

Center for American Progress



**Reining in the Repo Man:**  
The Case for Increased Regulation  
of the Debt Collection Industry

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# Executive Summary

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Thirty years ago, Congress adopted the Fair Debt Collection Practices Act (FDCPA) to regulate third-party debt “collectors” hired by creditors to convince consumers to pay up on delinquent bills. Since the passage of the Act, the number of collectors has risen dramatically and the industry now pulls in \$12 billion in annual revenues. Recent popular press articles conveying horror stories of consumers being abused at the hands of overzealous collectors compelled us to examine relevant data to determine if, and why, debt collectors have become more aggressive in recent years. This report finds a number of troubling consequences of the recent growth of the debt collection industry, including:

- The number of complaints to the Federal Trade Commission (FTC) regarding debt collection agencies has increased 560% since 1999, and the number of complaints to Better Business Bureaus regarding debt collectors has also increased roughly 560% since 1995;
- Despite receiving 305,570 complaints against third-party collectors in the past six years, the FTC has only initiated ten enforcement actions during that time and state attorneys general have collectively prosecuted only a handful of offenders;
- The economic squeeze on the American middle class caused by rising costs of living and stagnant wages makes Americans more vulnerable to the predations of lenders and collectors than in previous years.

In light of these findings, we recommend bolstering enforcement efforts and modernizing the FDCPA to better respond to debt collectors’ new abusive tactics. The federal government should:

- Adopt the FTC’s recommendations to close loopholes in the law that allow collectors to hide required legal notices and improper fees; Extend the FDCPA to regulate in-house debt collectors, who have increasingly adopted unscrupulous tactics;
- Implement strict pleading requirements to prevent collectors from using small claims courts to exploit vulnerable citizens;
- Increase punitive damage awards for FDCPA violations to be commensurate with the size of the industry and to compensate for thirty years worth of inflation.



# Reining in the Repo Man: The Case for Increased Regulation of the Debt Collection Industry

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## Introduction

As middle class Americans become increasingly burdened by staggering levels of household debt, an entire industry of professional debt “collectors” has quietly ratcheted up its efforts to profit off of the stagnant economy. Creditors (e.g., credit card companies) hire these for-profit collection firms that make a living by making people “pay up” (at times, even after discovering that the target doesn’t owe anything).

Debt-collection firms are increasingly purchasing old debts from creditors for pennies on the dollar. One day you might have a \$1,000 outstanding balance on your Visa, and suddenly you owe \$1,000 plus “collection fees” to Asset Acceptance Capital, which paid a grand total of \$24 for the right to collect your money. Asset Acceptance, one of the largest of the thousands of U.S. debt buying companies, purchased \$4.2 billion worth of consumer debt in this manner in 2005 for the bargain price of \$102.3 million (2.4¢ for every \$1 of debt). Much of this purchased debt is so old that consumers are no longer legally obligated to pay it. But that doesn’t stop collectors from trying to get it anyway.

The number of these professional collectors has expanded rapidly in recent years; there are now nearly 6,500 third-party collection agencies<sup>1</sup> in the U.S. with total revenues of over \$12 billion.<sup>2</sup> Congress saw the seeds of this trend decades ago and recognized the potential for foul play. In 1977, bipartisan majorities, with the support of the trade association of collection agencies (ACA International), passed the Fair Debt Collection Practices Act (FDCPA). The FDCPA contains vital consumer protections, including provisions that require collectors to verify disputed debts before proceeding with collection activities and language that prohibits collectors from harassing, intimidating, or threatening consumers; lying about the size or legal status of a debt; impersonating public officials or falsely claiming to be a lawyer; revealing (or threatening to reveal) alleged debt to others in order to embarrass the consumer; and threatening legal action or prosecution without basis.

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<sup>1</sup> ACA International website; <http://www.acainternational.org/?cid=5431>. Last accessed August 8, 2006.

<sup>2</sup> PricewaterhouseCoopers report for ACA International. “Value of Third-Party Debt Collection to the U.S. Economy: Survey and Analysis.”

The FDCPA's seemingly strong protections have not succeeded at preventing an alarming increase in over-the-line tactics by debt collectors. Recent articles in *The New York Times* and *The Boston Globe* highlight disturbing stories of Americans victimized by illegal collection activities, including accounts of consumers who were continually harassed and intimidated about debts that they could prove they never incurred.<sup>3</sup> The *Times* article highlights one New York resident living on Social Security whose bank account was frozen by debt collectors who claimed she failed to pay a bill for numerous charges at local gas stations. The woman has never owned a car or had a driver's license. Many other families report that collectors (illegally) call friends and relatives in an effort to shame consumers into paying up, or continually call alleged debtors at work to get their targets in trouble with superiors. One Minnesota debt collector recently made headlines for illegally filing a lawsuit against a serviceman while he was deployed in Iraq.

