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Debt Collectors

Do consumers need additional safeguards?

Lawsuits filed against debt collectors multiplied in recent years, as have complaints to regulators about abusive collection tactics. Indeed, the Federal Trade Commission (FTC) receives more consumer complaints against debt collectors than any other industry. Collection companies, which recover billions of dollars in delinquent debt for creditors annually, defend their practices and challenge the validity of many of the lawsuits and consumer complaints. Nevertheless, over the past 18 months, the FTC and state attorneys general have stepped up enforcement against collection agencies they believe are breaking consumer-protection laws. Meanwhile, the Internal Revenue Service has drafted rules aimed at curbing aggressive collection methods at nonprofit hospitals, including dunning sick patients for payment in the emergency room. At the same time, the collection industry is bracing for tighter regulation from the newly created Consumer Financial Protection Bureau.

Lung transplant recipient Tom Fuller testifies at a public hearing in St. Paul, Minn., on May 30, 2012, about high-pressure debt collection at a Fairview Health Services hospital. A scathing report by Minnesota's attorney general documents tactics such as asking patients to pay while lying in pain on a gurney.

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Debt Collectors

By Barbara Mantel

The Issues

It's not uncommon for debt collectors to pressure consumers to pay their bills, but Frank E. Lindstrom Jr. and Kevin Medley crossed the line into harassment and abuse, according to government regulators.

The pair, along with several colleagues, allegedly asked one consumer who was behind on funeral payments for her son how she would feel if his body was dropped outside her door. They allegedly threatened to kill another consumer's dog. The debt collectors were also accused of failing to turn over collected money to clients, threatening supposed debtors with lawsuits never intended to be filed, and harassing them with repeated phone calls and obscene language.

In March, the Federal Trade Commission (FTC) banned Lindstrom and Medley from the debt-collection business. The two did not admit guilt in the case, but as part of a settlement they agreed to a combined judgment of more than $1 million. They will surrender just under $50,000, however, because of their inability to pay. [1]

AP Photo/Chuck Burton

Eleanor Chittum, a convalescent-home resident in Winston-Salem, N.C., fought for a year and a half to stop a collection agency from collecting a $1,439 debt she had already paid. North Carolina law now requires debt buyers — purchasers of older, uncollected debt — to offer more proof they are owed the money before filing collection lawsuits.

The FTC says debt collectors are instrumental in helping creditors collect what they are owed and thus help to keep credit widely available to consumers at low costs. [2] An industry-commissioned study estimates that so-called third-party debt-collection agencies — companies hired by merchants, hospitals, credit-card issuers, utilities and other creditors to collect on past-due accounts — recovered and returned to creditors more than $40 billion in delinquent debt in 2010. [3]

Still, the FTC has stepped up enforcement against collectors it believes have violated the key law governing debt collectors: the 35-year-old Fair Debt Collection Practices Act (FDCPA).

The law applies to third-party debt-collection agencies and to companies that buy old consumer debt for pennies on the dollar and collection agencies those companies sometimes use. The law does not apply to original creditors' in-house debt-collection staff.

The FDCPA:

- Prohibits abusive language, harassing phone calls and deceptive threats of lawsuits;
- Limits the hours that collectors can contact people who owe money;
- Requires collectors to provide consumers with validation of the debt owed upon request; and
- Allows consumers to sue and collect damages for violations of the law. (*See box, p. 630.*)

In the first three months of 2012, about 14 percent of Americans faced collection action for an average $1,500 per person, according to the Federal Reserve Bank of New York. [4]

"Protecting consumers from deceptive or abusive debt collectors is one of the most important things the FTC does," David Vladeck, director of its Bureau of Consumer Protection, said last March. Over the previous 12 months, the FTC had filed or resolved seven debt-collection cases affecting hundreds of thousands of consumers, the highest number of cases in a single year. [5]

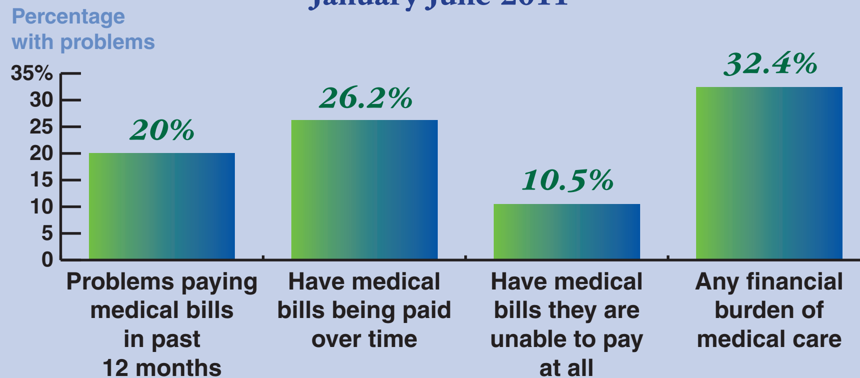
Two cases involved record civil penalties. In March 2011, West Asset Management, a major debt collector based in Omaha, Neb., agreed to pay $2.8 million to settle an FTC complaint accusing it of calling consumers "multiple times each day, often regarding accounts that did not belong to them, and sometimes using rude and abusive language." West Asset Management did not admit or deny wrongdoing. [6]

In January 2012, Warren, Mich.-based Asset Acceptance, one of the nation's largest buyers of bad consumer debt, agreed to pay $2.5 million after the FTC accused it of a series of mis-

Medical Bills Burden Families

About one in three Americans lives in a family weighed down by medical bills. A fifth are in families that had problems paying such bills during the previous year, and a one-fourth are in families that are making payments over time.

Persons in Families Burdened by Medical Bills, January-June 2011



Source: Robin A. Cohen, et al., *"Financial Burden of Medical Care: Early Release of Estimates From the National Health Interview Survey, January-June 2011," Centers for Disease Control and Prevention, March 2012, p. 1, www.cdc.gov/nchs/data/nhis/earlyrelease/financial_burden_of_medical_care_032012.pdf.*

representations, including misleading consumers about the legal status of old debt. [7] Debt collectors may not threaten to sue or sue on debt that is past a state's statute of limitations. Asset Acceptance did not admit or deny the FTC's claims.

In the past few years, the FTC has repeatedly called for tightening of consumer-protection laws and civil court procedures. But consumer advocates, collection agencies and regulators disagree about what reforms are necessary. They debate, for example, whether patients behind on medical debts need special protections, whether debt collectors are bringing bogus lawsuits against consumers and whether consumer attorneys accusing collectors of violations are doing the same. And they disagree on the extent of those violations.

After one FTC enforcement action in April, DBA International, a Sacramento, Calif.-based trade association for the debt-buying industry, said the case "highlights the kind of illegal tactics a few companies employ that give the entire industry a black eye." The association applauded the government "for targeting companies like these that prey on consumers." [8]

But consumer advocates contend the problem extends far beyond a few rogue operators. "This is an industry, according to the FTC, that generates more consumer complaints than any other," says Tena Friery, research director for the Privacy Rights Clearinghouse, a group in San Diego that advocates on behalf of consumers.

Last year the FTC received 142,743 debt-collection complaints, about one-fourth of all complaints to the agency. The top gripe against debt collectors was repeated calls. Misrepresenting the character, amount or status of debt was second, and falsely threatening an illegal or unintended act, such as a lawsuit, was next. [9]

The FTC has said that the number of complaints may actually understate the extent to which debt collectors violate the law. Suzanne Martindale, a staff attorney in the San Francisco office of the advocacy group Consumers Union, agrees. "There are probably a lot of people out there who don't know how to complain or who don't bother to but have nonetheless been harmed."

On the other hand, the FTC acknowledges that it does not verify the accuracy of the vast majority of complaints or whether they involve violations of law. "You could pick up the phone tomorrow and say, 'I have a complaint. Mark's collection agency called me at 9 a.m., and I don't like it.' But that's not a violation," says Mark Schiffman, vice president of public affairs for ACA International, a debt-collection trade association, based in Minneapolis, Minn.

