The CFPB reports that the majority of credit card issuers that responded to its survey outsource some collection activities to first-party collectors.[269] These first-party collectors may engage in collection tasks like "mailing a reminder to the consumer to pay a bill or placing a phone call a few days into delinquency."[270]

Accounts are typically outsourced "before 60 to 90 days of delinquency."[271] First-party collectors are typically required to use the credit card issuers case management system and dialer and to comply with any contact limit policies that the credit card issuer maintains for internal collections.[272]

Footnotes

269 Consumer Fin. Protection Bur., The Consumer Credit Card Market 249 (Dec. 2015).

270 *Id.* at 243.

271 *Id.* at 248.

272 *Id.* at 248–249.

Source: National Consumer Law Center, Fair Debt Collection [9th ed.], updated at www.nclc.org/library
Source URL: https://library.nclc.org/fdc/010405

A collection industry survey of third-party debt collectors found that, in 2016, ninety-eight percent of respondents use letters and phone calls to contact consumers, sixty-three percent use voicemail,[280] thirty-six percent use email, and ten percent use social media.[281]

In the CFPB's survey of third-party debt collectors, some survey respondents indicated that clients imposed requirements around call frequencies—either maximum or minimum numbers of collection calls.[282] Additionally, some collection agencies reported having their own internal policies regarding call limits.

Footnotes

280 Consumer Fin. Protection Bur., Study of third-party debt collection operations 28–29 (July 2016) (reporting that 42 out of 58 survey respondents (72%) leave voicemails).

281 Ernst & Young, The Impact of Third-Party Debt Collection on the US National and State Economies in 2016, p. 5 (Nov. 2017) (report commissioned by ACA International).

282 Consumer Fin. Protection Bur., Study of third-party debt collection operations 28–29 (July 2016).

Source: National Consumer Law Center, Fair Debt Collection [9th ed.], updated at www.nclc.org/library
Source URL: https://library.nclc.org/fdc/01040603

A third-party collector's goal is to contact consumers and convince them to pay as much as possible as soon as possible.[284] Collection agencies are racing against the clock imposed by their time limited placement (discussed above). Agencies may also be in a competition with other collection agencies through "champion-challenger" placement that pits two collection agencies against each other with the promise that the winner will receive a larger share of accounts for collection in the future.[285]

In order to enhance their ability to obtain payments, creditors are generally given authority to offer discounts on the face value of the debt. As the debt ages, the amount of the discount they are authorized to offer consumers may increase.[286]

In most cases, collection agencies mail a letter to the address that they have on file for the consumer prior to trying to make contact by phone or otherwise. The CFPB found that more than ninety percent of respondents to its survey of third-party collectors, send validation notices shortly after new accounts are placed with their collection agency, often within forty-eight hours.[287] Eighty-six percent of respondents used a letter vendor to send postal mail.[288]

When debt collectors start placing calls, they may use a variety of telephone technologies, such as autodialers, to try to reach the consumer and collection management systems to track collection efforts. For a discussion of technology used in collection efforts, see § 1.5 [1], *infra*.

Once collection agents reach consumers on the phone, they may have detailed procedures in place governing those interactions. For example, some collectors use scripts or "talk offs" (written or oral) to deal with frequent themes such as sickness or unemployment that come up in collection calls. Some collectors use abusive talk offs to ratchet up the pressure on consumers to make a payment.[289]

When consumers do not make voluntary payments, collection agencies may be authorized to use litigation as a collection method. In some states debt collection agencies can sue consumers in courts themselves.[290] Other collection agencies may, with approval from the creditor, contract with collection attorneys to place accounts for litigation.[291]

Footnotes

284 *See* Consumer Fin. Protection Bur., The Consumer Credit Card Market 253 (Dec. 2015).

285 *Id.* at 245.

286 *Id.*

287 Consumer Fin. Protection Bur., Study of third-party debt collection operations 28 (July 2016) (53/58 * 100 = 91.4%).

288 *Id.* at 32 (50/58 * 100 = 86.2%).

289 *See, e.g.,* Planet Money, Episode 574: The Buffalo Talk-Off (Nov. 16, 2016).

290 *See* Paul Kiel, *For Nebraska's Poor: Get Sick and Get Sued*, ProPublica, Apr. 28, 2016 (indicating that collection agencies filed large volumes of collection lawsuits in Nebraska, Indiana, and Washington).

291 *See* Consumer Fin. Protection Bur., The Consumer Credit Card Market 245 (Dec. 2015).

Source URL: https://library.nclc.org/fdc/01040605

Links

[1] https://library.nclc.org/nclc/link/FDC.01.05

Many sellers do not guarantee the accuracy of the data that they transfer to the first debt buyer. Instead of affirmative promises, many debt purchase and sale agreements specifically disclaim important aspects of the transaction.[300] For example, many sellers do not warrant that they have title to the accounts they sell, disclaim that the amounts listed as owed are correct, and disclaim compliance with applicable laws.[301] Moreover, some debt purchasing agreements state, "Buyer expressly acknowledges that . . . documentation may not exist with respect to the Loans purchased by Buyer."[302]

Although the CFPB reported that their review of some 2013–2015 debt sale agreements from credit card issuers included affirmative representations about title, compliance with consumer laws, and accuracy, they noted that in some cases these representations contained significant caveats such as "to the best of the seller's knowledge" or stated that records are "an accurate copy of the seller's records," rather than stating that the records were true and correct.[303] It is not clear whether the changes noted by the CFPB are present in purchase and sale agreements for other types of debts.

