



An FTC Perspective on Debt Collection Litigation Reforms

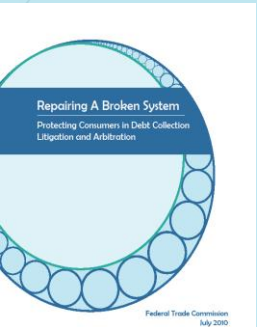
National Conference of State Legislatures
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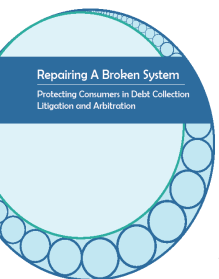
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Disclaimer

- The views expressed today are my own and not those of the Federal Trade Commission.





Federal Overview

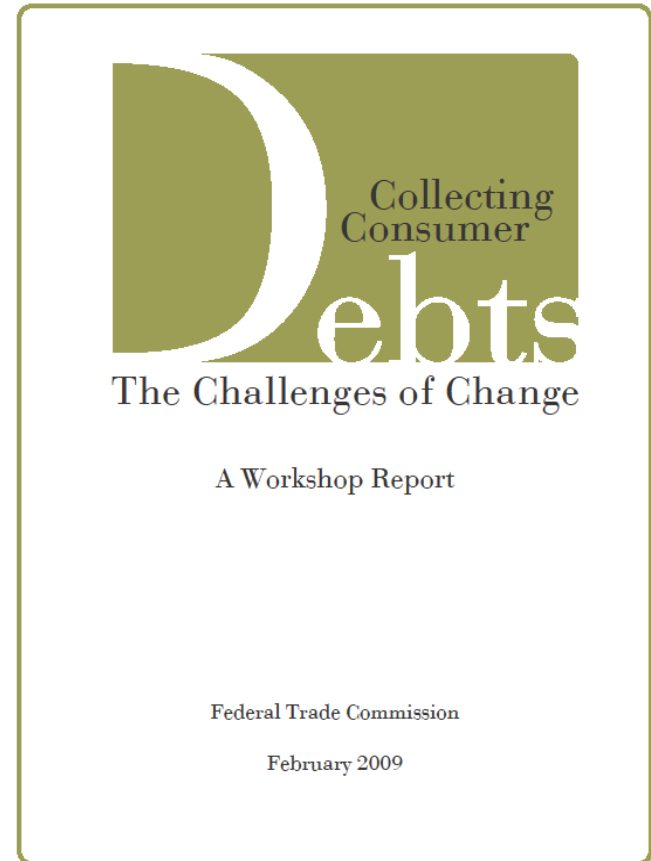
- CFPB and FTC have authority to enforce Fair Debt Collection Practices Act (FDCPA), and CFPB implementing rules.
 - 2 agencies must coordinate enforcement efforts
 - 2 agencies must coordinate and cooperate on UDAP rulemakings





Background

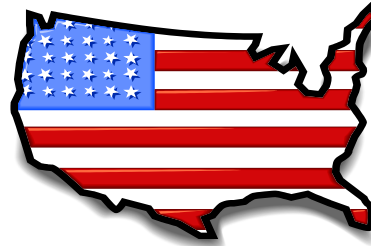
- Debt Collection Workshop Report (2009)
 - Serious consumer protection concerns with debt collection litigation and arbitration.
 - Insufficient information to make policy recommendations as to how to address these consumer protection problems.





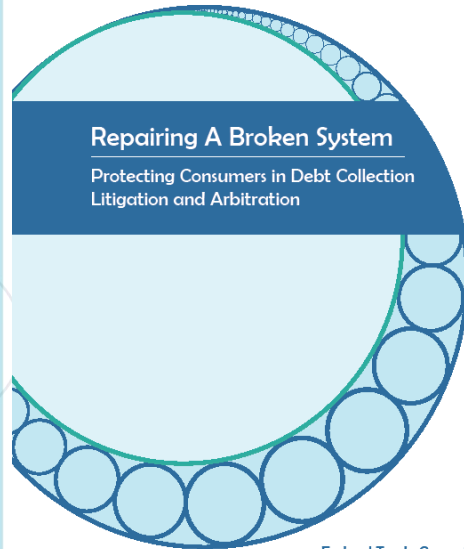
Background

- Commission held roundtables in 2009:
 - Debt collection litigation and arbitration.
 - Nationwide.
 - Nearly 100 expert panelists.
 - Public comments solicited.