Third-party debt collectors are paid on a contingency basis; they receive an average 25-30 percent of the debt recovered, according to one recent report. [10] The industry employs approximately 148,300 people, and more than half of the debt they collect is health-care related, according to a recent survey. Credit card and other financial debt account for about 20 percent of the debt collected. [11]

The entire industry — third-party collection agencies, debt buyers and law firms in the collection business — "was a boom industry for about 15 years, from around 1993 until 2008 or 2009, driven in large part by the proliferation of credit cards," says Mike Ginsberg, president and CEO of Kaulkin Ginsberg, an industry adviser in Rockville, Md. But the industry was "hit square in the mouth" by the recession, says Ginsberg, as credit-card loans dried up and more consumers began paying off card balances. Just over 11 percent of total credit-card balances were 90 days or more delinquent in the first quarter of this year, down from about 14 percent in early 2010. [12]

The industry also has a new, more powerful regulator. The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act created the Consumer Financial Protection Bureau (CFPB), which will share enforcement of the debt-collection law with the FTC. But unlike the FTC, the bureau can issue regulations clarifying the law and, for the first time, supervise and examine "larger" debt-collection and debt-buying companies as well as those it views as a risk to consumers.

"One of the industry's frequent arguments is that violations of the law are not representative of the industry, but you can't really resolve that question through enforcement actions," says Delecia Reynolds Hand, legislative director for the Washington-based National Association of Consumer Advocates, whose members are consumer attorneys. "Now CFPB supervision will provide a whole lot of information about policies and procedures across the industry."

It's not clear yet what supervision will mean: Will the bureau be able to listen in on phone calls to consumers, inspect debt-collectors' scripts or be able to review collectors' procedures for verifying a consumer's identity and delinquency status?

The bureau has preliminarily defined "larger" to capture approximately 175 firms — or 4 percent of companies — that account for 63 percent of the debt-collection market. [13] The industry, however, thinks that is too many firms, while consumer advocates say it is too few.

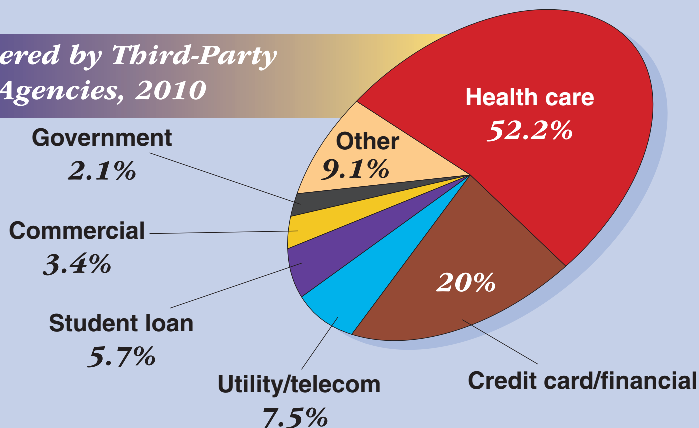
The CFPB's final decision will come in late July. In the meantime, here are some of the questions that creditors, debt collectors, consumer advocates, regulators and politicians are debating:

Are stronger consumer protections needed?

Karen Stevens, a 42-year-old resident of Hagerstown, Md., paid off a delinquent credit-card bill in 2006, but when her bank mistakenly sold her debt soon after a new set of debt collectors began pursuit.

Medical Bills Are Half of Debt Collected

Medical bills comprised more than half of the debt collected by collection agencies in 2010. Credit card and other financial debt made up one-fifth of the total.



Source: "The Impact of Third-Party Debt Collection on the National and State Economies," Ernst & Young, February 2012, p. 8, www.acainternational.org/files.aspx?p=/images/21594/2011acaeconomicimpactreport.pdf

Stevens sent proof that the debt was paid, but "that just didn't seem to be good enough for them," she told *American Banker*. "They still ended up taking me to court." Her debt was sold again, and Stevens ended up countersuing the last debt buyer for violating state and federal debt-collection laws. They settled out of court in 2009. [14]

Debt buying has become one of the fastest-growing parts of the collection business, and "it can be much more profitable" than collecting debt on a contingency basis, according to industry adviser Kaulkin Ginsberg. Debt buyers purchase portfolios of older debt for cents on the dollar, then collect what they can — sometimes "up to three times or more of the original purchase price," Kaulkin Ginsberg said. [15] When a debt buyer cannot collect, it can repackage the debt and sell it to another.

The industry says debt buying is a win for creditors and consumers: Creditors receive money for debt they've written off as uncollectible, and consumers benefit from the low price that debt buyers paid to the original creditors. "Debt buyers are usually much more willing to work out more creative solutions than the original creditor," says Barbara Sinsley, general counsel at DBA International.

But consumer advocates contend that the rapid growth in debt buying has led to an increase in collection actions against the wrong person or involving debts in the wrong amount or that were already settled, and to a surge in poorly documented lawsuits against consumers.

"It's garbage in, garbage out," says Martindale of Consumers Union. "It is all too common for debt buyers to acquire spreadsheets containing inadequate or absent records of payments, disputes or prior exchanges with the consumer — and these spreadsheets are sold and resold repeatedly," Consumers Union told the FTC. [16]

Sinsley disagrees that the problems are widespread. "Debt buyers, when they buy debt, spend a lot of resources

on checking the accuracy and integrity of the information," she says. "Debt buyers do not want to be buying or collecting on disputed debt."

Consumer advocates are not convinced and have a laundry list of desired reforms, either through new CFPB rules or federal or state legislation. Chief among them is requiring more and better documentation — such as the name of the original creditor, a copy of the signed contract or credit application, a breakdown of the claimed debt including any interest or fees, and proof of ownership of the debt — before a collection agency or a debt buyer attempts to collect on a consumer debt. And advocates say the information should be given to consumers. [17]

But the industry says the fault is with the original creditors. "At the end of the day, if the bank is not providing the kind of documentation that is needed in the original sale, it's not going to be available later on," says industry adviser Mike Ginsberg. "That's where the regulation needs to be." ACA International wants the federal Truth in Lending Act amended to require original creditors to maintain consumer account information for at least seven years after a debt is written off. [18]

But the chief problem, according to many consumer advocates, is a flood of debt-collection lawsuits. That's a direct result of the proliferation of debt purchasers, according to a U.S. Government Accountability Office report, because they "often use collection law firms as their primary tool for recovery." [19]

"A million or more consumers are sued each year by debt collectors in state courts," says Robert Hobbs, deputy director of the Boston-based National Consumer Law Center, and a substantial portion of those suits have insufficient evidence, he says. The FTC has called debt-collection litigation "a broken system." [20]

The problems start with process servers,* who may not always properly notify consumers of a lawsuit, according to the FTC. From there, the problems build, as many consumers fail to respond to the notices they do receive. While the FTC says there is no empirical data explaining the low response rate, advocates say it is because many indebted consumers are poor and lack access to lawyers. They often are confused about how to navigate the legal system, especially if the notice comes from a debt buyer and not the original creditor, advocates say. [21]

* Process servers deliver notifications, summonses and other relevant paperwork to those who are being sued.

bethsreversemortgageblog.wordpress.com

Credit counselors seek to help consumers with unmanageable debts by negotiating with creditors to establish a plan that may allow for reductions in debt payments, interest and late fees. The Minnesota attorney general recommends finding a reputable counselor through the National Foundation for Credit Counseling.

"They may not understand that even if you don't recognize the name of the plaintiff and you think it is a mistake, you still must respond," says Martindale. "If you don't, you will default, and [collection agencies] can still get a court order to take your money away, even if it is a mistake." Between 60 and 95 percent of consumer debt-collection lawsuits result in default judgments, according to the FTC. [22]

Those judgments, says Hobbs, can be based on flawed affidavits — written sworn statements of fact — submitted by the debt owner to the court. "They can be robo-signed and based on no personal knowledge and no review of the debt because, for the most part, there is no documentation for them to check," says Hobbs.

Sinsley dismisses that argument, however. "I think robo-signing is not the problem it is portrayed to be," she says. "DBA members hire experienced local counsel to assist with local state guidelines."

One year ago, debt buyer Encore Capital Group, based in San Diego, settled a class action lawsuit for $5.2 million in which two subsidiaries were accused of robo-signing affidavits to buttress collection lawsuits. In testimony, an employee was said to be signing hundreds of affidavits a day.

As the case made its way through the courts, Encore amended its methods in 2009 with what it described as "simple process improvements and language changes." After the settlement, it said the "alleged defects in the affidavits had no impact on whether or not the debt was owed." [23]

Consumer advocates would like to see states require debt buyers to pro-

vide greater evidence and documentation in court when suing consumers over delinquent debt. In 2009, after North Carolina adopted such a law, collection lawsuits dropped significantly, garnering praise from consumer advocates and protests from the industry that legitimate debts were going uncollected.

Has federal law lagged behind advances in technology?