Despite disclaimers or caveats about accuracy, debt buyers tend to represent that information as entirely correct and accurate when collecting debts.

Footnotes

300 Dalié Jiménez, *Dirty Debts Sold Dirt Cheap,* 52 Harv. J. on Legis. 41 (2015); Fed. Trade Comm'n, The Structure and Practices of the Debt Buying Industry (Jan. 2013).

301 *Id.*

302 Loan Sale Agreement between FIA Card Servs., N.A. and Cavalry SPV I, L.L.C. 31 (Oct. 29, 2008) [1], *available at* http://dalie.org *and* http://perma.cc; Loan Sale Agreement between FIA Card Servs., N.A. and CACH, L.L.C. 31 (Apr. 14, 2010) [2], *available at* http://dalie.org *and* http://perma.cc; Loan Sale Agreement between FIA Card Servs., N.A. and CACH, L.L.C. 29 (Aug. 11, 2009) [3], *available at* http://dalie.org *and* http://perma.cc.

303 Consumer Fin. Protection Bur., The Consumer Credit Card Market (Dec. 2015).

Source: National Consumer Law Center, Fair Debt Collection [9th ed.], updated at www.nclc.org/library
Source URL: https://library.nclc.org/fdc/01040702

Links
[1] http://dalie.org/wp-content/uploads/2014/10/2008.10.29-FIA-Card-Services-to-Cavalry-SPV-I-LLC.pdf
[2] http://dalie.org/wp-content/uploads/2014/10/2010.04.14-FIA-to-CACH-LLC.pdf
[3] http://dalie.org/wp-content/uploads/2014/10/2009.08.11-FIA-Card-Services-to-CACH-LLC.pdf

Debt buyers may obtain very little information about the consumer debts that they buy. The FTC reviewed the types of information transferred in 3400 debt portfolios sales between 2006 and 2009, finding that important pieces of information were not transferred with the data file.[304] For example, only thirty percent of accounts contained information about the interest rate, only eleven percent listed the principal amount, only thirty-seven percent contained information about finance charges and fees, and only thirty-five percent reported the date of first default.[305] The FTC also found that debt buyers almost never received documentation at the time of sale, finding that account statements and terms and conditions were only transmitted with six percent of accounts.[306] Moreover, debt buyers rarely received any dispute history or information about whether a prior dispute had been resolved.[307]

The FTC further found that, although sellers typically agreed to provide missing documents upon request for a certain percentage of accounts, debt buyers typically had to pay $5 to $10 per document after they exceeded that percent or after the time to request additional documentation ran out.[308] If the first purchaser sells debts to a second debt buyer, the seller typically has no obligation to provide documents to the second debt buyer, who would have to submit any request for documents to the first debt buyer and ask them to transmit the request to the seller.[309]

In August 2014, the Office of the Comptroller of the Currency (OCC) issued guidance on debt sales to the banks and financial institutions that it regulates.[310] The Bulletin instructs banks to provide debt buyers with a signed contract and the last twelve account statements for each account.[311] It also requires banks to provide additional information such as details of any unresolved disputes and an itemization of the principle, interest and fees.[312]

The CFPB found that in mid-2015, about a year after the OCC's guidance, credit card issuers were providing documentation of the following information to sellers:

> [A]ccount statements, the account number, the account holder's identifying information (such as their Social Security number), written applications, affidavits, cease and desist indicators, attorney representation indicators, and outstanding principal, interest, and fees at charge-off.[313]

Although the OCC's Bulletin calls for production of the twelve most recent monthly statements, the CFPB found that some issuers only provided the last transaction statement and a "a 'charge-off statement' detailing the final payment made, the remaining balance, and the date of charge-off."[314] The CFPB reported that half of the credit card issuers charged a document retrieval fee for any document the debt buyer does not have, with fees ranging from $5 to $15 per document.[315]

At this time, there are no regulations similar to the OCC guidance that applies more broadly to other types of debt sales. Thus, any improvements in information and documentation transfers observed in debts sales from banks may not be reflected in the practices of other debt sellers.

The lack of reliable information contributes to collection problems like collecting from or suing the wrong person or for the wrong amount or attempting to collect accounts that have already been paid or settled.

Footnotes

304 Fed. Trade Comm'n, The Structure and Practices of the Debt Buying Industry, at T-9 to T-10 (Jan. 2013).

305 *Id.*

306 *Id.* at T-11.

307 *Id.* at 37.

308 *Id.* at 39–40.

309 *Id.* at 27–28.