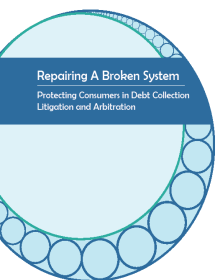


July 2010 Report:



Federal Trade Commission
July 2010

Repairing A Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration





Litigation

- Consumer Participation
- Evidence of Indebtedness
- Time-Barred Debt
- Garnishment of Bank Accounts
- Emerging Issue: Bail Funds & Debt



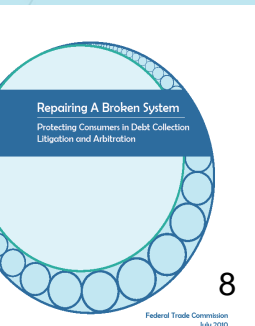


Litigation

- Consumer Participation: Findings



- Few consumers appear or defend.
- Not clear why. Possibilities:
 - Service and notice problems.
 - Lack of familiarity with litigation.
 - Costs of participating.
 - Appearing or defending would be futile.





Litigation



- Consumer Participation: Recommendations

- Improve service of process and notice.
- Educate and assist consumers to increase their comfort with litigation and awareness of possible defenses.
- Decrease costs to consumers:
 - Use technologies to decrease time and costs of attendance.
 - Award consumers lost wages and costs, where appropriate.
- Encourage pro bono assistance.

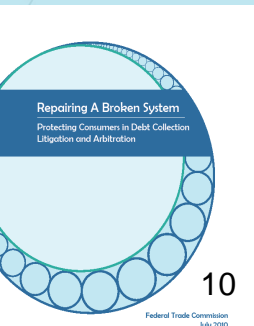


Litigation



• Consumer Participation: Reforms

- Supplemental Notices in addition to Service:
 - North Carolina – 30 days pre-suit (2009).
 - NYC – US Mail letter sent by clerk to same address where service was made. Bars entry of default if letter is returned as undeliverable.
- Enhanced Service Requirements:
 - NYC – GPS tracking of process server locations.
 - MA, CT – require consultation of multiple lists to identify correct, current address.
- Pro Bono and Self-Help Measures:
 - NYC, Chicago – Limited courthouse assistance with debt collection defense.
 - Checklists of possible defenses. Court-issued consumer education.
- Reform Default Procedures:
 - Several states, e.g., DE, MD, encourage extra judicial scrutiny before granting default judgments for plaintiffs or continuances when plaintiff is unprepared.





Litigation

- Evidence of Indebtedness: Findings
 - Complaints filed against wrong person or for wrong amount.
 - Complaints lack sufficient information:
 - Inadequate information about alleged debt.
 - Inadequate information about the underlying credit contract.





Litigation

- Evidence of Indebtedness:
Recommendations

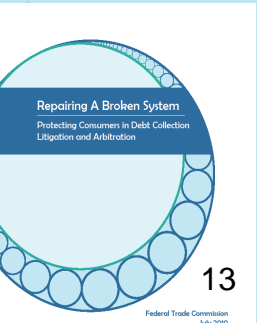


- Complaints should include:
 - Original creditor + redacted account #.
 - Default/charge-off date + amount due then.
 - Current owner of the debt.
 - Total amount due: principal, interest, and fees.
 - Contract or description of relevant terms.



“Robosigned” Affidavits

- Affiant rapidly signs numerous documents swearing s/he has personal knowledge of the underlying issues when not true.
- Alleged in mortgage and debt collection cases.
- Where default is common (as in collection suits), affidavit assertions likely will go unquestioned.
- False affidavits alleged in *Vassalle v. Midland Funding* (N.D. Ohio 2011)





Litigation



- Evidence of Indebtedness: Reforms

- “Robosigned” Affidavits:

- *E.g.*, Maryland “Judgment on Affidavit” rule (pers. knowl., admissible evid.) now requires:
 - Proof debt exists;
 - Docs proving terms of contract (usually);
 - Unbroken chain of title = proof P owns debt;
 - Specific details RE true amount of claim (pre- or post-charge-off, incl. Interest Worksheet & Assigned Consumer Debt Checklist, & orig acct #, etc.);
 - Collection agency license numbers;
 - Various other details providing necessary information about the consumer claim.



