FEDERAL TRADE COMMISSION
OFFICE OF THE SECRETARY
ROOM H-135 (ANNEX N)
600 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20580

COMMENTS OF ACA INTERNATIONAL REGARDING THE DEBT COLLECTION WORKSHOP

FTC FILE NO. P074805

FILED ELECTRONICALLY ON JUNE 6, 2007

Rozanne M. Andersen, Esq.
ACA International
4040 W. 70th Street
Minneapolis, MN 55435
(952) 926-6547

General Counsel and Senior Vice President of Legal and Governmental Affairs

Andrew M. Beato, Esq.
Stein, Mitchell & Mezines, LLP
1100 Connecticut Avenue, N.W.
Suite 1100
Washington, DC 20036
(202) 737-7777

ACA Retained Federal Regulatory Counsel

TABLE OF CONTENTS

I. Introduction...3

II. Background On ACA International...7

III. ACA Members Are A Critical Part Of The Economy..................................11

IV. Responses To Requests For Comment 14

1. Demographic and Industry Information 14

2. Industry Trends...27

3. Debt Collection Practices And Techniques.......................................51

4. Industry Compliance With Applicable Federal and State Laws.......71

5. Consumer Behavior And Knowledge Of Their Rights 89

6. Legislative Issues..92

V. Conclusion...114

I. Introduction.

The following comments are submitted on behalf of ACA International (ACA) in response to the Federal Trade Commission's request for comments in advance of the October 10-11, 2007, Debt Collection Workshop, P074805 (Workshop). The Workshop will explore subjects related to consumer debt collection, including the impact of technological, economic, and legal changes on the debt collection industry and whether the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (FDCPA), and other laws have kept pace with these developments.

Thirty years ago Congress enacted the FDCPA in an effort to legislate the fair treatment of consumers when debt collectors engage in conduct essential to the vitality and health of the economy, namely, the recovery of debts. Among the stated purposes of the FDCPA, as described by Congress, is the elimination of "abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collectors."[1] ACA supported

---

[1] 15 U.S.C. § 1692(e).

the passage of the FDCPA in 1977.[2] Today, ACA embraces the Commission's effort to meaningfully explore the FDCPA's successes and shortcomings during the past thirty years with an aim toward improving consumer experiences.

The FDCPA, as all Federal legislation, represents a balance of interests. A primary interest of the statute is to protect consumers' privacy. It does so by prohibiting deceptive, unfair, and abusive practices and guarding against disclosures of sensitive financial information to third-parties. Another interest fostered by the FDCPA is the recovery of debts in compliance with the law. As recently observed by the Commission, the FDCPA "permits reasonable collection efforts that promote repayment of legitimate debts, and the Commission's goal is to ensure compliance with the Act without unreasonably impeding the collection process. The Commission recognizes that the timely payment of debts is important to creditors and that the debt collection industry offers useful assistance toward that end."[3]

---

[2] ACA also has supported numerous legislative amendments to reform the FDCPA to address ambiguities in this strict liability statute in the years following the original passage of the statute, e.g., H.R. 3066.

[3] Federal Trade Commission, Annual Report 2007: Fair Debt Collection Practices Act, at 2 (Annual Report).

These two interests need not necessarily collide, although it must be recognized that they are in tension. After all, nearly every collection communication is uninitiated from the consumer perspective, but indispensable from the credit grantor perspective.

The delicate balance struck by Congress so reflective of consumer behavior and industry composition in 1977 increasingly finds itself in disequilibrium today. The causes are varied and undoubtedly will be fully explored during the Workshop. Debts are vastly different. The amount of debt per household is substantially higher. The tools to collect debts have sharpened with technology, for example, skiptracing, automated dialer systems, and voice-mail. Other technologies portend even further refinements in the collection process by the use of electronic mail, text messages, and cellular phones.

Indeed, technology also has impacted the business models of debt collectors, which have gravitated from local or community-based services to state, regional and national operations. Now even the smallest of debt collectors have a national capacity due to technology, credit grantor demands, and consumers' mobility. The proliferation and complexity of Federal and state statutes and regulations governing the conduct of debt collectors has made compliance more complicated and costly. Indeed, there are numerous examples in which Federal and state laws or regulations inadvertently have

given rise to compliance conflicts,[4] and the patchwork of state laws have led to unequal legal protections.[5] Further, the functional use of debt collectors by credit grantors also has changed. The last decade alone has witnessed credit grantors increasingly transferring ownership of accounts by asset sales.

These are just a few of the forces in play. What emerges is that the FDCPA was enacted for a different time and different set of circumstances. The adaptive ability of the statute to rise to the dynamic growth and challenges now and in the future should be examined anew and at the most basic of levels, for example, how consumers and business expect to communicate during the next thirty years and beyond. In this way, the FDCPA will not be a static, reactive statute.

This is not to suggest that the FDCPA is flawed or fails to provide the consumer protections envisioned by Congress in 1977. To the contrary, ACA believes that the

---

4 For example, in 2002 the Federal Communications Commission implemented a regulation requiring a debt collector to identify its state-registered name in artificial and prerecorded telephone messages even though doing so plainly contradicted with the requirements of section 805(b) of the FDCPA which prohibits the disclosure of the existence of a debt to persons other than the debtor. After an administrative process lasting several years, the FCC finally clarified the conflict.

5 The state laws enacted to supplement the credit and collection laws afford different protection to consumers. This harms consumers, causes confusion as to their rights on a Federal and state-based level, and greatly complicates compliance.

statute is capable of continuing to fulfill the original mandate to protect consumers while encouraging the recovery of debts. Nevertheless, ACA welcomes the opportunity to participate in the Workshop and the Commission's fact-finding concerning the nature and extent of changes in the industry and ways to foster better consumer-oriented outcomes.

II. Background On ACA International.

ACA International is an international trade organization originally formed in 1939 and composed of credit and collection companies that provide a wide variety of accounts receivable management services. Headquartered in Minneapolis, Minnesota, ACA represents approximately 6,000 members based in more than 55 countries and ranging from credit grantors, third-party collection agencies, attorneys, and vendor affiliates.6 ACA has numerous divisions or sections accommodating the specific compliance and regulatory issues of its members' business practices.[7]

---

[6] ACA's membership includes approximately 3500 company members, 1200 credit grantor members, 850 attorneys in the Member Attorney Program, 150 affiliate members, and 350 international company members. All stated, ACA represents approximately 95 percent of all debt collectors located in the United States.

[7] *See* www.acainternational.org. ACA's divisions include Creditors International, Asset Buyers Division, Members Attorney Program, Government Services Program, Healthcare Services Program, and Internet and Check Services Program.

The company-members of ACA are subject to applicable Federal and state laws and regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. Specifically, the collection activity of ACA members is regulated primarily by the Commission under the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*, the FDCPA, the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, and the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*, in addition to numerous other Federal and state laws. Indeed, the accounts receivable management industry is unique if only because it is one of the few industries in which Congress enacted a specific statute governing all manner of communications with consumers when recovering payments. In so doing, Congress committed the Federal enforcement of the recovery of debts to the jurisdiction of the Commission.

ACA members range in size from small businesses with a few employees to large, publicly held corporations. Together, ACA members employ in excess of 150,000 workers. These members include the very smallest of businesses that operate within a limited geographic range of a single town, city or state, and the very largest of national corporations doing business in every state. The majority of ACA members, however, are small businesses. Approximately 2,000 of the company members maintain fewer than ten employees, and more than 2,500 of the members employ fewer

than twenty persons.

ACA serves members and represents the industry by developing timely information based on sound research and disseminating it through innovative education, training, and communications. The Association also promotes professional and ethical conduct in the global marketplace; acts as the members' voice in critical business, legislative, legal, regulatory and public arenas; and provides quality products and services to its members.

To help members stay current on regulatory and business developments, as well as industry practices, ACA provides more than 130 educational and training workshops to its members each year, with nearly 1,000 industry professionals completing ACA's collector credentialing program annually. As discussed in detailed herein, ACA is the industry leader in providing compliance information and education to its members,[8] and education to consumers to encourage financial literacy. ACA provides consumers with valuable information about their rights under the FDCPA and the Fair Credit Reporting

---

[8] Through ACA's Campus ACA™, the Association provides a wide variety of training and educational opportunities such as professional development courses, certification opportunities under ACA's proprietary certification program entitled Professional Practices Management System™ (PPMS), local and in-house seminars, online seminars, teleseminars and Webcourses, as well as regularly scheduled conferences. *See* http://www.acainternational.org/?cid=321.

Act.

In addition, ACA has a Code of Ethics and Professional Responsibility (Ethics Code). Upon becoming a member of ACA and as a condition of membership renewal, each member agrees to abide by the Association's Ethics Code. In addition, ACA members must comply with all Federal and state laws and regulations governing the credit and collection industry. In fact, ACA's commitment to compliance is reflected in the fact that consumers are encouraged to file complaints with ACA. If a complaint is filed regarding an ACA member, ACA investigates the complaint and, if it finds that a member company has violated the Association's standards and ethics guidelines, it will impose sanctions ranging from a private letter of admonition to suspension to expulsion.

ACA's five core values are:

1. ***Respect*** – for diverse customers, clients, colleagues and the global workforce.

2. ***Leadership*** – by uniting members to advance a successful, service–oriented and professional credit and collection industry.

3. ***Service*** – by providing quality products and services to members while meeting the highest professional standards.

4. ***Innovation*** – by exploring new ways to achieve excellence.

5. ***Fiscal Responsibility*** – by operating the Association in a prudent manner while creating and maintaining a financial reserve to meet future member needs.

III. ACA Members Are A Critical Part Of The Economy.

The credit and collections industry in general, and ACA members in specific, play a crucial role in safeguarding the health of the economy. Uncollected consumer debt threatens the economy. According to a 2006 economic impact study of the collections industry conducted by PricewaterhouseCoopers LLP, third party collection agencies returned $39.3 billion to creditors measured on a commission basis in 2005.[9] This represents a savings of $351 per household each year, which equates to 155 gallons of gasoline or 129 days of electricity payments attributed to households.[10]

[9] *See* PricewaterhouseCoopers, LLP, *Value of Third-Party Debt Collection to the U.S. Economy: Survey and Analysis* (June 27, 2006) (Exhibit 1). The $39.3 billion returned to creditors in 2005 amounts to a 22 percent reduction in non-public debt. *Id.* It equates to 11.4 percent of the before tax profits of all United States' domestic financial corporations. *Id.*

[10] *Id.*

By itself, outstanding credit card debt has doubled in the past decade and now exceeds one trillion dollars. Total consumer debt, including home mortgages, exceeds $9 trillion.[11] Moreover, the greatest increases in consumer debt are traced to consumers with the least amount of disposable income to repay their obligations.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of practically every community's businesses. For example, ACA members represent the local hardware store, the retailer down the street, and the local physician. The collection industry works with these businesses, large and small, to obtain payment for the goods and services received by consumers.

ACA members also partner with Federal, state, and local governments to assist in the recovery of public debts. Each year, Federal agencies refer billions of non-tax debts to the Department of Treasury's Financial Management Service (FMS) pursuant to the Debt Collection Improvement Act of 1996. FMS is responsible for "improv[ing] the quality of the [F]ederal government's financial management by increasing the collection of delinquent debt owed to the government, by providing debt management services to all federal agencies, and by protecting the financial interests of the

[11] William Branigan, *U.S. Consumer Debt Grows at an Alarming Rate*, Wash. Post, Jan. 12, 2004.

American taxpayer."[12] According to FMS, "the FMS debt collection program is a central tool for sound financial management at the Federal level. Since 1996, FMS has collected more than $24.4 billion in delinquent debt. In fiscal year 2005, collections of [F]ederal delinquent debt remained at a constant $3 billion."[13]

The importance of collections industry also is reflected in other Federal and state initiatives involving partnerships with between industry and government. For example, the Internal Revenue Service has implemented a program, authorized by the Executive Office of the President, to utilize debt collectors to supplement recovery efforts on approximately $120 billion in unpaid Federal income taxes. In addition, ACA members are essential to the recovery programs of the Department of Education and state analogs. Comments from interested parties concerning the importance of student loan recovery programs will be submitted to the Commission separately.

---

[12] *See* http://www.fms.treas.gov/debt/index.html. The debts include (1) loans made, insured or guaranteed by the government, including deficiency amounts due after foreclosure or sale of collateral; (2) expenditures of non-appropriated funds; (3) overpayments, including payments disallowed by Inspector General audits; (4) any amount the U.S. Government is authorized by statute to collect for the benefit of any person, e.g., consumer redress; (5) the unpaid share of any non-Federal partner in a program involving a federal payment and a matching or cost-sharing payment by the non-Federal partner; and (6) fines or penalties assessed by an agency. *See* http://fms.treas.gov/debt/questions.html#Debts%20Included.

Without an effective collection process, the economic viability of these businesses, as well as public debt recovery programs, is threatened. At the very least, Americans would be forced to pay higher prices to compensate for uncollected debt.

IV. Responses To Requests For Comment.

ACA respectfully submits the following responses to the Commission's requests for comment:

1. *Demographic and Industry Information.*

a. Please provide information regarding the composition and size of the debt collection industry, including: 1) in-house debt collectors (i.e., employees of credit issuers who collect on behalf of their employers); 2) collection agencies; 3) collection law firms; 4) debt buyers; and 5) other identifiable industry sub-groups. For each category, if possible, please submit data showing the number of entities in the category; the number of persons employed by entities in the category; and the percentage of overall debts collected by entities in the category.

RESPONSE: The composition and size of the debt collection industry defies easy identification. The industry, to the extent there is a single "industy", is highly decentralized. For example, credit grantors may, or may not, be defined as part of the debt collection industry. Although credit grantors typically seek to recover debts from

[13] *See* http://fms.treas.gov/news/factsheets/delinquent_debtcollection_2005. html.

their customers using internal processes, procedures, and customer service representatives as "first-party collections", it is generally accepted that these internal efforts are not subject to the FDCPA because creditors collecting in their own name are excluded from the definition of "debt collector."[14] In recent years, first-party collections have assumed a larger role in the process of collecting debts whether performed by employees of the creditor or *de facto* employees over whom the creditor retains a significant degree of control.[15] The point is that it is misconception that the

[14] The term "debt collector" means "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6). *See also Stafford v. Cross Country Bank*, 262 F. Supp. 2d 776, 794 (W.D. Ky. 2003); *Kempf v. Famous Barr Co.*, 676 F. Supp. 937, 938 (E.D. Mo. 1988); FTC Statements of General Policy or Interpretation Staff Commentary on the FDCPA, 53 Fed. Reg. 50097, 50102 (Dec. 13, 1988) (FTC Commentary)

[15] An individual employed by the creditor as an in-house collector is exempt from the FDCPA provided she acts in the name of the creditor and notifies the consumer that she is collecting the debt as an employee of the creditor. The creditor exemption also includes *de facto* employees of a creditor or "collection agency employee[s], who work . . . for a creditor to collect in the creditor's name at the creditor's office under the creditor's supervision." FTC Commentary, 53 Fed. Reg. at 50102. Although the FDCPA does not specify what constitutes significant control over operations, the FTC has stated that such control would likely include the creditor supervising virtually all aspects of the collection agency employee's work. Vandebroek, FTC Informal Staff Letter (Apr. 20, 1981). The FTC has further indicated that off-site collection agency employees may be considered *de facto* employees provided the creditor retains

industry is a homogenous entity when, in fact, it is a mosaic of distinct industries including (a) highly diversified credit grantors (including, for example, international financial institutions engaged in traditional extensions of credit, utility companies, hospitals, landlords, retailers, judgment-creditors, etc.);[16] (b) third-party debt collectors unaffiliated with the credit grantors other than functioning as an independent, contract-based service provider; (c) asset buyers and sellers (with credit grantors and third-party collection agents both buying and selling); (d) attorneys representing the interests of

---

significant control over the employees' collection activities. Shapiro, FTC Informal Staff Letter (Oct. 1, 1997). *See also* de Mayo, FTC Informal Staff Letter (May 23, 2002). The applicability of the *de facto* employee provision will, however, "depend on the degree of control and supervision exercised by the creditor over the agency employees' collection activity, and how similar that control and supervision is to that exercised by the creditor over its own employees." de Mayo, FTC Informal Staff Letter (May 23, 2002).

[16] The diversification of the credit grantor component of the so-called "industry" is considerable. Credit grantors, as the Commission is aware, range in size from large, multi-national financial institutions and banks to national retailers such as Target Corporation to local, small businesses, and even to the level of a single landlord seeking to recovery delinquent rent from a single tenant. The variation in the federal, state, and local laws and regulations applicable to these entities is beyond the scope of these comments, however, it is relevant to note impact of these laws and regulations upon subsequent efforts to recover past due payment obligations. For example, as noted, the FDCPA does not generally apply to creditor-based recovery of debts, although it does apply upon the creditor's hiring of a professional debt collector to recover a debt.

credit grantors; (e) data providers such as national or specialty consumer reporting agencies; and (f) technical support services companies and vendors that supply services ranging from skip tracing or location information data to predictive dialer technology. In short, it is relevant to the Commission's understanding of the "debt collection industry" as phrased in this question that the "industry" is much more diversified and fragmented than recognized. Indeed, for this reason, it is more common today to use the term "accounts receivable management industry" to refer to both credit grantor and third-party collection practices.[17]

The in-house collection resources of credit grantors are considerable. According to the Bureau of Labor Statistics, there are 456,000 "bill collectors" in the United States. The majority work in financial institutions, retail stores, government agencies, physicians' offices, hospitals, and other institutions that lend money and extend credit.[18]

---

[17] Analysts predict that credit grantors, particularly large financial institutions, will increasingly incorporate asset purchasing into their business plans. The projected result is that large corporations heretofore unaffiliated with credit and collections will establish debt purchasing divisions as a regular component of operations.