Accounts from industry insiders show that these stories are not merely fabricated by bitter debtors. Former debt collector Mike Flanagan has traded in his old job and now focuses on exposing collector abuses. Explaining his old collection strategy to CBS News, he said, "If I beat you hard enough, long enough, often enough, you'll pay the bill if nothing else but to get me to go away."<sup>4</sup> Debt collectors interviewed for the upcoming documentary on consumer debt *Maxed Out* describe making calls to friends and family members to deliberately intimidate consumers into paying up. As one remarkably frank debt collector explained:

I like to make the analogy that, you know, you're like this pirate on a pirate ship...and you're walking them out on the plank, and you walk them as far as you can out on that plank without pushing them off. And then you bring them back to get what you want.

This report reviews the available data on debt collection and finds evidence of a widespread pattern of exploitation. It also explores possible causes of the trend, including how the deteriorating economic position of the American middle class makes families increasingly vulnerable to abuse. Finally, it discusses the merits of proposals to address the problem and suggests additional ways the federal government can step in to curb collector abuses.

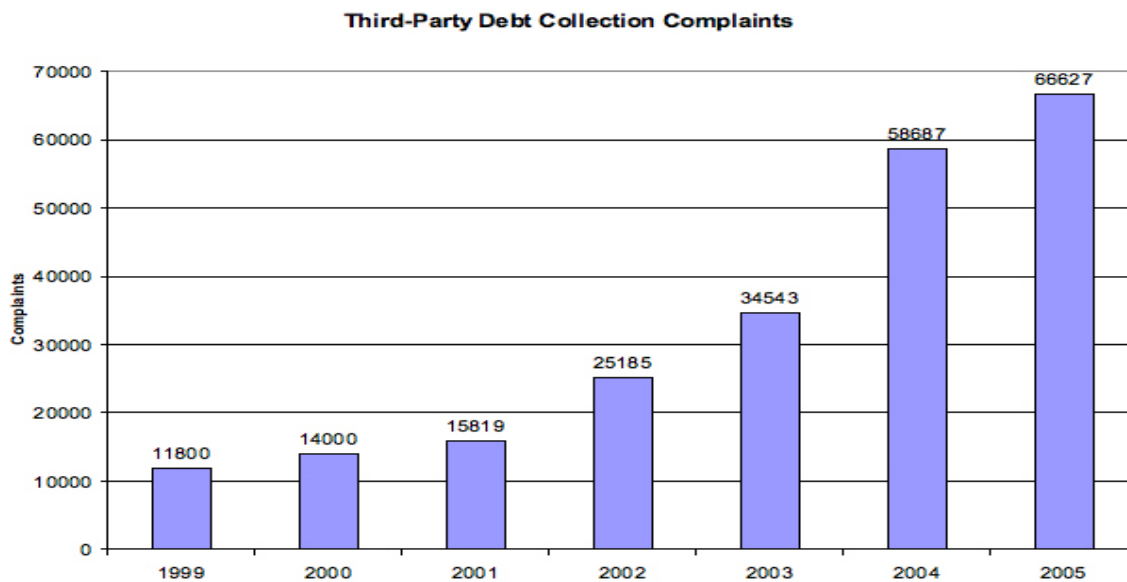
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<sup>3</sup> See, for example, Sewell Chan, "An Outcry Rises as Debt Collectors Play Rough," *New York Times*, 5 July 2006, and the *Boston Globe's* recent four-part special report "Debtor's Hell" (July 30-August 2).

<sup>4</sup> KDKA Pittsburg, CBS. [http://kdka.com/seenon/local\\_story\\_180202634.html](http://kdka.com/seenon/local_story_180202634.html).

## Data and Analysis: Complaints Exploding

While some might argue that the horrific tales of consumers abused by overzealous collectors are the exception rather than the rule, statistics show that these stories are not isolated incidents. In its annual report to Congress on implementation of the FDCPA, the Federal Trade Commission reported collecting a record 66,627 complaints about third-party debt collectors in 2005—more complaints than were received about any other industry. This figure reflects a 560% increase in complaints since 1999 when the FTC began collecting data (Figure 1). Data provided to the Center for American Progress by the Council of Better Business Bureaus corroborates this trend. The data shows that complaints to Better Business Bureaus regarding debt collection companies also increased over 560% during the past ten years. In 1999, the debt collection industry ranked 13th on the Better Business Bureau's list of industries with the most complaints. By 2005, the industry moved up to sixth.<sup>5</sup>



**Figure 1: Third-party collection complaints have risen dramatically.** Complaints to the FTC have also risen as a share of total FTC complaints (from 12.6% in 2003, the first year the FTC reported this statistic, to 19.1% in 2006). Source: FTC Reports to Congress on the FDCPA.

