Able Debt Settlement, Inc.

A National Debt Settlement Services Provider

JUNE 2007 COMMENTS

REPORTED BY:
Ralph S. Lewis, COO
Able Debt Settlement, Inc.
2351 W. Northwest Hwy, Suite 3355
Dallas, Texas 75220

REGARDING:
FAIR DEBT COLLECTION PRACTICES ACT
Collecting Consumer Debts, the Challenges of Change
FTC Debt Collection Workshop, P074805
October 10-11, 2007

SUBMITTED TO:
Federal Trade Commission
Office of the Secretary
Room H-135 (Annex N)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
debtcollectionworkshop@ftc.gov

CONTENTS:

I Introduction

Able Debt Settlement, Inc. (ADSI) appreciates the opportunity to provide the Federal Trade Commission with comments and suggestions regarding the Fair Debt Collection Practices Act in an effort to constructively advance consumer protection through reasonable rules and regulations controlling the collection practices of debt collectors.

ADSI is a National Debt Settlement Services Provider headquartered in Dallas, Texas from where it provides independent contractors such as attorneys, accountants, business analysts, project analysts, financial analysts and other practitioners with debt settlement support services as an alternative to bankruptcy for their financially insolvent clients.

ADSI workout, turnaround, restructure and liquidation programs are used by business owners, project managers, professional individuals and consumers to develop specific financial plans based solely on their individual financial capabilities. ADSI Programs are referred to as *"Qualified Settlement Programs"* as defined in the *"Debt Settlement Services Provider Business Models April 2006 Report,"* which is available upon request.

ADSI programs incorporate at least three categories of services involving client analysis, creditor processing and settlement support services. These services may be provided by a single practitioner or by separate independent contractors whose functions are collectively coordinated by one contractor for the duration of a settlement plan, which can range from several months to several years depending on the financial condition, needs and capabilities of the client.

Principals of ADSI have been in the financial services industry since 1973 working with business and consumer clients having debts which include secured, unsecured, priority and non-priority as well as complex debts involving cross-collateralizations, tie-ins, lines-of-credit, all-inclusive notes, wrap-arounds and other forms of debt instruments.

As the settlement support services provider, ADSI processes and services debt settlement programs involving merchants, vendors, suppliers, financial institutions and other issuers of credit and loans. From its position within the financial services industry, ADSI monitors first hand and through its clientele, both original creditor and third-party debt collection practices and the patterns of behavior employed with various individuals, debts and jurisdictions.

II Background

Lending practices today are far removed from those once localized to demographic practices of banks, finance companies and merchants. Current lending strategies are more focused on target-oriented customer markets and absent of any geographic or political boundaries. While this expansive lending practice has stimulated the overall economy and provided financial support for major industries, it has also led to an overwhelming level of underperforming unsecured debt, spiraling upwards into the trillions of dollars.

Today, information technology creates sub-markets within existing markets thereby generating an endless supply of financial products limited only by the imagination and marketing skills of credit issuers. This technology is also misused to develop predatory lending strategies to solicit individuals with teaser rates that incorporate abusive conversions, modifications and non-refundable activation fees that are not fully disclosed in a manner reasonably understood by their customers.

Influenced by financial institutions attempting to compete in a saturated market, lending regulations have eased to the point where credit issuers solicit and provide unsecured loans to individuals with poor to bad credit and or no income. This is the case with college student credit cards used by many students to fund their "spring break" vacations rather than educational expenses. These and other less prudent lending practices have created a dangerously high default rate and losses which lenders pass along to the rest of their customers.

In a strategy designed to increase loan portfolio book-valuations and longer term revenue streams, many creditors lowered minimum monthly payment requirements to (2%) of the outstanding debt balance. Lowering the minimum monthly payment from such as (4%) to (2%) doubles the borrowing power of the consumer and the amount of debt as well. Unfortunately, consumers have financed common household items for decades that should have been purchased with monthly discretionary cash flow. While this irrationally stimulated asset-value may have been attractive to Wall Street, the real street-value of a nonperforming unsecured debt portfolio is highly discounted and commonly purchased by "acquisition companies" and other "junk debt buyers" for ($.05) on the dollar or less.