[18] Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Bill and Account Collectors, at http://www.bls.gov/oco/ocos143.htm (visited May 4, 2007).

Third-party or contingent debt collectors nevertheless continue to represent a large segment of collection efforts undertaken on behalf of credit grantors. The relationship between grantors and third-party debt collectors is based upon contractual agreements. Although varied, these agreements commonly impose the highest level of security and privacy requirements on the data transmitted by credit grantors.[19] As of 2005, there were an estimated 6,500 third-party debt collection agencies in the United States. These companies employed 168,343 people to service the $141 billion in delinquent consumer debt placed for collection in 2005 by private U.S. businesses alone.[20] Collection agencies returned $39.3 billion to U.S. businesses in 2005, representing a 22% reduction in private sector bad debt. Gross dollars collected totaled $51.4 billion; however, collection agencies earned $12.1 billion for their services that year. Of this $12.1 billion, $9.8 billion was for collection activity on a contingency basis and $2.3 billion was from the recovery of debts the companies

---

19 In some instances, the underlying debts referred for collection define the service agreements. For example, healthcare receivables sent by a provider are subject to a business associate agreement and HIPAA's heightened requirements for security and privacy of protected health information.

20 PricewaterhouseCoopers, LLP, *Value of Third-Party Debt Collection to the U.S. Economy: Survey and Analysis* (June 27, 2006) (Exhibit 1).

purchased.[21]

ACA is not aware of separate employment figures for collection law firms or debt buying companies.

b. **Please provide information regarding consumers subject to debt collection action, particularly any information showing changes in overall numbers of such consumers, and demographic data about the consumers themselves.**

***RESPONSE*:** The Federal Reserve Board's Survey of Consumer Finances is instructive to consumers' demographic characteristics over time. The Survey has been conducted every three years beginning in 1983. It provides a good picture of personal assets and liabilities of households and changes in these trends historically.

According to the 2004 Survey, the most recent data available, "the amount of debt relative to total assets has increased markedly."[22] Further, "[a]s debt rose over the period, families devoted more of their incomes to servicing their debts, despite a

21 PricewaterhouseCoopers, LLP, *Value of Third-Party Debt Collection to the U.S. Economy: Survey and Analysis* (June 27, 2006) (Exhibit 1).

22 Bucks, Brian K., Federal Reserve Board, *Recent Changes in U.S. Family Finances: Evidence from the 2001 and 2004 Survey of Consumer Finances*, at A1 (2006) (hereinafter "*Survey of Consumer Finances*").

general decline in interest rates."[23] Among those with credit card accounts, 54% consistently pay off balances in full each month.[24] Households that carry credit card debt owed a median $2,200.[25] One in 14 carries more than $10,000 in credit card debt—and only one in 50 owes $20,000.[26]

According to the Federal Reserve, a compelling indicator of financial distress is the proportion of families with unusually large monthly payments relative to their incomes. A debt-to-income ratio above 40% is considered uncomfortable. The typical American household pays monthly obligations valued at 18% its monthly disposable income.[27] Twelve percent of households in the 2004 survey felt the pressure of a ratio above 40%.[28]

---

23 *Id.* at A-30-31.

24 *Id.* at A-30-31.

25 *Id.* at A-30-31.

26 *Id.* at A-30-31.

27 *Id.* at A-33.

28 *Id.* at A-33.

Consumer demographic information also is available at myFICO®, which is the consumer division of Fair Isaac Corporation. According to myFICO®, a representative national sample of credit profiles reveals that most consumers are paying their bills on time. Less than half of all consumers have ever been late 30 days or more on a payment.[29] Seventy-seven percent of all consumers have never had a payment more than 90 days overdue, and less than 20 percent of the balance have ever had an account closed by the lender due to default.[30]

Although total consumer debt has increased dramatically over time, the typical household has avoided overextensions of credit. The debt-to-income ratio tracked by the Federal Reserve has trended within a narrow range of 15 to 19 percent since 1980.[31] Increases in the borrowing population and in household income and net worth

---

29 Fair Isaac Co., "Average Credit Statistics," *available at* http://www.myfico.com /CreditEducation/AverageStats.aspx (viewed May 9, 2007).

30 Fair Isaac Co., "Average Credit Statistics," *available at* http://www.myfico.com /CreditEducation/AverageStats.aspx (viewed May 9, 2007). The obvious implication from these statistics is that the majority of consumer debt traces to a comparatively smaller minority of the consuming public.

31 Federal Reserve Board, Household Debt Service and Financial Obligations Ratios, *available* at http://www.federalreserve.gov/releases/housedebt/default.htm (visited May 7, 2007).

may explain how overall debt can grow briskly while household debt ratios remain more stable.

c. Please provide information about trends in the nature of the underlying debt subject to debt collection actions (e.g., mortgage, automobile, educational, credit card, personal, etc.).

RESPONSE: ACA's Agency Operations Survey provides information about trends in the underlying debts subject to collection actions. The Survey is an informal poll of ACA's collection agency members based in the United States and conducted approximately every 3 years.[32] The survey asks respondents to indicate the top three markets served by their company. Table 1 is a comparison between the survey results in 1995, 2000, and 2005 which reveal changes over the decade:

THE REMAINDER OF THIS PAGE LEFT BLANK

[32] The Survey is not statistically reliable but the results are believed to be accurate and reflective of larger industry trends. ACA cautions, however, that the Survey results offer anecdotal evidence based on the non-scientific observations of ACA members.

TABLE 1			
Markets among your top 3	**1995**	**2000**	**2005**
Healthcare	78%	80%	76%
Retail (part of Financial Services in 2005 survey)	63%	70%	37%
Commercial	46%	43%	31%
Utility (Telecomm. & Utilities in 2005)	23%	33%	37%
Other	17%	21%	25%
Government (added in 2005)	n/a	n/a	20%

In addition, the Federal Reserve's *Survey of Consumer Finances* tracks family holdings of debt based on selected characteristics and debt types. The *Survey of Consumer Finances* indicates that 76.4 percent of families carry debt, representing a 1.3 percent increase during the survey period of 2001-2004.[33] The proportion of families with debt secured by a residence in 2004 was 69.4 percent.[34] Forty-six percent of families carried installment debt, defined generally as a closed-end consumer loan such as durable goods, automobiles, and educational obligations.[35] In

33 *Survey of Consumer Finances*, at A26.

34 *Id.*

35 *Id.* at A30.

addition, 46.2 percent of families carried credit card balances on bank-issued cards, with the balances on bank-issued cards composing approximately 85 percent of all outstanding credit card debts.[36] However, the Federal Reserve noted that "the carrying of credit card balances is widespread but notably lower among the highest and lowest income groups, the highest wealth group, and families headed by persons who are aged 65 or older or retired."[37]

Other industry sources have reported on the types of debts subject to collection actions by focusing on the revenue generated by debt type. For example, one source reports that the distribution of industry revenues by market segment are 26 percent derived from the healthcare receivables, 21 percent from financial services, 12 percent from educational loans, 11 percent commercial, 9 percent telecommunications or utilities, and 21 percent was categorized as "other."[38]

---

36 *Id.* at A30-31.

37 *Id.* at A30.

38 Kaulkin Ginsberg Company, The Kaulkin Report, *Debt Collection: An Industry in Transition*, at 11 (5th ed. Aug. 2001).

d. Please provide information detailing recent changes in the extension and use of credit and how, if at all, this has affected the collection of debts.

RESPONSE: ACA does not maintain data detailing changes in the extension and use of credit by credit grantors. However, one readily identifiable change in credit granting is the rapid growth the total dollar amount of outstanding credit. The Federal Reserve Board notes that consumer debt has tripled since 1992 and currently stands at $2.4 trillion.[39] As the Federal Reserve explains, "[b]ecause population, income, employment, prices, and nearly every other economic indicator also rose over the period, the growth of consumer credit is often put in perspective by comparing it with the growth of consumers' income. Total consumer credit outstanding has grown at approximately the same pace as disposable personal income over the past generation, although with noticeably more cyclicality."[40] The data does not reveal the precipitating factors for the increase in outstanding credit. However, it is generally accepted that a portion of the increase is likely due to improved risk management tools allowing

[39] Federal Reserve Board, Consumer Credit, Historical Data, *available at* http://www.federalreserve.gov/releases/g19/hist/cc_hist_sa.html (visited May 7, 2007).

[40] Federal Reserve Bulletin, "Credit Cards: Use and Consumer Attitudes, 1970-2000," (Sept. 2000).

lenders to extend credit to consumers previously considered less creditworthy.

Some information about the use of credit by consumers is set forth above in response to subparagraphs b and c, above. In addition, ACA notes that the Federal Reserve has commented that the two main purposes for consumers to use credit cards are "as a substitute for cash and checks when making purchases and as a source of revolving credit."[41] Whereas 6 percent of families had a bank-type card with an outstanding balance after their most recent payment in 1970, today approximately 37 percent maintain such a card. This suggests that consumers' usage patterns have changed significantly during the period that the FDCPA was enacted. Initially credit cards were viewed by consumers as a convenient substitute for cash, not a long-term financing vehicle. This has evolved to the point where today credit cards are viewed more as an essential part of consumers' purchasing ability based on the expectation of deferring payment until a later date.[42]

---

41 *Id.*

42 The reasons for consumer usage patterns having changed is unclear. It may reflect a deferral of payment because of the lack of available funds. It may reflect the fact that bank credit cards are more available and commercially accepted by a greater number of retailers. It also may reflect a value-added component in the view of consumers who which to take advantage of benefits associated with purchases made on certain cards, for example, free airline tickets or other rewards.

e. Please provide any other demographic or industry data that may be pertinent to the FTC's staff's examination of the debt collection industry.

RESPONSE: ACA submits that other industry data is relevant to the FTC's staff's examination of the debt collection industry. In brief, these factors include the diversification of debt collectors which maintain branches in all states, thereby giving rise to formidable compliance obligations from a licensing and regulatory point of view. Another factor is the public perception of the industry which, in some measure, is affected by the Commission's recording of complaints against third-party debt collectors. This subject will be discussed in greater detail when ACA submits a forthcoming study on the consumer complaint data.

2. *Industry Trends.*

a. What has caused the growth of the collection industry in recent years?

RESPONSE: Many factors have come together to contribute to the growth of the collection industry. One factor already identified is that more consumers are carrying higher balances. This contributes to more delinquencies and, thus, an increased demand for collection services. Another factor is that credit grantors appear to hire third-party debt collectors more frequently. They do so to take advantage of the

expertise, technological advantages, and other efficiencies conferred by debt collectors which, in turn, permits credit grantors to downwardly adjust the minimum amount of debt deemed recoverable before charging off to profit and loss. Technology and the efficiencies of third-party collectors permit lower balance accounts to be recovered more so than in the past.

The use of third-party debt collectors by Federal agencies and state and local governments also has contributed to the development and growth of the collection industry. Today, the Department of Education, the Department of Treasury, and the Department of Health and Human Services each have contracted with private collection agencies to collect debts owed to the Federal government. In 2005 alone, the Federal government referred more than $13 billion in delinquent receivables (e.g., fines, civil penalties, non-tax debts, loans) to third-party collection agencies, and the annual referrals continue to increase.[43] State and local governments have followed suit.

An additional factor is asset buying which, as the Commission is aware, has flourished in the past decade. Various industry sources suggest that sales of debt portfolios have increased six-fold since 1995 to exceed more than $77 billion annually.

---

[43] PricewaterhouseCoopers, LLP, *Value of Third-Party Debt Collection to the U.S. Economy: Survey and Analysis*, at iii (June 27, 2006) (Exhibit 1).

The sale of these asset portfolios appears to be preferred by some credit grantors (as opposed to traditional long-term collection processes) largely as a measure to realize revenue for low performing or non-performing assets and as a consequence of tighter margins. Of course, with more debt being reintroduced into the collection process, there exists more opportunities and need for collectors.

b. Are a greater number or percentage of consumer accounts delinquent today than in the past? If so, why?

RESPONSE: The rate of delinquency for consumer accounts has remained relatively stable during the past ten years. Based on Federal Reserve data, the table set forth below tracks seasonally-adjusted delinquency rate percentages on credit card debt on a quarterly basis beginning in 1995.

THE REMAINDER OF THIS PAGE LEFT BLANK

TABLE 2[44]	
Reporting Period	**Delinquency Rate Reported**
1995Q1	3.46 percent
1995Q2	3.69 percent
1995Q3	3.84 percent
1995Q4	3.93 percent
1996Q1	4.04 percent
1996Q2	4.26 percent
1996Q3	4.46 percent
1996Q4	4.59 percent
1997Q1	4.68 percent
1997Q2	4.72 percent
1997Q3	4.68 percent
1997Q4	4.78 percent
1998Q1	4.74 percent
1998Q2	4.74 percent
1998Q3	4.71 percent
1998Q4	4.7 percent
1999Q1	4.64 percent
1999Q2	4.47 percent
1999Q3	4.54 percent
1999Q4	4.5 percent
2000Q1	4.39 percent

[44] The source of this data is the Federal Reserve Board. *See* Federal Reserve Statistical Release, *Charge-off and Delinquency Rates on Loans and Leases at Commercial Banks*, *available at* http://www.federalreserve.gov/releases/chargeoff (accessed May 24, 2007).

TABLE 2 (CONTINUED)	
Reporting Period	**Delinquency Rate Reported**
2000Q2	4.51 percent
2000Q3	4.53 percent
2000Q4	4.56 percent
2001Q1	4.81 percent
2001Q2	4.95 percent
2001Q3	5 percent
2001Q4	4.68 percent
2002Q1	4.94 percent
2002Q2	4.79 percent
2002Q3	4.89 percent
2002Q4	4.84 percent
2003Q1	4.68 percent
2003Q2	4.53 percent
2003Q3	4.24 percent
2003Q4	4.42 percent
2004Q1	4.22 percent
2004Q2	4.15 percent
2004Q3	4.07 percent
2004Q4	4.03 percent
2005Q1	3.73 percent
2005Q2	3.66 percent
2005Q3	3.89 percent
2005Q4	3.53 percent
2006Q1	3.92 percent
2006Q2	4.12 percent
2006Q3	4.09 percent
2006Q4	3.92 percent

Table 2 demonstrates that the delinquency rates on credit card debts have consistently remained between three and five percent of loan balances on a quarterly basis for more than a decade. During that same period, delinquency rates on residential loans were between one to two percent, and the data recorded by the Federal Reserve for other delinquency categories (non-credit card based loans, leases, agricultural loans) do not reveal significant fluctuations.[45]

During the same period, the data compiled by the Federal Reserve indicates that charge-offs of credit-card debts were more volatile. The rates varied from 2.94 percent in the first quarter of 1995, surpassed 6 percent in 2001, and peaked at 7.67 percent in the first quarter of 2002 before steadily declining to the most recent observation of 3.96 percent for the fourth quarter of 2006.[46]

---

[45] *See* Federal Reserve Statistical Release, *Charge-off and Delinquency Rates on Loans and Leases at Commercial Banks, available at* http://www.federalreserve.gov/releases/chargeoff/delallnsa.htm (accessed May 24, 2007).

[46] *See* Federal Reserve Statistical Release, *Charge-off and Delinquency Rates on Loans and Leases at Commercial Banks, available at* http://www.federalreserve.gov/releases/chargeoff/chgallsa.htm (accessed May 24, 2007). The charge off rates for other types of consumer debts (residential loans, leases, non-credit card-based loans) also can be accessed at the above-referenced website. ACA notes that there the rates or percentages may be specific to the type of debt. For example, hospitals experience a similar level of bad debt, charging off an average three percent of receivables per

This data suggest that, during the past 10 years, the delinquency rates for credit card debts have remained relatively constant as have other types of debts, while the percentage of charged-off accounts more than doubled before returning to the more historically consistent range of 3 percent to 4 percent.

c. **Please provide data, particularly from the past ten years, illustrating trends in the number or percentage of accounts in collection with each of the following: 1) credit issuers; 2) collection agencies; 3) collection law firms; 4) debt buyers; and 5) other identifiable industry sub-groups.**

RESPONSE: As far as can be ascertained, there is no industry-wide data which has recorded the number of accounts in collections spanning the past ten years. Apart from the complications of gathering this information based on the number and variation of credit grantors and third-party debt collectors, many consider this information proprietary, particularly were non-public companies are contemplated.

Similarly, third-party debt collectors consider their commission terms proprietary. As the Commission is aware, debt collectors typically are compensated

---

quarter since 2003. These are the amounts due that potentially may be placed for collection and are separate from the uncompensated care classified under hospitals' charity guidelines. Bad debt and charity care combined represent an average 6 percent of hospital receivables per quarter.

based on a percentage commission of the debt recovered by the collector. The commission percentage is a negotiated term of the underlying contractual arrangement. The percentage reflects a number of factors such as the age of the debt, the availability of location information, the type of collection activity to be performed (for example, first-party versus third-party; written and oral communications; credit reporting obligations), the type of debt (for example, healthcare, utilities, telecommunications) which correlates to the required specialization or legal and regulatory knowledge to be possessed by the collector, and whether the placement by the creditor grantor is primary, secondary, or tertiary. In many instances, the percentage ranges between 10 percent to 35 percent or more.