<sup>5</sup> See Council of Better Business Bureau press releases at <http://www.bbb.org/alerts/article.asp?ID=663> and <http://www.bbb.org/alerts/article.asp?ID=412>.

In a statement responding to the FTC Report, ACA International notes that these complaints represent “one one-thousandth of one percent of the annual contacts made to consumers.”<sup>6</sup> However, the FTC rebuts that “the number of consumers who complain to the agency represents a relatively small percentage of the total number of consumers who actually encounter problems.”<sup>7</sup> The fact is, as the FTC would agree, “many consumers never complain,” and many more are unaware that the conduct they have experienced is even illegal. In some sense, the victims profiled by the Times and the Globe are the lucky ones. Many of those Americans had incontrovertible proof that their debt was illegitimate, or had clear evidence of abuse, and could confidently fight against these powerful collectors. But millions of Americans who do struggle with high debt are fearful of the consequences of protesting and quickly acquiesce even to over-inflated payment demands. Others give in because they worry that their credit score could be adversely affected, increasing their monthly mortgage and credit card bills. Many others declare bankruptcy simply to stop the debt collectors’ harassing and intimidating phone calls.

Equally troubling is data on the number of lawsuits filed against alleged debtors. The Boston Globe report finds that eight collection firms file 90,000 lawsuits a year in Massachusetts alone. One of the largest national firms, Asset Acceptance, employs an “army” of lawyers to file tens of thousands of lawsuits in small claims courts throughout the country.<sup>8</sup> The firm pursues a deliberate strategy of taking small debts directly to court in order to frighten consumers into capitulating. Lawyers for debt collection companies cleverly exploit the lax rules in small claims courts to obtain summary judgments against alleged debtors. After reviewing detailed records of proceedings in Massachusetts small claims courts, The Boston Globe found that judges and attorneys for collection companies “routinely” broke court rules, “almost always to the detriment of the defendant.” Even when rules are strictly followed, the system is tilted strongly in favor of collectors. Many consumers, especially elderly or poor consumers who many collectors intentionally target, quickly capitulate rather than square off against seasoned lawyers in an unfamiliar environment. Typically collectors’ only evidence of a debt is a name, the last known address, and a total amount due—hardly enough to form a case. Tellingly, collectors’ cases are often so tenuous that they almost always drop the case outright if the consumer contests the debt at all.<sup>9</sup>

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<sup>6</sup> ACA International Statement on the 2006 FTC report to Congress. <http://www.acainternational.org/media.aspx?cid=8289&via=325>. Last accessed August 3, 2006. This statement implies that ACA International believes that collection companies contacted consumers 6.6 billion times in 2006.

<sup>7</sup> United States Federal Trade Commission. 2006. Report to Congress. “Annual Report 2006: Fair Debt Collection Practices Act.”

<sup>8</sup> Suein Hwang, “Once-Ignored Consumer Debts are Focus of Booming Industry.” Wall Street Journal. October 25, 2004.

<sup>9</sup> Lauren Goldberg. “Dealing in Debt: The High-Stakes World of Debt Collection After FDCPA.” University of Southern California Law Review. March 2006. 79 S. Cal. L. Rev. 711.

## Collector's Fantasy: A Middle Class Squeezed

The grip of these modern-day loan sharks is a small part of a much wider squeeze on working families. In a recent report, the Center for American Progress found that slow income growth, rapidly rising interest rates, and high costs of healthcare, education, and transportation are sending more and more families into debt.<sup>10</sup> If mounting debt and paycheck-to-paycheck budgeting were ever considered solely problems for low-income families, they certainly aren't anymore—the report found that the median debt level of families in the middle income quintile has jumped 42.6% from 2001 to 2004 after adjusting for inflation. A first-of-its-kind bipartisan poll on consumer attitudes toward debt commissioned by the Center for American Progress, the Center for Responsible Lending, the National Military Families Association, and AARP, and conducted by Greenberg Quinlan Rosner Research and Public Opinion Strategies, found that 79% of Americans believe that debt is a problem for middle class families as well as low-income families. And as more of these families fall into debt, more become vulnerable to the predations of collection “pirates.”

