

**COMPLY WITH THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**  
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The Fair Debt Collection Practices Act (“FDCPA”) was passed by Congress on 20 September 1977 (and codified as 15 U.S.C. 1692 *et. seq.*) In passing this law, Congress determined:

1. 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.
2. Existing laws and procedures for redressing these injuries are inadequate to protect consumers.
3. Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.<sup>1</sup>

Congress purposed therefore to “eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.”<sup>2</sup>

The legislative history showed that Congress felt “[t]hat every individual, whether or not he owes the debt, has a right to be treated in a reasonable and civil manner.”<sup>3</sup> The hearings on the FDCPA further stated

[U]niversal agreement among scholars, law enforcement officials, and even debt collectors that the number of persons who willfully refuse to pay just debts is minuscule. . . [T]he vast majority of consumers who obtain credit fully intend to repay their debts. When default occurs, it is nearly always due to an unforeseen event such as unemployment, overextension, serious illness, or marital difficulties or divorce.<sup>4</sup>

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<sup>1</sup> 15 U.S.C. §1692 (2007).

<sup>2</sup> *Id.*

<sup>3</sup> 123 Cong.Rec. 10241 (1977) (remarks of Rep. Annunzio); *see Baker v. G. C. Services Corp.*, 677 F.2d 775, 777 (9th Cir. 1982).

<sup>4</sup> Sen.R. 95-382, 1977 USCCAN 1695, 1697.

While the amount of compliance with and governmental enforcement of the FDCPA is seems to be questionable, Attorneys and debt collectors are subject to private lawsuits for violations. Therefore, it behooves both lawyers and lay debt collectors to understand the Act and comply with it.

## **I. WHAT THE FDCPA SAYS - IN A NUTSHELL**

### **A. THE ACT**

The FDCPA is concerned about the methods used to collect debts. The primary areas of importance under FDCPA are what is a debt, who collects it and how it is collected.

#### *1. What is a Debt*

To implicate the FDCPA there must be an attempt to collect a debt. Debt is defined as “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.”<sup>5</sup>

Note that the Act refers specifically to consumer debts. Non-consumer debts (like business obligations or agricultural loans) are not covered by the FDCPA.<sup>6</sup>

The FDCPA does not define the term “transaction.” Federal courts have attempted to supply that term’s meaning. The Ninth Circuit adopted the ruling of the Seventh Circuit and stated that the FDCPA is limited “to those obligations to pay arising from consensual transactions, where parties negotiate or contract for consumer-related goods or services.”<sup>7</sup>

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<sup>5</sup> 15 U.S.C. §1692a(5).

<sup>6</sup> *Turner v. Cook*, 362 F.3d 1219, 1227 (9th Cir. 2004).

<sup>7</sup> *Id.* citing *Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C.*, 111 F.3d 1322, 1326 (7th Cir.1997).

Consumer debts reduced to judgment are covered by the FDCPA, and attorneys seeking to collect on such judgments must follow the FDCPA.<sup>8</sup> A dishonored check written for personal, family, or household purposes is a “debt” covered by the FDCPA.<sup>9</sup>

At least the Second Circuit Court of Appeals has held that back rent is a debt under the Act.<sup>10</sup> No other circuit has yet followed this precedent.<sup>11</sup>

The following are not covered by the act

Tort claims<sup>12</sup>

Taxes, (income taxes, per capita taxes, property taxes, vehicle taxes)<sup>13</sup>

unemployment compensation<sup>14</sup>

child support obligations<sup>15</sup>

obligation to pay for shoplifted merchandise<sup>16</sup>

foreclosure proceedings<sup>17</sup>

## 2. Who is a Debt Collector

The FDCPA covers the activities of a "debt collector." A "debt collector" includes "any person:

- 1). 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
- 2). who regularly collect or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.
- 3). who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests."<sup>18</sup>

The original creditor is expressly excluded from the definition of "debt collector."<sup>19</sup> The two exceptions to this exception are:

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<sup>8</sup> *Fox v Citicorp Credit Services, Inc.*, 15 F.3d 1507, 1512 (9th Cir. 1994).