There is data tracking the amount of revenue generated industry-wide based on market segments. In this regard, a market analysis prepared by the advisory firm Kaulkin Ginsberg reported that 63 percent of revenues were derived from traditional, third-party contingent collections in 2004.[47] Debt buying revenues were reported to be 20 percent, with first-party and legal process collections accounting for 12 percent and

[47] Kaulkin Ginsberg Company, The Kaulkin Report, *Debt Collection: An Industry in Transition*, at 41 (5th ed. Aug. 2001).

5 percent, respectively.[48]

One way of addressing the Commission's question is to consider the number of accounts placed with a collector annually. Some ACA members report that placements with third-party debt collectors by debt buyers has increased in the past five years which, in part, proceeds from credit grantors selling debt portfolios earlier in the collection cycle to generate revenue.

d. Has the percentage of credit issuers retaining their collections in-house changed? If so, how and why?

RESPONSE: ACA is not aware of public data on an industry-wide basis that records the rate at which credit grantors have retained in-house collections or, conversely, outsourced those functions to third-party debt collectors. Tracking this type of data is complicated, as noted above, due to the proprietary nature of the information. Moreover, the data can be evaluated in a number of different ways which might affect that analysis. For example, merely focusing on the percentage of credit grantors might lead to inaccurate conclusions because there simply are more credit grantors today than when the FDCPA was enacted. Thus, data should be expressed as a component of the total number of credit grantors and the amount of receivables carried by the creditors.

---

48 *Id.*

There is anecdotal evidence suggesting that the percentage of credit grantors using debt collectors for first-party services increased during the 1990s. This largely is a consequence of creditors seeking to take advantage of professional, trained recovery services offered by third-party debt collectors. As noted, first-party collections have assumed larger roles in the process of collecting debts whether performed by employees of the creditor or *de facto* employees over whom the creditor retains a significant degree of control. The FDCPA's creditor exemption includes *de facto* employees of a creditor or "collection agency employee[s], who work . . . for a creditor to collect in the creditor's name at the creditor's office under the creditor's supervision."[49] In effect, debt collection professionals have proven that they can collect more efficiently than the credit grantor in many instances, thereby alleviating

[49] FTC Commentary, 53 Fed. Reg. at 50102. Although the FDCPA does not specify what constitutes significant control over operations, the FTC has stated that such control would likely include the creditor supervising virtually all aspects of the collection agency employee's work. Vandebroek, FTC Informal Staff Letter (Apr. 20, 1981). The FTC has further indicated that off-site collection agency employees may be considered de facto employees provided the creditor retains significant control over the employees' collection activities. Shapiro, FTC Informal Staff Letter (Oct. 1, 1997). See also de Mayo, FTC Informal Staff Letter (May 23, 2002). The applicability of the *de facto* employee provision will, however, "depend on the degree of control and supervision exercised by the creditor over the agency employees' collection activity, and how similar that control and supervision is to that exercised by the creditor over its own employees." de Mayo, FTC Informal Staff Letter (May 23, 2002).

creditors of the need to hire and maintain their own collection staff, facilities, and associated costs. Further, credit grantors may view first-party collections as a way to limit risk in an increasingly complex Federal and state statutory and regulatory context.

First-party collection was affected by a trend in this decade to move recovery departments offshore, whether functioning as direct or indirect employees of credit grantors. Some credit grantors and third-party debt collectors have established offshore operations in locations such as South America and India. Lower costs overseas have coupled with advances in technology to make it more profitable to do so.[50]

Another factor affecting the percentage of in-house collections performed by credit grantors is the increased use of collection agencies to recover Federal, state, and local/municipal debts. Governmental agencies at both Federal and state levels engage third-party debt collectors to aid in the collection of all types of debts owed to the

[50] Technology such as computer networking, Voice over Internet Protocol, and broadband have combined in such a way so as to make international collection efforts by telephone and correspondence seamless to debtors. The debt collection industry, in this regard, has followed the lead of many other customer service-based corporations such as technology and computer companies which previously established offices and call centers overseas to take advantage of a highly motivated, skilled workforce. The ever-increasing complexity of Federal and state statutory and regulatory requirements also have contributed to this development.

government ranging from library and parking fines to income and property taxes. Indeed, the Federal government is the largest creditor in the United States. For more than 25 years state government agencies have been working with private debt collectors and currently 41 states engage private debt collectors to recover delinquent income taxes. Private collection agencies also work with many federal government agencies including the Department of Education, the Department of Health and Human Services and the Department of the Treasury. In 2004 alone, private collection agencies (the term commonly used in governmental contracts with third-party debt collectors) under contract with the Departments of Education, Health and Treasury alone received $18.3 billion of uncollected government debt.

Perhaps the best example of the role played by third-party debt collectors in this regard can be found in the Internal Revenue Service program to hire private collection agencies to recover tax debts.[51] The IRS and the Government Accountability Office (GAO) have both documented significant declines in the compliance and collection activities of the IRS over the past several years. In 2002, the GAO reported a 60

---

[51] Congress authorized the IRS in 2004 to hire third-party debt collectors or "private collection agencies" to supplement the IRS's internal debt recovery program. *See* American Jobs Creation Act of 2004, Pub. L. No. 108-357, § 881, 118 Stat. 1418 (codified at 26 U.S.C. 6306) (2004).

percent gap between the IRS collection workload and the amount of work that agents were completing. This "gap" translates into $340 billion in unpaid federal income taxes -- $120 billion of which is potentially collectable, and $20 billion categorized as readily collectable. The IRS has worked for over four years to develop a program to utilize PCAs. In a 2003 audit report, the Treasury Inspector General for Tax Administration (TIGTA) noted, "[i]n summary, the IRS's preliminary planning related to the use of [PCAs] was extensive and included a detailed evaluation of similar existing programs at other federal and state government entities."

The recovery program has worked exceptionally well because of a good record of revenue return with few consumer complaints. In fact, the IRS expects that working with PCAs will increase taxpayer satisfaction by 12.5 percent, and recent independent consumer survey information closely monitoring the IRS program substantiates this result.[52] The IRS uses a comprehensive evaluation system that will reward collectors for their responsiveness and sensitivity in dealing with taxpayers, not just for the tax dollars collected. The program is also careful to protect the privacy of taxpayer

---

[52] *See* GAO, *Measuring Taxpayer Opinions Regarding Private Collection Agencies*, GAO-07-890T (May 23, 2007) (noting that the independent consulting company reported overall taxpayer satisfaction ratings from 94 to 96 percent for contacts made from November 2006 through February 2007).

information. Agencies under the contract are provided with only the name, phone number, addresses, the tax year and the amount of taxes due for the taxpayers they will contact.

e. **Please provide data illustrating how the practice of debt buying has evolved over the years and what impact, if any, it has had on the practice of debt collection. In addition, please discuss the frequency with which debt is sold more than once in the course of collection, the age of debts that are sold, and the impact, if any, that trends in this area have had on businesses and consumers.**

RESPONSE: The debt buying market was unheard of in 1977when the FDCPA was enacted. Debt sales have increased from a face value of $6 billion in 1993 to $68 billion in 2003. By 2005, the asset buying market recorded some $110 billion sales. Credit card debt makes up about 90 percent of all the debt sold today.

The structure of the asset buying market has matured. Today, credit grantors typically compile portfolios of accounts which are bid upon competitively by asset buyers based on the buyer's valuation of the portfolios. The portfolios may contain accounts with similar characteristics (such as age, amount, and delinquency term),[53]

[53] It is generally accepted that accounts 6-12 months past due are deemed primary; 12-24 months are secondary; beyond 24 months is tertiary or warehouse level accounts. There also is a general correlation between the age or stage of delinquency and the

however, there are instances when this is not the case.

Asset buyers used to expect to recover three times a portfolio's purchase price over three years as a rule of thumb. As the market has matured, prices have become more competitive and the projection is now 250 percent return over five years. Buyers essentially make an investment in the debt. The debt market operates much like that for mortgages—lenders depend on pools of financial assets being sold to investors to provide capital for future loans.

The maturity of a vibrant debt buying industry logically has led to more credit grantors considering it as an option when evaluating how to deal with delinquent accounts. With monthly, quarterly and annual fiscal deadlines to meet, it can be attractive to sell a debt portfolio in order to quickly reduce potentially long-term uncertain debt into liquid capital that can be reinvested in alternatives more beneficial to the creditor. Increasingly credit grantors have turned to the sale of consumer-based receivables as a way to provide liquidity, much the same as the emergence of the second home mortgage market previously.

---

perceived value of the portfolio, all other factors remaining equal.

As with every developing market, asset sales face unique challenges which frequently do not arise in traditional first-party or third-party debt collection transactions. In recent years, ACA has worked through its Asset Buying Division (ABD)[54] to identify these challenges and develop strategies to foster ethical, compliant collection of portfolios consistent with Federal and state laws. Through publications such as ACA's ABD "Due Diligence Guidelines", "Buying Receivables Guide", and "Guide to Purchase and Sale Agreements", ACA has demonstrated its commitment to developing a knowledgeable and ethical debt buying industry. ACA's Due Diligence Guidelines are designed to provide buyers and sellers with detailed information on financing arrangements, risk assessments, accounting and tax analysis, legal analysis of purchase agreements, and instruction on compliance with applicable laws. The Buying Receivables Guide is a comprehensive document available to members of ACA's ABD which addresses everything from valuing prospective portfolios to selling purchased portfolios to other asset buyers. Finally, ABD's publication "Guide For Understanding Purchase and Sale Agreements" is designed to help sellers and buyers evaluate and

---

[54] ABD membership is open to companies that buy, sell, finance or service asset sale transactions, and employ individuals such as debt buyers or sellers, brokers and investment bankers.

understand the contracting process including common warranties and representations, as well as indemnification issues.[55]

In response to the questions about the frequency of reselling portfolios, ACA's experience is that asset buyers pursue any number of strategies which may ultimately result in the sale of some or all of a purchased portfolio. Some buyers are third-party collection agencies and make the purchase solely with the intention of collecting on the accounts directly. Other buyers are investors which purchase based on an intention to place the accounts with third-party collection agencies. In this situation, the buyer, such as a finance company, may sub-divide the portfolio (based on partitions such as credit score ratings, age of the accounts, type of debts, or licensing issues) resulting in the retention of certain accounts for internal collection, referral to a third-party collector, and/or the sale of others. These subsequent sales may be to debt collectors, attorneys, or other companies at reduced rates. Other strategies find buyers "seasoned" or re-performing accounts. This involves situations where a portfolio of otherwise non-

[55] No amount of due diligence prior to the purchase of a portfolio can cure deficiencies in the original data transmitted by an original credit grantor. As long as there are willing sellers of partially or unverified or incomplete consumer data, the market will downwardly adjust purchase prices to permit the sales of such portfolios with downstream effects on consumers.

performing accounts is acquired with the objective of identifying consumers that will settle or make time payments on their accounts. Once this is accomplished, the refined portfolio can be resold as a performing asset for greater value.

f. What incentives exist for credit issuers to sell their debt portfolios rather than hiring contingency debt collectors?

RESPONSE: As discussed above, the incentives for credit grantors to sell portfolios of accounts as opposed to pursuing contingent-based collections appear to be financial. These incentives vary with the type of asset, e.g., whether it is performing, under-performing, or non-performing. Carrying a non-performing asset which amounts to a large uncollected receivable on the books of a credit grantor has significant implications for the valuation of the company. In this situation, credit grantors may elect to sell the asset to recognize revenue and, in effect, forego a long-term contingent collection strategy.

Other incentives include minimizing exposure to litigation and business risk attendant with continuing to collect on the accounts internally or externally. These risks may be accentuated for certain types of debts, such as health care receivables, that require highly sophisticated, specialized in-house or third-party debt collectors who are knowledgeable of the multitude of Federal and state laws and regulations (e.g., HIPAA,

Medicare and Medicaid provider reimbursement requirements).

In addition, some credit grantors elect to sell the consumer receivables in order to free-up internal assets (personnel and infrastructure) which otherwise would be allocated to internal collections but can be re-tasked other operations.

g. Please provide data illustrating how the work that collection law firms do has evolved over the years and what impact, if any, this evolution has had on the practice of debt collection. In addition please provide data, particularly from the past ten years, regarding the number or percentage of debts being assigned to collection law firms relative to the number or percentage being assigned to collection agencies.

RESPONSE: The role of law firms that specialize in providing legal representation to credit grantors and third-party debt collectors as part of recovery efforts has changed during the past 30 years. To understanding the changes, it is important to briefly address the application of the FDCPA to attorneys.

Attorneys play an integral role in the debt collection process. Whether acting independently as debt collectors, assisting collection agencies, or working in concert with creditors, attorneys write letters, pursue collection, and ultimately file suit in court to collect delinquent debt. Because of the gravity of influence attorney involvement can have over the "least sophisticated consumer," the FDCPA has forbidden the

misleading use of the impression of attorney involvement to coerce payment. Under the FDCPA, it is a false, deceptive, or misleading practice for a debt collector to misrepresent that a communication is from an attorney[56] or to use false or deceptive means to collect any debt.[57] A "debt collector" includes anyone "who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another."[58] In 1995, the Supreme Court recognized that attorneys commonly participate in the process of recovering debts and ruled that the FDCPA applies to attorneys when engaged in litigation.[59]

The FDCPA itself imposes no requirement that an attorney be "meaningfully

---

[56] 15 U.S.C. § 1692e(3). Section 1692e(3) was intended to apply to situations where an ordinary debt collector falsely represented, expressly or even implicitly, to a debtor that he was an attorney. *See* FTC Commentary, 53 Fed. Reg. at 50106 (cmt. 1 to § 807(3) ("A debt collector may not send a collection letter from a 'Pre-Litigation Department,' where no legal department exists. An attorney may use a computer service to send letters on his own behalf, but a debt collector may not send a computer-generated letter deceptively using an attorney's name").

[57] 15 U.S.C. § 1692e(10).

[58] 15 U.S.C. § 1692a(6).

[59] *Heintz v. Jenkins*, 514 U.S. 291 (1995). In 2000, the Federal Trade Commission issued an advisory opinion under the FDCPA which adopted the ruling of *Heintz*. *See* Federal Trade Commission Formal Advisory Opinion to Basil J. Mezines, Esq., March 31, 2000 (*available at* http://www.ftc.gov/os/2000/04/fdcpaadvisoryopinion.htm).

involved" in the collection process. It is a judicial construct. Courts that have examined the extent of involvement of an attorney in the collection process offer guidance as to the conduct that generally is deemed adequate to avoid a deceptive representation of involvement.[60] As a general proposition, there is no *per se* deception merely because a collection letter originates with a law firm or individual attorney.[61] Indeed, the collection laws clearly and expressly require a debt collector to use its own name in its collection communications.[62] Nor is there a law violation if a collection

---

[60] In order to show that a letter was deceptive under § 1692e(3) for lack of meaningful involvement, it must be established that the letter contains a false representation of fact. Such falsity may be express or implicit. An example of an express misrepresentation would be the express written statement that the writer was an attorney when he or she is not. Implicit falsity is determined with reference to the meaning communicated under the circumstances. *Wade v. Regional Credit Ass' n*, 87 F.3d 1098, 1100 (9th Cir. 1996); *Alvia v. Rubin*, 84 F.3d 222, 227 (7th Cir. 1996). Notably, however, the claimant's burden of proof is greater with claims based on implicit falsity. In such cases, the claimant must offer evidence of both (1) *actual deception* and (2) *resulting harm* arising from the communication. *Alvia*, 84 F.3d at 227. Regardless of the type of falsity, the ultimate test to determine if an FDCPA violation occurred is whether the communication is likely to deceive the hypothetical least sophisticated debtor. *See Anthes v. Transworld Systems, Inc.* 765 F. Supp. 162, 166-67 (D. Del. 1991) (no FDCPA violation when an attorney, in fact, sent the letter).

[61] *Sturdevant v. Jolas, P.C.*, 942 F. Supp. 426, 430 (W.D. Wis. 1996).

[62] 15 U.S.C. 1692e(14).

letter is sent from a law firm and an attorney is involved by reviewing the account information to determine whether a letter should be sent.[63]

Typically, meaningful involvement analysis balances factors such as (a) whether the attorney reviews the form of the collection letter; (b) whether the collection letters are prepared by the attorney, not the credit grantor or a debt collector,[64] (c) the extent to which the attorney is involved in reviewing the accounts,[65] (d) the degree of control and supervision over the process exercised by the attorney,[66] and (e) whether the attorney, and not the credit grantor, determines when the letters are sent.[67] This is both an objective and subjective assessment. What is clear however is that the mere involvement of an attorney in the process *does not* give rise to a claim under the FDCPA for a false threat of litigation unless it is objectively established that there was

---

63 *Anthes*, 765 F. Supp. at 166-67.

64 *See, e.g., Taylor v. Perrin, Landry, deLaunay & Duranc*, 103 F.3d 1232 (5th Cir. 1997).

65 *Nielsen v. Dickerson*, 307 F.3d 623 (7th Cir. 2002); *see Boyd v. Wexler*, 275 F.3d 642 (7th Cir. 2001); *United States v. National Fin. Serv., Inc.*, 98 F.3d 131 (4th Cir. 1996); *Clomon v. Jackson*, 988 F.2d 1314 (2d Cir. 1993).

66 *Clomon*, 988 F.2d at 1321.

67 *Bitah v. Global Collection Serv., Inc.*, 968 F. Supp. 618 (D. N.M. 1997).

no intention to pursuing the threatened activity.

