



FDCPA and Debt Collection - What You Need To Know

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Federal Law – The Fair Debt Collection Practices Act Definition of “Debt Collector”

- The definition of “debt collector” is broad: 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 to another.** 15 USCA § 1692a(6), 12 C.F.R. § 1006.2(i)(1).
- Exceptions:... (vi) Any person collecting or attempting to collect any debt owed or due, or asserted to be owed or due to another, to the extent such debt collection activity:
 - (A) Is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;
 - (B) **Concerns a debt that such person originated;**
 - (C) **Concerns a debt that was not in default at the time such person obtained it;** or
 - (D) Concerns a debt that such person obtained as a secured party in a commercial credit transaction involving the creditor.

Federal Law – The Fair Debt Collection Practices Act Definition of “Debt Collector”

Courts base the determination of whether a company is a “debt collector” on a review of the status of the debt when servicing begins.

- ◆ Was the account in default when servicing began?
- ◆ The definition of “default” is most often in the credit agreement.
- ◆ A company that services accounts from inception is not a “debt collector” even if the account later goes into default.
- ◆ Determination of status as a “debt collector”, typically, is case-by-case.

Federal Law – The Fair Debt Collection Practices Act Definition of “Debt” and “Creditor”

Debt means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services that are the subject of the transaction are primarily for personal, family, or household purposes, whether or not the obligation has been reduced to judgment.

Creditor means any person who offers or extends credit creating a debt or to whom a debt is owed. The term creditor does not, however, include any person to the extent that such person receives an assignment or transfer of a debt in default solely to facilitate collection of the debt for another.

Federal Law – The Fair Debt Collection Practices Act Structure of Statute and Regulation

I. Some disclosure requirements

II. Mostly restrictions and prohibitions:

✦ Debt collectors may not use conduct that is:

- Harassing, oppressive or abusive
- False, deceptive or misleading
- Unfair or unconscionable.

Federal Law – The Fair Debt Collection Practices Act Requirements

Debt Validation Notice

- ***Required Information:***

- The New Mini-Miranda Notice.
- The **debt collector's name and mailing address** to which consumers can send requests for verification.
- The **consumer's name and mailing address.**
- The **itemization date and the amount due as of the itemization date.**
- If the debt collector is collecting consumer financial product or service debt, **the name of the creditor to whom the debt was owed on the itemization date.**
- **Current amount of debt.**

Federal Law – The Fair Debt Collection Practices Act Requirements (continued)

Debt Validation Notice (continued)

- ***Required Information (continued):***
 - The **account number**, if any, associated with the debt **on the itemization date**, or a truncated version of that number.
 - The name of the **creditor to whom the debt currently is owed**.
 - An **itemization of the current amount of the debt** in a tabular format reflecting interest, fees, payments, and credits since **the itemization date**.
 - The **date** the debt collector will consider **the end date of the validation period**, and **statements regarding the consumer's right to dispute the debt** before the end date of the validation period.
 - Consumer response form
- The regulation and model form also allow for additional optional information.

Federal Law – The Fair Debt Collection Practices Act Requirements (continued)

Debt Validation Notice (continued)

- **Validation period.** Starts on the date that a debt collector provides the required validation information and ends 30 days after the consumer receives or is assumed to receive the validation information (the debt collector may assume that a consumer receives the validation information on any date that is at least five days (excluding legal public holidays identified in 5 U.S.C. 6103(a), Saturdays, and Sundays) after the debt collector provides it).
- **No overshadowing.** During the validation period, a debt collector must not engage in any collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's rights to dispute the debt and to request the name and address of the original creditor. The "safe harbor" notice complies with this limitation.
- **Failure to dispute.** The failure of a consumer to dispute the validity of a debt does not constitute a legal admission of liability by the consumer.

Federal Law – The Fair Debt Collection Practices Act Requirements (continued)

Mini-Miranda Notice -

A debt collector must disclose **in its initial communication** with a consumer, and in **each subsequent communication** with the consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.