310 Office of the Comptroller of the Currency, Risk Management Guidance, Bulletin 2014-37 (Aug. 4, 2014).

311 *Id.*

312 *Id.*

313 Consumer Fin. Protection Bur., The Consumer Credit Card Market 261 (Dec. 2015).

314 *Id.*

315 *Id.*

Source: National Consumer Law Center, Fair Debt Collection [9th ed.], updated at www.nclc.org/library
Source URL: https://library.nclc.org/fdc/01040703

The appellate courts in recent years have generally rejected a narrow construction of the term "debt," maintaining FDCPA protection for collection practices involving debts arising from mortgages, credit cards, student loans, dishonored checks, condominium fees, and rent. Dicta in *Zimmerman v. HBO Affiliate Group*,[639] a Third Circuit decision, had narrowly construed the term "debt" by stating that an obligation must involve a credit agreement, or the deferral of payment, to be covered by the FDCPA.[640] Subsequently, the Third Circuit in *Pollice v. National Tax Funding, L.P.* rejected the *Zimmerman* dicta and held that some utility bills were covered by the Act.[641] *Pollice* followed the approach of other appellate courts that rejected that narrow interpretation and followed the plain language of the Act applying it to the collection of dishonored checks. The first appellate decision to squarely address the issue, *Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C.*, ruled that the clear language of the FDCPA term "debt" applied the Act to a dishonored check.[642] The court looked at the definition of debt and found that it is limited to "transactions" but clearly not to "credit transactions." It determined that this was a conscious decision by Congress because earlier bills had contained a definition of debt limited to credit transactions, an industry witness at a hearing on a subsequent bill that did not contain the credit limitation stated that the Act would apply to dishonored checks, and a congressional report stated it would apply to checks.[643] The *Bass* decision rejected the argument that other subtitles of the Consumer Credit Protection Act were limited to credit transactions by pointing out that another subtitle, the Electronic Funds Transfer Act,[644] does not involve credit for the most part. The *Bass* decision was followed by decisions in the Seventh,[645] Eighth,[646] Third,[647] Ninth,[648] and Tenth[649] Circuits holding that the plain language of the Act applied to the collection of checks written to purchase personal or household goods. Certiorari was denied in several of those cases,[650] and the arguments that checks are not covered and that the FDCPA applies only to credit transactions no longer have any vitality.[651] As listed below, those decisions were followed by courts determining that condominium fees, rent, mortgages, and other types of consumer debt were covered by the FDCPA.

The term is clearly broad enough to include:

- Rent;[652]
- Medical bills;[653]
- Utility bills;[654]
- Insurance bills and claims;[655]
- Student loans;[656]
- Campground memberships;[657]
- Credit cards;[658]
- Condominium fees;[659]
- Attorney fees;[660]
- Judgments;[661]
- Obligations discharged in bankruptcy;[662]
- Homeowner association fees;[663]
- Mortgages;[664]
- Post-foreclosure deficiency claims;[665]
- Fees arising from a vehicle rental[666] and finance agreement[667]; and
- Other debts.[668]

In *Oppenheim v. I.C. Sys., Inc.*,[669] the Eleventh Circuit found that an obligation owed to PayPal was a debt under the FDCPA even though the debt arose while an individual was acting as a seller, selling his used laptop. The sale of a laptop over Craigslist resulted in the purchaser making a fraudulent deposit into the FDCPA plaintiff's PayPal account, obligating the plaintiff to reimburse PayPal. PayPal's collection agency argued the FDCPA did not cover the transaction. The Eleventh Circuit found that there were two transactions: the sale of the laptop and PayPal's attempt to reverse the payment to the seller. The second transaction involved the individual seller's purchase of PayPal's money transfer services, which was within the FDCPA's definition of a covered "debt." The court explained: "This Court previously has recognized the broad scope of 'debt' in the FDCPA, agreeing with the Seventh Circuit that '[a]s long as the transaction creates an obligation to pay, a debt is created.'"[670] The debt collector failed to timely argue that the transaction did not meet the FDCPA requirement that it be "primarily for personal, family, or household purposes," so the court refused to consider the issue. A federal law passed in 2004 applied FDCPA protections to collection agencies collecting federal tax debts for the IRS.[671]

Also within the definition of "debt" are automobile purchases and credit,[672] and car leases.[673] A court held that an obligation under a condominium agreement to remove a swimming pool did not involve a debt as it did not involve an obligation to pay

money.[674] The term "debt" also applies to an alleged obligation. The effect of this is to place the collection of an invalid, void, or nonexistent debt under the FDCPA's coverage.[675] Debt collectors may argue that they are only enforcing a security interest and not seeking payment on the debt; this is discussed at § 4.2.6 [1], *supra*. It should be noted that a federal law passed in 2004 applied FDCPA protections to collection agencies collecting federal tax debts for the IRS.[676]

Footnotes

639 834 F.2d 1163 (3d Cir. 1987).

640 *Id. See also* Shorts v. Palmer, 155 F.R.D. 172 (Bankr. S.D. Ohio 1994) (debt from shoplifting not covered); Renner v. Derin Acquisition Corp., 1996 WL 221160 (Ohio. Dist. Ct. May 13, 1996) (invalid discount coupon).

641 Pollice v. Nat'l Tax Funding, L.P., 225 F.3d 379 (3d Cir. 2000). *See also* Lipscomb v. The Raddatz Law Firm, P.L.L.C., 109 F. Supp. 3d 251 (D.D.C. 2015) (majority of circuits hold that an extension of credit is not required for an obligation to constitute a "debt" under the Act; rent, including overdue fees for water service, was consumer debt).

642 111 F.3d 1322 (7th Cir. 1997).

643 *Id.*

644 15 U.S.C. §§ 1693 to 1693r.