One large market within the industry may provide context to how often a delinquent debt is pursued by legal means. ACA estimates that fewer than 4 percent of all healthcare accounts are reduced to judgment. Overall statistics on the use of legal collection efforts are difficult to obtain, however. Notwithstanding, it is clear that collection law firms are a growing component of the recovery process, particularly where the underlying debts require specialized knowledge such as foreclosures, healthcare, and judicial liens. When collection law firms are involved, the track record is that consumers are afforded excellent protections under applicable rules of civil procedure and by the retention of counsel.

h. Has the practice of selling mortgage and other debt portfolios multiple times affected the collection industry and consumers subject to debt collection? If so, how? In responding, please discuss what information about the consumer and the debt is typically transferred by credit issuers to debt buyers, and whether this information is typically transferred from one debt buyer to another if the debt is subsequently resold. Is there additional information that could be transferred that would be useful in verifying the debt, and if so, why is it not routinely transferred?

RESPONSE: Asset buying has affected third-party debt collectors and

consumers. This impact is more acute in the area of debt verification. The extent to which a debt collector is able to verify a debt after a sale by a credit grantor is contingent on many factors, some of which trace to events years in advance of the asset sale. This is because each debt portfolio sold contains different information concerning the underlying consumer accounts. Some portfolios have detailed account information, such as payment histories. Other portfolios may have basic demographic information (account numbers and last known address and telephone number). Still others may have even less complete information. The capabilities of credit grantors computer systems to record and maintain consumer data over time is a critical component in the downstream availability and integrity of the data relied upon by asset buyers and/or debt collectors.[68] The result is that, if the data is inaccurate or incomplete, a wrong consumer may be contacted about the debt because there is less information available to

[68] Debt collectors are entitled to rely on the accuracy of information provided by credit grantors. Numerous courts have concluded that "a debt collector has the right to rely on information provided by the client-creditor, and has no obligation to undertake an independent debt validity investigation." *Jenkins v. Union Corp.*, 999 F. Supp. 1120, 1140-41 (N.D. Ill. 1998). *See also Ducrest v. Alco Collections, Inc.*, 931 F. Supp. 459, 462 (M.D. La. 1996) ("debt collector should be able to rely on the representation and implied warranty from its client that the amount was due under either the lease or the law"); *Schmitt v. FMA Alliance, Ltd.*, 398 F.3d 995, 997 (8th Cir. 2005) (debt collector is not liable for actions taken in reliance on the creditor's provided information).

verify whether the consumer, in fact, is the same consumer listed on an account.

With regard to the verification issues, please refer to ACA's response to question 4.c., *infra*.

3. *Debt Collection Practices and Techniques.*

a. What new techniques and technologies are being employed in debt collection? Specifically, to what extent are the following technologies, or other similar ones, used in debt collection, and what benefits and costs to businesses and consumers are associated with their use?

RESPONSE: There are many new techniques and technologies which have been developed in recent years that add value to the services provided by third-party debt collectors and provide important safeguards to consumers such as minimizing the risk of third-party disclosures. ACA's Agency Operations Survey, *see* response to question 1.c., above, provides a list of industry technologies. The Survey asks respondents to indicate each in use at their office. Below is a comparison between the 1995, 2000 and 2005 surveys that show changes over the decade:[69]

---

[69] The Survey is not statistically reliable but the results are believed to be accurate and reflective of larger industry trends.

TABLE 3			
Technology	**1995**	**2000**	**2005**
Collection Software	93%	96%	96%
Fax	50%	92%	95%
E-mail	n/a	78%	94%
Skiptracing service	26%	60%	90%
Predictive Dialers	38%	37%	52%
Billing Software	33%	34%	18%
PBX/Computer Integration	9%	26%	29%
Check Verification	14%	15%	17%
Scoring Software	1%	13%	12%
Automated Messaging (outbound msg. system)	n/a	n/a	41%
Call recording	n/a	n/a	28%
Document Imaging	n/a	n/a	39%
Intelligent Mail Return	n/a	n/a	28%

The costs and benefits associated with each of these technological developments is addressed in the following subparagraphs:

i. Databases containing consumer contact and location information.

RESPONSE: The industry depends heavily on access to consumer data and location information. One leading provider estimates 35 percent of delinquent debtors move annually, and half of all accounts placed for collection require some kind of

skiptracing services. This is one area where there has been significant change in the past ten years. Today there are many companies that specialize in providing location information which is defined in section 803(7) as "a consumer's place of abode and his telephone number at such place, or his place of employment."[70]

As depicted in Table 3, above, the use of skiptracing services increased from 26 percent in 1995 to 90 percent in 2005. The availability and use of these databases are essential and beneficial to debt collectors and consumers alike. The benefit is that data aggregation on a consumer-specific level helps protect privacy by ensuring that the correct consumers are contacted and minimizing the risk of third-party disclosures. These services also are of direct benefit to consumers by helping guard against identity theft.

At the same time, there are have been numerous efforts on Federal and state legislative levels to further restrict access to such databases by measures that, for

[70] Notwithstanding the widespread availability of skiptracing services, there continues to be a lag in the type of information that is aggregated by such services. For example, there is no commercially available database of cellular telephone numbers even though many consumers provide cellular numbers as a primary contact and/or exclusively use cellular phones. Indeed, of the 233 million cellular phone subscribers in the United States (76 percent of all households), 12.8 percent of households have discontinued landline service and rely exclusively on a wireless line. *See* http://www.ctia.org/media/industry_info/index.cfm?bPrint=1&AID=10323.

example, bar the transmission of social security numbers and drivers' license data as a privacy protection. Frequently these legislative proposals do not intend to apply to the recovery of debts, but the effect on the ability of credit grantors and third-party debt collectors would be extremely harmful to such an effort if basic identifying information such as social security numbers are restricted. This is because social security numbers and drivers' license information is a critical component in the successful identification of a correct account holder. Other data elements (addresses, telephone numbers) commonly collected by credit grantors are subject to change, but social security numbers are a unique identifier that many credit grantors use. Restricting the legitimate use of this information to recover a debt undoubtedly will result in more consumers with similar demographic information (e.g., "John Smith" or "John A. Smith" or "John Andrew Smith") being contacted for a debt of a different individual. This risks further increases in consumer complaints and higher costs of collections.

ACA believes that the availability of consumer contact and location information databases needs to responsive to consumer privacy interests but also reflective of the needs of the industry to locate the correct consumers to effectuate recovery. This is in keeping with the FDCPA, which allows debt collectors to locate and contact consumers.

ii. Technology that facilitates storage and transfer of records necessary to identify and locate consumers subject to debt collection, such as those transferred from credit issuers to third-party debt collectors.

RESPONSE: Document imaging technology that stores and transfers customer records is in use today. The technology allows the user to create an electronically searchable version of a hardcopy document. About 40 percent of ACA members who responded to the ACA Survey report using this type of technology in some capacity. The electronic availability of this information allows debt collectors to readily access underlying account information, such as contracts or signed documents. Direct access to this information can be helpful when contacting and identifying a consumer. At the same time, the use of imaging technology is an additional cost. The Commission should evaluate the use of imaging technology to record consumer data prior to the sale of a portfolio.

iii. Telephone technology (e.g., cell phones, VoIP, Caller ID, predictive and other automatic dialers, pre-recorded messages, call recording, voice mail, etc.).

RESPONSE: New telephone technologies are critically important to modern debt collection efforts, and many of the technologies confer consumer benefits. Based

on the ACA Survey, pre-recorded messages were in use at 41 percent of responding debt collector agencies in 2005. In response to increasing demand by clients, 28 percent of debt collectors confirmed recording calls with the consent of consumers. Frequently call recording is undertaken as a way to monitor and critique collection calls, particularly at the requirement of a credit grantor client.

VoIP promises lower telephony costs which has contributed to its increased usage. By 2005, VoIP technology was reported by 14 percent of ACA members who responded to the Survey. Interactive voice messages, which have the ability to authenticate the called party as the borrower named on the account, are now a very important part tools utilized by credit grantors and debt collectors. These messages respect the borrower's privacy rights and protect against unwanted third-party disclosures while, as the same time, providing sufficient information about the status of the debt to allow an informed decision by the consumer.

Perhaps the single most significant change in technology since the enactment of the FDCPA is the use of predictive dialers. Approximately 50 percent of ACA members surveyed in 2005 use an autodialer or "predictive dialer", representing a one-third increasing since 1995. Dialers have enabled debt collectors to more effectively manage the high volume of calls necessary to establish contact with consumers.

Dialers are essential as a tool to communicate with consumers about their payment obligations. The fact is that telephone calls are the most efficient way to contact consumers, and many consumers today use cell phones as their primary or exclusive point of contact. The call initiated by predictive dialer software are not random or sequential in the context of collection services. They are limited to customers of credit grantors who have received a service or product without payment. Typically the telephone number is provided by the customer for purposes of receiving calls, for example, as part of a credit application.

Autodialers confer important benefits to consumers. The technology is precise and maximizes consumers' privacy by eliminating dialing errors that risk inadvertent contacts with individuals other than those responsible for the debt. Autodialers are programmed to restrict calls to designated area codes within the calling times prescribed by law. Finally, the technology allows for a cost effective and reliable way for consumers to learn about their accounts and arrange for payment. This helps keep the cost of credit under control by keeping consumers informed and helping them avoid unnecessary defaults or legal action.

The Commission has thoroughly analyzed the use of this technology in the context of pervasive telemarketing when enacting amendments to the Telemarketing

Sales Rule. As part of that process, the Commission concluded that debt collection calls do not constitute "telemarketing" and therefore are not subject to the call abandonment and other restrictions placed on telemarketer's which use dialers.[71]

Nevertheless, restrictions on the use of the technology and the issues raised by various privacy issues and telephone communication legislation have limited the level to which these technologies can be employed. For example, although the Commission does not restrict the use of predictive dialers under the TSR when used for collections, the Federal Communications Commission has taken the position that the Telephone Consumer Protection Act and its regulations thereunder apply to calls initiated by a predictive dialer when made solely for a collection purpose which terminate in a cellular phone. In October, 2005, ACA filed a Petition with the FCC to request an expedited declaratory ruling that the amendments by the Commission in 2003 to the TCPA regulation did not alter the FCC's previous findings that the TCPA's automatic telephone dialing system restriction does not apply to creditors and collectors when

[71] Telemarketing Sales Rule, 68 Fed. Reg. 4580, 4664 n.1020. An exception to the non-applicability of the predictive dialer restrictions to debt collectors centers on upselling. That is, a collector who calls a consumer for a collection purpose using a predictive dialer but then engages in a telemarketing solicitation nonetheless is bound by the TSR requirements.

calling telephone numbers to attempt to recover payments for goods and services received by consumers.[72] Some 18 months after filing the Petition, the FCC has not issued a ruling to clarify whether the TCPA bans collection calls initiated by a predict dialer.

The complexity involved in the use of these new technologies in compliance with Federal and state laws and regulations frequently can be a deterrent to their usage. This is reflected in the intersection of voicemail and pre-recorded messages. Section 807(11) of the FDCPA requires a debt collector to disclose in the initial written communication with the consumer, and if the initial communication is oral, in that oral communication as well, that the debt collector is attempting to collect a debt and any information obtained will be used for that purpose. Additionally, all subsequent communications with the consumer must disclose that the communication is from a

---

[72] The TCPA prohibits telemarketers from using autodialers to call consumers' cell phones to sell goods. For more than a decade, the Federal Communications Commission (FCC) recognized that telephone calls by or on behalf of creditors to recover payments for goods and services were not subject to the autodialer rules. This is because the calls are not telemarketing. In 2003, the FCC changed its interpretation of the definition of the term "autodialer" in order to limit telemarketers' use of this technology. Although the TCPA statute and the FCC regulations never intended credit grantors and debt collectors to be subject to the autodialer prohibition, the new interpretation of autodialer had the effect of inadvertently pulling the industry into the autodialer ban intended for telemarketers.

debt collector.

Federal courts have been addressing this issue recently. In March 2006, the Southern District of New York found in *Foti v. NCO Fin. Sys., Inc.*, 424 F. Supp. 2d 643 (S.D.N.Y. 2006), that the disclosure requirement extends to pre-recorded and live messages left on a consumer's answering system. In *Foti*, the court held that a pre-recorded message left on a consumer's answering system was a communication in connection with the collection of a debt. Because the pre-recorded message was left with the consumer after the initial validation notice was sent, the court determined the message was a subsequent communication. To comply with section 807(11), a debt collector must disclose in all communications subsequent to the initial communication with a consumer, that the communication is from a debt collector.

Numerous courts have held that the disclosure is satisfied if the debt collector states, "This is a communication from a debt collector" or if the name of the debt collection agency [as stated in the written or oral communication] makes clear the communication is from a debt collector. In *Foti*, the pre-recorded message stated: "Good day, we are calling from [Defendant] Financial Systems regarding a personal business matter that requires your immediate attention. Please call back 1-866-701-1275 once again please call back, toll-free, 1-866-701-1275, this is not a solicitation."

The court determined that other than the debt collector name, the message contained no other suggestion that the correspondence was from a debt collector. Instead, a consumer would need to recall that she previously received mail from a debt collection agency in order to recognize the call was from a debt collector. The court found that placing such a burden on the consumer was unreasonable. Thus, the court determined the pre-recorded message failed to comply with the requirements of section 807(11) of the FDCPA.

The *Foti* decision is similar to a recent California district court decision. In *Hosseinzadeh v. M.R.S. Assocs., Inc.*, 387 F. Supp. 2d 1104 (C.D. Cal. 2005), the court determined that messages left by a debt collector on a consumer's answering machine constituted "communications." Therefore, the messages were required to include the mini-Miranda disclosure, as required by section 807(11). Additionally, in *Joseph v. J.J. MacIntyre Cos., L.L.C.*, 281 F. Supp. 2d 1156 (N.D. Cal. 2003), the court held that both an automated message system and a live caller calling on behalf of a debt collection company must accurately disclose the name of the company and the nature of the business of the company when placing telephone calls pursuant to the FDCPA. The court noted that the risk of third party disclosure is more remote when leaving messages on the consumer's phone than when a collector discloses information about a debt on

the face of an envelope or postcard.[73] *Foti* and these other decisions underscore the complexity of discerning exactly what the FDCPA requires when using emerging technologies.

iv. Other communication technology (e.g., overnight mail, email, instant messaging, etc.).

RESPONSE: Other communication technology, such as Short Message Service (SMS) text messages, instant message and electronic mail (e-mail) are emerging as effective channels for debt collection and continue to replace the more traditional means of contacting consumers. However, without guidance on the application of the FDCPA to these new methods of communication, debt collectors and consumers alike are without a reference point to assess the legality of using these

---

[73] In 2005 ACA requested an advisory opinion clarifying two provisions of the FDCPA: (1) under § 806(6), must a debt collector identify a corporate name in order to meaningfully disclose the caller's identity; and (2) when leaving a message for a consumer is the collector required to provide the mini-Miranda disclosure under § 807(11). The FTC declined to issue an opinion on the grounds that federal courts have ruled consistently on the questions raised. The letter from the FTC stated that there is clear court precedent for the proposition that a debt collector leaving a voice mail message must reveal the name of this employer, even if the name indicates that the message involves a debt. ACA believes that this creates an unreasonable risk of a disclosing the debt collection purpose of a call in a voicemail message because so many third-party debt collections utilize trade or business names using terms such as "Debt", "Recovery," and "Receivables".

technologies to communicate in a cost-effect and frequently consumer-preferred format.

Email is particularly instructive in this regard. The Commission is well-versed in the use of email in commerce, both from unsolicited and solicited points of view. Today, the overwhelming majority of consumers own or have direct access to at least one desktop computer with email capabilities. A Pew Internet & American Life Project survey found that 91 percent of Internet users between the ages of 18 and 64 send or read e-mail, and fully 88 percent of United States' adults have personal e-mail accounts. Purchasing transactions are commonly initiated and completed online with no direct contact or oral communications between buyer and retailer. There is every reason to believe that the next thirty years of the FDCPA will continue to witness email predominate with standard mail communications relegated to a relic. Still, few today can say with certainty whether the FDCPA actually permits email collection communications, at least from the perspective emails initiated by debt collectors. To be sure, there is a tension between email and the FDCPA's requirements that communications about a debt not be disclosed to third-parties. In standard mail letters, the tension is non-existent because sealing of the envelope assures the privacy of its contents. Email requires additional measures of security to ensure privacy, but defining

those measures is within the expertise of the Commission.

v. Financial services technology (e.g., automatic withdrawal, ACH transactions, etc.).

RESPONSE: Electronic payment processing is a critical component of the automated collection treatments enabled by Web sites, Interactive Voice Messaging, SMS and email. With this capability, consumers are able to cure their delinquency or pay off their debt at the same time they receive their message. By doing so, they avoid additional collection attempts, while credit grantors benefit from lower payment processing costs.

As we traditional paper check transactions decline as consumers opt to use the more immediate and convenient methods of electronic fund transfers, the collection industry needs to be able to have access to these payment tools in order to provide easy and convenient methods of payment to consumers. Delaying and complicating the payment process for consumer debtors is not a benefit to them. Indeed, consumers increasingly have come to request to make payments electronically.

Both businesses and consumers benefit from the use of electronic transactions. Some consumers do not need to write a check or purchase a money order and mail the payment. They have the convenience of being able to authorize a one-time payment or a

series of automatic payments over the phone or through a Web site. Businesses are able to lower operating costs and increase efficiency with electronic payments because they do not have to process paper checks or money orders.

vi. Technology that facilitates outsourcing of debt collection to entities or call centers abroad.

RESPONSE: Technology has deconstructed natural geographic barriers in the collection industry, much the same as it has in other customer-service oriented industries. Today, the intersection of the aforementioned technologies make it not only technologically feasible, but also financially beneficial for credit grantors to outsource collections (primarily "first-party collections" at this stage) to foreign call centers. An abundant supply of technologically sophisticated workers in these countries reinforces this trend. In addition, complicated statutory and regulatory requirements in the United States have factored into the analysis.

b. Do techniques and technologies employed in debt collection vary depending on the nature of the debt to be collected (e.g., mortgage debt vs. educational debt vs. credit card debt vs. personal loan debt)? If so, how?

