



PROGRAM MATERIALS

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Fair Debt Collection Practices Act (FDCPA): Compliance Risks, Consumer Protections & Collection Controls

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**Fair Debt Collection
Practices Act (FDCPA):
Compliance Risks,
Consumer Protections &
Collection Controls**

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Justin Muscolino

Justin brings over 20 years of wide-ranging experience in compliance training and regulations. He previously led the compliance training function for JPMorgan Chase Macquarie Group, UBS, Bank of China, and GRC Solutions. Justin also runs his own compliance training company focusing on US & International regulations providing real-life training.

Justin also worked for FINRA, a US regulator, where he created Examiner University to train examiners on how to perform their function. He also serves as an advisor for the Global Compliance Institute (GCI) and instructs at the Barret School of Business and various compliance training providers.

Agenda

- Overview of Fair Debt Collection Practices Act
- Key provisions
- Customer actions
- Enforcement
- Takeaways



What is the FDCPA?

- The FDCPA was passed to control abuses by the third-party debt collection industry.
- FDCPA is a consumer protection amendment, establishing legal protection from abusive debt collection practices, to the Consumer Credit Protection Act, as Title VIII of that Act.
- It limits the behavior and actions of third-party debt collectors who are attempting to collect debts on behalf of another person or entity.
- The statute's stated purposes are:
 - to eliminate abusive practices in the collection of consumer debts,
 - to promote fair debt collection, and to provide consumers with an avenue for disputing and
 - obtaining validation of debt information in order to ensure the information's accuracy.



What is the FDCPA?

- The Act creates guidelines under which debt collectors may conduct business, defines rights of consumers involved with debt collectors, and prescribes penalties and remedies for violations of the Act.
- It is sometimes used in conjunction with the Fair Credit Reporting Act.
- The FDCPA broadly defines a debt collector as
 - "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another."
- FDCPA generally applies only to third party debt collectors—not internal collectors for an "original creditor"—some states, such as California, have similar state consumer protection laws which mirror the FDCPA, and regulate original creditors.
- Some federal courts have ruled that a collector of debt is not a "creditor" but is rather a "debt collector" under the FDCPA where the collector of debt buys defaulted debt from an original creditor for the purpose of debt collection.

What is the FDCPA?

- The FDCPA itself contains numerous exceptions to the definition of a "debt collector," particularly after the October 13, 2006, passage of the Financial Services Regulatory Relief Act of 2006.
 - Attorneys, originally explicitly exempted from the definition of a debt collector, have been included (to the extent that they otherwise meet the definition) since 1986.
- The FDCPA's definitions of "consumers" and "debt" specifically restricts the coverage of the act to personal, family or household transactions. Debts owed by businesses (or by individuals for business purposes) are not subject to the FDCPA.
- The FDCPA does not protect debtors from those who are attempting to collect a personal debt.
 - If you owe money to the local hardware store, and the owner of the store calls you to collect that debt, that person is not a debt collector under the terms of this act.
 - FDCPA only applies to third-party debt collectors, such as those who work for a debt collection agency. Credit card debt, medical bills, student loans, mortgages, and other household debt are covered by the law.

Congressional Findings

- Congressional findings and declaration of purpose
 - Abusive practices:
 - There is 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.
 - Inadequacy of laws Existing laws and procedures for redressing these injuries are inadequate to protect consumers.
 - Available non-abusive collection methods Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.
 - Interstate commerce Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce.
 - Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

Key Provisions

- FDCPA dictates how debt collectors can contact you. It also bars the use of excessive phone calls, abusive language or threats of violence.
- It allows you to request proof. That proof would show that you actually owe the amount of money the debt collector says you owe.
- it prohibits the debt collector from letting others know about the debt. Next, it bans contact with consumers at certain times.
- if they violate the law, consumers are able to sue debt collectors. They can sue them both individually and collectively in a class action suit.



Key Provisions: First Contact

- The FDCPA requires debt collectors to inform consumers that they are attempting to collect a debt. They need to let the consumer know that they have rights under the law.
- There are a number of key factors that the collector must inform the consumer of. Those must take place at the first contact or immediately following the first contact:
 - The amount of the debt attempting to be collected.
 - The name of the collector itself.
 - That the consumer has the right to dispute the debt and if the consumer does not do so within 30 days, it will be considered valid. And,
 - That the consumer can ask for a verification of the debt.



