

Consumer Financial Protection
Bureau vs. Private Right of
Action: Effectiveness in
Obtaining Financial Relief for
Victims of FDCPA Violations

April 2015

Executive Summary

The Consumer Financial Protection Bureau recently issued its 2015 report to Congress regarding Fair Debt Collection Practices Act complaints and enforcement actions. In addition, the CFPB reported on its public education initiatives to inform consumers about their rights under the FDCPA.

Reviewing 2014 data on CFPB complaint resolution and lawsuits alleging violations of the FDCPA in federal district court, it is apparent that consumers are more successful in attaining monetary relief when exercising their right to sue than when filing a complaint with the CFPB. Although the CFPB fielded 88,300 complaints, in only 600 instances did the consumer obtain monetary relief. This contrasts strongly with the 9,720 lawsuits filed in federal court during the same period.

Despite gaining monetary relief for consumers in only two percent of complaints forwarded to businesses for response, the CFPB's "Ask CFPB" public education initiative informs consumers about the CFPB complaint process more than twice as often as it informs consumers about their right to sue debt collectors that violate the FDCPA. Providing consumers with more and better information about the FDCPA's private right of action would likely result in a greater number of consumers obtaining monetary relief.

Background

Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act (15 U.S.C. § 1692-1692p) was signed into law by President Jimmy Carter on September 20, 1977. The FDCPA amended the Consumer Credit Protection Act and was intended to curtail abusive debt collection practices. The statute applies to third-party debt collectors (as opposed to original creditors) and expresses both prohibitions and requirements of debt collection activity. Prohibited tactics include:

- Calling before 8:00 a.m. or after 9:00 p.m.
- Calling repeatedly or continuously
- Calling a consumer at his or her workplace after being told that such calls are not allowed
- Continuing to contact a consumer after being told to cease and desist (except to inform the consumer that debt collection efforts will stop or that legal action is being taken)
- Contacting a consumer directly after the collection agency is notified that the consumer is represented by an attorney
- Contacting a consumer after he or she requests validation of the debt and before such validation is provided
- Publishing a consumer's name in conjunction with a debt
- Threatening legal action when such action cannot be taken or there is no intention to take such action
- Using abusive or profane language
- Revealing the existence of a debt to third parties
- Communicating via postcard
- Using envelopes that reveal that communication is from a debt collector
- Threatening to provide or providing a false report to a credit reporting agency

The FDCPA requires that third-party debt collectors:

- Identify themselves as debt collectors when communicating with consumers
- Notify that information provided by the consumer will be used to collect a debt
- Provide the consumer with the name and address of the original creditor within 30 days of the consumer's request
- Within five days of a debt collector's initial communication, notify the consumer of his or her right to dispute the debt
- Provide verification of a debt within 30 days of the consumer's request

Role of the Federal Trade Commission and Consumer Financial Protection Bureau

When it was enacted, the Fair Debt Collection Practices Act required the Federal Trade Commission (FTC) to submit an annual report to Congress that included the agency's assessment regarding compliance with the statute and the enforcement actions undertaken by the agency. The FTC did so through 2011.

On July 21, 2010, the Dodd-Frank Wall Street Reform Act was signed into law. Title X of the law, known as the Consumer Financial Protection Act of 2010, created the Consumer Financial Protection Bureau (CFPB). In January 2012, the FTC and CFPB created a Memorandum of Understanding to avoid duplicative efforts in enforcing consumer laws and regulations. In March 2012, the FTC relinquished the reins of the annual FDCPA Congressional report and the CFPB issued its inaugural report. In March 2015, the CFPB issued its fourth annual report to Congress regarding FDCPA consumer complaints and the enforcement actions undertaken by both the FTC and CFPB.

In addition to reporting to Congress about FDCPA complaints and enforcement, the CFPB conducts education and outreach initiatives. According to its March 2015 report to Congress, "The Bureau empowers consumers to make sound financial decisions for themselves and their families through wide-ranging consumer education efforts."