The expansion of the debt collection problem is not simply a result of irresponsible spending habits. In fact, the share of the average family's income devoted to discretionary purchases has fallen in real terms since 2000.<sup>11</sup> Families are often pushed off the edge by a devastating event (or events), and then trapped by usurious interest rates and fees that cause small loans to spiral rapidly out of control. Credit card underwriting practices have become notoriously lax, and many companies grant or extend credit lines that consumers could not reasonably be expected to pay back. Creditors realize that their practices will push many into bankruptcy, but they also realize that they can extract outrageous amounts of interest and fees before families resort to that option.<sup>12</sup> The recent debt-buying trend is a key part of this business strategy—although many consumers will default, creditors can cut their loses by selling the debt off to collectors.

Given the recent struggles of working class Americans to make ends meet, the last thing America needs now is the heavy hand of the Repo Man. The expanded role of third-party debt collectors raises the stakes of America's growing debt crisis and portends serious consequences for hard-

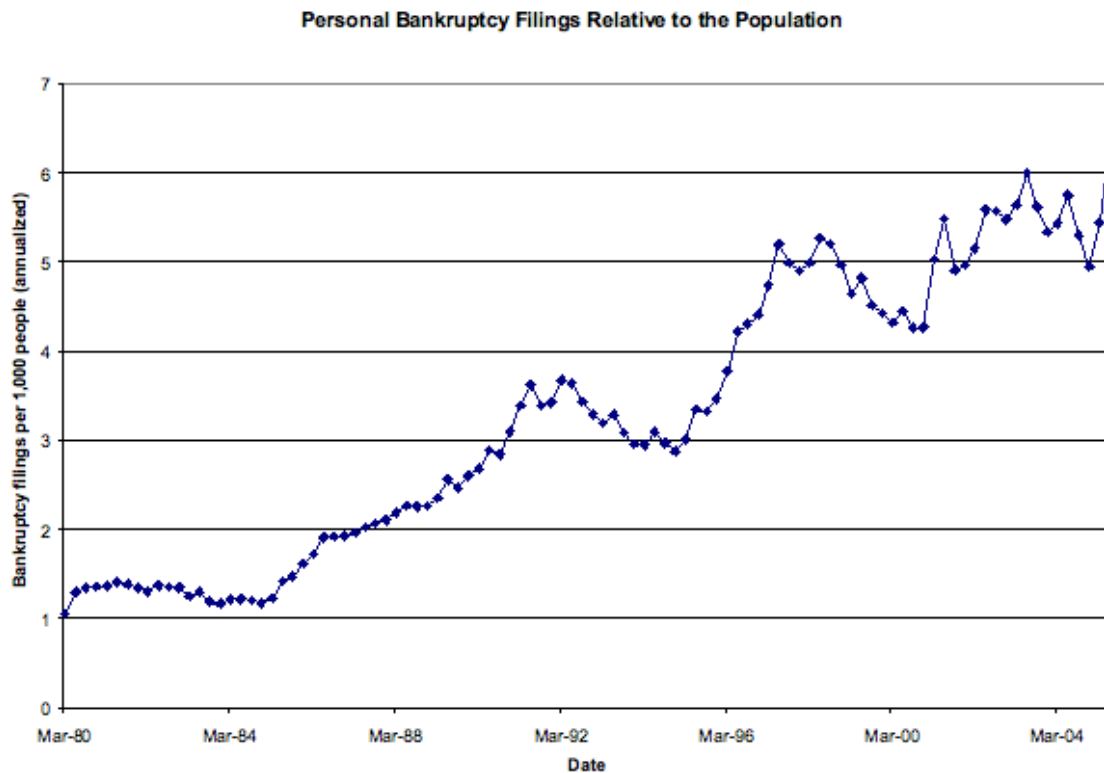
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<sup>10</sup> Christian E. Weller. “Drowning in Debt: America's Middle Class Falls Deeper in Debt as Income Growth Slows and Costs Climb.” Center for American Progress. May 2006.

<sup>11</sup> Christian E. Weller. “The Middle Class Squeeze at 25-Year High.” Center for American Progress. March 21, 2006.

<sup>12</sup> For a discussion of predatory credit card industry behaviors, see for example Elizabeth Warren and Amelia Warren Tyagi, “The Two-Income Trap.” Basic Books, 2004. Also see the upcoming documentary *Maxed Out* by director James Scurlock.

working Americans desperately trying to claw their way out of debt incurred during lackluster economic times. The rise in third-party debt collection comes at the same time that the percentage of new foreclosure proceedings on home mortgages and defaults on non-mortgage consumer loans approach all-time highs. Bankruptcy filings rose until passage of the Bankruptcy Bill last fall (Figure 2), and mortgage foreclosures have increased over the past ten years (Figure 3). Consumer default rates, while volatile, have also spiked since the beginning of the decade (Figure 4). The correlation is unsurprising: with more debt comes more abuse, more harassment, more bankruptcy, and more hard-working families denied the opportunity to achieve the American dream.



