

Fair Debt Collections Practices Act

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I Fair Debt Collection Practices Act: Overview

- A. The Fair Debt Collection Practices Act (“FDCPA”) was adopted in 1978. The FDCPA addresses debt collection agencies and lawyers.
- B. The United States Supreme Court has confirmed that attorneys who regularly collect consumer debts are covered by the FDCPA. *Heintz v. Jenkins*, 514 U.S. 291 (1995).
- C. The FDCPA prohibits collection efforts which harass, cause an invasion of privacy, abuse, which are false or deceptive, unfair or unconscionable.
- D. The FDCPA also outlines specific notice provisions and procedural requirements for debt collectors.

II Who is a Debt Collector?

- A. 15 U.S.C. §1692a(6): A “debt collector” is a person who “regularly collects or attempts to collect directly or indirectly, debts owed or due...”
- B. General application:
 - 1. Collection agencies;
 - 2. Attorneys;
 - 3. Creditors using a false name;
 - 4. Creditors collecting for another person;
 - 5. Repossession and foreclosure companies;
 - 6. Drafters or designers of deceptive forms;
 - 7. Purchasers of debt after default;
 - 8. Credit counselors (for profit); and
 - 9. Check “guarantee” services.
- C. The Act does not require compliance from a person who does not “regularly” engage in debt collection. Further, the Act only applies to consumer debts. It does not apply to business transactions.
- D. Entities which are generally excluded from the FDCPA:
 - 1. Creditors (collecting their own debts), i.e. retail stores, banks, finance companies; (note: this is not true of ch. 427 of the Wis. Consumer Act)

¹The information contained in this outline is based, in large part, upon the *Fair Debt Collection*, National Consumer Law Center (5th ed.).

2. Assignees (before default) (i.e. car finance companies, mortgage servicing companies);
 3. Government employees;
 4. Business debts; and
 5. Non-profit credit counseling services.
- E. Employees of a debt collector may be individually liable, with their employer, for violations of the FDCPA. 15 U.S.C. §1692a(6)(A). Likewise, both the debt collector agency and an attorney collecting on his behalf are individually liable for the attorney's violations. *Ditty v. CheckRite, Ltd.*, 937 F. Supp. 1320 (D. Utah 1997).
- F. While creditors are exempt from FDCPA coverage, when they use a fictitious name they will be subject to liability under the Act. 15 U.S.C. §1692a(6). The implication of using a false name is that the creditor is not collecting but rather that a third party debt collector is contacting the debtor.
- G. Likewise, repossession and foreclosure companies and others whose principal business is to enforce security interests are liable under the FDCPA. 15 U.S.C. §1692a(6).
- H. Lawyers
1. Lawyers were included within the ambit of the FDCPA in a 1986 amendment passed by Congress. An attorney who regularly collects consumer debts is now subject to the FDCPA. The lawyer must provide validation notices, debt collection notices, and refrain from contacting third parties.
 2. Special considerations: The FDCPA contains a venue provision which requires debt collectors to bring suit only in the district where the consumer signed the contract upon which the debt is based. Actions to enforce interest against property may only be brought where the property is situated. Any less protective state law is preempted.
 3. The notice and validation rights and of the debt collection purpose are required in a litigation context even if the first communication is service of a Summons and Complaint. It is not material that the initial communication occurs through litigation. The notice and validation rights are required regardless of the debt collector's preference to litigate rather than send a demand letter.
 4. Pitfalls for lawyers:
 - Threatening to sue when no intention or ability to do so;

- Misrepresentation the source of the collection letter or attorney’s involvement;
- Imposing specious deadlines;
- Misleading representations as to the effect of litigation; and
- Filing suit other than in the court permitted by 15 U.S.C. §1692i.

III “Debts” Covered by the FDCPA

- A. Statute: 15 U.S.C. §1692a(5): “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”.
- B. The key elements of a debt are:
- Natural person;
 - A transaction;
 - Involving money, property, insurance or services; and
 - For personal, family or household purposes.
- C. A broad range of consumer debts are covered under the FDCPA:
- Dishonored checks;
 - Rent - *Romea v. Heiberger & Associates*, 163 F. 3d 111 (2d Cir. 1998);
 - Medical bills - *Piplies v. Credit Bureau, Inc.*, 886 F. 2d 22 (2d Cir. 1989);
 - Utility bills - *Pollice v. National Tax Funding*, L.P. 225 F 3d 379 (3d Cir. 2000);
 - Insurance bills and claims - *Heintz v. Jenkins*, 514 U.S. 291, 115 S. Ct. 1489 (1995);
 - Student loans - *Brannan v. United Student Aid Funds, Inc.* 94 F. 3d 1260 (9th Cir. 1996), *cert. denied*, 421 U.S. 1106 (1997);
 - Campground memberships - *Dorsey v. Morgan*, F. 60 F. Supp. 509(D. Nd 1991);
 - Credit cards - *Challen v. Town & Country Charge*, 545 F. Supp. 1014 (N.D. Ill. 1982);
 - Condominium fees - *Fuller v. Becker & Poliakoff, P.A.*, 192 F. Supp. 2d 1361 M.D. Fla. 2002);
 - Attorneys fees - *Person v. Stupar, Schuster & Cooper, S.C.*, 136 F. Supp. 2d 957 (E.D. Wis. 2001);
 - Judgments;
 - Obligations discharged in bankruptcy;