<sup>9</sup> *Charles v. Lundgren & Associates, P.C.*, 119 F.3d 739, 742 (9th Cir. 1997).

<sup>10</sup> *Romea v. Heiberger & Associates*, 163 F.3d 111, 119 (2nd Cir. 1998).

<sup>11</sup> *Cook v. Hamrick*, 278 F.Supp.2d 1202 (D.Colo. 2003); *Krevsky v. Equifax Check Services, Inc.*, 85 F.Supp.2d 479 (M.D.Pa. 2000); *Missionary Sisters of Sacred Heart, Inc. v. Dowling*, 703 N.Y.S.2d 362, (N.Y.City Civ.Ct. 1999); *Citibank N.A. v. Jones*, 706 N.Y.S.2d 301 (N.Y.Dist.Ct. 2000).

<sup>12</sup> *Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367, 1371 (11 Cir. 1998).

<sup>13</sup> *In re Westberry*, 215 F.3d 589, 591 (6th Cir. 2000).

<sup>14</sup> *Berman v. GC Services Ltd. Partnership*, 146 F.3d 482, 485 (7th Cir. 1998).

<sup>15</sup> *Mabe v. G.C. Servs. Ltd. P'ship*, 32 F.3d 86, 88 (4th Cir.1994).

<sup>16</sup> *Id.*

<sup>17</sup> *Santoro v. CTC Foreclosure Service*, 12 Fed.Appx. 476, 480 (9th Cir. 2001).

<sup>18</sup> 15 U.S.C. §1692a(6)

- 1). it uses a name which suggests that a third-party debt collector is involved in the collection process (the false name exception),<sup>20</sup> or
- 2). it obtains the debt after default for the purpose of collection.<sup>21</sup>

The Act also does not include:

- A). any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
- B). any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;
- C). any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;
- D). any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;
- E). any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and
- F). any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity
  - i). is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;
  - ii). concerns a debt which was originated by such person;
  - iii). concerns a debt which was not in default at the time it was obtained by such person; or
  - iv). concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.<sup>22</sup>

### *3. Who is the Creditor*

The "Creditor" is "any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of debt in default solely for the purpose of facilitating collection of such debt for

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> 15 U.S.C. §1692a(4)

<sup>22</sup> 15 U.S.C. §1692a(6).

another."<sup>23</sup> Generally, original creditors are not covered by the Act. Assignees of the original creditor are not subject to the FDCPA when the assignment is made before default.<sup>24</sup>

#### 4. *Communication*

Any communication with a debtor must not be misleading. The first, or initial communication must disclose that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.<sup>25</sup> Prior to 1997, such disclosures had to be in all communications. Since 1997, only the initial disclosure requires it.

Within five days after the initial communication, written notice of the following information must be given to the debtor:

- 1). the amount of the debt;
- 2). the name of the creditor to whom the debt is owed;
- 3). a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- 4). a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- 5). a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.<sup>26</sup>

If the consumer notifies the debt collector within 30 days that he disputes the debt or asks for the name and address of the original creditor, the debt collection must stop, on the disputed portion, and the collector must obtain verification of the debt or a copy of the judgment, or the

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<sup>23</sup> 15 U.S.C. §1692a(4).

<sup>24</sup> *Kvassay v. Hasty*, 236 F.Supp.2d 1240, 1272 (D.Kan. 2002)

<sup>25</sup> 15 U.S.C. § 1692e(11).

<sup>26</sup> 15 U.S.C. § 1692g(a).

contact information requested. This information must be mailed to the consumer before collection efforts can continue.<sup>27</sup>

The ACT does not require production of the original, a certified, or an attested copy of the document creating a debt as part of the verification.<sup>28</sup>

The FDCPA prohibits certain types of communications. A "communication" is defined as "the conveying of information regarding a debt directly or indirectly to any person through any medium."<sup>29</sup> Dunning letters, telephone calls, or telegrams are common methods used by debt collectors. Courts broadly and literally construe the term communication to encompass other forms of conveying information as well. At least once Circuit Court has held that a legal action is not an initial communication within the meaning of the FDCPA.<sup>30</sup> The Second Circuit differs and holds that a lawsuit, if done without a prior communication is an initial communication under the Act.<sup>31</sup>

The FDCPA also requires debt collectors to not communicate with the consumer at any unusual time or place known, or that should be known, to be inconvenient to the consumer.<sup>32</sup> Absent knowledge to the contrary, this would include communications before 8:00 A.M. and after 9:00 P.M. local time.<sup>33</sup> The debt collector may not communicate with the consumer known to be represented by legal counsel or at the consumer's place of employment at which personal communications are prohibited.<sup>34</sup>

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<sup>27</sup> 15 U.S.C. § 1692g(b).