Directives influenced by the Comptroller of the Currency caused creditors to increase their minimum payment requirements leaving millions of individuals unable to service or payoff their debts. Many individuals seeking to ease their monthly expenses have converted this unsecured debt to long term debt usually secured by their personal residences through "consolidation loans." This restructuring of consumer debt has helped to fuel the very high numbers of mortgage defaults and foreclosure rates, which now undermine the real estate markets and could threaten the integrity of the financial community.

In an attempt to shore-up and protect their asset base, the financial community influenced legislators to enact bankruptcy reform to prevent nearly all individuals except those experiencing the most severe financial hardships and insolvency from discharging their unsecured debts. Individuals now seeking protection from their creditors under bankruptcy could find themselves subjected to a greater financial hardship than their creditors may have been entitled to under state and federal garnishment limitations. While bankruptcy reform may have been justified in some cases, it is coming to a high point of abusive creditor-collector practices and should have provided more adequate "*...consumer protection,*" especially in cases where there was no proper lending discipline applied prior to advancing funds or an extension of credit and where credit issuers claim the right to modify their financial arrangements at will.

The more abusive of these practices include the periodic use of a numerical scheme to generate a *"financial score"* such as the *"FICO Score"* to re-assess an individual's future creditworthiness, and the application of *"universal default"*, which allows creditors to charge higher rates to consumers with loans in good standing in the event they default on any other reported obligation. One problem with this scheme is that as much as (30%) of the information reported to the credit reporting bureaus is incorrect and unknown to the individual, but used by the keepers of the scoring methodology to change the individual's *"financial score"* without notification. Another problem occurs when a creditor, with whom an individual has a legitimate dispute, files a derogatory comment that allows other creditors to take an unfair advantage of the individual without recourse.

Whether by an intentional scheme or not, creditors can extend credit to an individual and adversely affect their *"financial score"* causing other creditors to automatically react by lowering credit limits or raising interest rates to extreme levels, forcing an otherwise financially solvent individual into a state of insolvency. Another defect found in the *"FICO Score"* is that an individual is numerically penalized for closing an old account and switching to a new line of credit offering better services. The payment history of an individual belongs to the individual and it is anti-competitive behavior to penalize them for switching to a better offer from a new issuer of credit. The manner in which creditors act in concert to both the *"financial score"* and *"universal default"* are in conflict with antitrust laws and should be abolished.

There are three major categories for nonperforming creditor accounts – 1) individuals subjected to financial adversities beyond their control; 2) individuals abusing credit; and 3) individuals abused by creditors. While item number 1) is beyond anyone's control, returning to a more discipline oriented lending criteria can eliminate items 2) and 3) and avoid a large majority of insolvent individuals that default on their financial obligations. In addition, items 2) and 3) are major causes for the escalation of nonperforming creditor accounts, which are forwarded to debt collectors. The average financially insolvent individual has six major unsecured debts represented by separate debt collectors all in competition to obtain money from the individual. Unfortunately, less scrupulous debt collectors engage in unethical or even illegal activities in their attempt to extract money from individuals and account for much of the industry complaints.

No longer allowed to simply discharge their non-priority unsecured debts under bankruptcy, millions of individuals in default today have nonperforming accounts headed for debt collectors, junk debt buyers, collection attorneys and the civil courts.

Now is the time for a three prong solution – 1) prudent credit issuance and lending criteria; 2) fixed and restrictive terms and conditions for loan and credit modifications; and 3) collection regulations that incorporate mandatory forms and content, which include an automatic penalty assessment notice for statutory collection violations.

III Topics for Comment

ADSI provides the following comments as outlined within the **FTC Debt Collection Workshop, P074805 "Workshop Description & Questions for Comment."**

1. Demographic and Industry Information

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.

Today, anyone can become the target of an abusive debt collector fishing for payment on a debt. Consumers from the upper middle and middle income brackets down to minimum wage and those that have no wages at all are commonly pursued by debt collectors.