Key Provisions: Disputing the Debt

- You have the right to dispute a debt you don't believe that you owe. This is a critically important tool that the FDCPA guaranteed to consumers.
- The first step is to inform the debt collector that you'll be disputing the debt and request a written debt verification letter. Collectors have an indefinite amount of time to validate the debt, but collection calls and letters must stop while the debt is being verified.
- The verification letter should include a whole host of information, including:
 - Name and contact information for the original creditor. This doesn't mean the collector currently trying to get the debt from you, but the first creditor with whom you did business. An example of this would be the credit card company whose product you used.
- The collector should also include why they believe you owe the debt, i.e. you made purchases on a credit card, stopped paying, etc.
 - All recorded owners of the debt.
 - The amount of the debt and the date at which it was first incurred.

Harassment, Abuse and Misrepresentations

- One of the most important things that the FDCPA did is to establish strict guidelines on how debt collectors interact with consumers. They may not make or send repeated phone calls, text messages or emails.
- Debt collectors may not post on your social media accounts, contact family members or publish lists of outstanding debts online in order to shame consumers.
- Additionally, during the initial phase of communications, debt collectors are not permitted to contact your place of work. That means your employer will become aware of the debt. This is why it is important to take calls from debt collectors but understand your rights.
- Note that not all phone calls are harassment. Additionally, if debt collectors are unable to get in contact with you, they are able to seek a court order and garnish your wages.
- Collectors may not show up at your home or place of work and cannot claim to be attorneys or credit reporting agencies. They also cannot threaten prosecution or jail time.
- If debt collectors do any of these things, you should send a cease communication letter informing the company that they have violated federal law and contact the CFPB as well as your local state attorney general.

Purpose

- Debt collectors don't necessarily represent the credit-card issuer, company or bank that lent or advanced your money.
- After a period, often six months, many original lenders sell their uncollected debt to other companies.
- Both outside collection agencies and companies that assume bad debt must follow FDCPA rules.
- The FDCPA covers personal, family and household debts including credit cards, home/ auto loans, retail refinancing and medical bills.



Purpose

- The law doesn't apply to so-called in-house collectors. These are branches or departments of the company that originally loaned the money.
- Some banks use these in-house departments to collect debts in the early stages of default, only turning to outside collection agencies if the debt isn't collected in a certain amount of time.
- After a period, often six months, many original lenders sell their uncollected debt to other companies. Both outside collection agencies and companies that assume bad debt must follow FDCPA rules.
- The FDCPA covers personal, family and household debts including credit cards, home/auto loans, retail refinancing and medical bills.

State Application

- The FDCPA generally applies only to third party debt collectors; the statutory scheme was not intended to cover the conduct of the original creditor.
- However, some states, such as California, have enacted consumer protection statutes that provide broader coverage than the FDCPA, and they may include the conduct of the original creditor within their sweep.
- The FDCPA permits such state laws. 15 U.S.C. § 1692n.

Commonwealth Financial Systems

CFPB Shuts Down Commonwealth Financial Systems for Illegal Debt Collection Practices

WASHINGTON, D.C. —The Consumer Financial Protection Bureau (CFPB) today took action against a medical debt collector, Commonwealth Financial Systems, for illegally trying to collect unverified medical debts after consumers disputed the validity of the debts. Under the order issued today, the company will cease operations and pay a \$95,000 penalty to the CFPB's victims relief fund.

Commonwealth Financial Systems is a nonbank corporation with its principal place of business in Dickson City, Pennsylvania. Commonwealth is a third-party debt collector that specializes in the collection of past-due medical debts and furnishes information about consumer collection accounts to consumer reporting companies.

Commonwealth's actions violated the Fair Credit Reporting Act because the company failed to conduct reasonable investigations of disputed debts and failed to inform consumer reporting companies that certain information was being disputed. Commonwealth also violated the Fair Debt Collection Practices Act because it continued to attempt to collect disputed debts without substantiating documentation.