- If the debt collector's initial communication with the consumer is oral, the debt collector must make the disclosure required by this paragraph again in its initial written communication with the consumer. 15 USCA § 1692e(11), 12 CFR § 1006.18(e)(1).

Example:

North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Federal Law – The Fair Debt Collection Practices Act Requirements (continued)

Post-Dated Check Notice – 12 C.F.R. § 1006.22(c)(1)

A debt collector must not accept from any person a check or other payment instrument **postdated by more than five days unless** such person is notified in writing of the debt collector's intent to deposit such check or instrument **not more than ten, nor less than three, days** (excluding legal public holidays identified in 5 U.S.C. 6103(a), Saturdays, and Sundays) **prior to such deposit.**

Federal Law – The Fair Debt Collection Practices Act Limitations

Three general categories of prohibited conduct, with enumerated examples:

- A debt collector **must not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person** in connection with the collection of a debt. 15 USCA § 1692d, 12 CFR § 1006.14.
- A debt collector **must not use any false, deceptive, or misleading representation or means** in connection with the collection of any debt. 15 USCA § 1692e, 12 CFR § 1006.18.
- A debt collector **must not use unfair or unconscionable means** to collect or attempt to collect any debt. 15 USCA § 1692f, 12 CFR § 1006.22.

Federal Law – The Fair Debt Collection Practices Act Limitations (continued)

Harassing, oppressive, or abusive conduct:

- In connection with the collection of a debt, a debt collector must not:
 - use or threaten to use violence or other criminal means to harm the physical person, reputation, or property of any person.
 - use obscene or profane language, or language the natural consequence of which is to abuse the hearer or reader.
 - publish a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons with a “permissible purpose” to see a consumer report.
 - advertise for sale any debt to coerce payment of the debt.
 - communicate or attempt to communicate with a person through a medium of communication if the person has requested that the debt collector not use that medium to communicate with the person.
 - The debt collector may ask follow-up questions regarding preferred communication media to clarify statements by the person.

Federal Law – The Fair Debt Collection Practices Act Limitations (continued)

Harassing, oppressive, or abusive conduct – Contact Frequency:

- In connection with the collection of a debt, a debt collector must not place telephone calls or engage any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- Rebuttable presumption: a debt collector violates the above if the debt collector places a **telephone call** to a particular person in connection with the collection of a particular debt either:
 - More than 7 times within 7 consecutive days; or
 - Within a period of 7 consecutive days after having had a telephone conversation (commentary: whether initiated by consumer or debt collector) with the person in connection with the collection of such debt, with the date of the telephone conversation being the first day of the 7 consecutive day period.

Federal Law – The Fair Debt Collection Practices Act Limitations (continued)

Consumer Contact Limitations – 12 CFR § 1006.6(b)(1)

In general, a debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of any debt:

- At any unusual time, or at a time that the debt collector knows or should know is inconvenient to the consumer. In the absence of the debt collector's knowledge of circumstances to the contrary, a time before 8:00 a.m. and after 9:00 p.m. local time at the consumer's location is inconvenient; or
- At any unusual place, or at a place that the debt collector knows or should know is inconvenient to the consumer.
- **Consumer's location:** If a debt collector has conflicting or ambiguous information regarding a consumer's location, then, in the absence of knowledge of circumstances to the contrary, the debt collector complies with the timing rule by communicating or attempting to communicate at a time that is convenient in all locations (e.g., West Coast-East Coast consumer, call times are 11am ET to 9pm ET).

Federal Law – The Fair Debt Collection Practices Act Limitations (continued)

False, deceptive, or misleading representations or means:

A debt collector must not use any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

- Generally, a debt collector must not:
 - Threaten to take any action that cannot legally be taken or that the debt collector does not intend to take.
 - Communicate or threaten to communicate to any person credit information that the debt collector knows or should know is false, including the failure to communicate that a disputed debt is disputed.
 - Use or distribute any written communication that simulates or that the debt collector falsely represents to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or that creates a false impression about its source, authorization, or approval.
 - Use any business, company, or organization name other than the true name of the debt collector's business, company, or organization.
- Other debt collector conduct expressly deemed by FDCPA and Reg F as false, deceptive or misleading representations or means.