<sup>28</sup> *Clark v. Capital Credit & Collection Services, Inc.*, 460 F.3d 1162, 1173-74 (9th Cir. 2006)

<sup>29</sup> 15 U.S.C. §1692a(2).

<sup>30</sup> *Vega v. McKay*, 351 F.3d 1334, 1337 (11th Cir. 2003).

<sup>31</sup> *Goldman v. Cohen*, 445 F.3d 152, 157 (2nd Cir. 2006).

<sup>32</sup> 15 U.S.C. §1692c(a)(1).

<sup>33</sup> *U.S. v. Central Adjustment Bureau, Inc.*, 667 F.Supp. 370, 375 (N.D.Tex. 1986).

<sup>34</sup> 15 U.S.C. §1692c(a)(2)-(3).

The debt collector may not communicate with someone other than the consumer except to obtain location information.<sup>35</sup>

Courts developed a "least sophisticated consumer" test to judge whether a communication meets the standards of the FDCPA.<sup>36</sup> In essence, the test is whether the trial court believes that the least-sophisticated-consumer would understand and not be misled by the communication. "This standard serves the dual purpose of protecting all consumers, including the inexperienced, the untrained and credulous, from deceptive debt collection practices and protecting debt collectors against liability for bizarre or idiosyncratic consumer interpretations of collection materials."<sup>37</sup>

Debt collectors are prohibited from making "the threat to take any action that cannot legally be taken or that is not intended to be taken."<sup>38</sup> This may be the most common violation of the act. Examples:

- 1). The threat of suit within a short time when the creditor has not authorized suit or the debt collector does not file suit within the period stated. However, a statement that legal action "could result" does not violate 15 U.S.C. §1692e(5).<sup>39</sup>
- 2). Threats of suit by an attorney not licensed within the jurisdiction or who does not in fact file suits in the jurisdiction.
- 3.) Threats to enforce creditor remedies which cannot be enforced at the time stated or to the extent stated.

Another debt collection technique is to send collection letters, with implicit or explicit threats of suit, under the name of an attorney. Courts have held that "A debt collection letter on an attorney's letterhead conveys authority and credibility."<sup>40</sup>

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<sup>35</sup> 15 U.S.C. §1692b.

<sup>36</sup> *Baker v. G. C. Services Corp*, 677 F.2d 775, 778 (9th Cir. 1982).

<sup>37</sup> *Taylor v. Perrin, Landry, deLaunay & Durand*, 103 F.3d 1232, 1236(5th Cir. 1997).

<sup>38</sup> 15 U.S.C. §1692e(5).

<sup>39</sup> *Newman v. Checkrite California, Inc.*, 912 F.Supp. 1354, 1381 (E.D.Cal. 1995)

<sup>40</sup> *Crossley v. Lieberman*, 868 F.2d 566, 570 (3d Cir.1989).

To be in compliance, the attorney should in fact review the debtor's file and make a professional judgment that whatever action is threatened is appropriate. The threatened action must be authorized by the client. Anything less violates the prohibition on "false representation or implication that any individual is an attorney or that any communication is from an attorney."

### 5. *Unfair Practices*

The FDCPA does not allow "unfair or unconscionable means to collect or attempt to collect any debt."<sup>41</sup> Unfair practices include "the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law."<sup>42</sup> This is the most common violation of the unfair practice section. The debt collector's knowledge is not a requirement for a violation of 15 U.S.C. §1692f.<sup>43</sup>

Other violations include:

- the imposition of service charges for dishonored checks where not permitted by agreement and applicable state law,
- the attorney's fees and/or court costs where no contract or statute authorizes them,
- the demand for payment of court costs which were not awarded by a court,
- the addition of unauthorized insurance charges,
- the solicitation and use of post-dated checks under certain circumstances,
- the use of collect telephone calls and telegrams,
- threats of illegal repossession, and
- the use of postcards or envelopes that reveal the collection purpose.