Actions Consumers Can Take

- **File a Complaint:** If you believe a debt collector has violated the law, take action. You reserve the right to sue a collector in a state or federal court within one year from the date the law was alleged to be violated.
- The FTC advocates for consumers to prevent deceptive and unfair business practices. Many states have their own debt collection laws that may differ from and strengthen the federal Fair Debt Collection Practices Act.
 - It allows you to request proof. That proof would show that you actually owe the amount of money the debt collector says you owe.
 - it prohibits the debt collector from letting others know about the debt. Next, it bans contact with consumers at certain times.
 - if they violate the law, consumers are able to sue debt collectors. They can sue them both individually and collectively in a class action suit.

How to file a Complaint?

- If a debt collector hasn't followed the FDCPA law, you can complain to law enforcement.
- Complaints can be made to your state attorney general's office, the Federal Trade Commission and the federal Consumer Financial Protection Bureau. States often have their own collection laws to go beyond federal statutes.
- Contacting a state attorney general's office is the best way to learn about what practices are illegal under state law.
- It's always advisable to keep records of all contact with debt collectors. If you talk to one on the phone, write a note after the call describing what you discussed. If you write a letter, send it certified mail with a return receipt. Keeping thorough records is the best way to document a violation.
- You have two main options if you think your rights were violated:
 - File a complaint
 - Sue the collection agency

Proving a Debt is yours

- Under the rules of the FDCPA, debt collectors are required to provide details about each debt they are attempting to collect by sending a written notice with the following information:
 - Name of the creditor
 - Amount owed
 - Instructions on how to repay the debt
- This is called the validation notice and must be sent to the consumer within five days of initial contact.

Proving a Debt is yours

- This is called the validation notice and must be sent to the consumer within five days of initial contact.
- After that, you have 30 days to contact the debt collector —also by letter —and give reasons why you don't owe the debt or why the amount is incorrect.
- Sometimes a debtor owes money to several creditors, or more than one debt to a single creditor.
- Debts can also be resold multiple times, so the name of the creditor might change even though it's the same debt. You should demand that the collector be very clear about where the debt originated and how much is still owed.
- If the Debt Is Yours – If you've already paid it, be sure to include a copy of the cancelled check or bank statement. If you contest the amount of the debt, verification should include information about payments made, and interest and fees charged and/ or waived.

Verification of debt

- The verification must include:
 - The amount of the debt
 - The date it was supposedly incurred
 - The name and address of the original creditor if different from the current one
 - Proof that your account has been sold or assigned to the collection agency.
 - If the required information is not forthcoming, all attempts at collection must immediately cease.

Verification of debt

- Fair Debt Collection Practices Act violations specify that debt collectors cannot contact debtors at inconvenient times.
 - That means they should not call before 8 a.m. or after 9 p.m., unless the debtor and the collector have made an arrangement for a call to occur outside of the permitted hours.
 - If a debtor tells a collector that they want to talk after work at 10 p.m., for instance, the collector is allowed to call then. Without invitation or agreement, however, the debtor cannot legally call at that time. Debt collectors may also send letters, emails, or text messages to collect a debt.

Verification of debt

- Debt collectors can attempt to reach debtors at their homes or offices. However, if a debtor tells a bill collector, either verbally or in writing, to stop calling his place of employment, the collector must not call that number again.
- Within five days of contacting a debtor, a debt collector must send a written "validation notice" that includes:
 - How much money is owed
 - The name of the creditor the debt is owed to
 - What to do if you think the debt is not you

Required Conduct

- Debt collectors must prove that you owe the debt they're attempting to collect.
- This starts with the validation letter, and if you request a verification letter to get more information, they must provide that as well.
- Special Considerations: Debtors can also stop collectors from calling their home phones, but they must put the request in a letter and send it to the debt collector
- They also cannot lie or use profane or obscene language.
- Debt collectors cannot threaten to sue a debtor unless they truly intend to take that debtor to court.