Consumer Redress for Fair Debt Collection Practices Act Violations

A consumer who suspects a debt collection agency has violated his or her rights under the Fair Debt Collection Practices Act has two primary courses of action:

- Filing a complaint with the Consumer Financial Protection Bureau
- Suing the debt collection agency in federal court

While ancillary courses of action exist, such as filing complaints with state Attorneys General and state licensing boards, those bodies do not provide avenues of redress for individual consumers and are therefore outside the scope of this paper.

Prior to July 2013, the Federal Trade Commission logged consumer complaints about debt collection activities. In July 2013, the CFPB began accepting collection-related consumer complaints. The CFPB Congressional report released in March 2015 is that first that includes data from a full calendar year (2014).

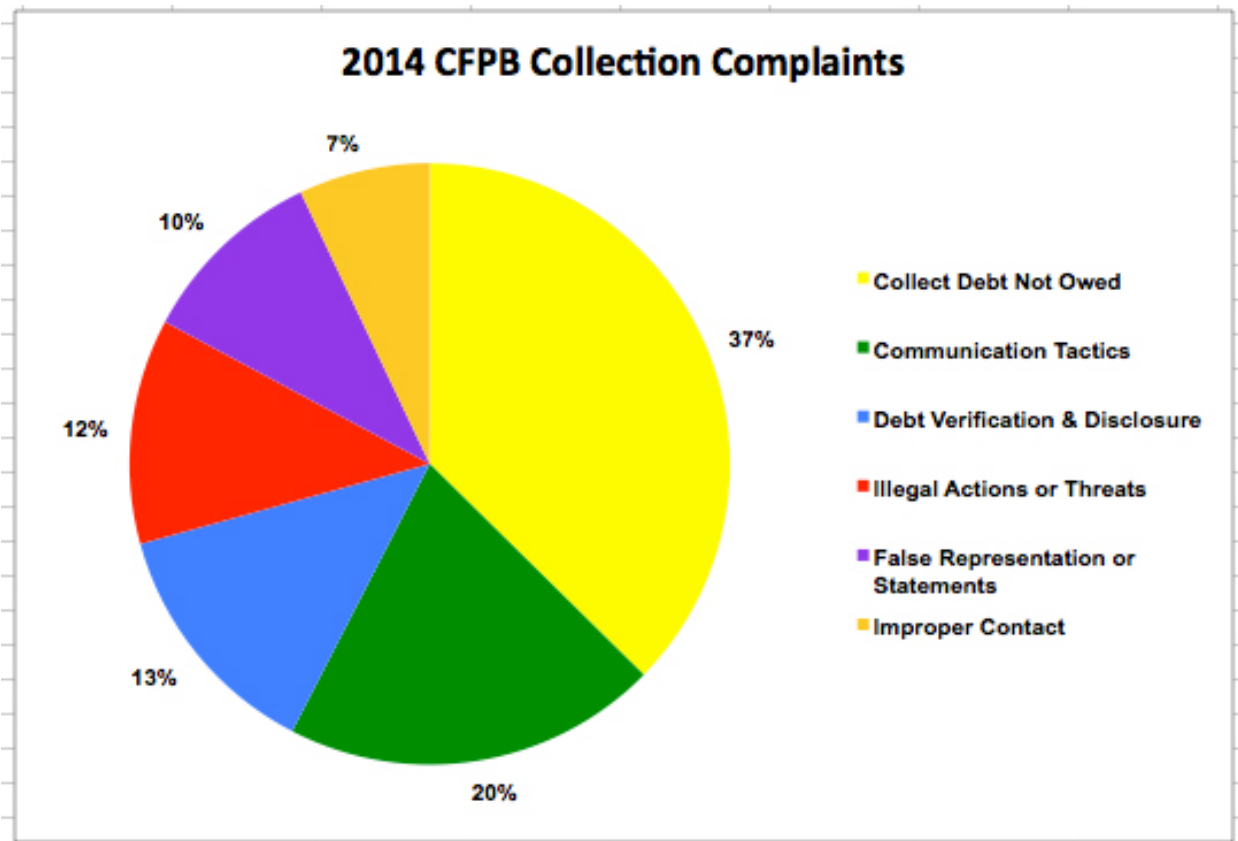
An important distinction between the roles of the two agencies is that the FTC collected consumer complaints while the CFPB also investigates and responds to complaints.