645 Ryan v. Wexler & Wexler, 113 F.3d 91 (7th Cir. 1997).

646 Duffy v. Landberg, 133 F.3d 1120 (8th Cir. 1998). *See also* Volden v. Innovative Fin. Sys., Inc., 440 F.3d 947, 951 (8th Cir. 2006); Page v. Checkrite, Ltd., 1984 WL 1052036 (D. Neb. Apr. 2, 1984).

647 Fed. Trade Comm'n v. Check Investors, Inc., 502 F.3d 159 (3d Cir. 2007).

648 Charles v. Lundgren & Assocs., P.C., 119 F.3d 739 (9th Cir. 1997); Radi v. Bennett Law Offices, 117 F.3d 1426 (9th Cir. 1997); Draper v. CRA Sec. Sys., Inc., 117 F.3d 1424 (9th Cir. 1997).

649 Snow v. Jesse L. Riddle, P.C., 143 F.3d 1350 (10th Cir. 1998). *See also* Brown v. Budget Rent-A-Car Sys., Inc., 119 F.3d 922, 924 (11th Cir. 1997) (claim against consumer for truck rental fees arising in connection with accident involving rental truck was "debt" covered by FDCPA; credit is not requirement for FDCPA coverage of debt).

650 Duffy v. Landberg, 133 F.3d 1120 (8th Cir. 1998); Charles v. Lundgren & Assocs., P.C., 119 F.3d 739 (9th Cir. 1997); Ryan v. Wexler & Wexler, 113 F.3d 91 (7th Cir. 1997).

651 *See* Appx. E.1.1.3 [2], *infra*.

652 *E.g.*, Romea v. Heiberger & Assocs., 163 F.3d 111 (2d Cir. 1998); Emanuel v. Am. Credit Exch., 870 F.2d 805 (2d Cir. 1989); Gonzalez v. Law Office of Allen Robert King, 195 F. Supp. 3d 1118 (C.D. Cal. 2016); Lipscomb v. The

Raddatz Law Firm, P.L.L.C., 109 F. Supp. 3d 251 (D.D.C. 2015); Smith v. Nat'l Credit Sys., Inc., 2014 WL 2003025 (N.D. Ga. May 15, 2014); Riley v. Giguiere, 2008 WL 436943 (E.D. Cal. Feb. 14, 2008); Daniels v. Baritz, 2003 WL 21027238 (E.D. Pa. Apr. 30, 2003); Wenrich v. Robert E. Cole, P.C., 2000 WL 4994 (E.D. Pa. Dec. 22, 2000); Garmus v. Borah, Goldstein, Altschuler & Schwartz, P.C., 1999 WL 46682 (S.D.N.Y. Feb. 1, 1999); Strange v. Wexler, 796 F. Supp. 1117 (N.D. Ill. 1992); Hodges v. Sasil Corp., 915 A.2d 1 (N.J. 2007). *See* Leasure v. Willmark Communities, Inc., 2011 WL 2267598 (S.D. Cal. June 7, 2011). *See also* Am. Mgmt. Consultant, L.L.C. v. Carter, 915 N.E.2d 411 (Ill. App. Ct. 2009) (sought back-rent). *But see* Baer v. Harmon Law Offices, P.C., 2009 WL 102698 (D. Mass. Jan. 14, 2009) (damages for holding over, not rent and not covered by FDCPA). *But cf.* Andrews v. Campbell, 1997 WL 148588 (E.D. Pa. Mar. 21, 1997) (rental of real estate was not debt primarily for personal, family, or household purposes). *See generally* Appx. E.1.1.2 [3], *infra*; FTC Official Staff Commentary § 803(6)-1, *discussed at* § 3.4.4.1.4 [4], *supra*, *reproduced at* Appx. C.2 [5], *infra*; Dempsey, FTC Informal Staff Letter (Sept. 13, 1996); Kaufman, FTC Informal Staff Letter (June 12, 1988).

653 *E.g.*, Pipiles v. Credit Bureau, Inc., 886 F.2d 22 (2d Cir. 1989); Ferri v. Del Medico, 2013 WL 12156114 (M.D. Fla. May 21, 2013) (underlying loan was to help a family member in "financial difficulty due to an illness"); Healy v. Jzanus Ltd., 2002 WL 31654571 (E.D.N.Y. Nov. 20, 2002); Frazier v. Absolute Collection Serv., Inc., 767 F. Supp. 2d 1354 (N.D. Ga. 2011); Campion v. Credit Bureau Services, Inc., 2000 WL 33255504 (E.D. Wash. Sept. 19, 2000); Creighton v. Emporia Credit Serv., Inc., 981 F. Supp. 411 (E.D. Va. 1997); Adams v. Law Offices of Stuckert & Yates, 926 F. Supp. 521 (E.D. Pa. 1996); Bingham v. Collection Bureau, Inc., 505 F. Supp. 864 (D.N.D. 1981); FTC Official Staff Commentary § 803(5)-1, *discussed at* § 3.4.4.1.4 [4], *supra*, *reproduced at* Appx. C.2 [5], *infra*; Isgrigg, FTC Informal Staff Letter (Dec. 22, 1992); Jack Mailman & Leonard Flug D.D.S., P.C. v. Whaley, 2002 WL 31988623 (N.Y. Civ. Ct. Nov. 25, 2002). *See also* Kelly v. Montgomery Lynch & Assocs., Inc., 2008 WL 1775251 (N.D. Ohio Apr. 15, 2008). *See generally* Cutter, FTC Informal Staff Letter (Dec. 13, 1996).