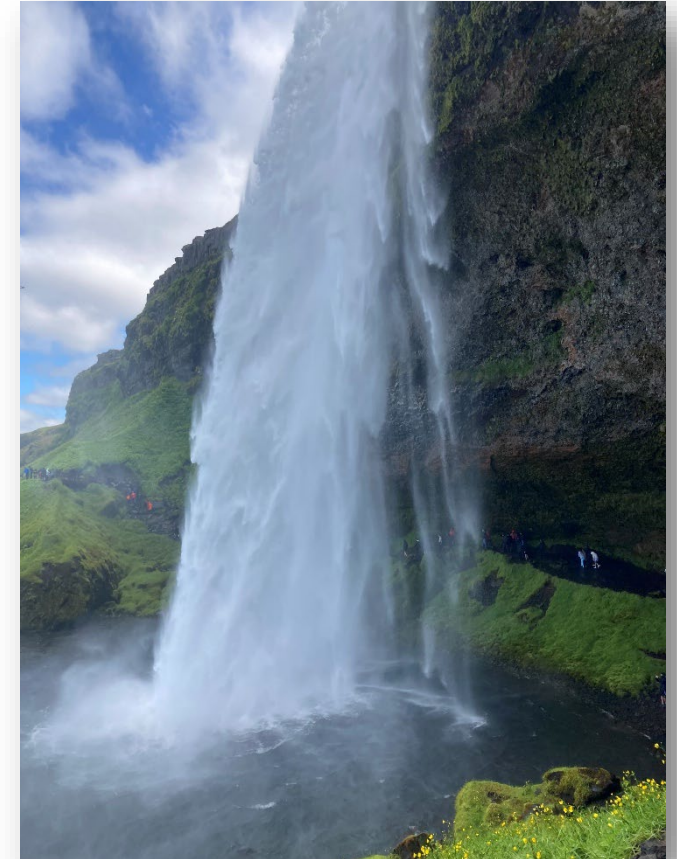


Required Conduct

- The Act prohibits certain types of "abusive and deceptive" conduct when attempting to collect debts, including the following:
 - Hours for phone contact: contacting consumers by telephone outside of the hours of 8:00 a.m. to 9:00 p.m. local time.
 - Additionally, if certain hours are inconvenient for consumers during the allowable time (those who work at night and sleep during the day) they may not be contacted during those times.
- Failure to cease communication upon request: communicating with consumers in any way after receiving written notice that said consumer wishes no further communication or refuses to pay the alleged debt, with certain exceptions, including advising that collection efforts are being terminated or that the collector intends to file a lawsuit or pursue other remedies where permitted.

Prohibited Conduct

- Evidence — Consumers are entitled to proof that they owe the money.
- Harassment – Debt collectors may not harass, oppress or abuse the consumer by using threats of harm, using obscene or profane language, or repeatedly contacting the consumer
- False Statements – Debt collectors are forbidden from lying to collect a debt.
- Misrepresentation: Collectors can't try to pretend being someone else.



Prohibited Conduct

- Misleading Threats – Debt collectors aren't allowed to threaten consumers with legal actions that aren't permitted.
- Unfair Practices – Debt collectors may not engage in unfair debt collection practices by trying to collect more than the consumer owes or the state law allows
- Wage Garnishment – Debt collectors are not legally allowed to garnish wages or bank accounts without a court order.
- Misleading Correspondence – Debt collectors aren't allowed to give false information about you to anyone — including a credit reporting agency
- Right to Sue: If debt collectors break the law. Consumers can sue them individually or through a class action.



Prohibited Conduct

- Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously: with intent to annoy, abuse, or harass any person at the called number.
- Communicating with consumers at their place of employment after having been advised that this is unacceptable or prohibited by the employer
- Contacting consumer known to be represented by an attorney
- Communicating with consumer after request for validation has been made:
- Communicating with the consumer or pursuing collection efforts by the debt collector after receipt of a consumer's written request for verification of a debt made within the 30-day validation period and before the debt collector mails the consumer the requested verification or original creditor's name and address