The FDCPA also prohibits "any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt."<sup>44</sup> Among the conduct specifically defined as harassment or abuse is the threat of violence, obscene or profane

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<sup>41</sup> 15 U.S.C. §1692f.

<sup>42</sup> 15 U.S.C. §1692f(1).

<sup>43</sup> *Turner v. J.V.D.B. & Associates, Inc.*, 330 F.3d 991, 997 (7th Cir. 2003).

<sup>44</sup> 15 U.S.C. §1692d.

language, the publication of a list of debtors, the advertisement of a debt in order to coerce payment, repeated telephone calls, and telephone calls without disclosure of the caller's identity.

## II. THE PROVISIONS UNDER THE FDCPA FOR DAMAGES

### A. ACTUAL DAMAGES

A violation of any provision of the FDCPA creates liability for actual damages.<sup>45</sup> State law requirements regarding the proof of intentional or negligent infliction of emotional distress are not applicable to actual damages under the FDCPA.<sup>46</sup>

### B. STATUTORY DAMAGES

In addition to actual damages, the consumer in an individual action may be awarded "such actual damages as the court may allow, but not exceeding \$1,000."<sup>47</sup> In statutory damages the court is to consider "the frequency and persistence of non-compliance by the debt collector, the nature of such non-compliance, and the extent to which the non-compliance was intentional."<sup>48</sup>

Further, the FDCPA also contains special damage provisions for class actions. Recovery of statutory damages for the class is limited to 1% of the debt collector's net worth or \$500,000, whichever is less.<sup>49</sup>

### C. ATTORNEY'S FEES

The successful consumer is entitled to an award of costs and reasonable attorney's fees.<sup>50</sup> Given the structure of the section, attorney's fees should not be construed as a special or

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<sup>45</sup> 15 U.S.C. §1692k(a)(1).

<sup>46</sup> *Smith v. Law Offices of Mitchell N. Kay*, 124 B.R. 182, 185 (D.Del. 1991).

<sup>47</sup> 15 U.S.C. §1692k(a)(2).

<sup>48</sup> 15 U.S.C. §1692k(b)(1).

<sup>49</sup> 15 U.S.C. §1692k(2)(B).

<sup>50</sup> 15 U.S.C. §1692k(a)(3).

discretionary remedy; rather the Act mandates an award of attorney's fees as a means of fulfilling Congress's intent that the Act should be enforced by debtors acting as private attorneys general.

Even where no actual or statutory damages are awarded, attorney's fees are available. "Because the FDCPA was violated, however, the statute requires the award of costs and a reasonable attorney's fee . . . ." <sup>51</sup>

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<sup>51</sup> *Pipiles v. Credit Bureau of Lockport, Inc.*, 886 F.2d 22, 28 (2d Cir. 1989).

## The Unfair Debt Collection Practices Act

15 U.S.C. § 1692. Congressional findings and declaration of purpose

(a) **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.

(b) **Inadequacy of laws**

Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) **Available non-abusive collection methods**

Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) **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.

(e) **Purposes**

It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

15 U.S.C. § 1692a. Definitions

As used in this subchapter—

(1) The term “Commission” means the Federal Trade Commission.

(2) The term “communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term “consumer” means any natural person obligated or allegedly obligated to pay any debt.

(4) The term “creditor” means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term “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 which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term “debt collector” means 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. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting

his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f (6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity

(i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(ii) concerns a debt which was originated by such person;

(iii) concerns a debt which was not in default at the time it was obtained by such person; or

(iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term “location information” means a consumer’s place of abode and his telephone number at such place, or his place of employment.