Collection agencies and debt buyers should be able to contact borrowers more easily on their cellphones and through text messaging and email, the debt collection industry says. But, it complains, outdated federal law, passed long before cellphones and the Internet became standard ways of communicating, hobble debt collectors and hurt consumers. "If you can communicate with a consumer about a debt and understand what they have the ability to pay, I think you would see a decrease in litigation and an increase in payment plans," says Sinsley of DBA International.

"It has become harder to get hold of consumers who have shifted to cellphones and, in many cases, go without a landline at all," says Schiffman of ACA International. To reach consumers on their landlines, debt collectors routinely use recorded messages and automated dialers programmed to predict when a consumer will be home. But the 1991 Telephone Consumer Protection Act does not allow collectors to use predictive dialers to call cellphones unless the consumer has given prior consent — for instance, by putting down a cellphone number as the point of contact in the original credit application.

"We want it to be equal to how I can contact you on a landline phone," says Schiffman. The industry supported a bill introduced in the U.S. House of Representatives last year by Rep. Lee Terry, R-Neb., called the Mobile Information Call Act that would have loosened restrictions on cellphone calls. But 54 state and territorial attorneys general opposed the bill, and it never left committee. (*See "Current Situation," p. 636.*)

The law could result in "a flood of solicitation, marketing, debt collection and other unwanted calls and texts" to consumers' cellphones, they said in a letter to Congress, and "shift the cost of these calls . . . to consumers, placing a significant burden on low-income consumers." [24]

The industry also wants the Consumer Financial Protection Bureau to write specific language that it can use to leave messages on consumers' answering machines and voice mail, technology not much in use when the Fair Debt Collection Practices Act was passed in 1977. Courts have confirmed that collectors must identify themselves when leaving phone messages, but that puts them at risk of disclosing information about the debt to third parties who might overhear the message, something that the FDCPA prohibits.

"It's a huge Catch-22," said Chris Morris, a Minneapolis lawyer who defends collectors accused of violating the FDCPA. [25] As a result, many collectors are no longer leaving messages. When they do, ACA International recommends that they name the party they are trying to reach, instruct anyone else to hang up, and only then proceed to identify themselves as a debt collector.

But, says Sergei Lemberg, a Stamford, Conn., lawyer whose firm specializes in suing collectors for alleged legal violations, "Is there a constitutional right to leave messages? Just because somebody owes a debt doesn't mean that they then have to expose themselves to being embarrassed in front of their roommates or spouses or family members."

Without clarification from regulators, however, collectors say they must call consumers more frequently, risking a lawsuit alleging harassment. Schiffman says consumer attorneys don't want the CFPB to write an allowable script for messages because then they wouldn't be able to sue debt collectors for technical violations of the law.

The number of lawsuits accusing collection agencies, debt buyers and collection law firms of violating the FDCPA has risen steadily, to 12,018 in 2011, nearly four times the total in 2005, according to WebRecon, which tracks such lawsuits and provides the industry with the names of the most litigious consumer lawyers and consumers. (*See graph, p. 628.*) Most cases are settled before trial.

Because consumers do not have to show they were harmed to prove a violation of the FDCPA, many lawsuits are over minor technical violations, such as "calling five minutes after calling is allowed," or that arise from ambiguities in the law, says Jack Gordon, WebRecon's CEO. "Maybe the consumer had their cellphone in a different time zone and the collector had no way to know," leading to a call during prohibited hours.

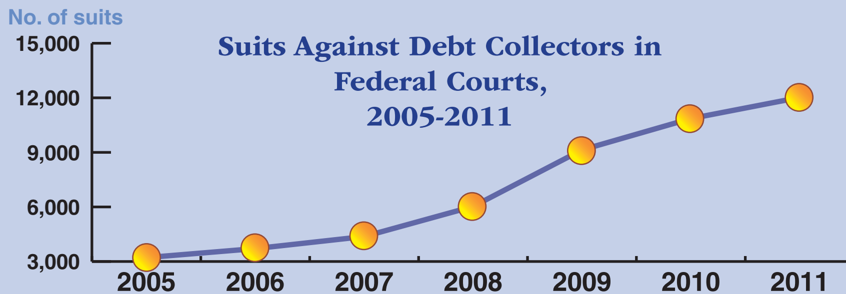
The Internet has fueled the increase in lawsuits, says Gordon. "There are ads from consumer attorneys imploring you not to pay debt collectors a penny until they give you a free case review," and websites that instruct consumers how to entrap a collector on the phone, says Gordon.

But consumer attorneys say it is the industry's behavior that drives such suits. "The economy is so bad that it's getting more and more difficult for these debt collectors to get money from people who just don't have it," said Tammy Hussin, a Carlsbad, Calif., consumer attorney. "So the collectors are more frustrated, and they're getting more aggressive." [26]

Lemberg agrees. "We don't need marginal cases," he says. "We have dozens of people every day complaining about harassment, abuse, third-party disclosure, getting seven to 10 calls a day and disrespectful collectors."

Suits Against Debt Collectors on Rise

Consumer attorneys filed 12,018 federal lawsuits against debt collectors in 2011 under the Fair Debt Collection Practices Act, nearly four times the total in 2005.



Source: "2011 Litigation Statistics Revised Upward, FDCPA Suits Surpass 12,000," WebRecon LLC, February 2012, www.collectionindustrynews.com/FOR%20 IMMEDIATE%20RELEASE%2020120224%202011%20revision.pdf

Consumer attorneys typically take such cases on a contingency basis. If a debt collector is proven to have violated the FDCPA, a consumer can claim reasonable attorney fees, which can be several thousand dollars, statutory damages of up to $1,000 per violation and actual damages, if any.

The industry complains that the consumer lawyers benefit the most from such lawsuits. "Are consumers better off than they were two or three years ago because of all this litigation?" asked Charity Olson, a Michigan attorney who defends debt collectors. "Sadly, I don't think they are. But there are a lot of attorneys who are a lot better off." [27]

"We're not going to deny that there are litigation shops out there that are not very selective," says Reynolds Hand of the National Association of Consumer Advocates. "But our members are not those guys. Our members are contacted by consumers about behavior that is crossing the line, behavior that is outlined in the FDCPA."

To make it more worthwhile for consumers to sue, consumer attorneys and advocates have been asking Congress for years to raise the $1,000 statutory damage award to reflect inflation; it hasn't changed in 35 years. "We've gotten very close in negotiations with the industry to them agreeing to that in exchange for something they wanted," says Hobbs of the National Consumer Law Center. "But it hasn't happened."

Do consumers behind on medical bills deserve special protection?

This spring, in an investigation of the collection practices of Carolinas Healthcare headquartered in Charlotte, N.C., the *Charlotte Observer* found that the nonprofit health-care system sued more than 12,000 patients over a five-year period for bad debt. An in-depth look at some cases found most of the patients in those cases were uninsured and "a significant number of them should have qualified for free hospital care," the newspaper said. [28]

Consumer advocates are pushing for special protections for uninsured and underinsured patients who are behind on their medical bills. "This is not a store credit card that's been overdrawn for consumer goods. This is a vital service," says Mark Rukavina, executive director of The Access Project, an advocacy group in Boston that works to improve health-care access.

Moreover, says Rukavina, "Unlike your mortgage, your monthly credit-card payment and your utility bill, medical bills are "significant expenses that are unanticipated. Generally speaking, you can't predict when you're going to get sick."

Medical debt is a growing problem, according to a survey by The Commonwealth Fund, a New York foundation. Twenty-nine percent of adults ages 19 to 64 — 53 million people — had problems paying or were unable to pay medical bills in 2010, up from 23 percent five years earlier. Sixteen percent, or 30 million people, had been contacted by a collection agency for unpaid medical bills, up from 13 percent in 2005. While the uninsured are most affected, insured patients are increasingly struggling with rising copayments, coinsurance and unaffordable deductibles. [29]

The Affordable Care Act (ACA), which the Supreme Court largely upheld in June, will partly address the problem by increasing the number of Americans with health insurance. In addition, Congress placed rules governing billing and collection in the law, in response to troubling reports of aggressive debt collection at nonprofit hospitals. [30]

The ACA requires nonprofit hospitals to develop and publicize written financial-assistance policies that provide free or partially free care to uninsured or underinsured low-income patients, and to charge those who qualify for partial assistance the same discounted rates for medical care given to insured patients. [31]

"The common practice has been that people who are uninsured are charged a rate that can be three to four times as high," says Jessica Curtis, project director of the Hospital Accountability Project at Community Catalyst, a Boston-based patient-advocacy group.