Federal Law – The Fair Debt Collection Practices Act Limitations (continued)

Unfair or unconscionable means (examples):

- A debt collector must not:
 - Collect “any amount” unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
 - Cause charges to be made to any person for communications by concealment of the true purpose of the communication.
 - Take or threaten to take any nonjudicial action to effect dispossession or disablement of property if:
 - There is no present right to possession of the property claimed as collateral through an enforceable security interest;
 - There is no present intention to take possession of the property; or
 - The property is exempt by law from such dispossession or disablement.
 - Communicate with a consumer regarding a debt by postcard.
 - Note, there are special rules for text messages and electronic communications, including e-mail and social media.

Federal Law – The Fair Debt Collection Practices Act Limitations (continued)

Third-Party Disclosure Limitation

A debt collector must not communicate (i.e., convey information about a debt), in connection with the collection of any debt, with any person other than, (i) the consumer; (ii) the consumer's attorney; (iii) a consumer reporting agency, if otherwise permitted by law; (iv) the creditor; (v) the creditor's attorney; or (vi) the debt collector's attorney.

- Skip tracing exception.
- ◆ Two safe harbors:
- Limited Content Message (voicemail)
 - Electronic communications – email and text message.

Federal Law – The Fair Debt Collection Practices Act Limitations (continued)

Third-Party Disclosure Limitation (continued):

- **Limited Content Message - 12 CFR § 1006.2(j)**
 - Required and optional information
 - Available for voicemails (not text messages) to the consumer only (not third parties)
 - Not a “communication”, therefore no Mini-Miranda needed

EXAMPLE (only required information): **“This is Robin Smith calling from ABC Inc. Please contact me or Jim Johnson at 1-800-555-1212.”**

EXAMPLE (required and all optional information): **“Hi, this is Robin Smith calling from ABC Inc. It is 4:15 p.m. on Wednesday, September 1. Please contact me or any of our representatives at 1-800-555-1212 today until 6:00 p.m. Eastern time, or any weekday from 8:00 a.m. to 6:00 p.m. Eastern time.”**

Federal Law – The Fair Debt Collection Practices Act Limitations (continued)

Third-Party Disclosure (continued):

Emails and text messages:

- Debt collector must maintain procedures reasonable adapted to avoid third-party disclosure.
- A debt collector may send a text message to a telephone number if certain conditions are met.
- Opt-outs: Every electronic collection message must include a **clear and conspicuous statement** describing a **reasonable and simple method** by which the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number.

Federal Law – The Fair Debt Collection Practices Act Limitations (continued)

Third-Party Disclosure (continued):

Place of Employment Contacts

A debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of any debt at the consumer's place of employment, if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

- A debt collector knows or has reason to know that a consumer's employer prohibits the consumer from receiving such communication if, for example, the consumer tells the debt collector that the consumer cannot take personal calls at work.
- The debt collector may ask follow-up questions regarding the employer's prohibitions or limitations on contacting the consumer at the place of employment to clarify statements by the consumer.