The largest growing sector having nonperforming accounts and indebtedness are the upper middle income earners. Although many tapped into their home equity with consolidation loans, they again resumed credit card debt to subsidize reduced incomes.

Another sector growing faster than the middle income earners include the lower income and those having no income at all. The debt loads and number of credit cards encountered with this sector is unwarranted given their lack of income to pay for the necessities of life. One such individual earning minimum wage had eight credit cards from the same card issuer and each card was maxed out with approximately $5,000 of debt having a total indebtedness of nearly $40,000. Given the individual's advanced age, lack of assets and no expectation of higher earnings made these improper loans, and yet the individual was pursued by separate debt collectors representing each of the accounts.

Loans to a portion of the lower income sector that is NOT showing up in our settlement programs are the "pay day" and "cash advance" loans. This is simply due to the minimum debt requirements being higher than the normal debt loads of this sector.

Our best estimate at this time is that there are approximately sixty-million accounts modified by rollover or extension, underperforming, delinquent or nonperforming and could all become subject to debt collector activities within twelve to thirty-six months.

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.).

The practice of sub prime, adjustable and negative amortized home mortgage lending overstayed its welcome and has now left us with very high default and foreclosure rates. While "graduated payment mortgages" are a useful program for assisting young first-time home buyers having an expectation of higher earnings, they need to restrict payment increases to a proper lending threshold of real world income expectations.

The no-money-down automobile loans and loans that include that portion of a prior car loan in excess of its trade-in value end up with debt collectors when a creditor pursues a monetary deficiency after a repossession and sale at auction. Allowing as much as twelve thousand dollars to be added to a no-money-down car loan is a disaster and today it is common to encounter car loans far in excess of the value of the car.

Educational loans without education expense and payment verification are nothing more than unsecured loans and do not receive special or priority treatment when in default. Debt collectors often pressure students without incomes into pursuing family members as a source of repayment. Debt collection law firms bring suit against such students and or their parents seeking judgments, liens and garnishments, which disrupt the education of the student whom may have to drop out of school from lack of financial support.

A dangerous scenario becoming more prevalent in the market is credit cards, lines of credit and other personal loans tied to secured loans. An abusive collection practice by creditors is to transfer an individual's payment from a secured loan to an unsecured loan and then foreclose or repossess or threaten such action against the secured asset when such action would not have otherwise been allowed, absent the claim by the creditor that they have a right to do so.

All such accounts and activities may end up with debt collectors on assignment from original creditors and often without the debt collector having been informed of the original creditor's activity, conduct or previous communications with counsel or financial representatives already assisting the individual.

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.

The practice of lenders transferring funds directly to the bank account of an individual having responded to a lender's direct mailer and absent any written agreement or right of rescission has left many debt collectors in pursuit of "stated accounts" without a written means of verifying a debt. In addition, such loans are often made solely on the numerical value posted on credit reports without any income verification or other financial discovery to assess the current or future financial capabilities of the individual. The increase in the issuance of credit without verifying the income and expenses of the individual is creating the greatest level of nonperforming accounts being turned over to debt collectors with little current knowledge of the financial condition of the individual.

2. *Industry Trends*

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

The growth in the collection industry is due to several factors including: 1) the increase in the overall number of accounts and therefore the number of nonperforming accounts coupled with the desire of original creditors to outsource their collection activities; 2) the merger and acquisition of original creditors thereby consolidating the available internal collection resources requiring creditors to outsource more nonperforming accounts to debt collectors; 3) the shortening of the required charge off time period driving more nonperforming accounts into portfolios where the sale to acquisition companies and other junk debt buyers is more advantageous from a tax, insurance and or reserve requirement perspective than pursuing the debt; and 4) the lack of disciplinary actions taken by state and federal agencies to pursue statutory debt collection violations has encouraged more aggressive collection activity and invited individuals accustomed to operating such boiler-rooms to take advantage of the current market conditions.