Prohibited Conduct

- Publishing the consumer's name or address on a "bad debt" list
- Seeking unjustified amounts, which would include demanding any amounts not permitted under an applicable contract or as provided under applicable law
- Threatening arrest or legal action that is either not permitted or not actually contemplated
- Abusive or profane language used in the course of communication related to the debt
- Communication with third parties: revealing or discussing the nature of debts with third parties
- Collection agencies are allowed to contact neighbors or co-workers but only to obtain location information;
- Contact by embarrassing media, such as communicating with a consumer regarding a debt by post card, or using any language or symbol, other than the debt collector's address.
- Reporting false information on a consumer's credit report or threatening to do so in the process of collection

Special Considerations

- Debtors can also stop collectors from calling their home phones, but they must put the request in a letter and send it to the debt collector.
 - It's a good idea to send the letter by certified mail and pay for a return receipt so that you have proof that the collector received the request.
- If a bill collector does not have contact information for a debtor, they can call relatives, neighbors, or associates of the debtor to try to find the debtor's phone number, but they cannot reveal any information about the debt, including the fact that they are calling from a debt collection agency.
- Debt collectors can only tell a debtor about the debt and request payment.
- In some cases, collectors can work out a payment plan or settlement to help the debtor pay the bill. However, the FDCPA is designed to protect debtors from harassment by bill collectors.
- The law has made it illegal for debt collectors to harass debtors and they cannot threaten bodily harm or arrest. They also cannot lie or use profane or obscene language.

Special Considerations

- The Act requires debt collectors to do the following (among other requirements):
 - Identify themselves and notify the consumer, in every communication, that the communication is from a debt collector, and in the initial communication that any information obtained will be used to effect collection of the debt
 - Give the name and address of the original creditor upon the consumer's written request made within 30 days of receipt of the §1692g notice;
 - Notify the consumer of their right to dispute the debt (Section 809), in part or in full, with the debt collector.
 - The 30-day "§1692g" notice is required to be sent by debt collectors within five days of the initial communication with the consumer.
 - Provide verification of the debt

Mini-Miranda

- It's crucial to understand the mini-Miranda when dealing with debt collectors and to know that you have rights when it comes to debt.
- Third-party debt collectors are only required to state the mini-Miranda before they begin the initial contact with you in each form of communication.
- The mini-Miranda protects you from saying things that could be used against you by telling you that whatever you say is being recorded.



Mini-Miranda

- When Must Collectors State the Mini Miranda?
 - Third-party debt collectors are only required to state the mini Miranda before they begin the initial contact with you in each form of communication.
 - The statement is not read before each discussion but applies to every interaction you have with them whether they are writing you a letter or calling you over the phone.
- The mini-Miranda protects you from saying things that could be used against you by telling you that whatever you say is being recorded.
- If the third-party debt collector does not include this statement at the beginning of your contact, even if you initiate the contact, they have violated the Fair Debt Collection Practices Act or FDCPA.

Mini-Miranda

- When Do Collectors Waive the Mini Miranda?
 - The mini Miranda does not have to be stated when you are speaking directly with a creditor. The creditor is the company to which you owe the original debt. If they contact you by phone, email, or in person and identify themselves as the creditor, the company does not need to state the mini Miranda warning.
 - It's important to note that if a debt collector contacts you, does not state who they are, and fails to read the mini Miranda to you, they violate the FDCPA. In this instance, you may be able to sue them.
- How Does the Mini Miranda Help You?
 - The mini Miranda exists to help you understand what you shouldn't say to a debt collector, so you don't incriminate yourself. Anything and everything you say to the debt collector during your correspondence can be used against you to build a case.
 - Be wary of what you say and what you admit to when speaking to a third-party debt collector. Your words could have serious repercussions.

Enforcement

- The Federal Trade Commission originally had the authority to administratively enforce the FDCPA using its powers under the Federal Trade Commission Act
- The FDCPA is a strict liability law, which means that a consumer need not prove actual damages in order to claim statutory damages plus reasonable attorney fees if a debt collector is proven to have violated the FDCPA.
- Penalties: If you feel a debt collector has violated the FDCPA and you are successful in a court case to that end, you may win damages.
- In addition to the court wiping your debt, you could realize some damages for your trouble, in some cases up to \$500,000 or 1 percent of the net worth of the debt collector.



THANK YOU!

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