RESPONSE: Techniques do vary somewhat based on the nature of the debt. Some debts, for example, are inherently document based, such as mortgages. Other debts are less so, such as utilities. The techniques used to effectuate collection of each

type of debt are a function of the type of debt, the amount, and the existence of any Federal or state specific laws applicable to the obligation.

A debt collector's insight for identifying and utilizing the most effective techniques and technology is a key element in successful debt recovery. Different types of debt are often associated with different demographic groups of consumers, e.g. student loan debt would generally be identified with a younger demographic group than mortgage debt. Techniques for collecting debt from different types of consumers vary in order to achieve effective results.

Different types of debt also present different legal considerations when collecting an account. For instance when collecting healthcare debt, the Health Insurance Portability and Accountability Act plays a large role in what techniques and technologies are available. ACA has developed a number of different publications to assist debt collectors in the collection and payment of healthcare receivables in a manner that observes all applicable laws, regulations and mandates pertaining to the processing, handling and sale of healthcare receivables. For example, ACA's *Healthcare Collection, Servicing and Debt Purchasing Practices: Statement of Principles and Guidelines (Healthcare Guidelines)* is a publicly available document

with the following defined objectives:[74]

- Service all healthcare accounts using a process that is consistent with the expectations of their healthcare provider clients.
- Collect patient accounts in a fair, consistent manner that reflects the public's high expectations of healthcare providers and the collection agencies and debt purchasers who communicate with their patients.
- When responding to a patient's request for information about the bill, account or past due debt, do so in a manner designed to help the patient fully understand his or her payment obligation and in accordance with applicable law or regulation.
- Encourage that due diligence is performed by the healthcare provider, the servicer of the accounts or the debt buyer of the accounts in an effort to promote solid business relationships and a good reputation for all.
- Perform services or payment operations in connection with the collection, servicing or purchase of healthcare debt subject to a written

[74] ACA International, *Healthcare Collection, Servicing and Debt Purchasing Practices: Statement of Principles and Guidelines* (Feb. 2007), *available at* http://www.acainternational.org/images/10281/healthcareguidingprinciples.pdf.

agreement signed by the healthcare provider and the collection agency or debt purchaser.

- Perform services or payment operations upon receipt of information necessary to comply with all applicable laws, regulations, mandates and duties as prescribed by the ACA Code of Ethics and Professional Responsibility and Code of Operations.
- Resell a healthcare receivable only with the express permission of the healthcare provider as provided in the debt sale agreement.
- Communicate regularly with the healthcare provider's designated representative having authority and oversight over the collection or sale of healthcare receivables.
- Establish communication and appropriate information sharing protocols with the healthcare provider during the term of the service agreement and for a reasonable period of time following termination of the service or debt sale agreement.
- Abide by and conduct all services in accordance with the Fair Debt Collection Practices Act, the Health Insurance Portability and

Accountability Act, the Fair Credit Reporting Act, charity care program requirements and healthcare and consumer protection laws and mandates, where applicable.

- Adhere to local and state licensing and bond requirements in the jurisdictions where such are required and provide license and bond documentation upon the request of the healthcare provider.
- Maintain a quality assurance program designed, adopted or developed by the individual member to promote compliance with these Guiding Principles and all collection servicing, debt sale agreements and business associate contract requirements.
- Provide initial and ongoing training and supervision of employees to encourage performance of their duties in a professional and ethical manner.
- Establish a Code of Conduct, signed by all employees that supports these Guiding Principles and the needs of the healthcare community.
- Actively promote and encourage the highest level of integrity within the healthcare receivables management industry.

Another comprehensive public document of ACA offers industry perspectives on the roles of healthcare billing and collection firms, the nature of the relationship between a healthcare provider and a billing and collection agency, and the laws and regulations that dictate the manner in which a healthcare billing and collection services are rendered.[75]

c. Is debt collection becoming more difficult? If so, why? What modifications to existing debt collection practices have been made to improve collection rates?

RESPONSE: There is no industry data that tracks the difficulty of engaging in debt collection as measured by collection rates. In a non-scientific manner, ACA has surveyed its membership for more than forty years to assess the recovery rates. These surveys are informal and were not conducted with the intention of being statistically or scientifically accurate. The surveys indicate that recoveries have dropped precipitously. In 1965, the average contingent rate reported was 40 percent. By 2005, the rate had decreased to 28 percent. Further, the marketplace is much more complicated. Consumers are more transient and the patchwork of Federal and state laws create incrementally more compliance costs.

[75] ACA International, *Healthcare Billing and Collections: The Industry Perspective* (May 2004), *available at* http://www.acainternational.org/media.aspx?cid

4. *Industry Compliance with Applicable Federal and State Laws*

a. Please provide empirical evidence of industry compliance with and efforts to comply with the FDCPA and state debt collection laws.

RESPONSE: Empirical evidence is not available, and it is difficult to envision what evidence could be adduced to quantify industry compliance. To respond to this inquiry, ACA focuses on (a) explaining the Association's educational mission which serves as a key component of engendering compliance, and (b) identifying the complexity involved in complying with highly detailed and frequently conflicting Federal and state laws.

Members of ACA's education team are some of the greatest advocates for ACA's learning and education initiatives. The Education Department works to proactively provide professional development opportunities that elevate the proficiency, compliance, and professionalism of members of the credit & collection industry. The Department accomplishes its goals through the brand of Campus ACA which, through the development and delivery of continual educational training programs, provides professional recognition via credentialing (e.g., certificates and association degrees). Campus ACA fosters life long career development where professionalism and ethical

=6532.

practices are the message, yet compliance and professional practices are engrained in the training and development offered by ACA.

ACA's Education Department consists of eight full-time staff working to design, develop and deliver the many different products, curriculum and professional development methods to ACA's members nationally and internationally. The close working alliance with ACA's Legal department and the guidance of an eight-person Education Council Committee, comprised of industry leaders and members of ACA International, the development and updates of products and curriculum is ongoing and thorough. In addition to CD-ROMS, videos, MP3 recordings, seminars and workshops, ACA-sponsored conferences and industry publications, Campus ACA's educational programs are available in a number of delivery methods to meet the needs of our industry professionals.

Members of the Education Department are especially proud of the Web courses offered through ACA Online. ACA's Web courses are comprehensive and highly accessible educational resources that can benefit members of the credit and collection industry in any location and at any time. Because the courses are available 24 hours a day, seven days a week through ACA Online, they are a great way for individuals to obtain the training and education they seek. Both Web courses currently offered

through Campus ACA—the Professional Telephone Collectors' Techniques (PTCT) seminar and the Introduction to the Fair Debt Collection Practices Act (FDCPA) seminar—convey a tremendous amount of valuable information for members across the nation. Additionally, the Higher Education Collection Practices and the Healthcare Collection Practices web course provide specialized training in the respective areas.

The Education Department also develops and coordinates ACA's teleseminars, which cover a wide variety of topics, including purchasing debt, due diligence, critical compliance issues, specific issues within the industry that arise, current legislation and much more. Presented by ACA Certified Instructors, committee members and industry experts, each 90-minute presentation allows time for audience interaction through question and answer, to ensure that participants get the most out of each session.

In addition, the Department's live & online web seminars bring ACA seminar curriculum to participants. These online seminars are growing in attendance rapidly and provide the opportunity to participate in a virtual classroom incorporating, chat, learning exercises and interaction with ACA Certified Instructors. The Train-the-Trainer Specialist program is conducted online multiple times annually in order to educate trainers to facilitate Campus ACA's curriculum on the FDCPA and PTCT for in-house staff that provides a consistent and compliant set of professional and ethical

training for collection professionals.

Campus ACA's Certified Instructors also facilitate a number of face-to-face seminars across the country on the FDCPA, FDCPA Issues For Owners, FDCPA Hot Topics, the Fair Credit Reporting Act (FCRA), Top Managers, State Law compliance, Skiptracing and other important and very timely topics.

Another foundational program for ACA, the Professional Practices Management System (PPMS), is a two-day training workshop which assists members in developing, implementing and adhering to a set of industry-specific professional practices and policies. PPMS is a quality assurance program based upon ISO specifically geared towards collection agencies. Agencies that certify through this program are held to annually auditing their processes for compliance, ethics, and best practices. An outside attestation occurs by an independent CPA every third year to maintain certification. The program is designed to enhance business practices around compliance, consumer contacts, third party disagreements, continuous improvements and legal and ethic code of conduct reviews. All processes are documented, tested and annually audited for compliance with laws and best practices.

The Education Department also manages a variety of professional designations and certificates through Campus ACA, each designed to help strengthen members'

businesses and further their professional careers. They are an excellent way for members to be recognized through the trade association for credit and collection industry professionals who demonstrate knowledge of compliance and professional collection techniques. Some professional designations and certificates currently available include: Professional Collection Specialist, Credit and Collection Specialist, Higher Education Collection Specialist, Healthcare Collection Specialist, Certified Instructor, International Fellowship of Certified Collection Executives and Master Credit Executive to name a few. Many of these designations require industry training and in most circumstances require a final exam that exhibits their knowledge and education in the specialized areas.

ACA members can also earn their Fellow and Scholar Degrees through the ACA Academy along with degrees for more focused areas of training for compliance officers, healthcare professionals, and debt purchasers. Enrollment is open to anyone who participates in ACA-sponsored meetings, seminars and other ACA educational programs. The Education Department plays a crucial role in every aspect of ACA—from developing the various educational opportunities through which members can earn Professional Development Units (PDUs) to ensuring that degree recipients receive a signed diploma recognizing their educational achievements.

Another way that Campus ACA provides a wide variety of professional development opportunities and gives members a chance to further their careers is through solid educational training by attending the annual Credit & Collection Business Academy—a three-day conference held each winter that offers members of the credit and collection industry more than 20 hours of valuable education and networking opportunities, including the Professional Practices Management System workshop/seminar.

As the preceding demonstrates, ACA is an industry leader in providing educational opportunities to members and non-members alike. These educational opportunities are geared toward maximizing compliance with Federal and state laws. At the same time, the number and complexity of compliance obligations in Federal and state laws is increasing. Often these laws and regulations are enacted without regard to whether compliance conflicts are created with existing Federal or state requirements. Depending on the type of accounts subject to collection, third-party debt collectors and/or the credit grantors may have compliance obligations under the following illustrative list of Federal laws in addition to the FDCPA:

- The Bank Holding Company Act, 12 U.S.C. §§ 1841 *et seq.*,

- The Consumer Leasing Act ,15 U.S.C. §§ 1667 *et seq.*,
- The Electronic Fund Transfer Act, 12 U.S.C. §§ 222 *et seq.*,
- The Equal Credit Opportunity Act,15 U.S.C. §§ 1691 *et seq.*,
- The Fair Credit Billing Act, 15 U.S.C. §§ 1666 *et seq.*,
- The Fair Credit and Charge Card Disclosure Act, 15 U.S.C. §§ 1601 *et seq.*,
- The Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*,
- The Federal Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*,
- The Graham-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*,
- The Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d-2 *et seq.*, including the Security Rule, Privacy Rule, and Transaction and Code Set Standards promulgated by the Department of Health and Human Services;
- The Home Equity Loan Consumer Protection Act, 15 U.S.C. §§ 1637 *et seq.*,
- The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism , P.L. 107-56, 115 Stat.

272;

- The Right to Financial Privacy Act, 12 U.S.C. §§ 3401 *et seq.*,;
- Telemarketing Sales Rule, 16 C.F.R. §§ 310.1 *et seq.*;
- Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*;
- Regulation E, 12 C.F.R. § 205.1 *et seq.*;
- Regulation J, 12 C.F.R. § 210.1 *et seq.*;
- Regulation M, 12 C.F.R. §§ 213 *et seq.*;
- Regulation Z, 12 C.F.R. § 226 *et seq.*

In addition, each state has enacted laws and regulations supplementing the FDCPA, including licensing and registrations requirements.[76] There is little uniformity in these laws. Indeed, ACA publishes a 1,000 page survey of state law requirements entitled *Guide to State Collection Laws & Practices* covering different topics for each state (state consumer collection requirements, garnishment exemptions, FDCPA compliance, licensing fees, statutes of limitation, "Mini–Miranda" and validation notice

---

[76] The FDCPA pre-empts state laws to the extent that those laws are inconsistent with any Federal provision, and then only to the extent of the inconsistency. A state law is not inconsistent if it gives consumers greater protection than the FDCPA.

information, bond requirements, trust accounts, resident office requirements, exemptions for out-of-state entities, and penalties for collecting without a license, among other topics).[77]

The intricate web of Federal and state requirements results in unintended compliance conflicts. One such conflict was discussed previously, that is, pre-recorded messages under the Telephone Consumer Protection Act and the FDCPA.[78] Other conflicts are reflected in the question whether a collection letter can include multiple state special text requirements or if the letter should only contain the state special text requirements specific to the state to which the letter is being sent. Some courts have held that letters that contain state-specific text for a state in which the consumer does not reside may violate section 807 of the FDCPA because the letter may be misleading to the consumer.[79] The majority of courts which have addressed this topic agree that if

[77] ACA International, *Guide to State Collection Laws & Practices*, *available at* http://www.acainternational.org/default.aspx?cid=866&ref=http://products.acainternational.org/eSeries2005/source/Orders/index.cfm^task=3*category=COMPLIANCE*product_type=sales*sku=21170*findspec=Compliance*continue=1*search_type=find.

[78] *See supra* discussion to question 3.a.iii.

[79] *See, e.g., Jenkins v. Union Corp.*, 999 F. Supp. 1120, 1139 (N.D. Ill. 1998) (letter including state special text requirements for Colorado, sent to non-residents of Colorado, violated the FDCPA because it may have confused those consumers into

state-specific text will be included in a collection letter concerning states in which the consumer does not reside, a preface should be included explaining the state-specific disclosures.[80] A further concern is whether a violation would occur if a collection letter containing only the state-specific language for the state to which the letter is addressed is forwarded to a different state with different text requirements.

There also are ambiguities as between Federal statues, such as the FDCPA and FCRA. One example is what constitutes a "dispute" under the two statutes. The FCRA and FDCPA impose liability on debt collectors and data furnishers in connection with the receipt of a dispute directly from a consumer. Under the FDCPA and the FCRA, when a consumer disputes information that is part of a consumer report, a debt collector/data furnisher must notify the consumer reporting agency of the dispute. Many ACA members are data furnishers to consumer reporting agencies.[81] As data

---

believing they had no similar rights because they lived outside Colorado).

[80] *See, e.g., Brown v. ACB Business Services, Inc.*, No. 95-Civ. 10197, 1996 WL 469588 (S.D.N.Y. Aug. 16, 1996) (a collection letter which prefaced its list of multiple states' required disclosures with the statement, "The following additional notices apply to persons residing in the following states," was not in violation).

[81] Whether credit grantors, asset buyers or sellers, or third-party debt collectors, ACA members regularly furnish and use consumer information to effectuate collections by and on behalf of their credit-grantor clients. In this regard, ACA members play a

furnishers, this triggers obligations under the FCRA, as amended, upon receipt of a "dispute" by a consumer. A "dispute" is an illusive concept. It is not defined by the FCRA, even though it is used throughout the statute to trigger duties of data furnishers. Moreover, the term "dispute" as used in the FDCPA has a different meaning and trigger. The courts that have looked what constitutes a consumer's "dispute" have not added clarity.[82]

ACA is hopeful that the Workshop will address these compliance issues and give needed guidance to industry on subjects such as the meaningful identity

---

role in the process of identifying discrepancies or irregularities in consumers' credit files. This fact is reflected in the FCRA, which requires third party collectors to take affirmative steps to investigate consumers' accounts upon notice of a dispute. When a collector receives a notice of a dispute directly from a consumer, the collector must take four steps: (1) conduct a reasonable investigation with respect to the disputed information; (2) review all the information provided by the consumer with the notice of dispute; (3) complete the investigation and respond to the consumer within thirty days of receipt of the dispute; and (4) if the investigation determines that the disputed item of information is inaccurate, the data furnisher must correct the inaccuracy with each CRA to which the furnisher provided the inaccurate information. Other provisions require collectors to have in place reasonable procedures to respond to identity theft notifications received from consumer reporting agencies in order to prevent more false information from being reported.

[82] *See Brady v. The Credit Recovery Co., Inc.*, 160 F.3d 64 (1st Cir. 1998). The court concluded that a dispute requires no notification by the consumer, written or oral, but instead depends solely on the furnisher's knowledge of the debt irrespective of what the consumer has communicated.

requirements in voice messages, email, text messages and other media; debt verification requirements; and how to resolve conflicts between Federal and state consumer protection laws.

b. What accounts for the growing number of consumer complaints to the FTC about third-party debt collectors? What accounts for the number of complaints to the FTC about credit issuers' in-house collectors?

RESPONSE: ACA is evaluating the complaint data and the possible root causes and explanations of the trends identified in the FTC's Annual Report to Congress. PricewaterhouseCoopers expects to release a written report of its findings in advance of the Commission's deadline for the submission of original research and academic papers.