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

The consolidation of many merchant accounts into financial credit accounts has lessened the diversity of delinquent accounts. Nearly (90%) of the debt settlement nonperforming accounts are held by (10) "financial conglomerates." Adjusted for population increases, the number of delinquent accounts is down. However, the overall number of delinquent accounts, which is a reflection of economic factors coupled with less than discriminating lending practices, has led to an increase in nonperforming accounts.

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

The shortening of the required charge off time period driving nonperforming accounts into portfolios where sales to acquisition companies and other junk debt buyers is more advantageous from a tax, insurance and reserve requirement perspective than pursuing the debt. Other portfolio economic factors include the amount and class of debt, the perceived financial condition of a class of debtors, and the statutory or legal jurisdiction of the debtors all play a part in the portfolio recovery and disposition decision process.

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.

Many collection law firms are simply collection agencies having one or more attorneys' names on the stationery. The ability of the debt collector to inform an individual that they are calling from a law firm provides the collector with a psychological advantage over most individuals. Many collection law firm debt collectors in direct communication and through correspondence provide unauthorized legal advice of actions to be taken by the debt collector, whom is not an attorney in the state of the individual or any other state and has no power or authority to bring such action. The most significant change has come as a result of the Bankruptcy Abuse Prevention and Consumer Protection Act. Collection attorneys can now threaten and take legal action knowing that fewer individuals can discharge their debts under bankruptcy. In all but the most severe financial hardships, collection attorneys find that an individual could be required to pay more through bankruptcy than a judgment creditor may be able to receive under the restrictions of a wage garnishment.

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?

The number of times an account is sold should never have or create any additional adverse affect on a consumer. It is the lack of proper notice of the sale of a debt that creates the first order of problems when a new holder contacts the consumer, who is expected to believe that the caller or correspondence is from a legitimate holder. Creditors that change the account numbers of both debts that they sell and forward to debt collectors frustrate consumers attempting to verify that the caller or correspondence containing unknown account numbers or reference numbers are actually their accounts. The consumer is often requested by the caller to verify who they are by providing personal information before the caller will identify the account information.

The sale of a debt should require that notice be forwarded to the debtor from the current holder, identifying the debt buyer and their contact information, account number, account balance transferred and the right to dispute the stated account balance. Debt collectors and debt buyers attempt to verify a debt by providing prior account statements when the amount in controversy is actually the amount now being claimed, or recently discovered by the individual that the original creditor had charged higher rates based upon inaccurate information. Unless one knows at what time of the month a creditor changed the interest rate it would be impossible for the consumer or debt buyer to verify a debt calculation.

Holders of debt instruments should be required to forward along with the consumer account information any relevant information regarding account disputes, communications and other notices including those from individuals representing a consumer.

There are creditors that do forward prior communications and notices of representation to acquisition companies. However, not all acquisition companies and junk debt buyers bother to review the files before pursuing collection efforts. It should be mandatory that all debt collectors and debt buyers forward written notice to a debtor, (10) days prior to any communication, a notice of confirmation of a sale or assignment containing the above information as well as the right to dispute the account or provide other notices.

3. *Debt Collection Practices and Techniques*

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?

While advances in information and communication technology have increased the utilization of human resources, they have also become a form of harassment through the abuse of automated call center dialing equipment. Debt collectors will use the automated call center to relentlessly call an individual until they answer the phone, knowing that the individual's caller ID indicates that it is from a debt collector whom they have already instructed to discontinue calling them. Another abuse of this technology is in the design of "circular call centers," which trap an individual into a perpetual menu driven maze that frustrates the individual to the point where they give up trying to convey a legitimate dispute and just pay their bill. Deceptive technology that serves no legitimate purpose is that which enables the debt collector to mask their true telephone identity with another telephone number and should be banned.

Debt collectors having access to an individual's credit report leads to abusive behavior. One such misguided effort is the practice of debt collectors that encourage an individual to borrow funds from another creditor reflecting available credit on a credit report after the individual has already informed the debt collector that they do not have the funds to repay their existing loans. Missing the umpteenth payment on a debt is generally a civil matter. However, missing the first payment on a debt could subject an individual to a more severe prosecution and penalties. Debt collectors should be banned from obtaining credit reports and from reporting anything other than a final disposition of an account owned by them.