The FDCPA includes a civil liability provision whereby a consumer can sue a debt collection agency for FDCPA violations in U.S. district court. The consumer can recover up to \$1,000. In a class action lawsuit, a court can award a total of \$500,000 or an amount up to one percent of the company's net worth, whichever is less. The FDCPA includes a fee-shifting provision, whereby those in violation of the statute can be ordered to pay the consumer's court costs and attorneys' fees.

Findings

Consumer Complaints

From January 1 through December 31, 2014, the Consumer Financial Protection Bureau received 88,300 consumer complaints about debt collection agencies. In its annual report, the CFPB provided a breakdown of the types of complaints received:

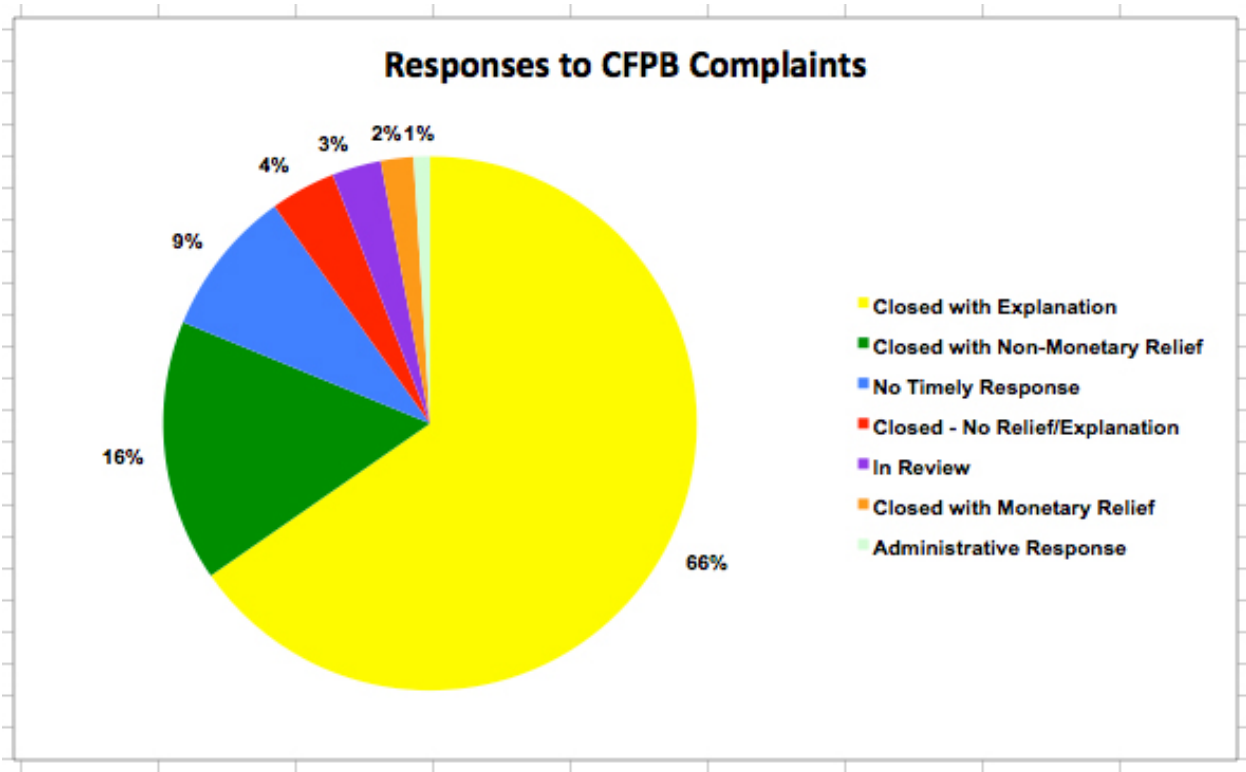


Although it is not possible to evaluate the veracity of each consumer complaint, the categories of complaints enumerated by the CFPB violate the FDCPA:

- “Continued attempts to collect debt not owed” potentially violates 15 USC 1692e and 1692g.
- “Communication tactics” potentially violates 15 USC 1692b, 1692c, and 1692d.
- “Disclosure about and verification of debt” potentially violates 15 USC 1692b, 1692c, 1692d, 1692e, and 1692g.
- “Taking/threatening legal action” potentially violates 15 USC 1692e, 1692f, and 1692i.
- “False statements or representation” potentially violates 15 USC 1692e.
- “Improper contact or sharing of information” potentially violates 15 USC 1692b and 1692c.

Complaint Resolution

In its Congressional report, the CFPB disclosed that, of the 88,300 complaints it received, the agency forwarded 39,500 on to companies. Companies responded to the CFPB in 35,100 instances. Those responses elicited 6,200 consumer disputes. The CFPB categorized company responses as follows:



The CFPB's description of each category demonstrates that consumers obtained relatively little concrete relief from the complaint process. An approach that looks at various forms of resolution through the lens of the most common debt collection complaint, "continued attempts to collect debt not owed," illustrates the lack of redress afforded consumers through the complaint process. According to the CFPB, almost two-thirds (64%) of consumers with this complaint say that the debt is not theirs to pay, while a quarter say that the debt was already paid.

According to the CFPB, two-thirds of all complaints (66%) were "closed with explanation." The agency notes, "This category would be used if the explanation substantively meets the consumer's desired resolution or explains why no further action will be taken." It appears as though a complaint can be closed when a company says that it will not take action on it – even if the consumer's concerns were not adequately addressed. Looking through the lens of an attempt to collect a debt not owed, a debt collection agency could disagree with the customer's assertion and the complaint would be marked closed.

Similarly, the CFPB notes that the category "closed with non-monetary relief," which accounted for 16 percent of responses, "may have addressed some or all of the consumer's complaint involving non-monetary requests." Using the example of a complaint about a debt not owed, it appears that the collection agency could agree to stop collecting the debt and thus close the complaint "with non-monetary relief."

Fully nine percent of complaints did not receive a timely response from companies, and four percent were closed by companies without relief or explanation. In either of these scenarios, it is conceivable – perhaps even likely – that a consumer complaining about a debt not owed will continue to receive collection calls about the debt.