Litigation



- Time-barred Debt: Findings
 - Much time-barred debt being **collected**:
 - Consumers may believe that collectors can sue to recover on this debt.
 - Consumers may pay on this debt without knowing that such payments may revive the entire balance for a new statute of limitations period.
 - Some time-barred debt being **sued upon**, usually leading to default judgments.



Litigation



- Time-Barred Debt: Recommendations
 - *General:*
 - States should clarify statute of limitations, if necessary.
 - *Litigation:*
 - States should make the statute of limitations part of the collector's case in chief rather than an affirmative defense.





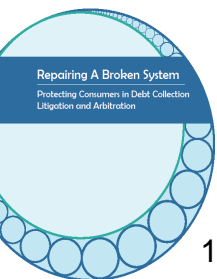
Litigation



- Time-Barred Debt: Recommendations

- *Collection:*

- Collectors should *disclose* that consumers cannot be sued if they do not pay.
- States should change laws so that payment does not revive full debt unless consumers knowingly consent to its revival.
- If states continue to permit revival, collectors should disclose the consequences of partial payments.





Litigation



- Time-Barred Debt: Reforms
 - New Mexico:
 - State AG issued rule that requires disclosure to consumers of rights & consequences of paying when collector believes debt is time-barred.
 - Arizona:
 - Clarified 3-year vs. 6-year statute of limitations: all 6-year now.
 - Federal:
 - Rep. Steve Cohen proposed legislation barring suits on time-barred debt and requiring disclosures when collecting on it.





Litigation



- Garnishment of Bank Accounts: Findings
 - Federal and state laws exempt some government benefits from garnishment, e.g., Social Security payments.
 - In response to state garnishment orders, banks have frozen accounts holding exempt funds.
 - Freezes cause extraordinary hardship:
 - Account holders cannot get access to critical funds.
 - Banks charge fees for freezes and bounced checks.





Litigation



- Garnishment and Frozen Exempt Funds: Recommendations
 - FTC supported generally the Joint Agency proposed rule, as well as state reforms to limit the amount banks can freeze in accounts with exempt funds.
 - FTC took no position on the specific limit that would be appropriate.





Litigation



- Garnishment: Reforms

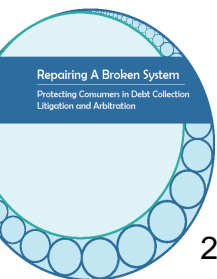
- Some states have enacted laws prohibiting banks from freezing a limited amount in accounts containing exempt funds.
- Treasury & other agencies have adopted interim final federal rule barring banks from freezing, in an account containing exempt funds, the lesser of:
 - Exempt benefits deposited into the account in the last 2 months, or
 - The balance in the bank account.





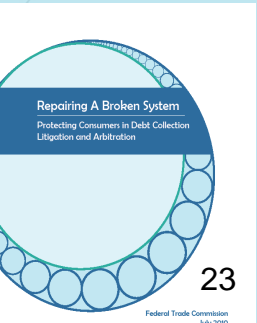
Bail Funds and Debts

- Bail Funds and Debts: Issue
 - Judgment debtors who disregard explicit court orders may be arrested on bench warrants.
 - They must pay bail to be released.
 - In some jurisdictions, the bail money is related to the amount of the debt and/or paid over to judgment creditors in satisfaction of the debt.
 - This can result in creditors receiving money protected by law from garnishment.
 - It can also create impression of “Debtors’ Prisons.”





- Bail Funds and Debts:
 - Recommendations
 - States should bar debt collectors from seeking or obtaining from the court any posted bail money.
 - Reforms
 - Washington State: Statute bars debt collectors from accepting the bail money of debtors jailed on bench warrants.

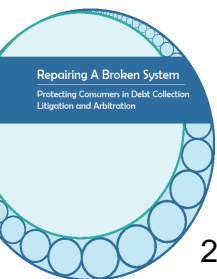




Litigation



- FTC Steps:
 - Advocate changes to state policymakers and debt collection stakeholders.
 - Serve as clearinghouse for state reforms.
 - Consider law enforcement actions and other activities to deter misleading consumers about time-barred debt.
 - Collaborate with other federal agencies, such as CFPB.





Conclusion

- Questions?