Moving on to the pre-charge-off, charge-off and recovery-disposition stages of nonperforming accounts is where one starts to see collection patterns of behavior, conduct, techniques and schemes, which often depend on the type of debtor, class of debt and the jurisdiction of the debtor.

The debtor: business owner, project manager, professional individual and consumer; a business owner generally has more discretion, latitude and available resources when dealing with debt collectors than do project managers operating under single client contracts with fixed subcontracts at existing levels of performance creating priority obligations, which are used by debt collectors that specialize in exploiting this knowledge.

Professional individuals having a license or identity under which they produce their income are today the subjects of very aggressive debt collectors with collection activities that go beyond harassment and intentional embarrassments bordering on extortion.

Consumers are generally the focus of debt collection activities designed to prey on their lack of knowledge of: Rights under the law regarding harassment and abusive debt collection practices; Creditor influenced credit counseling employed to drain their cash reserves; Debt collector advantaged financial advice; Unauthorized legal advice and legal threats; Rubber-stamped collection-arbitration combinations; and Collection attorneys that file suit under the rights of a creditor without direction, authorization or verifiable claims from the creditor.

The debt: secured, unsecured, priority and non-priority debt; Secured debts once provided debt collectors with the greatest leverage over a debtor. However, with the extent of sub prime lenders advertising that they may disregard prior foreclosures, repossessions and charged-off debts when considering new loans has defeated the debt collectors' threats of taking such actions and debtors today walk away from their property securing such debts.

Unsecured and non-priority debt receives the greatest range of aggressive and abusive debt collection activity because it has the least effect on the debtor and thereby usually generates the most complaints.

Priority debts involve the least aggressive collection effort simply because of the level of obligation, necessity or legal attachment afforded the debt holder.

The jurisdiction: Chapter 7 vs. 11 or 13 Bankruptcy, civil court matters, voluntary vs. involuntary receiverships, states that allow wage garnishment vs. states that disallow wage garnishment. An individual exempt from garnishment or that is judgment proof is less likely to be sued by a debt collection attorney. However, they are more likely to be harassed with relentless automated calling devices and embarrassed by debt collectors calling neighbors and relatives with fictitious efforts to locate or forward messages.

Those debts related to necessities of life or business or that are used in and for the production of income generally receive the most aggressive collection efforts when known to the debt collector. These are all matters considered by debt collectors in determining their collection process, technique and other activities.

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

Debt collection can be most difficult when competing debt collectors are in pursuit of the same diluted financial resource of repayment. With bankruptcy filings down, restrictive state and federal wage garnishment laws create an automatic obstacle for multiple debt collectors attempting to extract monies from the same individual.

In an attempt to overcome this obstacle, debt collection attorneys file lawsuits and obtain liens clouding the title to real and personal property and block an individual's ability to engage in normal commerce until or unless the individual settles with the debt collector. Other collection attorneys file liens on bank accounts even when it is known to the attorney that the account holds only wages. This constitutes 100% garnishment for which the attorney generally argues that the deposited wages are considered property and no longer exempt or restricted. State and federal laws restricting garnishment were put in place to prevent unsecured creditors from attaching levels of income that leave an individual unable to pay for the necessities of life, which could force them to seek public assistance. It is not in the public interest for taxpayers to subsidize unsecured creditors.

In another attempt to gain a priority over other creditors, debt collection law firms such as Wolpoff & Abramson and Mann Bracken established relationships with the National Arbitration Forum from which they receive rubber-stamped arbitration awards in nearly 100% of the cases. The National Arbitration Forum has issued awards in favor of the creditor/collector even where no arbitration took place, when the individual refused to arbitrate with the National Arbitration Forum outside of their own state, and where the arbitrator had not yet received financial information from the creditor but had received notice that the collector would forward the financial information as soon as it became available. Another deceptive practice involving arbitration occurs when a creditor/collector changes an individual's account number prior to filing an arbitration claim. When the individual files a dispute stating that they have no such account number the National Arbitration Forum forwards a notice stating that the parties have responded and issues an award in favor of the creditor/collector regardless. In a review of recent arbitration claims and activities involving Wolpoff & Abramson, Mann Bracken and the National Arbitration Forum, more than 17% of the arbitration cases were filed on account numbers disputed by individuals having no such account numbers.