In addition, the law directs nonprofit hospitals to make a reasonable effort to determine whether a patient qualifies for financial assistance before taking "extraordinary collection actions."

"We supported the law. We thought it made sense," says Melinda Hatton,

general counsel at the Chicago-based American Hospital Association, a trade group. But Hatton takes issue with the way it is being implemented.

Last month the Internal Revenue Service (IRS) issued draft rules on the law's billing and collection requirements. For example, the rules lay out detailed procedures for notifying patients of financial-assistance policies. Hatton says they are too rigid.

Richard Cordray heads the new Consumer Financial Protection Bureau, created by the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act. The bureau can issue regulations clarifying the Fair Debt Collection Practices Act and supervise and examine big debt-collection and debt-buying companies as well as those it views as a risk to consumers.

"You're going to be so focused on making sure that you've got it plastered on the wall in a conspicuous place, that you've got a summary in every single bill, that you've got it available in places that visitors can find it and that you've got it on your website. And as a result, new and better ideas about how to reach patients may fall by the wayside," says Hatton.

The IRS also says debt collectors cannot garnish the wages of patients eligible for financial help, place liens on their property or foreclose on their houses, seize their bank accounts or report their bad debts to credit bureaus. [32]

The IRS will hold nonprofit hospitals responsible if third-party collection agencies they hire violate any of these rules, and Hatton says that is not fair. "If hospitals make their best efforts to ensure that third-party collectors comply with their policies and procedures, and those third-parties make a mistake, then the hospital shouldn't be in danger of losing its tax exemption," says Hatton.

In addition, the IRS says nonprofit hospitals must wait up to 240 days to determine whether a patient behind on payments qualifies for financial assistance, during which time it can take no collection action. That's too long and will place a financial burden on nonprofits already squeezed by reduced reimbursement rates and rising costs, says Jeffrey Hausfeld, a physician and managing director of FMS Financial Solutions, a debt-collection agency in Greenbelt, Md. During the five or six or eight months that hospitals' billing staffs are chasing delinquent patients to get them to apply for financial assistance, "they are not working current accounts to get the money in to keep the hospital functioning," says Hausfeld.

Patient advocates, however, are pleased with the ACA's billing and collection requirements but say they go only so far. "It only pertains to nonprofit hospitals," says Rukavina. About half the nation's hospitals are nonprofit, according to the hospital association.

Last month Sen. Al Franken, D-Minn., introduced legislation to extend ACA provisions to all hospitals, and Community Catalyst has written model state legislation that would go even a bit further. While the federal law allows hospitals to set their own eligibility requirements for financial assistance, the model state legislation explicitly spells out the eligibility rules. [33] About a half-dozen states have such laws, including California, Maryland and New York.

But Hatton is not in favor of extending ACA requirements to all hospitals. "Tax-exempt hospitals have a different kind of obligation to their community because of the basis of their tax exemption," she says.

The model state legislation would also require hospital governing boards to expressly approve any extraordinary collection actions, such as placing a lien on a patient's property, garnishing wages or seizing a bank account. [34]

"That is way too onerous," says Hausfeld. "Boards would never get anything else done."

Curtis and Community Catalyst propose that states, or even Congress, ban the sale of medical debt. "You have a third party, possibly a for-profit group, that is profiting from someone's pain and sickness," says Curtis.

But Jim Richards, president and CEO of Capio Partners, a medical-debt purchaser in Sherman, Texas, disagrees. "We most definitely do not believe selling patient debt should be prohibited," he says. "Legislators need to fully understand the negative effect on a hospital's revenue before pursuing such legislation." ■

Do's and Don'ts for Debt Collectors

The Fair Debt Collection Practices Act applies to collection agencies, debt buyers and debt-collection law firms. Under the law:

Debt collectors may not:

- Reveal that a consumer owes a debt when communicating with others to learn the consumer's location. Debt collections also may not contact others more than once to learn the consumer's whereabouts.
- Contact the consumer before 8 a.m. or after 9 p.m. local time without the consumer's permission.
- Contact the consumer at work if the debt collector knows or has reason to know that the employer prohibits such communication.
- Contact a consumer known to be represented by an attorney.
- Harass, oppress or abuse any person in connection with the collection of a debt, including causing the telephone to ring repeatedly.
- Use false, deceptive or misleading information or representation.
- Collect amounts other than authorized by the credit agreement creating the debt.

Debt collectors must:

- Identify themselves as a debt collector in every communication with the consumer.
- Cease communication if the consumer notifies the debt collector in writing that the consumer refuses to pay a debt or wants communication to stop, except to notify the consumer of future remedies, such as a lawsuit.
- Within five days of initial communication, send the consumer a written notice containing the debt amount; creditor's name (or the name of the debt buyer if the debt was sold); a statement that the debt will be assumed valid unless the consumer disputes it within 30 days; a statement that if disputed the collector will mail the consumer verification of the debt; and a statement that the consumer may request the name of the original creditor.
- At the consumer's request, provide verification of the debt, including the amount owed and the name and address of the original creditor.

In addition:

- Consumers may sue a debt collector they believe has violated the law.
- Any debt collector found guilty of a violation is liable to the consumer for any actual damages sustained as a result of the violation, additional damages up to $1,000 to be determined in court, and court costs and reasonable attorney fees.

Source: Federal Trade Commission, www.ftc.gov/bcp/edu/pubs/consumer/credit/cre27.pdf

BACKGROUND

Early Borrowers

In the early 19th century, nearly three-quarters of Americans resided on farms, and most "lived and died by credit," wrote historian Louis Hyman in *Borrow: The American Way of Debt*. "The harvest came but once a year, but they needed goods — farm equipment, clothing, groceries — year-round." [35] So farmers bought from merchants on credit at inflated prices, repaying after the harvest, occasionally in cash, but most often in crops or livestock. For Western farmers, that meant wheat, eggs and hogs. For Southerners, it meant cotton.

The merchant, then, became the middleman, selling the farmer's products in the city and turning a profit. With the development of railroads in the mid- to late 19th century, getting agricultural products to market became much easier, and the number of merchants in farm towns multiplied. The resulting competition drove down the inflated prices farmers had to pay merchants for goods on credit.

Western farmers benefited, but in the South, where control of the land and stores after the Civil War remained concentrated in the hands of a few, the story was different. "Debt kept tenant farmers and sharecroppers in thrall to monopolistic country stores where each year's crop never quite made enough to free them from last year's debt," wrote Hyman. [36]

The Industrial Revolution and a wave of immigration pulled workers to the cities, and by the end of the 19th century, fewer than half of working Americans lived on farms. But many urban workers were poor and could not make ends meet, and they increasingly borrowed money from pawnbrokers and small

Continued on p. 632

Chronology

1800s-1920s

Stores and manufacturers extend installment credit to consumers, and small collection agencies proliferate.

1833
Federal law eliminates imprisonment for debt. Most states follow.

1911
Sears, Roebuck & Co. allows consumer installment payments.

1920s
States raise interest rates lenders can charge consumers for small loans in effort to provide incentive to legitimate lenders and drive out loan sharks. Small lenders thrive, and small collection agencies proliferate. . . . General Motors extends installment credit to car buyers. Ford follows eight years later. By decade's end most goods can be bought on an installment plan.

1930s-1950s

Department stores introduce revolving credit and charge interest on balances due. Banks begin issuing credit cards.

1938
Bloomingdale's is first to offer revolving credit to customers, bundling purchases into one bill and charging interest on overdue balances.

1949
Seventy-five percent of major stores have revolving-credit programs, charging an annual interest rate of 13 percent.

1951
Franklin National Bank in Long Island, N.Y., is first bank to issue a universal credit card, to be used anywhere it is accepted.

1958
Bank of America introduces universal credit card.

1970s-1980s

Congress regulates debt-collection industry; Supreme Court indirectly dismantles usury laws.

1977
Fair Debt Collection Practices Act (FDCPA) prohibits abusive, deceptive or unfair collection practices and allows consumers to sue debt collectors for violations.

1978
Middle Income Student Assistance Act expands student loan eligibility to middle- and upper-income students. . . . Supreme Court says banks can charge credit-card customers nationwide the interest rate in the banks' home state, encouraging banks to flock to states with no interest-rate caps. Credit card interest rates quickly rise.