In addition, ACA notes that data compiled by the Commission in terms of the number of complaints conflicts with data maintained by the national Better Business Bureau. According to the BBB, 14,322 complaints concerning collection agencies were received in 2006. The resolution rate for the 14,322 complaints was 85%. This is notably higher than the average BBB resolution rate of 72.5% (across all industries). In 2006, the BBB received 280,503 inquiries about collection agencies. This ranks the industry as 32 out of the 3600 industries that received inquiries.

c. **Are the debt verification efforts of credit issuers and third-party debt collectors (i.e., collection agencies, collection law firms, debt buyers, and mortgage servicers) adequate? If not, how could they be improved? What level of documentation should debt collectors be required to give consumers who dispute debts?**

RESPONSE: ACA believes that the debt verification procedures utilized by third-party debt collectors are adequate. Verification is a cornerstone principle of the FDCPA. Section 809(a)(4) of the FDCPA requires that "if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion, is disputed, the debt collector will obtain verification of the debt . . . and a copy of such verification . . . will be mailed to the consumer by the debt collector." The FDCPA, however, does not define verification. The lack of legislative history, FTC informal staff guidance,[83] and court cases has affected the ability to clearly define what is meant

[83] As noted *infra* in response to the section 6 and the Commission's questions about legislative recommendations, the collection industry has been substantially affected by the decision of the Commission several years ago to stop issuing informal staff opinion letters under the FDCPA "except in unusual circumstances." This fact, coupled with the fact that the FTC Commentary has not been updated in nearly 20 years, are factors in evaluating the industry's understanding of the unique issues presented by the asset buying market.

in the FDCPA by "verification" in the asset buying context.[84]

The FTC has stated that this section of the law is "intended to assist the consumer when a debt collector inadvertently contacts the wrong consumer at the start of his collection efforts."[85] Courts have adopted a similar interpretation, stating that "[V]erification of a debt involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed; the debt collector is not required to keep detailed files of the alleged debt."[86] Consistent with the legislative history, verification is only intended to "eliminate the . . . problem

---

[84] In recent years, web sites purporting to provide consumers with information concerning their rights under the FDCPA and FCRA have caused confusion among both consumers and the debt collectors. Verification requests seeking items such as a contract bearing the consumer's signature, the debt collector's contract with the creditor, proof that the debt collector is licensed by the authorities of the consumer's state and other such material are commonplace. The consumers often allege that failure to provide the requested material violates the FDCPA and constitute grounds for a state tort claim. The letters demand that the debt be removed from the consumer's credit history and threaten suit should the collector fail to comply within a specified period of time. Often, these letters are sent after the FDCPA's thirty-day validation period has expired, sometimes even long after the debt has been paid in full. However, such demands may have no basis in law. Thus, it is important to understand what is required under the FDCPA for proper verification and when such verification must be provided.

[85] FTC Commentary, 53 Fed. Reg. at 50108-09.

[86] *See, e.g., Azar v. Hayter,* 874 F. Supp. 1314, 1317 (N.D. Fla.), *aff'd,* 66 F.3d 342 (11th Cir.1995), *cert. denied,* 516 U.S. 1048 (1996).

of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid."[87] There is no concomitant obligation to forward copies of bills or other detailed evidence of the debt.[88]

Thus, the general requirement is that the debt collector obtain verification from the creditor that the amount demanded is the amount owed by the consumer from whom the collector is attempting to collect. If the consumer disputes a certain portion of the debt, or if multiple debts are involved, or if the debt includes interest or fees that have been added, an itemization may be required.[89]

In some instances, consumers state that they are not the debtor or that the debt collector is attempting to collect from the wrong person. This requires the collector to request appropriate proof of identity. Although the FDCPA does not define what constitutes appropriate proof of identity, the Fair Credit Reporting Act is illustrative.

---

[87] S. Rep. No. 95-382, at 4 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1699.

[88] *Chaudhry v. Gallerizzo*, 174 F.3d 394, 406 (4th Cir. 1999), *cert. denied*, 528 U.S. 891 (1999).

[89] *See Graziano v. Harrison*, 763 F. Supp. 1269, 1281 (D. N.J. 1991), *rev'd on other grounds, Graziano v. Harrison*, 950 F.2d 107, 113 (3d Cir. 1991) (computer printouts, routinely accepted by insurers to verify claims and as the basis for making payments, provided consumer sufficient information concerning the amount of the debts, the services provided, and the dates on which the debts were incurred).

The requirements for "appropriate proof" will likely vary by situation, and thus consumer reporting agencies must develop reasonable requirements to verify the identity of a consumer in accordance with the risk of harm that may arise from a misidentification.[90] At a minimum, the requirements should be sufficient to match a consumer with the underlying file.[91] Examples of information required to match a consumer with her file include: full name (first, middle initial, last, suffix), any other previously used names, recent or current full address (street name and number, apartment number, city, state, and zip code), full nine digits of the consumer's social security number, and/or date of birth. A collector may also find it necessary to request other information to verify a consumer's identity, such as copies of government-issued identification documents, copies of utility bills, or having the consumer answer questions to which only she would have the answers.[92] The consumer is, however, under no obligation to assist the debt collector in determining whether he or she is the person liable for the debt. Understandably consumers frequently do not wish to provide authenticating information over the telephone.

---

[90] 16 C.F.R. § 614.1.

[91] *Id.*

The verification requirements of section 809 also are intertwined with a consumer's cease communication rights. Section 809(b) of the FDCPA requires that "the debt collector shall cease collection of the debt, or any portion thereof, until the debt collector obtains verification of the debt . . . and a copy of such verification . . . is mailed to the consumer by the debt collector." However, a debt collector need not provide verification of the debt "if the debt collector chooses to abandon its collection effort with respect to the debt at issue."[93] Thus, when a debt collector receives a written request for verification of the debt during the thirty-day validation period, the debt collector has two options: (1) provide the requested verification and continue collection activity; or (2) cease all collection activity.[94] If a debt collector decides not to pursue collection efforts after receiving a written request for verification of the debt, the debt collector is not required to provide verification of the debt to the consumer.[95]

---

92 *Id.*

93 Cass, *FTC Informal Staff Letter* (Dec. 23, 1997).

94 *Jang v. A.M. Miller & Assocs.*, 122 F.3d 480, 483 (7th Cir. 1997). *See also Smith v. Transworld Sys., Inc.*, 953 F. 2d 1025, 1031 (6th Cir. 1992) (holding a debt collector does not violate the FDCPA for failing to verify the consumer's debt since the debt collector ceased collection activity).

95 Krisor, *FTC Informal Staff Letter* (Mar. 3, 1992). ACA notes that it has filed a

Based on the foregoing, ACA encourages debt collectors, upon receipt of a request for verification, to provide the consumer with the following information at a minimum: an itemization of the amount due; the name and address of the current and original creditor; the name and address of the consumer; a statement addressing the dispute; and a statement that the product or service has been provided but is not yet paid if you wish to continue your collection efforts. A computer printout of this information *may be* sufficient. All communication should cease until verification is provided.[96]

d. Please describe any industry self-regulatory efforts and comment upon their efficacy in improving compliance with federal and state laws governing debt collection.

RESPONSE: ACA is committed to offering the best educational and self-regulatory tools to its membership as a means to promote compliance with the FDCPA and state analogs. Many of ACA's efforts in this regard have already been discussed including the Ethics Code; ACA's Code of Conduct; broad-based educational

---

request for an advisory opinion with the Commission to confirm that a debt collector does not violate the FDCPA if it notifies a consumer of the termination of collection activity after receiving a written request for verification of a debt.

[96] This guidance is solely with regard to verification under the FDCPA. State-based mini-FDCPA laws make impose additional obligations.

programs; numerous statute or issue specific publications (e.g., ABD Due Diligence Guidelines and the Healthcare Guiding Principles); and ACA's PPMS accreditation and certification program.

5. Consumer Behavior and Knowledge of Their Rights

a. **Please provide any empirical data regarding consumer awareness of the FDCPA and other laws regulating debt collection practices. How can consumer awareness be increased?**

RESPONSE: ACA believes that consumers are aware of their rights under Federal and state laws regulating collection practices. The Commission has implemented numerous measures to encourage and increase consumer awareness, such as educational items online and publicizing the availability of the FTC website to register complaints. State regulatory bodies have supplemented these Federal efforts. Consumer groups have reinforced the regulatory efforts. In addition, ACA also has encouraged consumer awareness through consumer-oriented publications including ACA's consumer Web site, the ACA Foundation, ACA financial literacy goals, and its educational mission.

As noted previously, awareness is not the only measure. It is important that consumers are provided with accurate information. Too often, consumers access

information online which is inaccurate or incomplete concerning the requirements of the FDCPA. This misinformation leads to complaints about conduct which is not violative of the FDCA, for example, alleging that a debt collector failed to provide copies of underlying contractual documents creating a debt.

One measure of consumer awareness is the frequency in which consumers act as private attorneys general in litigating claims directly against credit-grantors and/or third-party debt collectors for putative law violations. ACA has undertaken an original study of every FDCPA case since 1996 to track certain litigation trends. The study is ongoing and will be submitted by the date for tendering original research and academic papers.

b. Do consumers subject to debt collection actions exercise their rights under the FDCPA?

RESPONSE: The original study referred in response to question 5.b, *supra*, will evaluate litigation trends over the past decade. Some of the statistics will include number of cases filed per year; whether the plaintiff prevailed or the defendant successfully defended the suit; number of class action lawsuits filed, certified and denied; and damages awards including actual, statutory, punitive, costs, and attorney's fees. ACA believes that, upon completion of the study, there will be good evidence to

illustrate that consumers exercise their rights as depicted in escalating litigation rates and awards.

In addition, ACA incorporates it discussion of consumers' exercise of their validation, verification and dispute rights. Although there is no quantifiable evidence, it is clear the consumers are aware of their rights to dispute a debt and request validation.

c. Do consumers subject to debt collection actions know where and how to file complaints regarding potential debt collection law violations?

RESPONSE: *See* response to question 5.a. and 5.b.

d. Please provide empirical data regarding consumers' use of the FDCPA's private right of action.

RESPONSE: *See* response to questions 5.a. and 5.b.

e. Is the behavior of consumers subject to debt collection actions today different than that of consumers in the past? If so, how is it different?

RESPONSE: *See* response to questions 5.a. and 5.b. ACA may file a supplemental information consistent with the deadline for original research, surveys, and academic papers.

6. Legislative Issues.

a. Are any modifications to the FDCPA warranted in light of technological, economic, or legal changes affecting the debt collection industry? If so, what specific modifications are needed and what are the costs and benefits of these modifications for consumers and businesses?

RESPONSE: The intent of the FDCPA when first signed into law was to structure to the collection process. The FDCPA was designed to protect consumers without harming ethical debt collection. However, key elements of Federal and state laws and regulations applicable to the debt collection industry that have arisen over the past thirty years have become unclear and incomprehensible. Conflicting court decisions make it challenging to comply with all applicable laws. Further, as new technologies have emerged over the past three decades, the application of FDCPA has become increasingly uncertain. ACA believes that consumer protection laws should be clear and comprehensible to consumers and to regulated entities alike. To provide consistency and clarity for both consumers and debt collectors, ACA recommends several amendments to the FDCPA designed to:

- Achieve consistency among judicial decisions;

- Address advancements made, and to be made, in technology used by consumers and debt collectors in connection with the collection of a debt; and

- Create consistency among the myriad of overlapping and complex consumer protection and privacy issues presented by related federal and state laws and regulations.

With these objectives in mind, ACA proposes the following fourteen FDCPA amendments for the Commission to evaluate and consider for public discussion during the Workshop:

PROPOSED AMENDMENT NO. 1: This amendment would modify liability for noncompliance with the Act from that of a strict liability standard to a negligence standard similar to that which is incorporated in the Fair Credit Reporting Act, a companion statute to the FDCPA. In general, the FDCPA is designed to protect *any person* from abusive debt collection practices. The Act further holds the offending debt collector to a strict liability standard notwithstanding frequency of noncompliance, persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, whether and to what extent the person was adversely affected and the extent to which such noncompliance was intentional. Presently, 15 U.S.C. § 1692k(a) provides:

§ 813. Civil liability

(a) Except as otherwise provided by this section, *any debt collector who fails to comply* with any provision of this title with respect to any person *is liable* to such person in an amount equal to the sum of –

(1) any actual damage sustained by such person as a result of such failure;

(2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000: or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

15 U.S.C. § 1692k(a) (emphasis added).

In contrast, the following sections FCRA reflect the FCRA's three-tiered approach to liability, namely willful non-compliance, knowing non-compliance, and negligent non-compliance.

§ 616. Civil liability for willful noncompliance

(a) In general

Any person who *willfully fails to comply* with any requirement imposed under this subchapter with respect to any consumer *is liable* to that consumer in an amount equal to the sum of--

(1) (A) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or

(B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or $1,000, whichever is greater;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Civil liability for *knowing noncompliance*

Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.

(c) Attorney's fees

Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

§ 617. Civil liability for *negligent noncompliance*

(a) In general

Any person who is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of--

(1) any actual damages sustained by the consumer as a result of the failure; and

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Attorney's fees

On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

15 U.S.C. §§ 1681n-o (emphasis added).

PROPOSED AMENDMENT NO. 2: The following amendment addresses communication with a third party in connection with the collection of a debt when the communication is intercepted by the third party through no fault of the debt collector. It would relieve the debt collector from liability for unintended or inadvertent disclosures. This amendment recognizes both the responsibility of the debt collector to carefully direct communications about the debt to the consumer as defined in 15 U.S.C.

§ 1692c(d), and the consumer's corresponding responsibility to limit access to his or her communications by third parties.

§ 805. Communication in connection with debt collection

(b) Communication with third parties

> "Except as provided in section 1692b and 1692d (6), of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, a debt collector may not communicate in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector. A communication from a debt collector which is otherwise in compliance with this section and intended only for the consumer but which is received, intercepted, accessed, or viewed by a party other than the consumer is not a violation of this section."

15 U.S.C. § 1692c(b).

PROPOSED AMENDMENT NO. 3: Section 806 of the FDCPA prohibits "the placement of telephone calls without meaningful disclosure of the caller's identity." It also prohibits disclosing the existence of a debt to a third party. Focusing on the first prohibition, several courts have required collectors leaving voice messages to include the "mini-Miranda," but doing so could result in third-party disclosures. To address this conflict, ACA recommends the following amendment:

§ 806. Harassment or abuse

(6) "Except as provided in section 1692b of this title, ~~the placement of telephone calls without meaningful disclosure of the caller's identity~~ the leaving of a message without disclosing the caller's name, company name or professional name."

15 U.S.C. § 1692d.

PROPOSED AMENDMENT NO. 4: Advancements in communication technologies since the enactment of the FDCPA have created interpretation dilemmas which restrict a debt collector's ability to use, and a consumer's ability to request and receive, communications through modern media. The conflict between technology and the FDCPA stems from the fact that use of technology may result in communication of debt information with someone other than the consumer. Whether it takes the form of a coworker picking up a fax, a roommate checking the answering machine, a family member checking the family email account, or the name "ACME Collections" transmitted on caller ID, the sender of debt collection information has no control over who will see it.

The use of technology can also present a conflict of laws. For example, every year increasing numbers of consumers go "wireless" and forgo traditional landline telephone service. However due to the Federal Communications Commission

interpretation of the Telephone Consumer Protection Act, debt collectors are unable to contact consumers via their cell phones while employing modern phone dialing technology.

To clarify the ability of debt collectors to communicate with consumers regardless of the mode of communication and to better inform consumers of the impact their choice to use certain technologies has on the debt collection process, ACA offers the following amendment.

§ 805. Communication in connection with debt collection

Add subpart (e) after (d)

(e) A debt collector may communicate with a consumer using those technologies to which the consumer has expressly or impliedly consented.

15 U.S.C. § 1692c (new subpart e).

PROPOSED AMENDMENT NO. 5: Under current law, a debt collector may defend a claim under the FDCPA by establishing a bona fide error defense. However, due to conflicting judicial decisions which result from ambiguities in the FDCPA, debt collectors seek the advice of legal counsel to interpret the law and provide them with compliance advice. ACA members rely on the advice of counsel to navigate this complex regulatory, statutory and common law legal framework, and the ability to rely

on the advice of counsel is of critical importance to the industry.

To complicate matters, despite the many conflicts between Federal law, state law and the common law, the Commission increasingly is reluctant to provide guidance. Following the enactment of the FDCPA, the Commission staff issued opinion letters when a consumer or debt collector requested clarification on ambiguous or conflicting issues. The staff of the Commission stopped issuing opinion letters in 2002 except in rare instances, and currently the primary way to obtain the guidance of the FTC is through a formal advisory opinion as provided in the Commission's Rules. Historically the Commission has been reluctant to issue advisory opinions (only one has been issued in the thirty year history of the statute). As recent as 2005, the Commission declined to issue an opinion on a matter of critical importance for the industry.

The preceding underscores the importance that debt collectors be able to rely on the advice or counsel to construe their compliance obligations. To support the ability of a debt collector to seek the advice of independent counsel, ACA recommends the following amendment:

§ 813. Civil liability

(c) A debt collector may not be held liable in any action brought under this title if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a mistake of law, conflicts of laws, or

> from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

15 U.S.C. § 1692k(c).

PROPOSED AMENDMENT NO. 6: A notable difference exists between the attorney's fees provision of the FDCPA, 15 U.S.C. § 1692k, and the attorney's fees provisions in the FCRA, 15 U.S.C. §§ 1681n & o. Specifically, the FCRA recognizes the right of the prevailing party to be reimbursed for the attorney's fees and costs it expended in defending the action. In contrast, the FDCPA merely provides the court with the discretion to award the defendant agency reimbursement of its attorney's fees and costs if it is proven the action was brought in bad faith and for the purpose of harassment. There is no reasonable basis for the higher standard imposed by the FDCPA. For this reason, ACA recommends substituting the attorney's fee provision of the FCRA in place of 15 U.S.C. Section 1692k(6).