Federal Law – The Fair Debt Collection Practices Act Limitations (continued)

Consumer Contact Limitations (continued):

- **Attorney representation:** Without prior consent direct from the consumer, or a court order, a debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of any debt if the debt collector knows the consumer is represented by an attorney with respect to such debt and knows, or can readily ascertain, the attorney's name and address, unless the attorney:
 - Fails to respond within a reasonable period of time [not defined] to a communication from the debt collector; or
 - Consents to the debt collector's direct communication with the consumer.
- **Place of Employment Contacts:** Without prior consent direct from the consumer, or a court order, a debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of any debt at the consumer's place of employment, if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

Federal Law – The Fair Debt Collection Practices Act Limitations (continued)

Consumer Contact Limitations (continued):

- **Cease-and-desist requests:** If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wants the debt collector to cease further communication with the consumer, the debt collector must not communicate or attempt to communicate further with the consumer with respect to such debt, except:
 - To advise the consumer that the debt collector's further efforts are being terminated;
 - To notify the consumer that the debt collector or creditor may invoke specified remedies that the debt collector or creditor ordinarily invokes; or
 - Where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

Federal Law – The Fair Debt Collection Practices Act Limitations (continued)

Skip Tracing – 12 CFR § 1006.10

- A debt collector communicating with a person **other than the consumer *for the purpose of acquiring location information*** must disclose certain information and is prohibited from certain conduct (similar to the prohibited conduct when contacting a consumer).
- A debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer **must not communicate more than once** with such person unless requested to do so by such person, or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information.

Federal Law – The Fair Debt Collection Practices Act Limitations (continued)

◆ **Time-barred Debts – 12 CFR § 1006.26**

A debt collector must not **bring or threaten to bring** a legal action against a consumer to collect a time-barred debt. This limitation does not apply to proofs of claim filed in connection with a bankruptcy proceeding.

- No official interpretations
- No explanation about what actions or language constitutes a “threat” to bring legal action

◆ **Requirements before furnishing data – 12 CFR § 1006.30**

A debt collector must not furnish to a consumer reporting agency information about a debt before the debt collector:

- (i) Speaks to the consumer about the debt in person or by telephone; or
- (ii) Places a letter in the mail or sends an electronic message to the consumer about the debt and waits a reasonable period of time (14 consecutive days from sending) to receive a notice of undeliverability.

Federal Law – The Fair Debt Collection Practices Act Limitations (continued)

Disputes – 12 CFR § 1006.38

- **Failure to dispute.** The failure of a consumer to dispute the validity of a debt does not constitute a legal admission of liability by the consumer.
- **Response to disputes.** Upon receipt of a dispute submitted by the consumer in writing within the validation period, a debt collector must cease collection of the debt, or any disputed portion of the debt, until the debt collector:
 - Sends a copy either of verification of the debt or of a judgment to the consumer in writing or electronically (in compliance with E-Sign); or
 - In the case of a dispute that the debt collector reasonably determines is a duplicative dispute, either:
 - Notifies the consumer in writing or electronically that the dispute is duplicative (i.e., substantially the same as a dispute to which the debt collector has already responded and provides no new and material information to support the dispute), provides a brief statement of the reasons for the determination, and refers the consumer to the debt collector's response to the earlier dispute; or
 - Sends a copy either of verification of the debt or of a judgment to the consumer in writing or electronically (in compliance with E-Sign).

Federal Law – The Fair Debt Collection Practices Act Limitations (continued)

Disputes (continued):

- **No time limitation on disputes.** While Regulation F prescribes certain responses for disputes or refusals to pay received during the validation period, a consumer may dispute a debt at any time.
 - It is a false, deceptive or misleading collection means for a debt collector to communicate or threaten to communicate to any person credit information that the debt collector knows or should know is false, **including the failure to communicate that a disputed debt is disputed.** 12 CFR § 1006.18(c)(2).
 - If the debt collector cannot resolve a dispute and furnishes data to a consumer reporting agency, the debt collector has to include a notation in its furnishing to let the CRA know that the consumer disputes the debt.