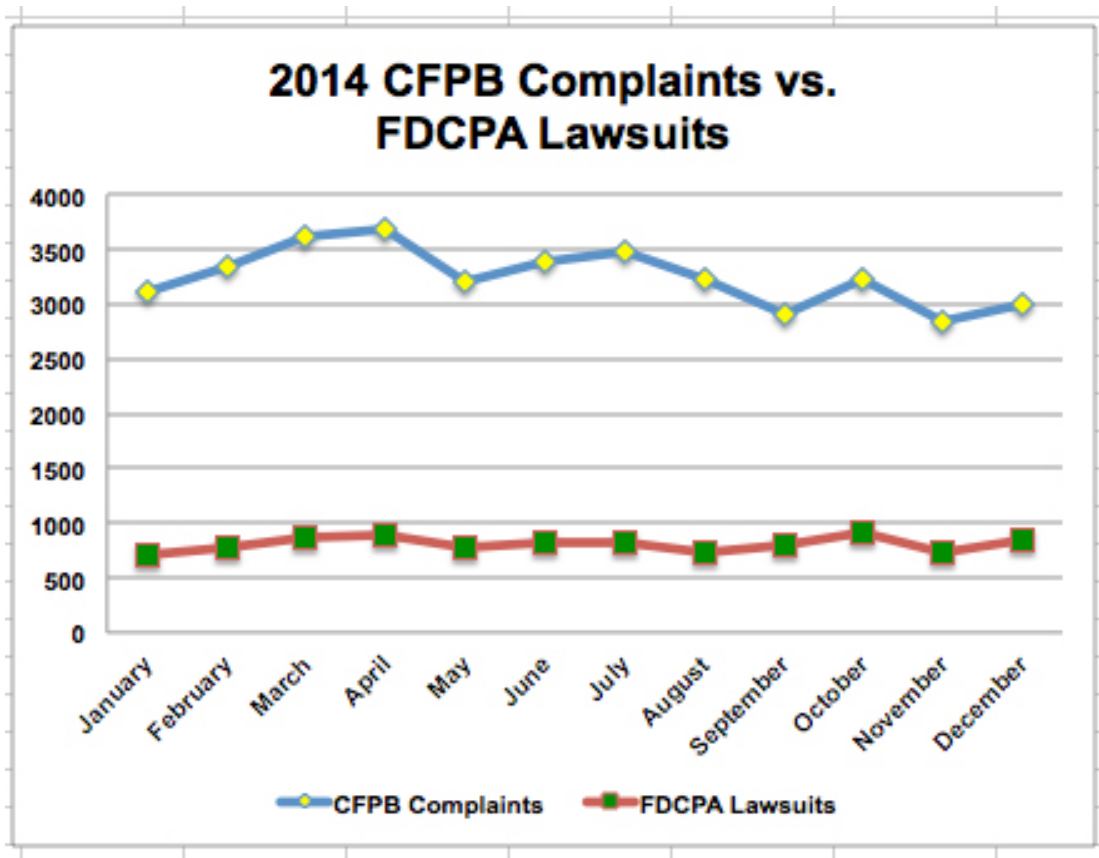
Only two percent of complaints – 600 complaints out of the 39,500 forwarded to companies, and out of 88,300 debt collection complaints received by the CFPB – resulted in monetary relief for the consumer. More than 10 times the number of consumers (6,200) disputed the responses provided by companies than achieved monetary relief.

Relief through the Courts

As previously noted, the FDCPA provides consumers with a right of action in federal court if they believe a debt collection agency has violated the law. If the consumer prevails, he or she can be awarded up to \$1,000, plus court costs and attorneys' fees.

In 2014, 9,720 lawsuits were filed in federal court alleging violations of the FDCPA. Because many lawsuits are settled prior to trial, it is impossible to know the number of consumers who prevailed in their FDCPA cases. In addition, because many potential FDCPA actions are settled in the pre-litigation phase, the number of consumers who obtain monetary relief through exercising their FDCPA rights is conceivably higher than the number of filed cases.

There is a striking disparity between the number of CFPB complaints and the number of FDCPA lawsuits filed in 2014:



While it may be impossible to tally the number of prevailing plaintiffs in FDCPA lawsuits or pre-litigation actions, logic dictates that the total clearly surpasses the 600 consumers who achieved monetary relief via the CFPB complaint process.

CFPB Education and Outreach

Because a consumer is more likely to gain relief by fully exercising his or her rights under the FDCPA than through the CFPB complaint process, it follows that advising consumers of their right to sue debt collection agencies should be a centerpiece of the CFPB's education and outreach initiatives.

The CFPB cites its online interactive tool, "Ask CFPB," as a noteworthy initiative. According to the CFPB's report to Congress, "Ask CFPB" is designed to help consumers "find short, clear, unbiased, authoritative answers to their financial questions." Debt collection ranks fourth in the most-viewed categories of "Ask CFPB," and the CFPB reports that the tool "provides practical tips to consumers regarding steps they can take to exercise their rights under the FDCPA...."