654 *E.g.*, Piper v. Portnoff Law Assocs., Ltd., 396 F.3d 227 (3d Cir. 2005) (municipal water bill; rejected argument that there was an in rem exemption in FDCPA); Pollice v. Nat'l Tax Funding, L.P., 225 F.3d 379 (3d Cir. 2000) (municipal water and sewer bills); Gulisano v. J.A. Cambece Law Office, 2016 WL 7536097 (S.D. Fla. Aug. 8, 2016) (personal telephone services); Albanese v. Portnoff Law Assocs., Ltd., 301 F. Supp. 2d 389 (E.D. Pa. 2004) (fact question remained as to whether municipal trash services are consumer debt); Clay v. Melchionne, 2000 WL 1838368 (D. Conn. Dec. 7, 2000) (municipality water usage fee); Britton v. Weiss, 1989 WL 148663 (N.D.N.Y. Dec. 8, 1989) (telephone bill); Florence v. Nat'l Sys., 1983 U.S. Dist. LEXIS 20344 (N.D. Ga. Oct. 14, 1983) (telephone bill); Keauhou Master Homeowners Ass'n, Inc. v. County of Hawaii, 87 P.3d 883 (Haw. 2004) (sewer debts covered); Appx. E.1.1.5.1.1 [6], *infra*. *See also* Parks v. Portnoff Law Assocs., 243 F. Supp. 2d 244 (E.D. Pa. Jan. 22, 2003) (disputed claim that municipal assessments for trash, water, and sewer charges were covered by FDCPA was settled); Allen v. BRT Util. Corp., 1996 WL 776583 (D. Conn. Oct. 24, 1996) (water service debt). *But see* Boyd v. J.E. Robert Co., 765 F.3d 123 (2d Cir. 2014) (municipal water and sewer liens akin to property taxes); Reilly v. Northeast Revenue Services, L.L.C., 2013 WL 3974181 (M.D. Pa. Aug. 1, 2013) (city's mandatory refuse disposal fee imposed by ordinance is not a "debt" because it "is more akin to a tax"); Gagliardi v. Clark, 2006 WL 2847409 (W.D. Pa. Sept. 28, 2006) (dismissing *pro se* plaintiffs' FDCPA claims complaining that utility shut off their water service, since complaint failed to allege that defendants were collecting "debt" or that they were "debt collectors").

655 *See* Heintz v. Jenkins, 514 U.S. 291, 115 S. Ct. 1489, 131 L. Ed. 2d 395 (1995); Hamilton v. United Healthcare, Inc., 310 F.3d 385 (5th Cir. 2002) (subrogation claim from an insurer for reimbursement for medical payments to its insured was "debt" under FDCPA), *aff'd,* 104 Fed. Appx. 942 (5th Cir. 2004); Kahn v. Rowley, 968 F. Supp. 1095 (M.D. La. 1997) (withdrawn from hard cover publication) (automobile liability insurance); Correa v. Rowley, 1997 WL 714858 (E.D. La. Nov. 14, 1997) (car insurance); Stewart v. Salzman, 1987 U.S. Dist. LEXIS 16865 (D. Conn. Nov. 2, 1987). *See also* Brunn v. Gaines, 1995 WL 88799 (N.D. Ill. Mar. 1, 1995) (vague claims that unauthorized insurance had been added to his loan by creditor failed to state claim against assignee, which sought only to collect amount assigned); Cutter, FTC Informal Staff Letter (Dec. 13, 1996); Hutchinson, FTC Informal Staff Letter (June 22, 1987) (mortgage guarantee insurer). *But see* Horowitz v. Cont'l Cas. Co., 2015 WL 9460111 (D. Md. Dec. 28, 2015); Meyer v. Credit Collection Services, 2013 WL 84929 (N.D. Ohio Jan. 7, 2013) (subrogated accident claim was not within FDCPA since it was not a consensual transaction as the driver found at fault was not insured); Taylor v. Javitch, Block & Rathbone, L.L.C., 2012 WL 2375494 (N.D. Ohio June 22, 2012) (adjustment for damages on behalf of an insured against another driver arising out of an accident does not arise out of any consensual or business dealing and does not constitute a "transaction" under the FDCPA).