1979
J.C. Penney is first national department store to accept Visa and then MasterCard. Other stores follow as they realize banks can shoulder bad debts more easily than they can.

1983
Recession ends, and credit card interest rates remain above 18 percent while all other interest rates fall. Banks issue credit cards to riskier consumers.

1986
Tax Reform Act of 1986 phases out deductibility of consumer credit, except mortgages.

1990s-Present

Americans borrow at record levels, and collection industry booms. Credit shrinks in aftermath of 2008 recession.

1990
Newly created Resolution Trust Corp. auctions off nearly $400 billion in assets of failed savings and loan institutions in decade's first half, helping to establish debt-buying industry.

1993
Debt buyers purchase about $6 billion of debt, mostly for credit-card transactions.

2000
Americans' household debt equals personal disposable income for the first time since data collection began.

2003
About one in 10 consumers faces collection action for overdue debt. The average collection amount per person is $900.

2005
Bankruptcy Abuse Prevention and Consumer Protection Act makes it more difficult for consumers to shed bad debts through bankruptcy. . . . Debt buyers purchase more than $110 billion in debt.

2011
Debt collector West Asset Management agrees to pay a record civil penalty of $2.8 million to settle an FTC complaint that it violated the FDCPA.

2012
Bank credit-card balances are 28 percent below their peak of January 2009, but about 14 percent of consumers face collection action, and the average collection amount has almost doubled from nine years earlier to more than $1,500.

Emergency Room Patients Pressed for Payment

Officials decry "aggressive" hospital debt collection.

Some patients were asked to pay while hooked to heart monitors, morphine drips and IVs. Others were dunned while lying naked and in pain on a gurney.

Minnesota attorney general Lori Swanson made those allegations in federal court in June against Chicago-based Accretive Health, one of the nation's largest collectors of medical debt. The complaint accuses Accretive of aggressively collecting late payments and current bills from emergency room patients who, in some cases, had not yet seen a doctor or been stabilized, a violation of the federal Emergency Medical Treatment and Active Labor Act. [1] *

"Accretive used 'bedside collection visits' in other patient hospital rooms besides the emergency room," according to the complaint, pressuring patients scheduled for medically necessary treatment, including time-sensitive surgeries, to pay outstanding bills. [2]

Experts say it is rare — but not unprecedented — for health care companies to pursue bedside payment from emergency-room patients, especially before they've been stabilized and received any treatment, making the allegations against Accretive particularly noteworthy.

"We've certainly heard that this happens anecdotally from some of our state partners, but I am not aware of other active investigations going on at this time," says Jessica Curtis, director of the Hospital Accountability Project at Community Catalyst, a Boston-based advocate for health-care access nationwide.

Swanson's accusations against Accretive are not new. She had made them in a scathing six-volume report in April that documented a culture of high-pressure collection tactics at Minneapolis-based Fairview Health Services, which runs eight nonprofit hospitals. Fairview had turned over its billing and collection to Accretive in 2010. [3]

* On July 30, 2012, Accretive agreed to pay the Minnesota attorney general's office $2.5 million to settle the allegations. The company did not admit wrongdoing.

Swanson also accused Accretive and Fairview employees under Accretive supervision of leading patients to believe that treatment would be withheld if they did not pay.

Alluding to the Accretive investigation, the Internal Revenue Service last month drafted a rule that prohibits debt collection at nonprofit hospitals "in the emergency department or in other hospital venues where collection activities could interfere with treatment."

"In recent months, we have heard concerns about aggressive hospital debt-collection activities, including allowing debt collectors to pursue collections in emergency rooms. These practices jeopardize patient care, and our proposed rules will help ensure they don't happen in charitable hospitals," said Emily McMahon, acting assistant secretary for tax policy at the U.S. Treasury Department. [4]

In an April statement, as well as in a 29-page document in May, Accretive denied all accusations and said the Minnesota attorney general's report was full of "inaccuracies, innuendo and unfounded speculation." The company called any suggestion that it put bedside pressure on patients to pay their medical bills out of pocket "a flagrant distortion of fact." The company said, instead, it worked with insured patients to make sure they were not being over-billed for their share and with uninsured patients to find coverage, including Medicaid, disability or auto insurance and charity.

In addition, "The very serious allegation of denying access to patient care is flatly untrue," said Accretive. [5]

Accretive's contract with Fairview was not its most important. Its biggest is with Missouri-based Ascension Health, the nation's largest Catholic and nonprofit health system. In response to an inquiry from stltoday.com, the online news site of the *St. Louis Post-Dispatch*, neither company would say how many of Ascension's 80 hospitals across the country use Accretive's services. In a written statement provided to the news site, Ascension Health said it "has policies regarding patient accounts that reflect our commitment to recognize the human dignity of our patients and treat them with respect and compassion." [6]

Swanson began investigating Accretive after suing the company in January 2012 for allegedly failing to protect the con-

Continued from p. 630

lenders — loan sharks — charging illegally high interest rates. For those who fell behind in their weekly payments, loan sharks would contact the delinquent borrower first through letters, if possible by telephone, and finally through personal visits. Those visits were made by a female "bawlerout," an employee who trapped "the delinquent borrower before co-workers and family in order to browbeat him publicly for being a sorry deadbeat," wrote historian Lendol Calder in *Financing the American Dream.* [37]

Credit Transformed

In 1928, the Russell Sage Foundation, which worked to improve social and living conditions in the United States, found that licensed pawnbrokers charged annual interest rates of up to 60 percent and loan sharks up to 480 percent, according to economist Charles Geisst in *Collateral Damaged: The Marketing of Consumer Debt to America.* [38]

To drive loan sharks out of business and encourage legitimate lending to middle- and lower-income consumers, the foundation sponsored the Uniform Small Loan Law, which would waive

fidentiality of patient information, as required by state and federal privacy laws. Five months earlier, an employee's laptop computer containing the unencrypted medical records of 23,500 Minnesota patients was stolen from a rental car. [7] The latest charges were added to that lawsuit. Accretive has asked the court to dismiss the entire suit.

The fallout this year has been swift. In January 2012, Fairview dropped Accretive as its debt collector. That decision followed mounting concerns among Fairview employees and officials about Accretive's practices at bedsides and in back offices. For example, in mid-2011, Fairview's chief financial officer, Daniel Fromm, had objected to Accretive's motivational practice of awarding gift cards to top collectors: "Do you also understand that this practice violates our corporate policy?" he asked. Another Fairview official asked Accretive to stop posting employee names with the amounts they collected. [8]

Getty Images/Chip Somodevilla

Sen. Al Franken, D-Minn., introduced legislation in June that would restrict the use of patient medical information for debt-collection purposes.

In April 2012, Fairview severed the last of its ties to Accretive, and, in May Fairview's Board of Directors failed to renew the contract of CEO Mark Eustis, who was instrumental in hiring Accretive. A week later, Charles Mooty, Fairview's board chairman and interim CEO, apologized to patients and offered a "firm commitment on behalf of the entire organization to regain your trust." [9]

Mooty spoke at a congressional hearing held in Minneapolis by Sen. Al Franken, D-Minn., to investigate the Accretive charges. In June, Franken reintroduced an expanded version of his 2011 End Debt Collector Abuse Act. The legislation would restrict the use of patient medical information for debt-collection purposes and apply the consumer protections of the Fair Debt Collection Practices Act to hospital staff.

The Federal Trade Commission, Minnesota Department of Commerce and the federal Centers for Medicare and Medicaid Services are also scrutinizing Accretive for possible violations of state and federal law.

— Barbara Mantel

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[1] "State of Minnesota, by its Attorney General Lori Swanson, Plaintiff, v. Accretive Health, Inc., Defendant," Second Amended and Supplemental Complaint, U.S. District Court of Minnesota, June 19, 2012, p. 41, www.ag.state.mn.us/PDF/Consumer/SecondAmendedSupplementaComplaint.pdf.

[2] *Ibid.*

[3] "Compliance Review of Fairview Health Services' Management Contracts With Accretive Health Inc.," Office of Attorney General Lori Swanson, April 2012, www.ag.state.mn.us.

[4] "Treasury Releases Proposed Guidance to Ensure Patient Access to Financial Assistance from Charitable Hospitals," U.S. Department of the Treasury, June 22, 2012, www.treasury.gov/press-center/press-releases/Pages/tg1621.aspx.

[5] "Statement from Accretive Health," April 29, 2012, http://phx.corporate-ir.net/phoenix.zhtml?c=234481&p=irol-newsArticle&ID=1688694&highlight=.