**Figure 2: Personal bankruptcy rate rising.** After dropping steadily throughout the late '90s, bankruptcy rates have risen dramatically since 2001. The data in this graph ends with the second quarter of 2005, when the passage of the Bankruptcy Reform Bill caused hundreds of thousands to rush to file before the law took affect. As a result, data beyond this point is not strictly comparable for trend purposes. Source: "Drowning in Debt: America's Middle Class Falls Deeper in Debt as Income Growth Slows and Costs Climb." Christian E. Weller, Center for American Progress. May 2006.

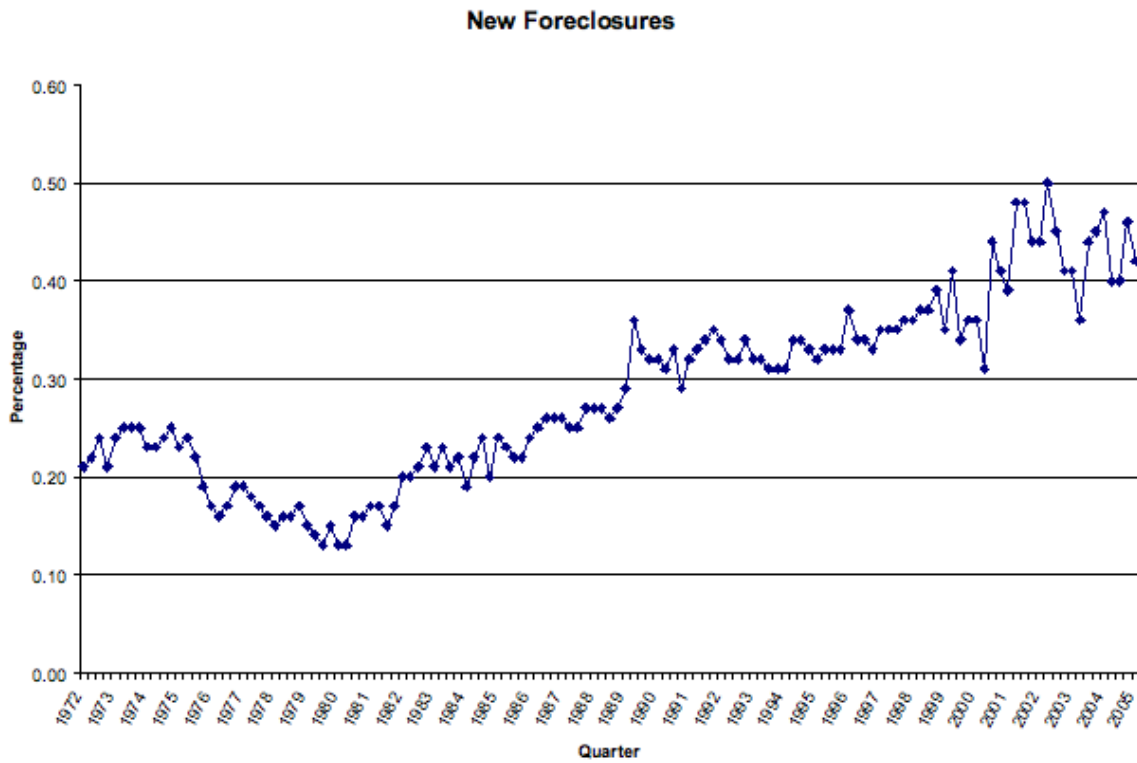


Figure 3: Foreclosures trending upward. Source: Federal Reserve Board.