- Other debts - *Hansen v. Ticket Track, Inc.*, 280 F. Supp. 2d 1196 (W.D. Wash. 2003)(where parking fees were incurred in consumer's personal endeavors and paid with personal funds, the fees were consumer debts covered by the FDCPA).

IV Collection Activities Under the FDCPA

- A. The FDCPA covers all direct or indirect actions or attempts to collect debt, including mistaken or alleged consumer debts.

V A "creditor" under the FDCPA

- A. Statute: 15 U.S.C. 1692a(4):

A 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 the debt in 'defaults' solely for the purpose of facilitating collection of such a debt for another."

VI General Principals of the FDCPA

- A. The FDCPA protects the *least sophisticated consumer*.
1. The law was not "made for the protection of experts, but for the public - that vast multitude of which includes the ignorant, the unthinking and the credulous". *Florence Mfg. Co. v. J.C. Dowd & Co.* 2 Cir., 178 F. 73, 75 (1910); and the "fact that a false statement may be obviously false to those who are trained and experienced does not change its character nor take away it's power to deceive others less experienced." *Federal Trade Commission v. Standard Education Soc.*, 302 U.S. 112, 116. *Jeter v. Credit Bureau, Inc.*, 760 F. 2d 1168 (11th Cir. 1985).
 2. This consumer protection purpose, as outlined in *Jeter*, has been utilized as the bellwether of the least sophisticated consumer, or as stated by the 7th Circuit: "However, we cannot simply apply a 'least sophisticated consumer' standard. Whether a consumer is more or less likely to be harassed, oppressed or abused by a certain debt-collection practice does not relate solely to the consumer's relative sophistication; rather, such susceptibility might be affected by the circumstances of a consumer or by the relationship between the consumer and the debt collection agency. For example, a very intelligent and sophisticated consumer might well be susceptible to harassment, oppression or abuse because he is poor (i.e. has

limited access to the legal system), is on probation or is otherwise at the mercy of a power relationship. Although the standard enunciated in part II *supra*, is not precisely applicable here, we believe that the consumer protective purposes of the FDCPA require us to adopt an enallage standard for violations of §1692d. Thus, we hold that claims under §1692d should be viewed from the perspective of a consumer whose circumstances make him relatively more susceptible to harassment, oppression or abuse.” See also *Horkey v. J.V.D.B. & Assocs., Inc.*, 333 F. 3d 769 (7th Cir. 2003).

3. Notably, in the 7th Circuit, the least sophisticated standard has been coined the “unsophisticated consumer standard” on grammatical grounds. *Gammons v. G.C. Services*, 27 F.3d 1254 (7th Cir. 1994). The *Gammons* case does not “significantly change the substance of the ‘least sophisticated consumer’ standard as it has been routinely applied by the courts. *Avila v. Rubin*, 84 F.3d 222, 227 (7th Cir. 1996).
4. In the 7th Circuit, whether a collection letter would mislead an unsophisticated consumer is a question of fact and not law. While other Circuits treat it as a mixed question or a question of law, there is no 7th Circuit precedence that precludes a court from finding that a collection letter is misleading on its face, as distinguished by its interpretation by an unsophisticated consumer.

B. Strict Liability

1. The FDCPA is a strict liability statute - *Hartman v. Meridian Fin. Servs., Inc.* 191 F. Supp. 2d 1031 (W.D. Wis. 2002); *Booth v. Collection Experts, Inc.*, 969 F. Supp. 1161 (E.D. Wis. 1997);
2. Liability will attach without regard to intent or knowledge or the willfulness of the violation.
3. The exception to strict liability, which includes an analysis of intent or knowledge, of claims under 15 U.S.C. §1692d(5), 1692e(4)(5).
4. A few courts have balked at imposing the FDCPA strict liability on collection agencies when a misrepresentation was based upon erroneous information provided by a creditor. See *Jenkins v. Heintz*, 124 F. 3d 824 (7th Cir. 1997).