[6] Jim Doyle, "Ascension Health's ties to embattled debt collector," April 27, 2012, www.stltoday.com/business/local/ascension-health-s-ties-to-embattled-debt-collector/article_6304c69a-8fe2-11e1-b74e-0019bb30f31a.html.

[7] "Attorney General Swanson Sues Accretive Health for Patient Privacy Violations," The Office of Attorney General Lori Swanson, Jan. 19, 2012, www.ag.state.mn.us/Consumer/PressRelease/120119AccretiveHealth.asp.

[8] Maura Lerner and Tony Kennedy, " 'Money-hungry' tactics raised alarms," *Star Tribune* (Minneapolis), July 9, 2012, www.startribune.com/lifestyle/health/151639735.html?page=2&c=y.

[9] "Senator Grills Collection Agency, Health System Executives," *Collections & Credit Risk*, May 31, 2012, www.collectionscreditrisk.com/news/franken-grills-health-care-collection-executives-3010834-1.html.

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state usury laws and allow state-licensed personal-finance companies to charge as much as 42 percent annual interest on loans of less than $300. By 1932, 25 states had adopted a version of the law, "a giant step forward toward the creation of a legitimate consumer-loan industry," wrote Calder. [39]

In July of that year, the number of state-licensed personal finance companies totaled 3,667, up from 600 in 1923. Their loans outstanding reached nearly $400 million, compared to $8 million in 1916. [40]

Consumers often used these loans to pay off other debts. But rather than wiping the slate clean with doctors, druggists and grocers as before, consumers were increasingly using the loans to pay off "automobiles, radios, refrigerators, and other goods sold on the installment plan," wrote Calder. [41]

In fact, the nature of consumer credit was rapidly changing in the early 20th century. Buying goods with a small amount of money down and the rest in fixed, monthly installments became acceptable and widespread. Before 1919, cars, for example, were bought with cash. But that year, General Motors created a financial subsidiary to lend money to car dealers and soon began to extend installment

credit to consumers as well. Henry Ford resisted the trend, but his Ford Motor Co. eventually followed. By the late 1920s, nearly everything could be bought on an installment plan, from radios to clothes.

With installment credit came delinquencies, and small collection agencies proliferated in the 1920s and '30s. Debt collectors, usually with just a few clients and employees, used phone and mail to reach debtors and if necessary made personal visits, becoming known as "door knockers," according to Kaulkin Ginsberg, the industry adviser. Collectors kept hand-written records on index cards. [42]

Collection industry giant NCO Financial Systems got its start in 1926. The Horsham, Pa.-based company now employs approximately 30,000 people in 11 countries.

Revolving Credit

While most merchants offered customers installment credit, large department stores offered charge accounts to their customers, mostly middle-class consumers. Monthly bills had to be paid promptly and in full. The accounts were not intended as a source of revenue for the store but as a convenience for customers.

In reality, however, many department store customers did not pay promptly, and credit departments became a money pit. Collecting on past-due accounts was a public relations nightmare for department store credit managers, who had to tread carefully between mailing letters asking for payment and making sure not to alienate regular customers, who might complain to friends. "Slow pays and no-pays were all too common but had to be endured for the sake of customer relationships," wrote Hyman. [43]

Then in 1938, Bloomingdale's instituted a new kind of charge account that changed the way Americans borrowed. The New York City department store allowed payment over a six-month period, essentially institutionalizing the existing payment practices of many customers. But for the first time, in exchange for this flexibility, the store charged a small amount of interest on the unpaid balance. Revolving credit was born.

As families moved to the suburbs after World War II, they shopped at newly opened branches of urban department stores in order to fill their empty houses. According to Hyman, revolving credit "bound customers to the stores." Tight budgets "did not have to mean going without." [44] But many consumers were unable to make their monthly payments, and debt collectors followed them to the suburbs. By outsourcing collections to agencies that were paid on a contingency basis, the department stores "could keep annoying debt collectors at arm's length. No self-respecting person would complain about a debt collector coming to her house, even if she might complain about Bloomingdale's refusing her credit." [45]

Soon banks across the country were offering credit cards that could be used at any establishment that accepted them. In the 1960s, BankAmericard — today's Visa — alone claimed 30 million cardholders, who charged $1.7 billion in 1969 and $2.7 billion just a year later. Like the department stores, which gradually came to accept these universal cards in addition to their own store cards, banks would turn to collection agencies when they had no success convincing cardholders to pay their balances. [46]

Regulating Debt Collectors

Health-care practitioners, small businesses, credit-card companies and department stores all used collection agencies to try to recover bad debt. But the industry was largely unregulated when, in 1974, the *Chicago Tribune* sent reporters to work in eight debt-collection agencies during a six-week investigation. In April of that year, the newspaper published a series of stories exposing abuses.

Under headlines such as "Bill Collection Terror Tactics," "Bill Collectors Here Show No Fear of the Law," and "They Try Anything to Catch a Debtor," the *Tribune* described collectors who "posed as police or lawyers, forged court orders and sent collection notices on the fabricated letterhead of a non-existent law firm," noted the National Consumer Law Center. [47] One story focused on a debt collector's harassing phone calls to the workplace of a woman whose health-insurance plan was late in paying a $195 medical bill. Her boss threatened to fire her because the calls were so disruptive. [48]

The *Tribune* exposé had a direct impact. In October 1975, Rep. Frank Annunzio, D-Ill., proposed legislation to curb abusive practices by collection agencies, and in 1977 Congress held hearings in which it found "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt-collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." [49]

Annunzio's Fair Debt Collection Practices Act was signed into law by President Jimmy Carter on Sept. 20, 1977, with the FTC charged with enforcing the measure. The FDCPA has remained largely unchanged since then.

Democratizing Credit

The nature of credit continued to change after passage of the FDCPA. In the early 1980s, banks found their modest credit-card profits squeezed. To fight inflation, the Federal Reserve had raised interest rates, and banks had to pay a much higher interest rate to borrow money from the Federal Reserve than state usury laws allowed them to charge on credit cards.

However, a 1978 Supreme Court decision, little-noticed at first, allowed Citibank to sidestep state usury laws. The result: a transformation in the credit-card business.

The court ruled that a bank could charge customers nationwide the interest rate in its home state. North Dakota, in search of jobs, repealed its usury law, and Citibank moved its credit-card operations there from New York. Chase Manhattan Bank persuaded Delaware to eliminate its usury law, and Chase, Manufacturer's Hanover and Chemical Bank as well as other banks relocated their credit-card operations there. Banks raised their credit-card rates, and kept them there, charging interest rates over 18 percent long after inflation had subsided and other rates had declined.

Meanwhile, "competition among the credit-card companies led to too many cards being offered and mounting debt by consumers who could not afford to pay it back," wrote Geisst. "The most surprising phenomenon to arise from the democratization of credit cards was the amount of credit made available to the poor. In 1983, one in thirty poor families had a credit card. By 1995, the number had risen to one in eight." [50] Not surprisingly, the percentage of credit-card debt that banks charged off as a loss began to rise sharply that year, reaching 6 percent in 1997, the highest in 25 years. [51]

Still, the bulk of household debt, about 70 percent, was in the form of mortgages in the late 1990s. Credit-card debt accounted for 10 percent, the next largest category; auto loans for 8 percent, and student loans for 2 percent. [52]

As credit was expanding, the debt-collection business was also undergoing significant change. After a crisis in the nation's savings and loan industry left many S&Ls insolvent, the government-owned and newly created Resolution Trust Corp. auctioned off nearly $400 billion in S&L assets in the late 1980s through the mid-1990s. Included in the sales were portfolios of delinquent credit-card debt. These auctions helped to establish the debt-buying industry.