4. *Industry Compliance with Applicable Federal and State 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?

The growing number of complaints is the result of the lack of state or federal resources available to respond to complaints, insufficient rewards encouraging legal representation, and no automatic penalty provisions with which an individual may assess their accounts for violations discouraging bad actors from engaging in deceptive, abusive or coercive activities. In-house debt collectors routinely inform individuals that the FTC has no jurisdiction over them and that they do not have to comply with the Fair Debt Collection Practices Act. However, consumers generally do not distinguish between in-house and outside debt collectors.

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?

No – debt verification is inadequate. All debt verifications must include the original creditor, original account number and the date any new account number was assigned and by whom. The verification must include an itemization of the debt being claimed. A significant problem with verification is that it does not provide any notice as to when a debt was actually modified and for what if any reason it was modified. In addition, those debts in writing or that provide a brochure of terms and conditions do not account for mid-month schemes providing special assessments and penalties, which some creditors list as purchases.

The level of documentation necessary to resolve a dispute depends on the type of dispute and when and how the individual discovered the item in controversy. Aside from identity theft, accounting, posting and charge errors, most disputes are a result of special assessments, penalties, interest and other modifications made by the creditor and unknown to the individual but that are disagreeable to the individual when discovered. In such matters the debt collector should be required to provide proof in writing signed by the individual that the creditor had the right to levy the charge and when and how it was applied and posted.

Other disputed debts involve those that have been discharged under bankruptcy, those for which the statute of limitations has run, those that have been previously settled and those that do not belong to the individual at all. In all such matters, if an individual disputes the debt and refuses to pay the debt collector, the debt collector must cease any further debt collection and return the account to the creditor who must file a ***"Verified Proof and Right of Claim"*** in a court having jurisdiction in the resident county of the individual and for which a statutory penalty may be awarded to the disputer if the court rules against the creditor. Should the court rule against a disputer that has abused this process and finds willful or intentional misconduct on the part of the individual then the debt may not be discharged under bankruptcy and additional penalties may be awarded the creditor.

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

Able Debt Settlement, Inc. of Dallas, Texas developed and implemented a creditor/collector processing and settlement support services program and procedure for nonperforming accounts that eliminates (90%) of the wasted human resources spent on nonproductive telephone calls that lead to adversarial and abusive communications and subsequent complaints. This procedure provides bi-monthly updates to creditors and monthly updates to debt collectors regarding the financial condition of individuals experiencing legitimate financial hardships and addresses collection compliance issues for creditors. This process should be made mandatory for all creditors and debt collectors with which individuals voluntarily contact their creditors directly or through a financial representative and that remain in contact with their creditors.

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?

Individuals are not aware of the FDCPA until after they have been abused by a debt collector and contact someone for assistance, usually through the internet. It should be a mandatory requirement for all debt collector correspondence to include in twelve-point print or larger, a reference to a FDCPA website or publication (10) days prior to any debt collector phone call to the individual.

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

NO – individuals are routinely provided false and misleading information regarding their rights or that if they exercise their rights that more aggressive actions may be taken by the "creditor," even though most creditors never give debt collectors any direction or authority to make such representations.

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

Consumers do not know where and how to file complaints and when they do it generally includes miscellaneous and irrelevant information confusing the violation and or lacks the essential elements of an actionable offense. A mandatory debt collector FDCPA notice could include a reference to a website and other resources for directions on how to file a complaint.

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

Consumers' private right of action has become more prevalent since the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act as a result of the increase in the number of attorneys willing to accept such cases. This activity has been limited due to restrictive consumer awards and reasonable attorney's fees. Statutory creditor assessed penalties for their debt collectors' violations and increases in the consumer awards against debt collectors would make this a viable alternative to filing state and federal complaints. Additional rules and regulations should be implemented to suspend or revoke a debt collector's right to practice after repeat offenses.