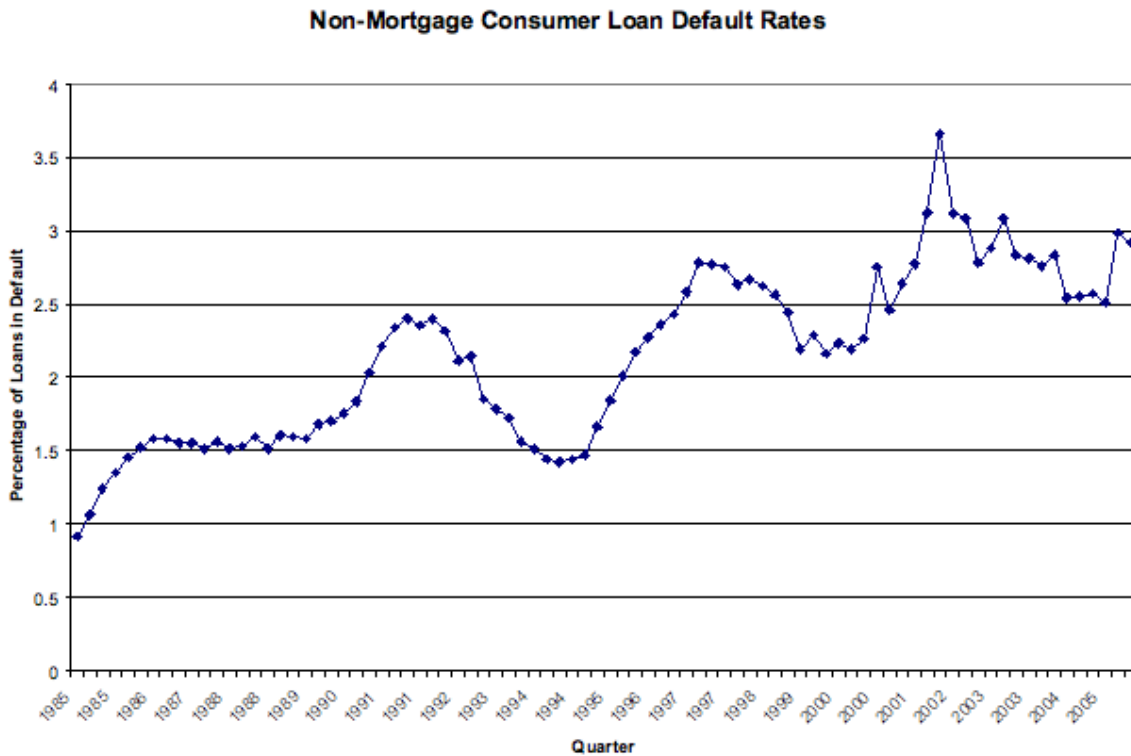


Figure 4: Default rates near all-time highs. Source: Federal Reserve Board.

## **The Role of Government**

Increased media attention to the activities of these collectors, as we've seen recently with the Times and Globe reports, can certainly help alleviate the problem. If consumers realize that they have legal rights and recourse, debt collection firms will find the risk of litigation or prosecution too great to adopt these tough tactics. Exploitative debt collectors undoubtedly realize their activities are illegal, but make a shrewd economic calculation—they know that most consumers will quickly give in, and that the vast majority have probably never heard of the FDCPA. Only a small fraction of consumers will be defiant, and only a small fraction of those will successfully sue or file a complaint. Profits reaped from those who lack the ability or the will to resist dwarf the expected cost of any legal actions. Collectors will only stop taking advantage of Americans going through tough times when it becomes unprofitable for them to do so.

Government agencies also must make wider enforcement efforts a higher priority. Lawsuits are effective ways to ensure that collectors comply with the law—as the debt collectors who file thousands of lawsuits each year to pressure consumers well know. Yet over the past six years, the FTC has engaged in only ten enforcement actions out of the 305,570 complaints filed during the same time period. As noted in the Globe and the Times, state governments have not performed any better. The FTC must more aggressively investigate complaints and utilize lawsuits to enforce the law. For this to be possible, Congress must ensure that the FTC has enough resources to compete with an industry that is becoming ever more skillful at exploiting consumers. Greater consumer awareness and tougher enforcement of existing laws is only part of the solution to increasingly abusive debt collection practices. As Lauren Goldberg notes in an article in the University of Southern California Law Review, the FDCPA was “intended only to remedy previous abusive behavior and not to prospectively adapt to a changing industry.”<sup>13</sup> Congress must step in to modernize the nearly 30-year-old FDCPA to address the current crisis.

Congress should take the advice of the FTC, which for years has made a number of important, common-sense recommendations to amend the FDCPA in its annual reports to Congress. These amendments seek to make the law clearer and provide fewer opportunities for collectors to exploit loopholes. The

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<sup>13</sup> Goldberg 2006.

Federal Reports Elimination and Sunset Act makes it legally unnecessary for the FTC to issue the annual reports to Congress. Yet, the FTC has stated that it will continue to do so because “FDCPA reports effectively convey the Commission’s enforcement priorities and legislative recommendations to the public as well as to Congress.”<sup>14</sup> The fact that the FTC continues to write reports that it is no longer required to produce sends a strong signal that debt collection is an important problem that merits Congress’ attention. The FTC has recommended for over a decade that Congress amend the law to prohibit collection agencies from hiding required legal notices by printing them in miniscule fonts or unreadable colors.<sup>15</sup> The FTC has also requested the authority to issue model notification letters for use by collection agencies to ensure that all communications make consumers’ legal rights clear, as the FTC does already with respect to the Fair and Accurate Credit Transactions Act. The FTC has also recommended a number of amendments that will resolve critical technical ambiguities in the law that some debt collectors have been able to exploit in legal proceedings, including clarifying that collectors may contact consumers only once after receiving a “cease communication” notice, extending some limited protections to consumers who dispute their debt orally (rather than in writing, as the law currently requires), and requiring collectors to provide an itemization of all alleged debt and fees upon request.<sup>16</sup>