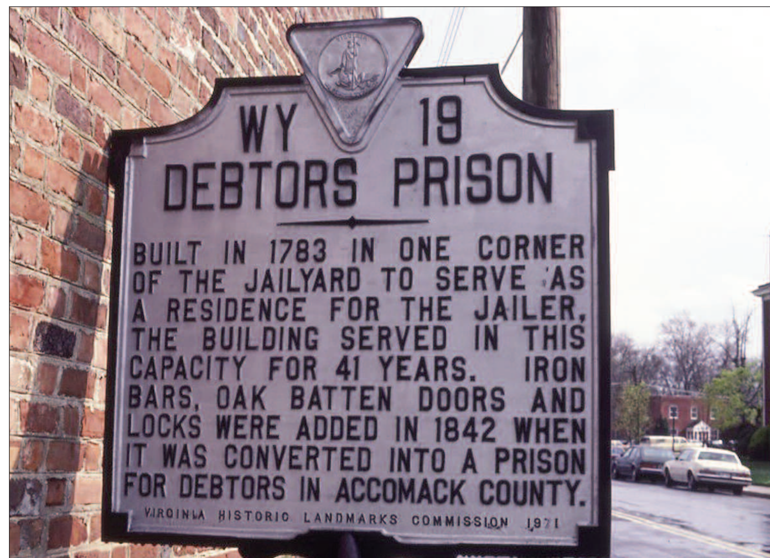
Credit-card companies, hospitals, and other issuers of credit that were owed money could not only hire debt collectors on a contingency basis but also sell portfolios of their most delinquent debt to a growing number of debt purchasers. Debt buyers purchased $12 billion in face value of debt in 1995. More than a decade later, that figure had grown to an estimated $215 billion, most of it credit-card debt. [53]

Debt buyers pay pennies on the dollar for delinquent debt. They provide an infusion of cash to creditors and, according to the debt-buying industry, are able to offer consumers more affordable payment plans than the original creditors. But consumer advocates assert that the growth in debt buying has actually led to more aggressive collection tactics, a surge in litigation against consumers and an increase in violations of federal law.

In September 2010, Sens. Franken, the Minnesota Democrat, and George LeMieux, R-Fla., introduced the End Debt Collector Abuse Act. It required debt collectors to provide information to consumers within five days of first contact to help them identify the debt as legitimate; thoroughly investigate consumers' disputes over the debt; and increase penalties on debt collectors who violate the law. [54] The bill died in the Senate Committee on Banking, Housing, and Urban Affairs.

However, that same year Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which created the Consumer Financial Protection Bureau. The bureau, along with the FTC, enforces federal consumer-protection laws and has the authority to periodically examine the practices of the larger debt-collection agencies or those it considers a risk to consumers. That kind of supervision, which has yet to begin, is unprecedented, and the industry is anxiously waiting to see how the CFPB carries out its authority.

On June 27, 2012, Franken reintroduced his bill, expanded to include new protections for consumers struggling with medical debt. ■



American Preservation Society

A sign identifies the still-standing colonial-era house in Accomack, Va., that served as a "gaol" for debtors for several years. Imprisonment for debt was outlawed by federal law in 1833, and most states eventually followed suit.

Repeat Calls Top Consumer Complaint List

More than 47,000 complaints of repeated calls by debt collectors were made to the Federal Trade Commission under the Fair Debt Collection Practices Act in 2011, surpassing all other complaint categories. Other common consumer complaints include misrepresentation of debt, false threats and failure to provide written notice.

Complaints Under Fair Debt Collection Practices Act, 2011	
Repeated calls	47,362
Misrepresents debt character, amount or status	46,482
Falsely threatens illegal or unintended act	35,473
No written notice	30,742
Falsely threatens arrest or property seizure	27,027
Fails to identify self as debt collector	20,781
Repeated calls to third parties	20,519
Improperly calls debtor at work	16,895
Uses obscene, profane or abusive language	16,576
Reveals debt to third party	12,636
Calls at inappropriate or inconvenient times	10,488
Refuses to verify debt after written request	10,000
Collects unauthorized fees, interest or expenses	9,314
Calls debtor after getting "cease communication" notice	5,922
Uses or threatens violence	3,977

Note: Callers can make more than one complaint in a single call.

Source: "Fair Debt Collection Practices Act," Consumer Financial Protection Bureau, 2012, Appendix C, files.consumerfinance.gov/f/201203_cfpb_FDCPA_annual_report.pdf

CURRENT SITUATION

Protecting Consumers

As the debt-collection industry evolves, the nation's attorneys general are stepping up their efforts to protect consumers against unscrupulous or abusive collection practices. And as they do, industry officials are watching legislative and regulatory developments carefully.

Rozanne Andersen, chief compliance officer at Muncie, Ind.-based Ontario Systems, which creates debt collection software, is among them. "Perhaps the most alarming news in 2011" for the industry was the joint opposition by 54 U.S. state and territorial attorneys general to the Mobile Information Call Act, which would have loosened restrictions on calls to consumers' cellphones, according to Andersen. [55] "That was unheard of for them to be so organized," she says.

That has not been the only coordinated action of state attorneys general against the debt-collection industry. Thirty-eight attorneys general, along with the FTC, opposed the $5.2 million settlement approved last August between debt buyer Encore Capital Group and 1.4 million consumers in class action lawsuits accusing the company of unfair practices, including using false affidavits to collect on debt.

"Under any interpretation, the ten-dollar-per-class-member settlement is not fair, reasonable, or adequate to address the harm incurred," the attorneys general said in a brief filed in federal court in Ohio. [56] Seven individuals who were part of the class action suits have appealed the settlement to the Sixth U.S. Circuit Court of Appeals in Cincinnati. [57]

Texas, West Virginia and Minnesota filed their own lawsuits against Encore. The company announced last October that it had reached a settlement with Texas but, at the same time, disclosed that North Carolina's attorney general had begun an investigation into Encore's debt-collection practices in that state. [58]

This past February, 19 attorneys general announced they had reached a settlement with NCO Financial Systems, the nation's largest debt collector, over charges of misleading and deceptive debt-collection practices. As part of the settlement, NCO agreed to change certain collection practices, pay $575,000 to the states for consumer enforcement and education efforts and set aside $950,000 to refund customers with valid claims against the company. [59]

A multi-state working group formed by the attorneys general in 2008 "received nearly two thousand complaints from consumers about [NCO Financial's] collection practices," New Mexico Attorney General Gary King said when the settlement was announced. "They include almost every possible violation of the federal Fair Debt Collection Practices Act." [60]

The company did not admit wrongdoing. "We are pleased to resolve the Multi-State Group's concerns, as well

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At Issue:

Should the Department of Education stop using debt collectors?

DEANNE LOONIN
DIRECTOR, STUDENT LOAN BORROWER ASSISTANCE PROJECT, NATIONAL CONSUMER LAW CENTER

WRITTEN FOR *CQ RESEARCHER*, JULY 2012

The reliance on private collection agencies has been a disaster for financially distressed borrowers who are desperate for help. Dispute resolution is, obviously, not the primary mission of loan collection agencies. Debt collectors are not adequately trained to understand and administer the complex borrower rights available under the Higher Education Act, and the government does not provide sufficient oversight of their activities.

There are certainly times when a borrower is uncooperative or has exhausted all options. In those cases, the loan holder may have no choice but to focus on collection efforts. Yet there are many borrowers who want to find a solution but are stymied because they cannot get past the rude, harassing and often abusive behavior of a collection agent.

At a minimum, until the government identifies viable alternatives to private collection agencies, it should bring all accounts in-house (and away from collection agencies) for low-income borrowers who are already subject to extreme collection programs such as Social Security seizures. The government should also immediately take the file in-house if a borrower informs a collection agency that he believes he has a defense to the debt, that the amount is wrong or that he wants to request a hardship reduction or waiver.

This will not only help borrowers but also save money. There are significant costs involved in pursuing even the most vulnerable borrowers until they die. Under the current system, lenders and collectors profit as the government pays higher and higher collection fees.

Student borrowers attempting to better their lives face severe consequences if they default on federal student loans. The government has nearly boundless powers to collect student loans, far beyond those of most unsecured creditors. Even in bankruptcy, most student loans must be paid. Unlike any other types of debt, there is no statute of limitations. We see and hear the human toll of the tattered student loan safety net every day from the low-income borrowers we represent.

There comes a point of no return where the government's ceaseless efforts to collect make no sense, monetarily or otherwise. Balancing collection for taxpayers and relief to borrowers can be difficult, but the reality is that the government has consistently favored school, lender and collection industry profits over the needs of struggling borrowers. It is time to do what is right for borrowers.

SHELLY REPP
PRESIDENT, NATIONAL COUNCIL OF HIGHER EDUCATION LOAN PROGRAMS

WRITTEN FOR *CQ RESEARCHER*, JULY 2012

For more than three decades the U.S. Department of Education and the guaranty agencies that help it administer the federal student loan programs have utilized the skills and technical expertise of debt collectors to assist in recovering defaulted student loans. The success of this public-private partnership is undeniable — $75 billion recovered in the past decade with more than $12 billion recovered in fiscal 2011. This is reason enough to conclude that the department should continue using private debt collectors, but there are other compelling reasons to maintain this partnership.