(8) The term “State” means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

#### 15 U.S.C. § 1692b. Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once 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;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

#### 15 U.S.C. § 1692c. Communication in connection with debt collection

##### (a) **Communication with the consumer generally**

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

- (1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location;
- (2) if the debt collector knows the consumer 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 attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or
- (3) 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.

##### (b) **Communication with third parties**

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

##### (c) **Ceasing communication**

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

- (1) to advise the consumer that the debt collector's further efforts are being terminated;
- (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or
- (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

##### (d) **“Consumer” defined**

For the purpose of this section, the term “consumer” includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

#### 15 U.S.C. § 1692d. Harassment or abuse

A debt collector may 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. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.
- (2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.
- (3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a (f) or 1681b (3) of this title.
- (4) The advertisement for sale of any debt to coerce payment of the debt.
- (5) 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.
- (6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.

#### 15 U.S.C. § 1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.
- (2) The false representation of—
  - (A) the character, amount, or legal status of any debt; or
  - (B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.
- (3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.
- (4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.
- (5) The threat to take any action that cannot legally be taken or that is not intended to be taken.
- (6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—
  - (A) lose any claim or defense to payment of the debt; or
  - (B) become subject to any practice prohibited by this subchapter.
- (7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.
- (8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a (f) of this title.

#### 15 U.S.C. § 1692f. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of 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 business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

- (B) there is no present intention to take possession of the property; or
- (C) the property is exempt by law from such dispossession or disablement.
- (7) Communicating with a consumer regarding a debt by post card.
- (8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

#### 15 U.S.C. § 1692g. Validation of debts

##### (a) **Notice of debt; contents**

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

##### (b) **Disputed debts**

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

##### (c) **Admission of liability**

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

#### 15 U.S.C. § 1692h. Multiple debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is

disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

#### 15 U.S.C. § 1692i. Legal actions by debt collectors

##### (a) **Venue**

Any debt collector who brings any legal action on a debt against any consumer shall—

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

##### (b) **Authorization of actions**

Nothing in this subchapter shall be construed to authorize the bringing of legal actions by debt collectors.

#### 15 U.S.C. § 1692j. Furnishing certain deceptive forms

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 1692k of this title for failure to comply with a provision of this subchapter.

#### 15 U.S.C. § 1692k. Civil liability

##### (a) **Amount of damages**

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2)

(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

**(b) Factors considered by court**

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

**(c) Intent**

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

**(d) Jurisdiction**

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

**(e) Advisory opinions of Commission**

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

15 U.S.C. § 1692l. Administrative enforcement

**(a) Federal Trade Commission**

Compliance with this subchapter shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to another agency under subsection (b) of this section. For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], a violation of this subchapter shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this subchapter in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

**(b) Applicable provisions of law**

Compliance with any requirements imposed under this subchapter shall be enforced under—

- (1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case of—
- (A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;
  - (B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) [1] of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], by the Board of Governors of the Federal Reserve System; and
  - (C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;
- (2) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;
- (3) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the National Credit Union Administration Board with respect to any Federal credit union;
- (4) subtitle IV of title 49, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;
- (5) part A of subtitle VII of title 49, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that part; and
- (6) the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture with respect to any activities subject to that Act.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813 (s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(c) Agency powers

For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law, except as provided in subsection (d) of this section.

(d) Rules and regulations

Neither the Commission nor any other agency referred to in subsection (b) of this section may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this subchapter.

15 U.S.C. § 1692m. Reports to Congress by the Commission; views of other Federal agencies

(a) Not later than one year after the effective date of this subchapter and at one-year intervals thereafter, the Commission shall make reports to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Commission deems necessary or appropriate. In addition, each report of the Commission shall include its assessment

of the extent to which compliance with this subchapter is being achieved and a summary of the enforcement actions taken by the Commission under section [16921](#) of this title.

(b) In the exercise of its functions under this subchapter, the Commission may obtain upon request the views of any other Federal agency which exercises enforcement functions under section [16921](#) of this title.

#### 15 U.S.C. § 1692n. Relation to State laws

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

#### 15 U.S.C. § 1692o. Exemption for State regulation

The Commission shall by regulation exempt from the requirements of this subchapter any class of debt collection practices within any State if the Commission determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.