656 *See* Kort v. Diversified Collection Services, Inc., 394 F.3d 530 (7th Cir. 2005); Brannan v. United Student Aid Funds, Inc., 94 F.3d 1260 (9th Cir. 1996); Juras v. Aman Collection Serv., Inc., 829 F.2d 739 (9th Cir. 1987); Urquiaga v. Fin. Bus. & Consumer Solutions, Inc., 2016 WL 6877735 (S.D. Fla. Nov. 22, 2016); Cutler ex rel. Jay v. Sallie Mae, Inc., 2014 WL 7745878 (C.D. Cal. Sept. 9, 2014); Smith v. Progressive Fin. Services, Inc., 2013 WL 3995004 (D. Or. Aug. 1, 2013); McComas v. Fin. Collection Agencies, 1997 WL 118417 (S.D. W. Va. Mar. 7, 1997); Carrigan v. Cent. Adjustment Bureau, Inc., 494 F. Supp. 824 (N.D. Ga. 1980); FTC Official Staff Commentary § 803(5)-1, *discussed at* § 3.4.4.1.4 [4], *supra*, *reproduced at* Appx. C.2 [5], *infra*; Solomon, FTC Informal Staff Letter (June 5, 1987); Appx. E.1.1.5.1.2 [7], *infra*. While not questioning coverage of student loan, many decisions have found student loan guarantee agencies are not covered "debt collectors." Cf. Skerry v. Massachusetts Higher Educ. Assistance Corp., 73 F. Supp. 2d 47 (D. Mass. 1999); Pelfrey v. Educ. Credit Mgmt. Corp., 71 F. Supp. 2d 1161 (N.D. Ala. 1999), *aff'd*, 208 F.3d 945 (11th Cir. 2000); Montgomery v. Educ. Credit Mgmt. Corp., 238 B.R. 806 (D. Minn. 1999); Coppola v. Connecticut Student Loan Found., 1989 WL 33707 (D. Conn. Mar. 22, 1989); Fries v. Norstar Bank, 1988 WL 75773 (D. Md. Aug. 31, 1988); Games v. Cavazos, 737 F. Supp. 1368 (D. Del. 1990); Fischer v. Unipac Serv. Corp., 519 N.W.2d 793 (Iowa 1994). *See generally* §§ 4.2.3 [8], 4.3.8 [9], 4.3.10 [10], *supra*; National Consumer Law Center, Student Loan Law [11] (5th ed. 2015), *updated at* www.nclc.org/library.

657 *See* Dorsey v. Morgan, 760 F. Supp. 509 (D. Md. 1991). *See also* Herbert v. Monterey Fin. Services, Inc., 863 F. Supp. 76 (D. Conn. 1994) (vacation timeshare covered).

658 *See* Laufman v. Phillips & Burns, Inc., 2008 WL 190604 (M.D. Fla. Jan. 22, 2008); Epstein v. Beck & McDonald, Clearinghouse No. 50,284 (N.D. Tex. 1994); Challen v. Town & Country Charge, 545 F. Supp. 1014 (N.D. Ill. 1982); Bell, FTC Informal Staff Letter (May 10, 1978). *See also* Elliott v. GC Services, L.P., 2011 WL 5975671 (M.D. Fla. Nov. 28, 2011) (purchase of an air conditioning system); FTC Official Staff Commentary § 803(5)-2, *reproduced at* Appx. C.2 [5], *infra*.

659 Haddad v. Alexander, Zelmanski, Danner & Fioritto, P.L.L.C., 698 F.3d 290 (6th Cir. 2012); Ladick v. Van Gemert, 146 F.3d 1205 (10th Cir. 1998); Newman v. Boehm, Pearlstein & Bright, Ltd., 119 F.3d 477 (7th Cir. 1997); Kelly v. Dunlap & Shipman, P.A., 2017 WL 528487 (N.D. Fla. Feb. 7, 2017); Smith v. Law Offices of Kirk A. Cullimore, L.L.C., 2014 WL 2462541 (D. Utah June 2, 2014). *See also* Appx. E.1.1.2 [3], *infra*.

660 See Person v. Stupar, Schuster & Cooper, S.C., 136 F. Supp. 2d 957 (E.D. Wis. 2001); Hodges v. Feinstein, Raiss, Kelin & Booker, L.L.C., 893 A.2d 21 (N.J. Super. Ct. App. Div. 2006) (nonpayment of costs and attorney fees), *aff'd sub nom.* Hodges v. Sasil Corp., 915 A.2d 1 (N.J. 2007). *But see* Vaile v. Willick, 2008 WL 204477 (W.D. Va. Jan. 24, 2008) (attorney fees for representing spouse and children seeking child support not a consumer debt as ordered by court, not considering the attorney's fee agreement).

661 *See* Bath, FTC Informal Staff Letter (May 28, 1987). *See also* Shula v. Lawent, 359 F.3d 489 (7th Cir. 2004) (court costs); Fedele, FTC Informal Staff Letter (Aug. 30, 1996) (judgments covered); § 12.5.4 [12], *infra*. *But see* Beal v. Himmel & Bernstein, L.L.P., 615 F. Supp. 2d 214 (S.D.N.Y. 2009) (judgment to pay legal fees incurred in post-divorce litigation was not "debt"); Cook v. Hamrick, 278 F. Supp. 2d 1202 (D. Colo. 2003) (attorney fee claim was not based on lease but eviction); Goist v. United States Bureau of Prisons, 2002 WL 32079467 (D.S.C. July 31, 2002) (criminal restitution debt not consumer transaction), *aff'd*, 54 Fed. Appx. 159 (4th Cir. 2003); McCarthy v. Rosenthal, 1996 WL 249991 (D. Md. Jan. 5, 1996).

662 *See* Shaw v. Bank of Am., 2015 WL 224666 (D. Mass. Jan. 15, 2015); Williams v. Edelman, 408 F. Supp. 2d 1261 (S.D. Fla. 2005); Peeples v. Blatt, 2001 WL 921731 (N.D. Ill. Aug. 15, 2001); Degrosiellier v. Solomon & Solomon, P.C., 2001 WL 1217181 (N.D.N.Y. Sept. 27, 2001); § 13.3 [13], *infra*.