Consumer advocates have stated that there should be a balance between the need to collect student loans and the need to assist borrowers. We agree. Average borrower indebtedness has more than doubled in the past decade, and student loan defaults are also on the rise. Congress has provided a number of ways to help defaulted borrowers. Private collection agencies (PCAs) are well-trained to help borrowers find the right solution for their unique financial situations. PCAs invest significant resources to comply with the Fair Debt Collection Practices Act and other applicable laws and use the latest technologies to promote borrower repayment.

The department provides monetary incentives not just based on dollars collected but also to reward superior customer service. It provides significant financial incentives to encourage loan rehabilitation. We expect the department to provide effective oversight. In this regard, the department has established a dedicated website and toll-free hotline to receive borrower complaints, and an active and effective ombudsman office. The Consumer Financial Protection Bureau stands by as a consumer watchdog.

There are some who believe the department should abandon the use of third-party debt collectors. They tout the IRS as an example justifying such a move. But PCA's have helped the Department of Education recover more than 90 percent of the defaulted student loans (after collection costs). On the other hand, since 2000 the IRS's backlog of uncollected debt exploded by 700 percent to more than $70 billion, while during the same period the collection rates on debt it attempted to recover have fallen by half. The government and taxpayers can't afford to replicate that record of loss.

The department's collection portfolio consists of nearly 23 million borrowers. With a program that size, there are bound to be some legitimate borrower complaints. They should be addressed. However, this does not justify ending a successful public-private partnership that benefits borrowers and taxpayers alike.

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as upgrade our compliance processes," said Ronald Rittenmeyer, NCO's chief executive. [61]

Legislative Action

State legislatures have been active on the debt-collection front as well. While the FDCPA regulates debt collection at the federal level, states can write their own legislation, and the industry must follow whichever statute is stricter.

North Carolina passed one of the strictest in 2009, aimed particularly at debt buyers. In court, attorneys representing a debt buyer or its collection agency must produce valid documentation that the debt buyer owns the debt; the name of the original creditor; the consumer's account number; a copy of the original credit agreement or similar document; and an itemized accounting of the alleged debt amount.

The law also requires the debt buyer or its collection agency to give 30 days' notice in writing to the consumer of its intent to sue. That notice must include all of the above information.

"It sounds like such a simple request, but the name of the original creditor can be a lot to ask for," says Andersen. "The ability to figure out the name of the first bank can be problematic because of mergers and acquisitions."

Illinois attorney Louis Freedman has a more fundamental objection to the North Carolina law: that the collection industry and its attorneys are being singled out. Freedman, president of the Washington-based National Association of Retail Collection Attorneys, says no other area of law requires such notice. "You are required to give [consumers] every bit of information before you have even filed suit," Freedman says.

But Hobbs of the National Consumer Law Center says the North Carolina law "is a good model for other states. Maryland and Delaware courts have enacted rules which are similar, although they might not be quite as strong."

California has also taken aim at debt buyers. The state Senate approved a bill in February that would require more documentation from debt buyers during the collection process, and on June 28 a committee in the General Assembly approved the measure.

Every state has a law that shields certain property from being claimed by creditors to pay off bad debts, but many of the laws are old. Some states have begun to revise them to reflect inflation and changes in technology.

More than a dozen states have increased the exemption for cars, and about a fifth of states have raised their exemptions for household goods, including computers. The revisions mean that "tens of millions of consumers with judgments over their heads, as they recover from a disability or a long period of unemployment, have the ability to acquire a used car or get a computer to look for a job without having the car seized or their computer taken away," says Hobbs.

The revisions were long overdue, says Hobbs. Before March 2011, Massachusetts law protected two cows, 12 sheep, two swine and a few tons of hay from creditors and exempted a vehicle worth up to $750 from seizure, according to Hobbs. In 2011, the state passed a new law that protected a broader array of items and raised the vehicle cap to $7,500. [62]

Still, says Hobbs, "a lot of states have not significantly improved these laws since the Great Depression."

Statute of Limitations

Debt collectors have a limited number of years to take consumers to court to collect bad debts. This statute of limitations varies from state to state. It's three years in Alabama, for example, five in Florida and eight in Wyoming. [63] But the debt does not go away, and while collectors cannot sue, they are allowed in most states to contact consumers to request payment on debt that has passed the statute of limitations, known as "time-barred" debt. Consumers are often not aware, however, that making a partial payment will reset the clock in most states, giving the debt collector a fresh shot in court.

Even though the FDCPA and state laws forbid collectors to sue on "time-barred debt," consumer advocates say it happens frequently. They say the problem can be missing paperwork that would have spelled out the applicable statute of limitations.

But Schiffman from ACA International disagrees that such lawsuits are commonplace. "It might happen occasionally, and when it does those collectors should be held accountable," he says.

A few states have recently added consumer protections for time-barred debt. New Mexico requires debt collectors to inform consumers if a debt has passed the state's statute of limitations and that they cannot be sued, though collectors can continue to pursue payment by phone or other means. "This rule is intended to ensure that debt collectors provide important information to consumers so that they make informed decisions when they are confronted with a demand to pay an old unenforceable debt," said King, the state's attorney general. [64] New York City and Massachusetts also have such rules.

Laws in Wisconsin and Mississippi go even further by completely extinguishing debt older than their statutes of limitations. The ACA does not want to see that practice spread to other states. "If there is no ability to collect on that debt, there would be a devastating impact on credit granting in the United States. You would make credit almost impossible to get," says Schiffman.

The ACA wants a national statute of limitations, rather than 50 different state statutes, to clear up any confusion during collection lawsuits. The trade association says the limitation period should be seven years. Consumer groups say it should be three. ■

OUTLOOK

New Rules?

The next year or so will be one of uncertainty for debt collectors as the Consumer Financial Protection Bureau (CFPB) rolls out new regulatory rules. But industry insiders say recent enforcement actions by the FTC offer clues to what is coming.

When the FTC settled with Asset Acceptance in January after investigating how the company collected on time-barred debt, it required the company from then on to disclose to consumers if a debt has passed the relevant statute of limitations. It also prohibited the company from suing a consumer after such a disclosure even if the consumer makes a partial payment that otherwise would reset the clock. [65]

Andersen at Ontario Systems, the debt-collection software firm, expects the CFPB to require all debt-collection agencies to notify consumers "that the statute of limitations is either close to an expiration date or has expired." And while the CFPB might not go as far as to prohibit suits against consumers who make a partial payment on time-barred debt, it might require collection agencies to warn consumers of how a debt payment may affect the statute of limitations, Andersen says.

She says she would be surprised if Congress passes legislation to amend the Fair Debt Collection Protection Act (FDCPA) this year or next, whether to raise the $1,000 limit on statutory damages when debt collectors violate the law, add documentation requirements for collectors or shield the industry from consumer lawsuits over debt-related phone messages. "Congress is not going to neuter the CFPB, not our current Senate anyway, by passing FDCPA legislation," Andersen says.

But Curtis of Community Catalyst says Congress might act. "I think there is some interest in strengthening the . . . act," she says, but adds a caveat: "It is also an election year, and that always has interesting implications for Congress."

One debt-related bill before Congress does have broad support. The House passed a version of the Medical Debt Responsibility Act in 2010, and Sen. Jeff Merkley, D-Ore., reintroduced the bill in the Senate in March. The bill would erase medical debt from consumer credit reports within 45 days of being settled or paid. Under current law, consumer debt, including medical debt, can remain on a credit report for seven years, driving down credit scores.

"Medical debt is not a great predictor of a person's creditworthiness, and folks should not be shackled from getting loans to start businesses or buy their dream home because they got very sick," Merkley said. [66]

The bill's support extends beyond patient-advocacy groups, such as Consumers Union and The Access Project, to the Mortgage Bankers Association, American Medical Association and members of the debt-collection industry. "Medical debt is unlike any other type of consumer debt," says Capio CEO Richards. "We totally understand no one plans an accident or illness, which creates medical debt."

Critics of the bill, however, say medical debt is predictive of a consumer's credit worthiness. A spokesman for the Consumer Data Industry Association, which represents the nation's major credit bureaus, told *The New York Times* that it had "deep concerns about deleting any type of accurate, predictive data" before the end of the seven-year period. "Broadly speaking, a precedent of deleting adverse information once a delinquent debt is paid would seriously impinge on the quality of data," he said. [67] ■

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