Federal Law – The Fair Debt Collection Practices Act States Regulate the Conduct of Debt Collectors Like the FDCPA

State Law Examples:

- **Florida – Fla. Rev. Stat. § 559.72:** In collecting consumer debts, no **person** shall:

- (1) Simulate in any manner a law enforcement officer or a representative of any governmental agency.
- (2) Use or threaten force or violence
- (6) Disclose information concerning the existence of a debt known to be reasonably disputed by the debtor without disclosing that fact. If a disclosure is made before such dispute has been asserted and written notice is received from the debtor that any part of the debt is disputed, and if such dispute is reasonable, the person who made the original disclosure must reveal upon the request of the debtor within 30 days the details of the dispute to each person to whom disclosure of the debt without notice of the dispute was made within the preceding 90 days.
- (7) Willfully communicate with the debtor or any member of her or his family with such frequency as can reasonably be expected to harass the debtor or her or his family, or willfully engage in other conduct which can reasonably be expected to abuse or harass the debtor or any member of her or his family...

Federal Law – The Fair Debt Collection Practices Act States Regulate the Conduct of Debt Collectors Like the FDCPA

State Law Examples (continued):

- **Florida:** In collecting consumer debts, no person shall:

... (17) Communicate with the debtor between the hours of 9 p.m. and 8 a.m. in the debtor's time zone without the prior consent of the debtor.

(a) The person may presume that the time a telephone call is received conforms to the local time zone assigned to the area code of the number called, unless the person reasonably believes that the debtor's telephone is located in a different time zone.

(18) Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, **unless the debtor's attorney fails to respond within 30 days to a communication from the person**, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication...

Federal Law – The Fair Debt Collection Practices Act States Regulate the Conduct of Debt Collectors Like the FDCPA

State Law Examples (continued):

- **Oregon – ORS § 646.639:** “Debt collector” means a person that by direct or indirect action, conduct or practice collects or attempts to collect a debt owed, or alleged to be owed, to a creditor or debt buyer.
- A “debt collector” engages in an unlawful collection practice if the debt collector, while collecting or attempting to collect a debt, does any of the following:
 - (a) Uses or threatens to use force or violence to cause physical harm to a debtor or to the debtor's family or property.
 - (b) Threatens arrest or criminal prosecution
 - (e) Communicates with a debtor or any member of the debtor's family repeatedly or continuously or at times known to be inconvenient to the debtor or any member of the debtor's family and with intent to harass or annoy the debtor or any member of the debtor's family.
 - (f) Communicates or threatens to communicate with a debtor's employer concerning the nature or existence of the debt.

Federal Law – The Fair Debt Collection Practices Act States Regulate the Conduct of Debt Collectors Like the FDCPA

◆ State Law Examples (continued):

- **Oregon – ORS § 646.639:** A “debt collector” engages in an unlawful collection practice if the debt collector, while collecting or attempting to collect a debt, does any of the following:

(g) Communicates without a debtor's permission or threatens to communicate with the debtor at the debtor's place of employment (POE) if the POE is other than the debtor's residence, except that the debt collector may:

(A) Write to the debtor at the debtor's POE if a home address is not reasonably available and if the envelope does not reveal that the communication is from a debt collector other than the person that provided the goods, services or credit from which the debt arose...

Federal Law – The Fair Debt Collection Practices Act States Regulate the Conduct of Debt Collectors Like the FDCPA

◆ State Law Examples (continued):

- **Oregon – ORS § 646.639:** A “debt collector” engages in an unlawful collection practice if the debt collector, while collecting or attempting to collect a debt, does any of the following:

(g) Communicates without a debtor's permission or threatens to communicate with the debtor at the debtor's place of employment (POE) if the POE is other than the debtor's residence, except that the debt collector may:...

(B) Telephone a debtor's POE without informing any other person of the nature of the call or identifying the caller as a debt collector but only if the debt collector in good faith has made an unsuccessful attempt to telephone the debtor at the debtor's residence during the day or during the evening between the hours of 6 p.m. and 9 p.m. The debt collector may not contact the debtor at the debtor's POE more frequently than once each business week and may not telephone the debtor at the debtor's POE if the debtor notifies the debt collector not to telephone at the debtor's POE or if the debt collector knows or has reason to know that the debtor's employer prohibits the debtor from receiving such communication.



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