The FTC is an independent agency, so many of its recommendations are modest in nature, but the 2006 FTC report gives policymakers clues about more ambitious ways to combat abusive collection practices. Most notably, the protections of the FDCPA do not bind “in-house” debt collectors—that is, collectors who work directly for the original creditors. The FTC received 23,605 complaints about these collectors in 2005, up from 20,585 in 2004. Complaints about in-house collectors as a share of total FTC complaints also grew from 6 percent in 2004 to 6.8 percent in 2005 (Figure 5). When combined with the 66,627 complaints regarding third-party collectors, overall debt collection complaints totaled 90,232 in 2005, nearly 26 percent of all complaints received by the FTC. The FTC warns “some in-house collectors use no-holds-barred collection tactics” without fear of prosecution under the FDCPA. As the public becomes more aware of their rights under FDCPA, and as the FTC and state attorneys general step up enforcement efforts, more creditors may switch to relying on these in-house services. These in-house collectors ought to be subject to the same rules that bind

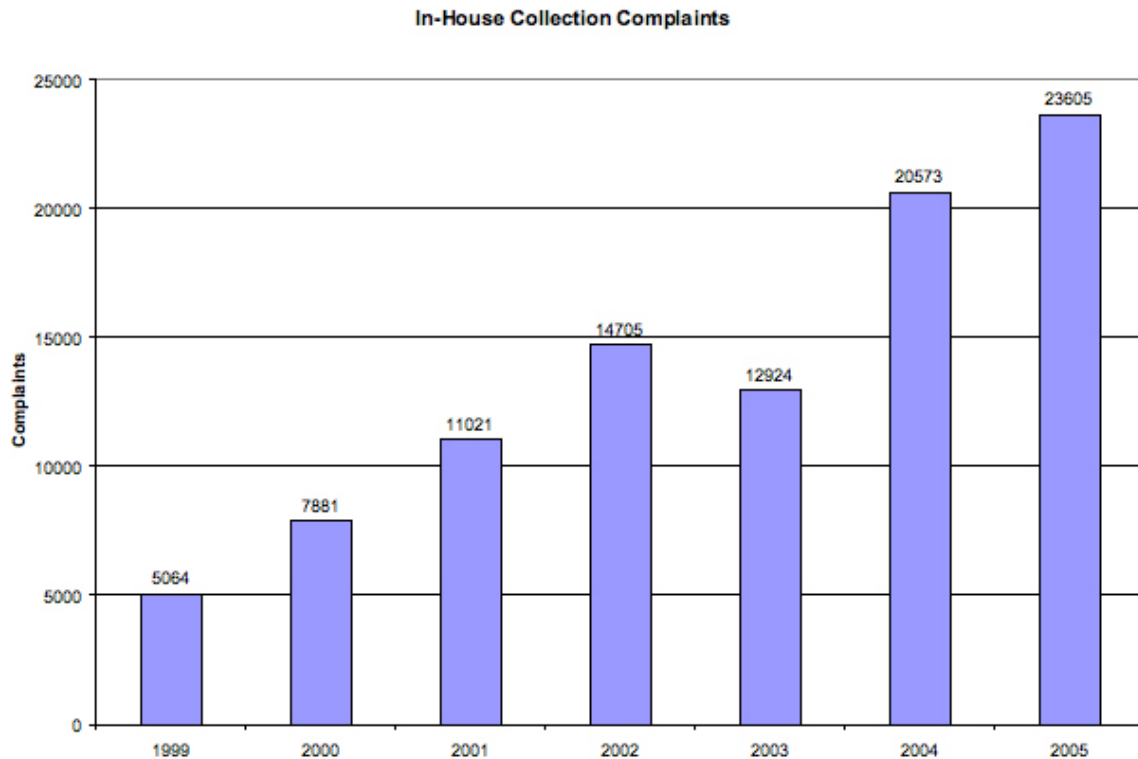
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<sup>14</sup> United States Federal Trade Commission. 2006. Report to Congress. “Annual Report 2006: Fair Debt Collection Practices Act.”

<sup>15</sup> See the FTC’s 1996 report on FDCPA. The recommendation has been reiterated in the FTC’s report each year since 1996.