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?

We find that there are distinct differences in the behavior of consumers within several pattern groups, which have been consistent since at least the 1970's.

Behaviors range from individuals that hide and evade debt collectors; those that attempt to borrow funds from other sources to pay debt collectors out of fear of actions threatened by the debt collector; those that are willing to haggle with the debt collector and those that inform the debt collector that they don't know them and don't owe them anything including the time of day and hang up on them.

6. *Legislative Issues* – see section V Suggestions below.

IV Conclusions

The Federal Reserve reported recently that consumers had a negative savings rate, which actually demonstrates that they are experiencing "deficit spending." Without a more discipline oriented lending and credit issuance criteria in place it should be expected that consumer debt and the number of nonperforming accounts will continue to increase along with the number of accounts turned over to debt collectors.

Many debt collectors constructively apply their technologies, techniques and resources in a manner that is consistent with the law. However, there are numerous debt collectors that abuse their technical access to the personal information of an individual to destructively interfere with the individual's ability to work, service their necessities of life and to engage in normal commerce. The greatest challenge to legitimate debt collectors today actually comes from the competition of less reputable debt collectors that disrupt the lives of the individuals who are voluntarily working with other creditors. If this trend continues, the increases in consumer complaints will eventually ignite a massive national movement calling upon congress to pass such as a "debt collectors don't contact registry" banning other than authorized debt collector calls and correspondence with consumers.

V Suggestions

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?

A "Debt Collector First Notice" must be sent to an individual not less than (10) days prior to any telephone call or subsequent letter and include: "Verified Proof and Right of Claim;" FDCPA Disclosure and Agency Contact; Right of Dispute; Debt Collector Prohibitions; and an Automatic Penalty Assessment for Debt Collector Violations.

In addition, any individual enrolled in a personal or private receivership such as a qualified "Debt Settlement Program" designed to resolve an insolvent financial condition should be entitled to an "automatic stay" against creditor lawsuits and debt collector harassment for the duration of the program or until the enrolled accounts are resolved.

The results of such programs have proven to provide equal treatment and distribution to creditors, utilizes far less human resources of a creditor or debt collector collection department, and provides monthly or other periodic notices for creditors and debt collectors in support of their collection requirements.

Another benefit from such programs is that they tend to be less disruptive to the family unit and do not interfere with an individual's work or ability to engage in normal commerce, although usually restricted financially.

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.

YES

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

YES

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

NO – this is not necessary. After a "cease communication" notice the debt collector may only forward a written notice to the individual. The debt collector may not contact any party other than the original creditor regarding the account. Debt collectors often misuse this opportunity to claim the individual confirmed a debt, reaffirmed a debt or rescinded a prior cease notice.

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.

Debt collectors should be banned from accessing and reporting to credit reporting bureaus anything other than the final disposition of an account owned by the debt collector. All other reporting must be through the original creditor.

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

A "Debt Collector First Notice" must be sent to an individual not less than (10) days prior to any telephone call or subsequent letter and include "Verified Proof and Right of Claim."

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

A "Debt Collector First Notice" must be sent to an individual not less than (10) days prior to any telephone call or subsequent letter and include "Verified Proof and Right of Claim."

The sale of a debt should require that notice be forwarded the debtor from the current holder identifying the debt buyer and their contact information, account number, account balance transferred and the right to dispute the stated account balance.

It is unconscionable for a debt collector to call and harass or threaten anyone for an immediate payment by any electronic means over a telephone. It should become mandatory that no debt collector may receive monies on account of a debt from the debtor without having a written agreement signed by the debtor and defining the terms, conditions and accounting of the monies to be paid by the debtor.

Reasonable rules and regulations controlling the collection practices of debt collectors that require mandatory notices having prescribed form and content along with automatic penalties assessed to violators is capable of eliminating (90%) of the debt collection complaints. Such a statutory process will reduce the operating expenses of both the creditors and the debt collectors without disrupting the lives of the individuals and is long over due.