
FDCPA

The Fair Debt Collection Practices Act

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This Title may be cited as the “Fair Debt Collection Practices Act”

Section 802

(a) Abusive Practices

There is abundant evidence of the abusive, deceptive and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to material instability, to the loss of jobs and to the 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 completely disadvantaged and to promote consistent State action to protect consumers against collection abuses.

Section 803

Definitions

As described in this subchapter –

- (1) The term “**Commission**” refers to the Federal Trade Commission.
- (2) The term “**communication**” refers to the conveying of information regarding a debt directly or indirectly to any person through any medium.
- (3) The term “**consumer**” refers to any person obligated or allegedly obligated to pay any debt. *(NCCI refers to as “borrower” or “debtor”)*
- (4) The term “**creditor**” refers to any person who offers or extends credit creating a debt or to whom a debt is owed. However, such a 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. *(NCCI refers to as “client” or “lender”)*
- (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 the collection of any debts or who regularly collects or attempts to collect, directly or indirectly, debts owed, due, assessed or due to be owed or due by 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 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 of which the enforcement of security interests.

The term does not include –

- (A) any officer or employee or 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 the 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 debts 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 bona fide fiduciary obligation or bona fide escrow arrangements (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 residence, his home telephone number 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.

Section 804

Acquisition of Location Information

Any debt collector communicating with any person other than the consumer (*NCCI refers to other person as a “third party”*) for the purpose of acquiring location information about the consumer shall abide by the following –

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

(2) not state the consumers owes any debt;

(2) not communicate with any person more than once unless requested to do so by such person or unless the collector reasonably believes that the earliest response of such person is erroneous or incomplete and that such person now has the correct complete information;

(3) not communicate by post card;

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

(5) after the collector knows the consumer is represented by an attorney with regard to the subject 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 communicate from the collector.

Section 805

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 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 the convenient time for communicating with a consumer between the hours of 8:00 AM to 9:00 PM, at the consumers local time zone;

(2) if the collector knows the consumer is represented by an attorney with respect to such debt and has the 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 collector knows or has reason to believe 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 prior consent of the consumer given directly to the collector, or the express permission of a court of competent jurisdiction, or a reasonably necessary to effectuate a post judgment judicial remedy. A collector may not communicate, in any 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 creditor's attorney, or the attorney of the debt collector.

(c) Ceasing Communication

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

- (1) to advise the consumer that any further efforts by the collector are being terminated;
- (2) to notify the consumer that the collector or creditor may invoke specific remedies which are ordinarily invoked by such collector or creditor; or
- (3) where applicable, to notify the consumer that the 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, parents (only if the customer is a minor), guardian, executor or administer.

Section 806

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 the 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 1681 a(f) or 1681b(3) of this title.
- 4.) The advertisement for sale of any debt to coerce payment of the debt.
- 5.) Causing the telephone to ring or engaging any person in the telephone conversation repeatedly or continuously with the 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.

Section 807

False or Misleading Representation

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.) Communication 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, approved by any court, official, or agency of the United States or any State, or which created 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.) Except as otherwise provided for communication to acquire location information under section 1692b of this title, “*the failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral communication, that the debt collector is attempting to collect a debt*

and 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 does not apply to a formal pleading made in connection with a legal action.”

12.) The false representation or implications 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 names 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.

Section 808

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 and interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt permitted by law.
- 2.) The acceptance of 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 postdated check or other post dated payment instrument for the purpose of threatening criminal prosecution.
- 4.) Depositing or threatening to deposit any post dated check or other post dated payment instrument prior to the date on the instrument.
- 5.) Causing charges to be made to any person for communication by concealment of the true purpose of the communication. Such charges include, but limited to, collect telephone calls and telegram fees.
- 6.) Taking or threatening to take any nonjudicial action to effect disposition or disablement of property if –
 - a. There is not present right to repossession 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 the 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.

Section 809

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 who 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 a thirty-day period that the debt, or any portion thereof, 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 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.

Section 810

Multiple debts

If any consumer owes multiple debts and makes a single payment to any debt collector with respect to such debts, such debt collector may not apply such payments to any debt, which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

Section 811

Legal actions by Debt Collectors

(a) Venue

Any debt collector who brings any legal action against a 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 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 described in this subchapter shall be construed to authorize the bringing of legal action by debt collectors.

Section 812

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.

Section 813

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 the amount of 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 \$1,000.00; or

(B) in the case of a class action, (i.) such amount for each named plaintiff as could be recovered under subchapter (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 \$500,000.00 or 1% 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 fees 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 was intentional; or
- (2) in any class action under subsection (a)(2)(A) 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 the 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.

Section 814

Administrative Enforcement

(a) Federal Trade Commission

The Commission shall enforce compliance with this subchapter, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to another agency under this subsection (b) of the section. For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, 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 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, 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, and insured State branches of foreign banks), commercial lending**

companies owned or controlled by foreign banks, and organizations operating section 25 or 25(a) 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, 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, by the National Credit Union Administrative Board with respect to any Federal Credit Union;

(4) subtitle IV of title 49, by the Interstate Commerce Commission with respect to any common carrier subject to such subtitle;

(5) the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any aircraft carrier or any foreign air carrier subject to that Act; and

(6) the Packers and Stockyard Act, 1021 (except as provided in section 406 of that Act, 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, shall have the meaning given to them in section 1(b) of the international Banking Act of 1978.

(c) Agency Powers

For the purpose of the exercise by an 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 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

Section 815

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 admission 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.

Section 816

Relation to State Laws

This subchapter does not annul, alter, 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 the purposes of this section, a State law is not consistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

Section 817

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 the State that class of debt collection practices is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provisions for enforcement.



National Creditors Connection, Inc.

Fair Debt Collections Practices Act Compliance Form

I have received a copy of the Fair Debt Collections Practices Act text and have read through it thoroughly.

I fully understand the information contained within the text of the FDCPA and agree to comply fully with all the rules and regulation within.

Contractor Name _____

Contractor ID# _____

Contractor Signature _____

Date _____

Please note, a sub-contractor employed by an NCCI Field Contractor must also sign and date this FDCPA Compliance Form and return with the completed exam.