> **§ 813. Civil liability**
>
> (a) Amount of damages
>
> Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of –
>
> (1) any actual damage sustained by such person as a result of such failure;

(2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000: or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

~~(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.~~ Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

15 U.S.C. § 1692k. *See* proposed amendment no. 1 for the corresponding sections of the FCRA.

PROPOSED AMENDMENT NO. 7: In enacting the FDCPA, Congress intended to safeguard the attorney-client relationship. The legislative history does not indicate that Congress intended to allow a non-attorney to assert the protections of such a relationship. Nevertheless some confusion has arisen regarding the application of section 804(6) of the FDCPA. A clear distinction should be drawn clarifying the fact

that the FDCPA honors the relationship between a consumer and an attorney at law, not an attorney in fact. Attorneys at law are bound by principles of agency law and the attorney-client relationship is marked by the confidentiality and representative capacity between attorneys and the people for whom they act. An attorney in fact relationship is created by contract under state law and carries limited personal discretion governed by the underlying contract. It is in the best interest of consumers and debt collectors for the FDCPA to expressly honor only the relationship between a consumer and her attorney at law.

Further, after a debt collector knows a consumer is represented by legal counsel, the requirement in section 804(6) that obligates a debt collector to wait a "reasonable period of time" before contacting the consumer directly, is ambiguous. It is in the interest of consumers and debt collectors to have a defined time frame articulated in the Act.

§ 804. Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall –

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by postcard;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by a ~~attorney~~ licensed attorney at law with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within ~~a reasonable period of time~~ 30 days to communication from the debt collector.

15 U.S.C. § 1692b.

PROPOSED AMENDMENT NO. 8:

The eighth proposed amendment is related to the preceding proposal and would amend section 805 for consistency:

§ 805. Communication in connection with debt collection

(a) Communication With The Consumer Generally. - Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt -

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an ~~attorney~~ attorney at law with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within ~~a reasonable period of time~~ 30 days to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer'' place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) Communication With Third Parties. - Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reason ably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

15 U.S.C. § 1692c.

PROPOSED AMENDMENT NO. 9: The following amendment clarifies the rights or obligations of consumers and debt collectors under section 805.

§ 805. Communication in connection with debt collection

(c) Ceasing Communication.

(1) In General - If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except for one additional communication which may be made by the debt collector for one or more of the following purposes:

(A)~~(1)~~ to advise the consumer that the debt collector's further efforts are being terminated;
(B)~~(2)~~ to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or
(C)~~(3)~~ where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

(2) Effective Date of Notice- If ~~such~~ a notice referred to in paragraph (1) from the consumer is made by mail, notification shall be complete upon receipt.

PROPOSED AMENDMENT NO. 10: Some elements of the FDCPA refer to written disputes, while others refer to disputes generally without specifying the form or substance of the dispute. Differentiating what constitutes an oral dispute and what rights a consumer has following an oral dispute has created a great deal of uncertainty in legal decisions. Frequently it is difficult to determine if a consumer is disputing a debt if he simply hangs up the phone, refuses to pay the debt without stating any reason, or refuses all mail as "return to sender".

In order to reduce confusion and promote consistency, the FDCPA should be amended as follows in amendment numbers 10 and 11 to require a valid dispute to be

submitted to the debt collector in writing.

§ 807. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of –

 (A) the character, amount, or legal status of any debt; or

 (B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to –

 (A) lose any claim or defense to payment of the debt; or

 (B) become subject to any practice prohibited by this title.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a ~~disputed debt~~ debt which has been disputed by the consumer in writing is disputed.

* * *

15 U.S.C. § 1692e

PROPOSED AMENDMENT NO. 11:

The following amendment addresses the issues discussed above in amendment

10.

§ 809. Validation of debts

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice described in subsection (e) or a written notice containing-

(1) the amount of the debt;
(2) the name of the creditor to whom the debt is owed;
(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes in writing the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment will be mailed to the consumer by the debt collector; and
(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is

mailed to the consumer by the debt collector.

(c) The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

15 U.S.C. § 1692g

PROPOSED AMENDMENT NO. 12: This amendment introduces optional safe harbor language to be included in debt collection letters in order to meet the validation notice requirements of section 809. Federal and state laws differ as to the specific content of the validation notice and safe harbor language would provide clarity and consistency. The following would be a new subsection (d) immediately following section 809(c).

§ 809. Validation of debts

(d) ALTERNATIVE VERSION OF NOTICE- A notice is described in this subsection for purposes of subsection (a) if the notice contains--
(1) the amount of the debt;
(2) the name of the creditor to whom the debt is owed; and
(3) a statement containing the following: "Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and provide you with a copy of such judgment or verification. If you request of this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from the current creditor."

15 U.S.C. § 1692g.

PROPOSED AMENDMENT NO. 13: Consumers are increasingly mobile and many consumers regularly cross state lines for various reasons such as employment. This suggests that the FDCPA should allow a legal action to commence in a venue other than where the contract was signed or where the consumer resides if it is convenient for the parties.

§ 811. Legal actions by debt collectors

(a) Any debt collector who brings any legal action on a debt against any consumer shall -

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity –

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides <u>or is employed</u> at the commencement of the action; or

(C) <u>to which such consumer has reasonably availed himself.</u>

15 U.S.C. § 1692i.

PROPOSED AMENDMENT NO. 14: Section 816 of the FDCPA allows states to pass laws governing the debt collection industry as long as the state law provides consumers with more protection than the FDCPA. The problem with this provision is that the debt collection industry is an increasingly interstate industry. Due

to technological advances, even the smallest debt collector is able to operate in interstate commerce. Creditors who utilize the services of debt collectors also are interstate in their operation. To complicate matters, it is estimated that 35 percent of delinquent debtors move annually resulting in debt collection efforts that must cross state lines.

The complex patchwork of state laws governing debt collection hinders interstate commerce. Law abiding debt collectors are challenged for conducting collection activity that is otherwise lawful under the FDCPA. For instance, a debt collector may send a compliant debt collection letter to a consumer who had moved to another state and the letter is automatically forwarded to the new state in which a different set of collection laws apply.

As demonstrated in this comment, the debt collection industry is an integral part of the United States economy and it operates nationally, not regionally or locally. Because of its effect on interstate commerce, it is important that debt collection be regulated federally. To be sure, the Fair and Accurate Credit Transaction Act of 2003 made permanent the federal preemption provisions in the FCRA. The FDCPA should be consistent with FACTA in this respect.

§ 816. Relation to state laws

~~This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any state with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. For the purposes of this section, a state law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title.~~

No requirement or prohibition may be imposed under the laws of any State with respect to any subject matter regulated under this title.

15 U.S.C. § 1692n.

PROPOSED AMENDMENT NO. 15: The FDCPA has been infrequently amended. The Workshop reflects the recognition that important consumer protection legislation such as the FDCPA should be evaluated more regularly. ACA suggests that a new section be added to the FDCPA mandating regular evaluation of the FDCPA.

§ 819. Evaluation of the Act's effectiveness

(a) Not later than five years after the effective date of this subsection and at five-year intervals thereafter, the Commission shall evaluate the overall effectiveness of the FDCPA. The Commission shall consider reports made to Congress pursuant to § 815(a) as well as public commentary. The Commission shall make regulatory changes as it deems necessary, work with Congress, and propose legislation in order to ensure the viability of this subchapter.

b. In its Annual FDCPA Report to Congress in 2005 (available at: http://www.ftc.gov/reports/fdcpa05/050729fdcparpt.pdf.) the FTC proposed eight amendments to the FDCPA. In October 2006, Congress enacted four amendments to the statute, two of which closely track amendments proposed in the 2005 annual report. Please comment on the costs and benefits to industry and consumers of the remaining six proposals, which are set forth below:

i. The FDCPA should make explicit the standard for clarity required for collectors' notices to consumers.

ii. The FTC should be allowed to issue model collection letters, the use of which would constitute compliance with certain FDCPA provisions.

iii. The FDCPA should clarify that collectors may communicate with a consumer only once after receiving a "cease communication" notice from the consumer.

iv. The FDCPA should expressly provide that a consumer's oral dispute is sufficient to require a debt collector to (1) notify credit bureaus ("consumer reporting agencies") of the dispute and (2) prevent the collector from assuming the debt is valid.

v. Collectors should be required to itemize their charges to consumers.

vi. Collectors should be encouraged to provide the name and address of the original creditor of the debt in their first communication with consumers.

RESPONSE: ACA International embraces and approves the spirit and intent of

the FTC's proposed amendments in section 6, subsection (b), with the caveat that final drafting language will prove critical to the actual effect of the suggested amendments and care must be taken in order to assure their correct application. For instance, the industry would embrace model, safe harbor debt collection letters suggested in subparagraph ii provided that use of the model letters is optional and not mandatory. Further, subparagraph v should be clearly articulated to require debt collectors to itemize charges to consumers incurred *after* assignment of the debt to the debt collector or purchase of the debt. A debt collector cannot be responsible for itemizing charges imposed by the creditor prior to assignment. Again, ACA approves the suggested amendments of Section 6(b) in principle, but not as legislative text as currently articulated. ACA reserves the right to provide interpretive commentary on the meaning and/or limited effect of any of the FTC's six proposed amendments.

V. Conclusion.

ACA appreciates the opportunity to comment on the issues raised by the Commission. If you have any questions, please contact Andrew M. Beato at (202) 737-7777 or abeato@steinmitchell.com.

Respectfully submitted,

STEIN, MITCHELL & MEZINES, LLP

Andrew M. Beato, Esq.
1100 Connecticut Avenue, N.W.
Suite 1100
Washington, DC 20036

ACA INTERNATIONAL

Rozanne M. Andersen, Esq.
4040 W. 70th Street
Minneapolis, MN 55435

Dated: June 6, 2007

FEDERAL TRADE COMMISSION
OFFICE OF THE SECRETARY
ROOM H-135 (ANNEX N)
600 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20580

EXHIBIT 1 TO COMMENTS OF ACA INTERNATIONAL REGARDING THE DEBT COLLECTION WORKSHOP

FTC FILE NO. P074805

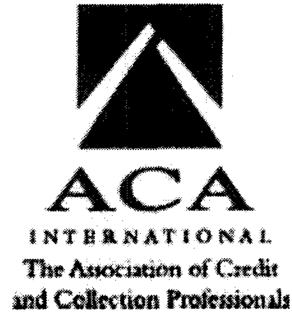
FILED ELECTRONICALLY ON JUNE 6, 2007

Rozanne M. Andersen, Esq.
ACA International
4040 W. 70th Street
Minneapolis, MN 55435
(952) 926-6547

General Counsel and Senior Vice President of Legal and Governmental Affairs

Andrew M. Beato, Esq.
Stein, Mitchell & Mezines, LLP
1100 Connecticut Avenue, N.W.
Suite 1100
Washington, DC 20036
(202) 737-7777

ACA Retained Federal Regulatory Counsel



SCOPE OF USE

The *Value of Third-Party Debt Collection To The U.S. Economy: Survey and Analysis* was commissioned by ACA International for the purpose of educating an audience which includes, but is not limited to, consumers, policy makers, the press, members of ACA International and non-members of ACA International about the value of the collection industry and its impact on the U.S. economy.

The survey results are not intended for, nor shall be used to, effectuate any agreement or understanding with respect to business practices, pricing, market share or professional activities. ACA disclaims any liability for any use of the information contained in this survey outside the scope of its intended purpose.

©2006 ACA International. All rights reserved. Materials may not be reproduced without written permission.

PRICEWATERHOUSECOOPERS

VALUE OF THIRD-PARTY DEBT COLLECTION TO THE U.S. ECONOMY: SURVEY AND ANALYSIS

Prepared for

ACA International

June 27, 2006

National Economic Consulting NEC

PricewaterhouseCoopers has exercised reasonable professional care and diligence in the collection, processing, and reporting of this information. However, the data used is from third party sources and PricewaterhouseCoopers has not independently verified, validated, or audited the data. PricewaterhouseCoopers makes no representations or warranties with respect to the accuracy of the information, nor whether it is suitable for the purposes to which it is put by users.

PricewaterhouseCoopers shall not be liable to any user of this report or to any other person or entity for any inaccuracy of this information or any errors or omissions in its content, regardless of the cause of such inaccuracy, error or omission. Furthermore, in no event shall PricewaterhouseCoopers be liable for consequential, incidental or punitive damages to any person or entity for any matter relating to this information.

VALUE OF THIRD-PARTY DEBT COLLECTION TO THE U.S. ECONOMY: SURVEY AND ANALYSIS

Table of Contents

Page

EXECUTIVE SUMMARY ii

I. INTRODUCTION 1

II. THIRD-PARTY DEBT COLLECTION SURVEY 2

III. THIRD-PARTY DEBT COLLECTION AND THE U.S. ECONOMY 3

IV. SURVEY AND ESTIMATION METHODOLOGY 6

APPENDICES:

A. SURVEY QUESTIONS 9

B. ABOUT PRICEWATERHOUSECOOPERS NATIONAL ECONOMIC CONSULTING 10

VALUE OF THIRD-PARTY DEBT COLLECTION TO THE U.S. ECONOMY: SURVEY AND ANALYSIS

EXECUTIVE SUMMARY

The third-party debt collection industry plays an important role in the U.S. economy. The industry employs hundreds of thousands of Americans as collection professionals, who collect on past-due accounts referred to them by various credit grantors, such as credit card issuers, banks, retail stores, hospitals and other health care services, or by Federal, state and local governments. Business purchases of this industry and personal purchases by its owners and workers ripple through the economy, supporting hundreds of thousands more jobs across the country. Further, the industry benefits the economy by recovering billions of dollars in delinquent debt each year that would otherwise go uncollected.

To quantify the value of third-party debt collection to the U.S. economy, ACA International retained PricewaterhouseCoopers LLP to conduct a survey and economic analysis of third-party debt collections.[1] The survey, carried out in the spring of 2006, reveals that in 2005 the industry's collection efforts resulted in $39.3 billion of debt being returned to creditors on a commission basis. The economic benefits of third-party debt collection are significant.

Value to Consumers

For consumers, the benefit of third-party debt collection can be seen through reduced consumer prices and greater consumer purchasing power, since consumers would likely be faced with higher prices if businesses were unable to recoup losses resulting from bad debt. This survey and analysis shows that the $39.3 billion in debt returned to creditors on a commission basis is equivalent to an average savings of $351 per American household that might have otherwise been spent had businesses been forced to raise prices to cover the unrecovered debt. The average per household savings attributable to third-party debt returned to creditors translates into approximately 19 bags of groceries, 129 days of electricity or 155 gallons of gasoline.[2]

Value to Businesses

Businesses, large and small, benefit from third-party debt collection because debt recoveries help them keep costs down and reduce their risk of financial insolvency and

---

[1] ACA represents over 5,500 members worldwide in the credit and collection industry, including third-party collection agencies, asset buyers, attorneys, creditors, and vendor affiliates.

[2] According to the Mid America Crop Life Association, a typical bag of groceries cost $18.79 in the United States in 2004. The Energy Information Administration reported that the average monthly residential electric bill was $81.42 and the average price of regular gasoline (all grades) was $2.27 in 2005.

bankruptcy that may be triggered by unrecovered bad debt. The $39.3 billion in debt returned to creditors on a commission basis was equivalent to a 22 percent reduction in private-sector bad debt in 2005,[3] and was equal to 3 percent of all U.S. corporate profits before tax, 4.5 percent of before tax profits of all U.S. domestic non-financial corporations, and 11.4 percent of the before tax profits of all U.S. domestic financial corporations.

Value to Creditors

The $39.3 billion in debt returned to creditors on a commission basis in 2005 was roughly 2 percent of total consumer credit outstanding and more than 62 percent of new consumer credit issued. It was equivalent to 3.3 percent of total household borrowing in the United States in 2005.

In addition, third-party debt collectors are increasingly working with Federal agencies and state and local governments. In fiscal year 2005, the Federal government referred $13.7 billion in delinquent receivables to private collection agencies (PCAs) resulting in collections of $693.5 million; up from $351.3 million in FY 2000.[4] In the area of Federal student loans, for example, the $603.1 million that PCAs returned to the Department of Education in fiscal year 2005 represents the average loan aid received by 122,681 college students during the 2004/05 academic year.[5]

Over the last fifteen years, employment in the third-party debt collection industry has more than doubled, from less than 70,000 in 1990 to nearly 150,000 in 2005.[6] We estimate from our economic impact model that the industry's payroll reached nearly $5 billion in 2005. Including business purchases by the industry and personal purchases by its owners and workers, we estimate the industry directly and indirectly supported 426,700 jobs with a payroll of $15.0 billion in 2005.

---

[3] Based on data from the Statistics of Income Division of the Internal Revenue Service, the amount of bad debt write-offs claimed by the private sector (corporations, partnerships, and non-farm sole proprietorships) on their tax returns is estimated to be $141 billion in 2005. The percentage reduction in bad debt is calculated as follows: $39.3 billion / ($141 billion + $39.3 billion) = 22%.

[4] Financial Management Service, U.S. Department of Treasury, *Fiscal Year 2005 Report to Congress on U.S. Government Receivables and Debt Collection Activities of Federal Agencies*. March 2006. Currently, the Department of Education, the Department of Treasury, and the Department of Health and Human Services have each established contracts with PCAs to collect debts owed to the Federal government. In addition to collecting debts, PCAs also help Federal agencies establish repayment agreements and resolve debts administratively (e.g., by determining if a debtor is bankrupt, disabled or deceased).

[5] College Board, *Trends in Student Aid 2005*, Table 7a: Loan aid per full-time equivalent (FTE) student during the 2004/05 academic year was $4,916.

