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


270 Id. at 243.

271 Id. at 248.

272 Id. at 248–249.

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, twenty-eight percent use email, and ten percent use social media. 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. 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).


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.\textsuperscript{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.\textsuperscript{284}

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.\textsuperscript{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.\textsuperscript{287} Eighty-six percent of respondents used a letter vendor to send postal mail.\textsuperscript{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 §1.3 [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.\textsuperscript{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.\textsuperscript{289} Other collection agencies may, with approval from the creditor, contract with collection attorneys to place accounts for litigation.\textsuperscript{291}

Footnotes


\textsuperscript{285} Id. at 245.

\textsuperscript{286} Id.

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

\textsuperscript{288} Id. at 32 (50/58 * 100 = 86.2%).

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

\textsuperscript{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).

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. 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. Moreover, some debt purchasing agreements state, "Buyer expressly acknowledges that . . . documentation may not exist with respect to the Loans purchased by Buyer." 

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. 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


301 Id.


Source URL: https://library.nclc.org/fdc/01040702

Links
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. 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. 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. Moreover, debt buyers rarely received any dispute history or information about whether a prior dispute had been resolved.

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. 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.

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. The Bulletin instructs banks to provide debt buyers with a signed contract and the last twelve account statements for each account. It also requires banks to provide additional information such as details of any unresolved disputes and an itemization of the principle, interest and fees.

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:

- Account 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.

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 “charge-off statement” detailing the final payment made, the remaining balance, and the date of charge-off. 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.

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


305 Id.

306 Id. at T-11.

307 Id. at 37.
308 Id. at 39–40.

309 Id. at 27–28.


311 Id.

312 Id.


314 Id.

315 Id.

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, 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. 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. 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. 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. 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, does not involve credit for the most part. The Bass decision was followed by decisions in the Seventh, Eighth, Third, Ninth, and Tenth 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, and the arguments that checks are not covered and that the FDCPA applies only to credit transactions no longer have any vitality. 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;
- Medical bills;
- Utility bills;
- Insurance bills and claims;
- Student loans;
- Campground memberships;
- Credit cards;
- Condominium fees;
- Attorney fees;
- Judgments;
- Obligations discharged in bankruptcy;
- Homeowner association fees;
- Mortgages;
- Post-foreclosure deficiency claims;
- Fees arising from a vehicle rental and finance agreement; and
- Other debts.

In Oppenheim v. I.C. Sys., Inc., 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.’” 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.

Also within the definition of “debt” are automobile purchases and credit, and car leases. 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. 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. 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 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.

Footnotes

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


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.


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


648 Charles v. Lundgren & Assocs., P.C., 119 F.3d 729 (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.I.1.3 [2], infra.

652 E.g., Romaine 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
4.4.2.2 A Broad Range of Consumer Debts Are Covered

Published on NCLC Digital Library (https://library.nclc.org)
Date downloaded: August 2, 2018 2:13 pm


663 See Mashiri v. Epstein 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...


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); Yelín 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).


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., Altermatt 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.


675 See § 4.6.3 [20], infra.

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

Source URL: https://library.nclc.org/fdc/04040202-0

Links
[1] https://library.nclc.org/nclc/link/FDC.04.02.06
[2] https://library.nclc.org/nclc/link/FDC.AE.01.01.03
[3] https://library.nclc.org/nclc/link/FDC.AE.01.01.02
[4] https://library.nclc.org/nclc/link/FDC.03.04.04.01.04
[5] https://library.nclc.org/nclc/link/FDC.AC.02
[6] https://library.nclc.org/nclc/link/FDC.AE.01.01.05.01.01
[7] https://library.nclc.org/nclc/link/FDC.AE.01.01.05.01.02
[8] https://library.nclc.org/nclc/link/FDC.04.02.03
[9] https://library.nclc.org/nclc/link/FDC.04.03.08
[10] https://library.nclc.org/nclc/link/FDC.04.03.10
[12] https://library.nclc.org/nclc/link/FDC.12.05.04

© Copyright, National Consumer Law Center, Inc., All rights reserved. Terms of Use National Consumer Law Center and NCLC are trademarks of National Consumer Law Center, Inc.