

- Falsely represent or imply that the consumer committed a crime or other conduct to disgrace the consumer.
- Communicate, or threaten to communicate, false credit information or information which should be known to be false, including not identifying disputed debts as such.
- Use or distribute written communications made to look like or falsely represented to be documents authorized, issued, or approved by any court, official, or agency of the United States or any state if it would give a false impression of its source, authorization, or approval.
- Use any false representation or deceptive means to collect or attempt to collect a debt or to obtain information about a consumer.
- Fail to disclose in the initial written communication with the consumer, and the initial oral communication if it precedes the initial written communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. In addition, the debt collector must disclose in subsequent communications that the communication is from a debt collector. (These disclosures do not apply to a formal pleading made in connection with a legal action.)
- Falsely represent or imply that accounts have been sold to innocent purchasers.
- Falsely represent or imply that documents are legal process.
- Use any name other than the true name of the debt collector's business, company, or organization.
- Falsely represent or imply that documents are not legal process or do not require action by the consumer.
- Falsely represent or imply that he or she operates or is employed by a consumer reporting agency.

#### Unfair Practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect a debt. Specifically, a debt collector may not:

- Collect any interest, fee, charge or expense incidental to the principal obligation unless it was authorized by the original debt agreement or is otherwise permitted by law.
- Accept a check or other instrument postdated by more than five days, unless he or she notifies the consumer, in writing, of any intention to deposit the check or instrument. That notice must be made not more than ten or less than three business days before the date of deposit.
- Solicit a postdated check or other postdated payment instrument to use as a threat or to institute criminal prosecution.
- Deposit or threaten to deposit a postdated check or other postdated payment instrument before the date on the check or instrument.

- Cause communication charges, such as those for collect telephone calls and telegrams, to be made to any person by concealing the true purpose of the communication.
- Take or threaten to repossess or disable property when the creditor has no enforceable right to the property or does not intend to do so, or if, under law, the property cannot be taken, repossessed or disabled.
- Use a postcard to contact a consumer about a debt.

#### Multiple Debts

If a consumer owes several debts that are being collected by the same debt collector, payments must be applied according to the consumer's instructions. No payment may be applied to a disputed debt.

#### Legal Actions by Debt Collectors

A debt collector may file a lawsuit to enforce a security interest in real property only in the judicial district in which the real property is located. Other legal actions may be brought only in the judicial district in which the consumer lives or in which the original contract creating the debt was signed.

#### Furnishing Certain Deceptive Forms

No one may design, compile and/or furnish any form which creates the false impression that someone other than the creditor (for example, a debt collector) is participating in the collection of a debt.

#### Civil Liability

A debt collector who fails to comply with any provision of the FDCPA is liable for:

- Any actual damages sustained as a result of that failure;
- Punitive damages as allowed by the court—
  - in an individual action, up to \$1,000; or
  - in a class action, up to \$1,000 for each named plaintiff and an award to be divided among all members of the class of an amount up to \$500,000 or 1 percent of the debt collector's net worth, whichever is less;
- Costs and a reasonable attorney's fee in any such action.

In determining punitive damages, the court must consider the nature, frequency and persistency of the violations and the extent to which they were intentional. In a class action, the court must also consider the resources of the debt collector and the number of persons adversely affected.

#### Defenses

A debt collector is not liable for a violation if a preponderance of the evidence shows it was not intentional and was the result of a bona fide error that arose despite procedures reasonably designed to avoid any such error. The collector is also not liable if he or she, in good faith, relied on an advisory opinion

## VII. Abusive Practices – FDCPA

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of the Federal Trade Commission even if the ruling is later amended, rescinded, or determined to be invalid for any reason.

### **Jurisdiction and Statute of Limitations**

Action against debt collectors for violations of the FDCPA may be brought in any appropriate U.S. district court or other court of competent jurisdiction. The consumer has one year from the date on which the violation occurred to start such as action.

### **Administrative Enforcement**

The Federal Trade Commission (FTC) is the primary enforcement agency for the FDCPA. The various financial regulatory agencies enforce the FDCPA for the institutions they supervise. Neither the FTC nor any other agency may issue regulations governing the collection of consumer debts by debt collectors. The FTC may, however, issue advisory opinions under the Federal Trade Commission Act on the meaning and application of the FDCPA.

### **Relation to State Law**

The FDCPA preempts state law only to the extent that a state law is inconsistent with the FDCPA. A state law that is more protective of the consumer is not considered inconsistent with the FDCPA.

### **Exemption for State Regulation**

The FTC may exempt certain classes of debt collection practices from the requirements of the FDCPA if the FTC has determined that state laws impose substantially similar requirements and that there is adequate provision for enforcement.

### **Examination Objectives**

The objectives of the examination are to:

1. Identify financial institutions that are debt collectors;
2. Determine the adequacy of the institution's internal procedures and controls to assure consistent compliance with FDCPA; and
3. Determine if the institution complies with the requirements of the FDCPA in collecting or attempting to collect third-party consumer debts.

### **Examination Procedures**

The following procedures are to be completed through interviews with personnel knowledgeable about and directly engaged in the institution's collection activities and through reviews of any written collection procedures, reciprocal collection agreements, collection letters, dunning notices, envelopes, scripts used by collection personnel, validation notices, individual collection files, complaint files, and other relevant records.

1. Determine if the institution is a debt collector under the FDCPA.
2. Determine if the institution has established internal procedures and controls to assure compliance with the FDCPA.
3. If the institution has acted or is acting as a debt collector under the FDCPA, determine if the institution has:
  - Communicated with the consumer or third parties in any prohibited manner;
  - Furnished the written validation notice within the required time period and otherwise complied with applicable validation requirements;
  - Used any harassing, abusive, unfair or deceptive collection practice prohibited by the FDCPA;
  - Collected any amount not expressly authorized by the agreement creating the debt or by state law;
  - Applied all payments received as instructed and, where no instruction was given, applied payments only to undisputed debts; and
  - Filed suit in an authorized forum if the institution sued to collect the debt.

### **References**

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*15 USC §1692: Fair Debt Collection Practices Act*  
<http://www.fdic.gov/regulations/laws/rules/6500-1300.html#6500titleviidcp>

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*Federal Trade Commission Staff Commentary on the FDCPA*  
<http://www.ftc.gov/os/statutes/fdcpa/commentary.htm>

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*FIL 26-97: Amendment to the Fair Debt Collection Practices Act*  
<http://www.fdic.gov/news/news/financial/1997/fil9726.html>

### **Job Aids**

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*See Examination Checklist – Fair Debt Collection Practices Act on the following page.*