663 *See* Mashiri v. Epsten Grinnell & Howell, 845 F.3d 984 (9th Cir. 2017) (overdue HOA assessment fee was a debt; late and collection fees related to assessment fee were not separately addressed); Agrelo v. Affinity Mgmt. Serv., L.L.C., 841 F.3d 944 (11th Cir. 2016) (contractual obligation to pay assessment to homeowner's association is a debt under

Florida state version of FDCPA; although assessment stems from a fine, debt is covered because it arose from consumer contract and not solely by operation of law or as a result of tort damages); Gomez v. Niemann & Heyer, L.L.P., 2016 WL 3562148 (W.D. Tex. June 24, 2016); Porras v. Vial Fotheringham L.L.P., 2015 WL 2449486 (D. Or. May 21, 2015); Abby v. Paige, 2013 WL 141145 (S.D. Fla. Jan. 11, 2013), *aff'd*, 553 Fed. Appx. 970 (11th Cir. 2014); Garner v. Asset Mgmt. Assocs., Inc., 2011 WL 6398112 (D. Utah Dec. 20, 2011); Koch v. Atkinson, Diner, Stone, Mankuta, & Ploucha, P.A., 2011 WL 4499100 (S.D. Fla. Sept. 27, 2011); Ferrell v. Cmty. Mgmt. Services, L.L.C., 2011 WL 1750452 (D. Del. May 6, 2011); Appx. E.1.1.2 [3], *infra*. See also Calvert v. Alessi & Koenig, L.L.C., 2013 WL 592906 (D. Nev. Feb. 12, 2013) (attorneys for the association were debt collectors). But see Mediterranean Villas Condo. Ass'n, Inc. v. Moors Master Maint. Ass'n, Inc., 2012 WL 882508 (S.D. Fla. Mar. 14, 2012); Dikun v. Streich, 369 F. Supp. 2d 781 (E.D. Va. 2005); Fuller v. Becker & Poliakoff, P.A., 192 F. Supp. 2d 1361 (M.D. Fla. 2002); Taylor v. Mount Oak Manor Homeowners Ass'n, Inc., 11 F. Supp. 2d 753 (D. Md. 1998); Thies v. Law Off?ces of William A. Wyman, 969 F. Supp. 604 (S.D. Cal. 1997). *But see* § 4.4.2.3 [14], *infra*.

664 *See* Glazer v. Chase Home Fin. L.L.C., 704 F.3d 453 (6th Cir. 2013) (home loan is a "debt" even if it is secured); Reese v. Ellis, Painter, Ratterree & Adams, L.L.P., 678 F.3d 1211 (11th Cir. 2012); Greco v. Ocwen Fin. Corp., 2016 WL 7183044 (D.N.J. Mar. 28, 2016); Kabir v. Freedman Anselmo Lindberg L.L.C., 2015 WL 4730053 (N.D. Ill. Aug. 10, 2015); Sheldon v. Clarfield, Okon, Salomone & Pincus, P.L., 2015 WL 4651320 (S.D. Fla. July 31, 2015); Goodin v. Bank of Am., 2015 WL 3866872 (M.D. Fla. June 23, 2015); Bieber v. J. Peterman Legal Group Ltd., 104 F. Supp. 3d 972 (E.D. Wis. 2015); Glenn v. FNF Servicing, Inc., 2013 WL 4095524 (E.D.N.C. Aug. 13, 2013) § 4.2.6.3 [15], *supra*. *See also* Pinson v. JP Morgan Chase Bank, 646 Fed. Appx. 812 (11th Cir. 2016) (obligation to pay residential mortgage qualifies as "debt" for purposes of FDCPA); Bush v. Loanstar Mortg. Services, L.L.C., 286 F. Supp. 2d 1210 (N.D. Cal. 2003) (loan to purchase residence); Caron v. Charles E. Maxwell, P.C., 48 F. Supp. 2d 932 (D. Ariz. 1999) (collector must comply with FDCPA whether home inherited, donated, or purchased); Garner v. Kansas, 1999 WL 262100 (E.D. La. Apr. 30, 1999); Galuska v. Blumenthal, 1994 WL 323121 (N.D. Ill. June 26, 1994) (eviction action after settlement not covered because no debt was involved); Shapiro & Meinhold v. Zartman, 823 P.2d 120 (Colo. 1992); §§ 4.3.9 [16], 4.3.10 [10], *supra*, Appx. E.1.2.2.3 [17], *infra*. *But see* Randerson v. Taylor Hayden, P.L.L.C., 2015 WL 4429354 (M.D. Fla. July 20, 2015); Hutsler v. Shapiro & Kreisman, L.L.C., 2014 WL 2452977 (E.D. Mo. June 2, 2014) (postforeclosure eviction did not involve a debt); Fuentes v. Deutsche Bank, 2009 WL 1971610 (S.D. Cal. July 8, 2009) (dismissing FDCPA claim on pleadings since "the act of foreclosing on a residential loan [is] outside the definition of debt collection"); Burks v. Washington Mut. Bank, 2008 WL 4966656 (E.D. Mich. Nov. 17, 2008) (where consumer's home had been sold at sheriff's sale which fully paid off mortgage, "debt" no longer existed, and summary judgment was awarded to debt collector on FDCPA claims). *Cf.* Shaw v. Bank of Am., 2015 WL 224666 (D. Mass. Jan. 15, 2015) (pursuant to her chapter 7 bankruptcy discharge, consumer was not liable for any deficiency between the price secured at foreclosure and the amount owed on the mortgage, and thus the bank, through the foreclosure, did not seek to collect a "debt" as defined by the FDCPA).

