as follow-up monitoring." The "scoping" process is described as a way to focus on risks to consumers and to direct resources to areas of higher risk.

The CFPB's report described FTC enforcement actions and stated that the Bureau "currently is conducting non-public investigations of debt collection practices to determine whether they violate the FDCPA or the Dodd-Frank Act" but that the Bureau has not yet taken enforcement actions under the FDCPA.

The [FTC's letter](#) and the [CFPB's report](#) are available online.