



Overview of FTC's “Repairing a Broken System” and Recent Changes in Law

Bevin Murphy

Senior Attorney

Northeast Region

Federal Trade Commission

Colin Hector

Attorney

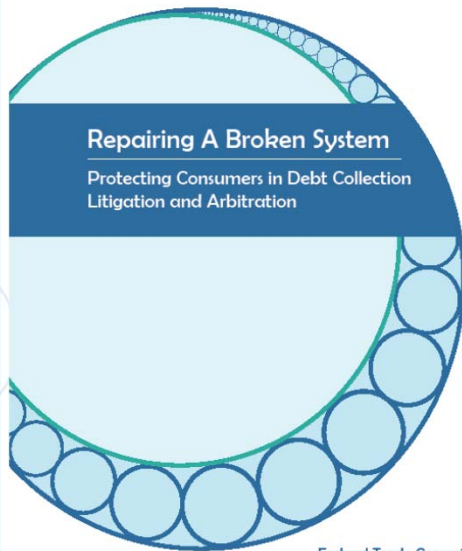
Division of Financial Practices

Federal Trade Commission

Presented at:



Life of a Debt: Data Integrity in Debt Collection
An FTC-CFPB roundtable
Washington, DC – June 6, 2013



Federal Trade Commission
July 2010

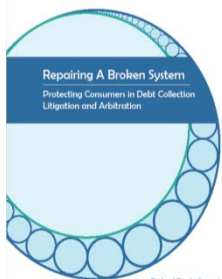
The FTC's Roundtables Report: Repairing Debt Collection Litigation and Arbitration

*Any views expressed in this presentation do not necessarily reflect the views of the FTC or any individual Commissioner. This presentation has been prepared for educational purposes only and should not be treated as legal advice. Laws may have changed since this presentation was delivered.



Background

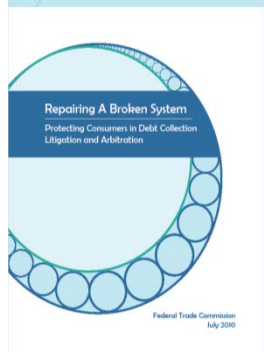
- Commission held roundtables in 2009:
 - Followed the Commission's 2009 report that identified some concerns with debt collection litigation and arbitration, but concluded that more information was needed.
 - Nationwide.
 - Nearly 100 expert panelists.
 - Public comments solicited.
- Commission issued report in 2010 with recommendations to improve efficiency and fairness to consumers.





Litigation

- Consumer Participation
- Evidence of Indebtedness
- Time-Barred Debt
- Levy of Bank Accounts

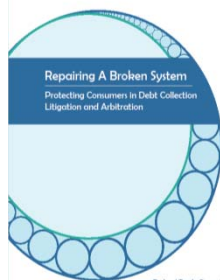




Litigation



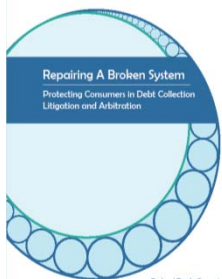
- Consumer Participation:
 - Few consumers appear or defend.
 - Not clear why. Possibilities:
 - Service and notice problems.
 - Lack of familiarity with litigation.
 - Costs of participating.
 - Appearing or defending would be futile.
 - Recommendations include: improving notice and service of process.





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.

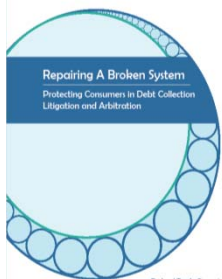




Litigation



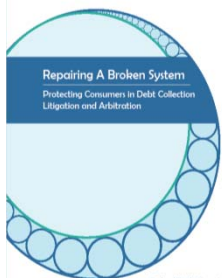
- Evidence of Indebtedness: Recommendations
 - Complaints should include:
 - Original creditor + redacted account #.
 - Default/charge-off date + amount due then.
 - Current owner of the debt.
 - Total amount due.
 - Breakdown of principal, interest, and fees.
 - If complaints do not set forth the above information, courts should ensure they obtain such information by:
 - Applying existing court rules, or
 - Consider specifying documents (or explanations in lieu of documents) that must accompany complaints.





Arbitration

- Arbitration Fundamental Criteria
 - Meaningful Choice - Creditors must give consumers a meaningful choice about debt collection arbitration.
 - Fair Process - Arbitration forums must use a fair process for arbitrating debt collection disputes.
 - Lack of bias
 - Notice and cost
 - Reasoned awards
 - Transparency





Examples of Proposed & Enacted Recent State Reform



Areas

- Evidence of Debt
 - Debt Collection Litigation
 - Pre-Collection (Verification)
- Time-Barred Debts (Disclosures)
- Levy (Notice of Exemption)



Evidence of Debt (Litigation)

- Enacted Del. Admin. Directive 2012-02 [Aug. 2012]
 - Pleading requirement:
 - Original creditor; last 4 digits of account; breakdown of principal amt. due & interest/fees
 - Required for default judgment:
 - Evidence showing chain of assignment & underlying legal obligation
 - Supersedes Del. Admin. Directive 2011-1 (2012-02 provides model forms)



Evidence of Debt (Litigation)

- Enacted Maryland Court Rules (Rules 3-306, 3-308, 3-509) [Sept. 2011]
 - Judgment by affidavit:
 - Documentation establishing proof of existence of account (not affidavit); proof of plaintiff's ownership (incl. bill of sale)
 - Itemization of post-charge-off fees and charges



Evidence of Debt (Litigation)

- Sup. Ct. Tex. Rule 508 (Debt Claim Cases) [Apr. 2013]
 - Pleading Requirements
 - Account name or credit card name; account number; date of issue or origination if known; date of charge-off if known; amount owed; whether plaintiff seeks interest
 - W/R/T assigned debt: debt claim transferred or assigned; date of transfer/assignment; name of prior holders of the debt; name or description of original creditor



Evidence of Debt (Litigation)

- Rule 508 continued:
 - Default Judgments
 - Evidence of damages (sworn statement or live testimony, may include documents)
 - Judge cannot reject sworn statement only because it is not made by the original creditor or because the documents attested to were created by a third party and subsequently incorporated into and relied upon by the business of the plaintiff



Evidence of Debt (Validation)

- Enacted Mass. Revisions (940 CMR 7.08) [Mar. 2012]
 - Requires that certain information/documents in a creditor's possession be produced in response to a validation request
 - Imposes “automatic stay” on collection activity before information/docs is produced



Evidence of Debt (Both)

- Proposed Cal. SB 890/233 (Fair Debt Buying Practices Act)
 - Pre-Collection: Need specified info and “access to” contract or other document evidencing agreement
 - Consumer can request records
 - Suit/Arbitration: Need to submit contract or other document



Time-Barred Debts

- Enacted New Mex. AG Rule [Dec. 2010]
 - Collection: disclosure that debt is time-barred
- Proposed Cal. SB 890/233
 - Collection: disclosure that debt is time-barred
 - Litigation: explicit ban on arbitration or suit to collect time-barred debts



Bank Account Levy

- Cal. Proposed SB 890/233
 - Requires notice of exemptions to be provided to consumer