[6] Data from *Current Employment Statistics* survey by the U.S. Bureau of Labor Statistics show that about 150,000 collection professionals were employed by third-party collection agencies (as defined under NAICS code 56144) in 2005. Outside of the third-party debt collection industry, many collection professionals work in banks, retail stores, government, physician's offices, hospitals, and other institutions that lend money and extend credit. All together, bill and account collectors as a profession held about 456,000 jobs in 2004, the most recent year for which data are available from the *Occupational Outlook Handbook* by the BLS.

VALUE OF THIRD-PARTY DEBT COLLECTION TO THE U.S. ECONOMY: SURVEY AND ANALYSIS

I. INTRODUCTION

The third-party debt collection industry employs hundreds of thousands of Americans as collection professionals. They collect on past-due accounts referred to them by various credit grantors, such as credit card issuers, banks, retail stores, hospitals and other health care services, or by Federal, state and local governments. By recovering billions of dollars in delinquent debt each year that would otherwise go uncollected, the industry generates important benefits to the U.S. economy. For consumers, the benefit of third-party debt collection can be seen through reduced consumer prices and greater consumer purchasing power, since consumers would likely be faced with higher prices if businesses were unable to recoup losses resulting from bad debt. Businesses, large and small, benefit from third-party debt collection because debt recoveries help them keep costs down and reduce their risk of financial insolvency and bankruptcy that may be triggered by unrecovered bad debt.

To develop a more complete picture of the economic importance of the third-party debt collection industry, PricewaterhouseCoopers LLP was retained by ACA International to conduct a survey of third-party debt collection agencies. The survey was fielded between February and April of 2006 to 992 U.S. third-party collection agencies selected from Dun and Bradstreet's ("D&B's") universe of U.S. third-party debt collection agencies. The third-party collection agencies that responded to the survey were representative of the population in terms of revenues and number of employees as reported by D&B.

The rest of the report is organized as follows. Section II of this report describes the survey and summarizes the results. Section III discusses the economic importance of third-party debt collection. The survey and estimation methodology is discussed in Section IV. An appendix includes a list of the survey questions and information about PricewaterhouseCoopers LLP's National Economic Consulting group, which prepared this study.

II. THIRD-PARTY DEBT COLLECTION SURVEY

PricewaterhouseCoopers LLP conducted a survey of third-party debt collection agencies in order to collect data that could be used to estimate the key measures of economic impact for the industry in 2005. The population for the survey consists of third-party debt collection agencies listed in Dun and Bradstreet's ("D&B's") business file. The third-party collection agencies that responded to the survey were representative of the population in terms of revenues and number of employees as reported by D&B.

Based on the survey, we estimate the total amount of debt recovered in 2005 by third-party debt collection agencies to be $51.4 billion, of which $49.1 billion represented gross collections on a commission basis. Gross recoveries by the third-party debt collection industry on purchased accounts represented $2.3 billion. Debt returned to creditors on a commission basis in 2005 was $39.3 billion.

Table II.1 – Debt Recovered by Third-Party Debt Collection Agencies in 2005
(Billions)

Economic Measure	Estimated Value
Debt Recovered	$51.4
Commission Basis	*$49.1*
Purchased Accounts	*$2.3*
Net Debt Returned on a Commission Basis	$39.3

Note: The margin of error at the 90 percent confidence interval is ± 20% for the estimated "debt recovered" and ± 24% for the estimated "net debt returned on a commission basis".

The total revenues of third-party collection agencies in 2005 from debt collection are estimated to be $12.1 billion, of which $9.8 billion is from commissions and $2.3 billion is from debt recovered on purchased accounts.[7] We estimate that third-party debt collection agencies employed 168,343 workers in 2005.[8]

[7] The margin of error at the 90-percent confidence interval for total revenues is ± 15%.
[8] The margin of error at the 90-percent confidence interval for employees is ± 13%.

III. THIRD-PARTY DEBT COLLECTION AND THE U.S. ECONOMY

Over the last fifteen years, employment in the third-party debt collection industry has more than doubled, from less than 70,000 in 1990 to nearly 150,000 in 2005.[9] We estimate from our economic impact model that the industry's payroll reached nearly $5 billion in 2005. Including business purchases by the industry and personal purchases by its owners and workers, we estimate the industry directly and indirectly supported 426,700 jobs with a payroll of $15.0 billion in 2005.

Third-party debt collection generates significant benefits for both U.S. consumers and businesses. Debt returned to creditors of $39.3 billion on a commission basis by the third-party debt collection industry in 2005 helped maintain lower prices for consumers. The $39.3 billion returned to creditors was equivalent to an average savings of $351 per American household in 2005 or 0.8% of the median U.S. household income of $44,389,[10] had businesses been forced to charge higher prices in the absence of this debt recovery.[11]

To put this number in perspective, the Mid American Crop Life Association estimates that a typical bag of groceries cost approximately $18.79 in 2004. Similarly, the U.S. Department of Energy's Energy Information Administration estimates that in 2005 the average monthly residential electric bill was $81.42 and the average price of regular unleaded gasoline was $2.27. Thus, had businesses been forced to charge higher prices in the absence of this debt recovery, debt returned to creditors by the third-party debt collection industry saved the average household the equivalent of approximately 19 bags of groceries, 129 days of electricity, or 155 gallons of gasoline in 2005.

Businesses, large and small, benefit from third-party debt collection because debt recoveries help cut down potential bad debt write-offs, thus reducing the risk of financial insolvency and bankruptcies for businesses nationwide. We estimate the amount of bad debt write-offs claimed by the private sector on their tax returns was about $141 billion in 2005.[12] This means debt returned to creditors by the third-party debt collection industry helped reduce private-sector bad debt by 22 percent in 2005.[13]

---

[9] Data from *Current Employment Statistics* survey by the U.S. Bureau of Labor Statistics show that about 150,000 collection professionals were employed by third-party collection agencies (as defined under NAICS code 56144) in 2005. Outside of the third-party debt collection industry, many collection professionals work in banks, retail stores, government, physician's offices, hospitals, and other institutions that lend money and extend credit. All together, bill and account collectors as a profession held about 456,000 jobs in 2004, the most recent year for which data are available from the *Occupational Outlook Handbook* by the BLS.

[10] U.S. Census Bureau, "*Income, Poverty, and Health Insurance Coverage in the United States: 2004,*" August 2005.

[11] According to the U.S. Census Bureau, there were 112 million households in the United States in 2004, the most recent year for which data were available.

[12] The IRS data show that U.S. corporations and partnerships took deductions for bad debt write-offs of $151 billion and $12 billion in 2003, respectively. On the basis of the historical pattern of bad debt write-offs, we estimate that the private sector bad debt write-offs totaled $141 billion in 2005.

In addition to helping businesses keep costs down, third-party debt collectors are increasingly working with Federal agencies and state and local governments. In fiscal year 2005, the Federal government referred $13.7 billion in delinquent receivables to private collection agencies (PCAs) resulting in collections of $693.5 million; up from $351.3 million in FY 2000.[14] In the area of Federal student loans, for example, the $603.1 million that PCAs returned to the Department of Education in fiscal year 2005 represents the average loan aid received by 122,681 college students during the 2004/05 academic year.[15] With the enactment of *The American Job Creation Act of 2004*, which created section 6306 of the Internal Revenue Code allowing the use of private collection agencies in the collection of Federal tax debts, the use of third-party debt collectors by the Federal government is likely to rise, resulting in an increase in the collections and additional money returned to the government.

Third-party debt collection and debt returned to creditors in 2005 can be compared to other relevant economic statistics. As shown in Table III.1, total outstanding consumer credit in the United States increased by $62.5 billion in 2005 to $2.2 trillion. Thus, debt returned to creditors in 2005 by the third-party debt collection industry was roughly 2 percent of total consumer credit outstanding and more than 62 percent of new consumer credit issued.

Debt returned to creditors in 2005 by the third-party debt collection industry was equivalent to 3.3 percent of total household borrowing in the United States in 2005.[16]

As noted above, most of the bad debt written off by the private sector was written off by corporations. In 2005, third-party debt collections returned to creditors was equal to almost 3 percent of all U.S. corporate profits before tax, 4.5 percent of before tax profits of all U.S. domestic non-financial corporations, and 11.4 percent of the before tax profits of all U.S. domestic financial corporations.

---

[13] This is calculated as follows: $39 billion / ($141 billion + $39 billion) = 22%.

[14] Financial Management Service, U.S. Department of Treasury, *Fiscal Year 2005 Report to Congress on U.S. Government Receivables and Debt Collection Activities of Federal Agencies*. March 2006. Currently, the Department of Education, the Department of Treasury, and the Department of Health and Human Services have each established contracts with PCAs to collect debts owed to the Federal government. In addition to collecting debts, PCAs also help Federal agencies establish repayment agreements and resolve debts administratively (e.g., by determining if a debtor is bankrupt, disabled or deceased).

[15] College Board, *Trends in Student Aid 2005*, Table 7a: Loan aid per full-time equivalent (FTE) student during the 2004/05 academic year was $4,916.

[16] Including mortgage borrowing.

Table III.1 –Third-Party Debt Collection Relative to Key Economic Variables, 2005

	Amount (in $ billions)	Total Debt Collected, as a Percent of	Debt Returned to Credit Grantors, as a Percent of
Third Party Debt Collection[1]			
Total Debt Collected	51.4		
Debt returned to Original Credit Grantors	39.3		
Consumer Credit[2]			
Net Change in Consumer Credit	62.5	82.3%	62.9%
Total Consumer Credit Outstanding	2,188.7	2.3%	1.8%
Other Household Debt[2]			
Total Household Borrowing	1,204.7	4.3%	3.3%
All Household Debt Outstanding	11,496.6	0.4%	0.3%
Corporate Profits Before Tax[2]			
Corporate Profits Before Tax	1,417.3	3.6%	2.8%
Domestic Nonfinancial	867.5	5.9%	4.5%
Domestic Financial	345.9	14.9%	11.4%

Sources:

(1) PricewaterhouseCoopers LLP estimates based on the 2006 Credit and Collection Industry Survey.

(2) Federal Reserve Board, "Flow of Funds Accounts of the United States." Release Z.1, March 9, 2006.

IV. SURVEY AND ESTIMATION METHODOLOGY

Sampling Frame Development

As a first step in creating our sampling frame, PricewaterhouseCoopers LLP purchased a list of collection agencies from Dun & Bradstreet ("D&B"). In order to avoid sending surveys to multiple locations within the same firm, we asked that the list be limited to headquarters operations and single location entities located in the United States. In addition to the name and address of the firm, we requested that D&B provide us with a contact person, the firm's phone number, revenues and employment. This data would be used to help develop our estimates of total collections in the industry.

Once this list was obtained we removed all records which had a primary Standard Industrial Classification (SIC) code that was not 7322 ("Adjustment and Claims Services"). Finally, working with ACA International we attempted to identify instances in which the name, address, or phone number for the contact person was incorrect. In these cases, an attempt was made to contact the business to determine the correct mailing address and contact person. We also attempted to identify and eliminate any firms that were no longer in business or were subsidiaries of other businesses on our list. During this stage of the process we identified a number of firms that were no longer in the debt collection business and eliminated them from our sampling frame.

After completing our processing, we had a listing of 6,164 third-party collection agencies. The total revenues for these third-party collection agencies as shown by D&B were $11.8 billion, and the total employee count as shown by D&B was 171,681. ACA International requested that seven additional businesses that were not in the D&B listings for third-party collection agencies be included in the sampling frame. This brought the total number of firms in the sampling frame to 6,171.

Sample Design

The statistical analysis uses a prediction-based (also known as model-based) statistical methodology. As such, we selected a balanced sample with respect to a quantity that is known for all members of the sampling frame. We chose to use the revenue data supplied by D&B for this purpose. Because the seven extra firms that ACA International requested be included in the study were not in the D&B listings for third-party collection agencies, we did not have the revenue data for them. Therefore, we placed these seven firms in a certainty stratum and surveyed all of them. However, responses from these firms were not used to represent other agencies in the sampling frame. Instead, response values from these firms were added to the sampling frame estimates to obtain the final results.

We selected a balanced sample using a selection methodology described in Valliant et al.[17] In following this methodology, we divided the sampling frame into two additional strata: one for the 111 largest agencies in terms of revenues, and another for the remaining 6,053 agencies. All firms in the "large agency" stratum were selected for the sample, and 874 firms from the remaining stratum were selected. In total 992 firms were selected for the sample. Table IV.1 is a summary of our sample design.

Table IV.1 –Sa mple Design

Stratum	Number of Companies	Total Sales per D&B (Billions)	Sample Size
1. ACA International Additions	7		7
2. Highest D&B Sales Stratum	111	$7.69	111
3. Remaining D&B Stratum	6,053	$4.07	874
Total	**6,171**	**$11.76**	**992**

Response Quality Review

A survey questionnaire was sent to each agency in the sample. We received responses from 117 of them. Diagnostic analysis was performed on the response data, and several questionable response values were identified. For example, some responses had unusually high gross collections when compared with other similar agencies. Also, we had a few respondents whose gross collections on a commission basis (Question 1) were less than or equal to the commissions earned (Question 2). Some survey questions were also left blank, making it unclear whether this meant that the respondent did not want to provide us the information or if a blank was a response of zero.

We contacted agencies identified in our diagnostic analysis in order to determine if the response value we received was correct for the question. In some cases we confirmed that the response value provided by the agency was correct, but in other cases the respondent told us that the original value was incorrect, and provided us with the correct value. We were not able to reach all the agencies with questionable responses, and the questionable responses for these agencies were treated as "no response." The survey analysis is based on the remaining 114 complete responses. Table IV.2 is a summary of the unweighted responses we received for the survey questions.

[17] Valliant, R., Dorfman, A. H., and Royall, R. M. (2002). *Finite Population Sampling and Inference: A Prediction Approach.* John Wiley & Sons, Inc., New York.

Table IV.2 –Survey Response Summary
(Dollar amount in millions)

Question	Response Count	Average	Median
1. Gross Collections on a Commission Basis	114	$ 67.7	$ 11.2
2. Commissions Earned	114	$ 12.9	$ 2.5
3. Revenue from Purchased Accounts	114	$ 6.0	$ -
4. Number of Employees	114	346	41
5. Number of Telephone Collectors	114	199	22

Estimation

We used a prediction- (or model-) based statistical methodology as described in Valliant et al. to derive national estimates for the third-party debt collection industry. Under this methodology, statistical regression is used to develop mathematical relationships between auxiliary variables such as D&B revenues or employment with survey response values of all survey respondents within each stratum. The mathematical relationship is then used to predict values for all unobserved members of the sampling frame based on the auxiliary information. Survey response values are aggregated along with predicted values within and across strata to obtain estimates. The variances of the estimates are calculated by comparing observed and predicted values for each survey response. Variances are calculated within each stratum and then totaled for the overall variance. The margin of error of each estimate is based on the corresponding variance, and is assessed at the 90-percent confidence level using a confidence factor based on Student's t distribution. The results of this estimation methodology for each survey question are provided in Table IV.3.

Table IV.3 –Est imation Results

Question	Estimated Value	Margin of Error
1. Gross Collections on a Commission Basis (Billion)	$ 49.1	± 21%
2. Commissions Earned (Billion)	$ 9.8	± 16%
3. Revenue from Purchased Accounts (Billion)	$ 2.3	± 49%
4. Number of Employees	168,343	± 13%
5. Number of Telephone Collectors	99,907	± 16%

APPENDIX A

SURVEY QUESTIONS

Data referred to in the main text are based on the responses to the following five survey questions.

COLLECTIONS

1. In 2005, what was the total amount of gross collections generated by your agency on debt collected on a commission basis? $ ______
2. In 2005, what was the total amount of commissions earned by your agency on accounts referred to you for collection? $ ______
3. In 2005, what was the total amount of revenue generated by your agency from gross recoveries on accounts you purchased and own? $ ______

EMPLOYEES

4. How many total employees (counting full-time and part-time equally) did you employ as of December 31, 2005? (Example: 3 full-time and 2 part-time would be 5 total employees.) ______
5. How many telephone collectors (counting each employee who communicates with debtors by telephone for any reason) did you employ as of December 31, 2005? ______

APPENDIX B

ABOUT PRICEWATERHOUSECOOPERS NATIONAL ECONOMIC CONSULTING

Since 1984, PricewaterhouseCoopers LLP's National Economic Consulting (NEC) group has provided clients with a broad range of economic, statistical, and modeling services. NEC is an integral part of the Washington National Tax Services office, the firm's policy analysis and advocacy organization. Our clients include corporations, trade associations and coalitions, government agencies, law firms, and other organizations.

Economic Impact Analysis

We analyze the impacts of private sector decisions on the economy, as well as the effects of government decisions on the private sector. For companies, we estimate the contributions of their operations to the regional economy. For trade associations, we quantify the industry-wide impacts of government mandates, such as environmental regulations. For associations and coalitions, we project the effects of tax and spending proposals on economic indicators, such as employment, investment, and exports, by industry and geography.

Survey, Research, Statistical and Data Analysis, and Benchmarking

We focus on locating the data our clients need, drawing on our team's experience using a wide range of public and proprietary databases and our experience working with large computer files. We also have experience designing and assisting with the implementation of company surveys for associations and coalitions, maintaining professional standards of confidentiality and increasing compliance with anti-trust regulations. In addition, we help clients implement proprietary benchmarking studies to enable comparison of their performance to that of their peers.

Additional information about PricewaterhouseCoopers LLP's National Economic Consulting group is available at www.pwc.com/nec.