The CFPB notes that "Ask CFPB" includes more than 85 questions and answers pertaining to debt collection. In a search of "Ask CFPB," 78 results were returned under the debt collection topic. Of these 78 questions, 26 were ripe for informing consumers about their right to sue under the FDCPA:

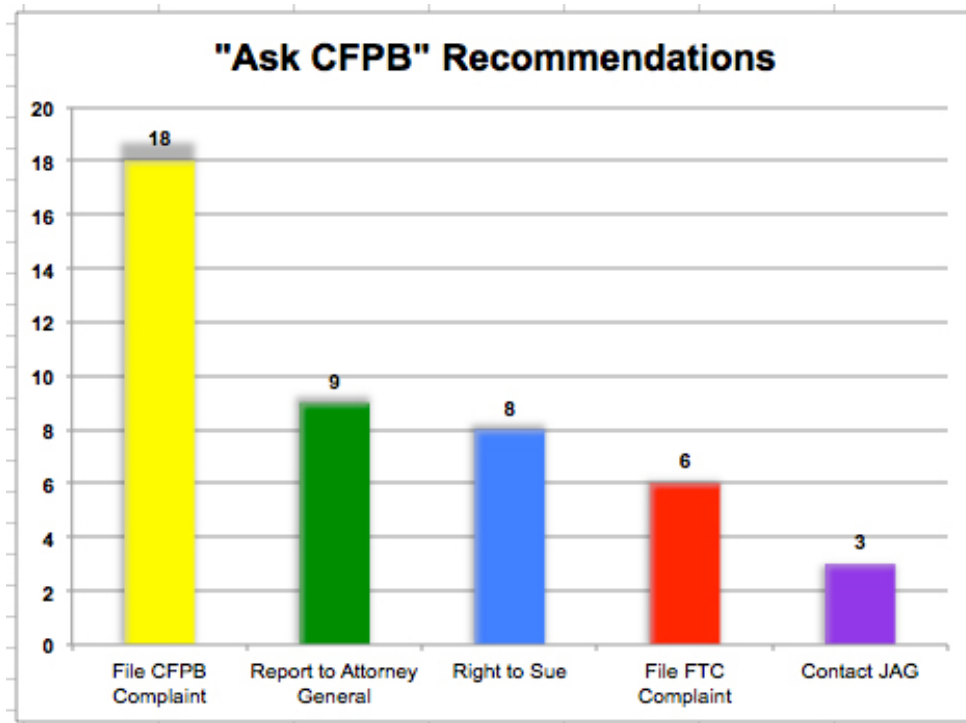
1. A debt collector called my employer looking for me. What can I do?
2. A debt collector contacted me about a debt I already paid. What should I do?
3. Are there laws that limit what debt collectors can say or do?
4. Can a debt collection agency try to have me arrested over a debt collection?
5. Can a debt collector call my military supervisor or Commander if I am delinquent in paying my credit card or other debt?
6. Can a debt collector contact me about a deceased person's debt when it was in that person's name only?
7. Can a debt collector try to deceive me to collect on a debt?
8. Can debt collectors call me anytime they want, day or night, about my debt?
9. Can debt collectors call my employer and tell them they are calling about my debts?
10. Can debt collectors tell other people about my debt?
11. Can I tell a debt collector to stop contacting me about the debts of my deceased relative?
12. Does a debt collector have to verify for me how much I owe?
13. Even if I am the executor or administrator authorized to pay a deceased person's debt from his or her estate, can I stop a debt collector from contacting me about the debt?
14. How can I stop debt collectors from contacting me?
15. How do I get a debt collector to stop calling me if it's not my debt?
16. I already told a debt collector who called about my deceased relative to talk to the executor or administrator of the estate, but they keep calling me at all hours of the day and night and leaving threatening messages. What can I do?
17. I am a few months behind in paying my credit card debt. A debt collector called and said that if I didn't pay off my credit card debt in full he would have me prosecuted under the Uniform Code of Military Justice (UCMJ). Can he do this?
18. I'm getting called day and night by a debt collector who is threatening to call my military chain of command, too. What can I do about this?
19. If I dispute a debt that is being collected, can a debt collector still try to collect the debt from me?
20. Is there a limit to how many times a debt collector can call me?
21. My parent got a notice from a debt collector to pay a debt that I took out after joining the military. It's already been paid in full and it was in my name only. Where can I get help to stop them from harassing my family?
22. What can I do if I believe a debt collector has violated the law?
23. What constitutes an "unfair" practice by a debt collector?
24. What if I believe I do not owe the debt or I want proof of the debt?
25. What is a statute of limitations on a debt?
26. What is harassment by a debt collector?