665 *See* Adams v. Albertelli, 2016 WL 931103 (M.D. Fla. Mar. 11, 2016); Huthsing v. Law Offices of Daniel C. Consuegra, P.L., 2015 WL 6777466 (M.D. Fla. Oct. 27, 2015); Kabir v. Freedman Anselmo Lindberg L.L.C., 2015 WL 4730053 (N.D. Ill. Aug. 10, 2015); Hernandez v. Dyck-O'Neal, Inc., 2015 WL 2094263 (M.D. Fla. May 5, 2015); Rojas v. Law Offices of Daniel C. Consuegra, P.L., 142 F. Supp. 3d 1206 (M.D. Fla. 2015); Baggett v. Law Offices of Daniel C. Consuegra, P.L., 2015 WL 1707479 (M.D. Fla. Apr. 15, 2015). *See* also Snyder v. Ocwen Loan Servicing, L.L.C., 2015 WL 1910989 (N.D. Ill. Apr. 27, 2015). *But see* Johns v. Wells Fargo Bank, 2015 WL 9238957 (S.D. Ala. Dec. 17, 2015); Randerson v. Taylor Hayden, P.L.L.C., 2015 WL 4429354 (M.D. Fla. July 20, 2015).

666 *See* Brown v. Budget Rent-A-Car Sys., Inc., 119 F.3d 922, 924 (11th Cir. 1997) (truck rental fees covered by FDCPA; credit is not requirement for FDCPA coverage); Yelin v. Swartz, 790 F. Supp. 2d 331 (E.D. Pa. 2011) (amount that consumer allegedly owed arising from an automobile accident involving a rental car leased for personal purposes was a "debt" because obligation was not a matter of tort liability, but imposed by rental agreement, a contract).

667 *See* Deplae v. Reg'l Acceptance Corp., 2010 WL 2270785 (E.D. Tenn. June 3, 2010) (purchase of car).

668 *See* Currier v. PDL Recovery Group, L.L.C., 2017 WL 712887 (E.D. Mich. Feb. 23, 2017) (loan to pay bills and make car repairs); Dibb v. Allianceone Receivables Mgmt., Inc., 2015 WL 8970778 (W.D. Wash. Dec. 16, 2015) (FDCPA covers checks to state for motor vehicle fees for personal use that were dishonored; underlying obligations arose from a

"voluntary transaction" and not a tax, and thus constituted a covered debt); Brown v. Transurban USA, Inc., 2015 WL 6675088 (E.D. Va. Nov. 2, 2015) (E-ZPass toll road payment system found to involve covered "debts"); Ruth v. Tenen, 2012 WL 2135478 (M.D. Ala. June 13, 2012) (agreement to pay balance of full retail price of television was an obligation arising from a consumer transaction); Barlow v. Safety Nat'l Cas. Corp., 856 F. Supp. 2d 828 (M.D. La. 2012) (bail bond purchased by mother to secure son's release from jail is within FDCPA because it arises out of a transaction in which insurance or services are primarily for family use); Spiegel v. Judicial Attorney Services, Inc., 2011 WL 382809 (N.D. Ill. Feb. 1, 2011) (legal fees); Hansen v. Ticket Track, Inc., 280 F. Supp. 2d 1196 (W.D. Wash. 2003) (parking fees).

669 627 F.3d 833 (11th Cir. 2010).

670 *Id.*

671 *See* 26 U.S.C. § 6304(e), *discussed at* § 14.10 [18], *infra*.

672 *E.g.*, Altergott v. Modern Collection Techniques, 1994 WL 319229 (N.D. Ill. June 23, 1994) (used car for business approximately 5% of time). *See also* § 4.2.6.2 [19], *supra*.

673 *E.g.*, Beasley v. Blatt, 1994 WL 362185 (N.D. Ill. July 11, 1994).

674 *See* Rael v. Davis, 2006 WL 2346396 (S.D. Ind. Aug. 11, 2006). *See also* Ohuche v. Bank of Am., 2013 WL 12100763 (N.D. Ga. Feb. 25, 2013) (potential short sale is not an obligation by consumer to pay money and is not covered by FDCPA as collection of a debt); Thomas v. Ernest Barrientos, P.C., 2006 WL 1096764 (N.D. Tex. Apr. 26, 2006) (by demanding return of rental furniture, defendant was not attempting to collect money); Gacy v. Gammage & Burnham, 2006 WL 467937 (D. Ariz. Feb. 23, 2006) (letter notifying consumer of medical service provider's lien on proceeds of any personal injury recovery was not effort to collect debt, in view of lack of admissible documentation that plaintiff owed money or that her obligation was in default); § 4.2.6 [1], *supra*.

675 *See* § 4.6.3 [20], *infra*.

676 *See* 26 U.S.C. § 6304(e); § 14.10 [18], *infra*.

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