<sup>16</sup> The FTC observed that some collectors will fool consumers by bundling illegitimate fees with legitimate ones into a single “amount due,” providing no way for victims to verify or dispute their alleged debt. For the most comprehensive description of all these recommendations, see the FTC’s 2005 report on the FDCPA.

third-party collectors; their exclusion threatens to undermine the goals of the FDCPA and threatens the commercial viability of reasonable, law-abiding third-party collection companies—many of which are small businesses.



*Figure 5: Complaints regarding in-house debt collectors are also on the rise. The FDCPA does not regulate in-house collectors, who often employ particularly aggressive collection tactics. Source: FTC Reports to Congress on the FDCPA.*

Congress must also take action to address the rampant abuse of the small claims system. One good approach is the one proposed by Lauren Goldberg, who suggested in the *University of Southern California Law Review* that Congress “implement strict and specific pleading requirements” that would place an affirmative obligation on collectors to provide documentation of alleged debts.<sup>17</sup> If a collector fails to provide basic documentation about a debt, the judge would be required to automatically dismiss the suit, regardless of whether or not the consumer is sufficiently well-versed in small claims

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<sup>17</sup> Goldberg 2006. In response to the *Boston Globe* series, Massachusetts Attorney General Tom Reilly has indicated that he will push for similar legislation that would require debt buyers to present adequate documentation of a debt before beginning a collection action. See Walter V. Robinson and Michael Rezendes. “Abuses spur vows to protect debtors.” *Boston Globe*. August 3, 2006.

procedure to mount a defense. Such a requirement would cause ripple effects throughout the collection industry. Currently, much blame for the explosion in collection abuses lies with the creditors themselves, who provide almost no information to collectors about the debt they sell. Implementing strict pleading requirements would make collectors less willing to purchase debts unless creditors kept detailed and accurate debt records. Creditors would be forced either to keep records more diligently, or to be more selective in their debt underwriting to avoid defaults.

Finally, and perhaps most basically, Congress must make it unprofitable for collectors to violate the law. Currently, the FDCPA allows for punitive damages of only up to \$1,000 for violators, in addition to any actual damages. This figure has not been updated since the law was passed in 1977. To simply keep pace with thirty years worth of inflation, Congress would need to raise this figure to around \$3,500. However, in light of the tremendous recent growth of the debt collection industry, Congress should consider much tougher penalties commensurate with the size of the industry. A punitive damage award of \$1,000 (or even \$3,500) is neither a sufficient incentive to make it worthwhile for most Americans to expend the effort and endure the stress of a lawsuit, nor is it a sufficient penalty to deter a \$12 billion industry that realizes that most people will not sue anyway. Debt collectors can do the math—as long as penalties remain this low, pushing the limits of legality is a great business strategy.

## **Conclusion**

For middle class families who struggle to maintain their standards of living in the face of declining wages and increasing costs, debt collectors are only one of the many different “pirates” they face every day. Ultimately, the economic squeeze that causes so many to turn to credit card companies and payday lenders will need to be alleviated in order to keep low- and middle-income families away from the debt collectors who prey on them. Economic relief will require a much broader policy response—one that helps families deal with the skyrocketing costs of healthcare, education, housing, and energy, and that ensures that Americans are fairly compensated for their work. As long as Americans continue to face these systemic economic challenges, they will remain vulnerable to abuse.

Notwithstanding the broader economic issues, the government has an obligation to ensure that families who are working hard to break free of the burden of crushing debt can do so without being harassed and abused. Thirty years ago, Congress boldly recognized that the problem of collection abuse

uniquely demands a policy solution. But consumers cannot be adequately protected by a policy of “legislate and forget.” Collectors have adapted to the FDCPA, and now the FDCPA must adapt to the collectors. It is time for Congress to do their part by preventing debt “pirates” from continuing to make an already difficult situation for American families even worse.

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## **About the Authors**

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**Derek Douglas** is the Associate Director for Economic Policy at the Center for American Progress. At the Center, he also directs the Economic Mobility Program, which focuses on issues that bear directly on the economic mobility and security of low- and middle-income families—such as banking, housing, and higher education. Prior to joining the Center, he was Counsel in the Strategic Counseling Practice Group at O’Melveny & Myers LLP, Assistant Counsel at the NAACP Legal Defense and Educational Fund, Inc. (LDF), and worked in the Economic Studies Program at The Brookings Institution as a Research Assistant to Dr. Charles Schultze. He has been a frequent guest on numerous television and radio programs. He graduated from the University of Michigan with Highest Honors in Economics, and from the Yale Law School. After graduating from Yale, he clerked for The Honorable Timothy K. Lewis on the United States Court of Appeals for the Third Circuit.

# Center for American Progress



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