In response to these questions, the CFPB sometimes provided a sole course of action, either as advice or a "tip." Other times, multiple courses of action were referenced. For 18 of the 26 questions, the CFPB notified consumers that they could file a complaint with the CFPB. For three questions related to military service, the CFPB's primary recommendation was to contact the JAG.

Nine of the responses told consumers that one of their options was to contact their state Attorney General's office, and six of the responses included recommendations to file a complaint with the FTC. As previously mentioned, state

Attorneys General and the FTC rarely take action on individual consumer complaints; more often, they look at complaints in aggregate when deciding whom to investigate and prosecute.

Only eight of the 24 responses included information on a consumer's right to sue for violations of the FDCPA. Given that the debt collection portion of the "Ask CFPB" tool is designed to inform consumers about exercising their rights under the FDCPA, the omission of a consumer's right to sue in the majority of relevant questions and answers is remiss.



Of the 26 questions that beg for this kind of public education, "What can I do if I believe a debt collector has violated the law?" is the most straightforward. Unfortunately, the answer provided by the CFPB is outdated:

Report any problems you have with a debt collector to the Federal Trade Commission's website or call 1-877-FTC-HELP (1-877-382-4357), or contact your state Attorney General's office. You also have the right to sue a collector in a state or federal court within one year from the date the law was violated (some state laws allow more time). Many states have their own debt collection laws that are different from the federal Fair Debt Collection Practices Act.

The link provided to the FTC website takes the visitor through a labyrinth. Four clicks later, the FTC site informs the visitor: "The Consumer Financial Protection Bureau handles complaints about financial products or services, and may be able to help you directly. You should file your complaint with the CFPB at www.consumerfinance.gov or toll free at 855-411-2372."

Conclusion

The Fair Debt Collection Practices Act was enacted to curtail abusive debt collection practices. The Consumer Financial Protection Bureau is tasked with fielding FDCPA-related consumer complaints, educating the public about their rights under the FDCPA, and issuing an annual report to Congress.

Although the CFPB fielded 88,300 debt collection complaints from consumers in 2014, only 39,500 were forwarded to companies for response. Of those, only 600 complaints resulted in monetary relief for the consumer. In contrast, 9,720 complaints were filed in federal court during 2014 alleging violations of the FDCPA. Because of the frequency of pretrial and pre-litigation settlements, the number of plaintiffs receiving monetary relief is unknown. Nevertheless, it undoubtedly surpasses the two percent recovery rate achieved by the CFPB.

A cornerstone of the CFPB's FDCPA public education efforts is the "Ask CFPB" online interactive tool. Yet only one-third of relevant questions and answers inform consumers of their option to sue violating debt collectors. Consumers are more likely to gain monetary relief by suing debt collection agencies that violate the FDCPA than by filing complaints with the CFPB. Therefore, the CFPB should expand its efforts to educate consumers about the right of action and fee-shifting provisions of the FDCPA.

About Lemberg Law

Lemberg Law is a leading consumer law firm that represents clients in actions involving the Fair Debt Collection Practices Act, the Telephone Consumer Protection Act, lemon law, and other consumer laws. Based in Stamford, Connecticut, and with of-counsel attorneys in states across the U.S., Lemberg Law has helped more than 11,000 clients recover more than \$30 million. Sergei Lemberg, Esq., has been named "most active consumer attorney" by the debt collection industry each year for the past five years.

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