C. Limitations on communications by debt collectors.

1. A debt collector may not contact at unusual or inconvenient times or prohibited places. 15 U.S.C. §1692c(A)(1). This provision applies to personal visits and other modes of communicating, including telephone, mail, telegram or e-mail. A collector may not contact at inconvenient

times. There is a presumption that any phone call received between 9:00 P.M. and 8:00 A.M. is made at an unusual or inconvenient time. Contacts could be considered inconvenient if the consumer was eating, attending to an illness in the family or entertaining friends. While Sunday used to be viewed as a sacrosanct day against debt collection activity, that presumption no longer exists. However, a consumer may inform the collector of the inconvenience, in which case the statute would apply.

2. Inconvenient places would include a consumer's workplace.
3. A collector may not contact a consumer it knows to be represented by counsel. 15 U.S.C. §1692c(A)(2).
4. Informing third parties of consumer's indebtedness is prohibited. 15 U.S.C. 1692c(b)
 - i. Except for efforts to locate a consumer, a debt collector may not phone, write or visit a consumer's employer, co-worker, secretary, relatives (except a spouse), friends, social worker, neighbors or any other third parties about the debt without the consumer's direct prior consent, court permission or the effect of a post-judgment or judicial remedy.
 - ii. A collector may contact the following non-consumers in connection with the consumer's debt:
 - The consumer's attorney;
 - A credit reporting agency;
 - The creditor;
 - The creditor or collector's attorney;
 - The consumer's spouse;
 - Parent, if the consumer is a minor;
 - Guardian, executor or administrator; and
 - Co-debtors.

D. A debt collector must halt its collection efforts upon receiving a written request from a consumer to cease collection efforts or a written refusal to pay the debt. 15 U.S.C. §1692c(c).

- i. Such written request shall be sent certified mail, return receipt requested, in order to confirm documentation.
- ii. After such notice, the collector may contact the consumer only to advise that collection efforts are being terminated and invoke other specified remedies.

VII Conduct Serving to Harass, Oppress or Abuse is Prohibited

- B. The FDCPA provides that 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.” 15 U.S.C. §1692d.
- i. General conduct:
- Threats to contact third parties;
 - Telephone messages left with neighbors;
 - Intimidating, belittling or insulting behavior;
 - Calling the consumer at work;
 - A collector’s failure to provide meaningful self-identification.
- C. Collectors may not threaten violence or criminal conduct. 15 U.S.C. §1692d(1).
- D. Collectors may not use obscene, profane or abusive language. 15 U.S.C. §1692d(2).
- E. Shameless or prohibited. 15 U.S.C. §1692d(3).
- F. Repeated or continuous phone calls are prohibited. 15 U.S.C. §1692d(5).
- G. False and deceptive practices are also prohibited. 15 U.S.C. §1692f (filing a time-barred suit is deceptive).
- H. Collectors may not falsely represent the character, amount or legal status of any debt. 15 U.S.C. §1692e(2)(A).
- I. Creditors are prohibited from suggesting that non-payment will result in arrest, imprisonment, garnishment, attachment, seizure or sale. 15 U.S.C. §1692e(4).

VIII Damages Under the FDCPA

- A. Statutory damages up to \$1,000.00. Non-compliance with the FDCPA provides for \$1,000.00 statutory damages. 15 U.S.C. §1692k(a)(2)(A). The award of statutory damages is not necessarily related to the award of actual damages.
- B. Each person affected by a violation of FDCPA may recover a separate statutory award for each violation.
- C. There can be multiple statutory damages for multiple violations.
- D. Punitive damage may be recovered in addition to actual or statutory damages.

- E. Successful plaintiffs are entitled to awards of reasonable attorney fees.
 - i. The FDCPA is a quintessential consumer protection statute in that it provides for fee shifting to a successful plaintiff. 15 U.S.C. §1692k(a)(3).
- F. The FDCPA has a one-year statute of limitations for private actions. 15 U.S.C. §1692k(d).
- F. Jurisdiction of claims
 - i. State and federal courts have concurrent jurisdiction over FDCPA claims. 15 U.S.C. §1692k(d).
 - ii. Personal jurisdiction and venue may be obtained over out-of-state collectors.
 - iii.

IX Debt Collector Defenses and Counterclaims

- A. Unintentional violations resulting from bona fide error. 15 U.S.C. §1692k©.
 - I. To establish a defense of bona fide error, a debt collector must plead and prove by a preponderance of the evidence that:
 - A. The error was unintentional;
 - B. The error was made in good faith;
 - C. The error resulted from a mistake; and
 - D. The collector maintained procedures, reasonably adapted a check and avoid such errors.
Neilson v. Dickerson, 307 F. 3d 623 (7th Cir. 2002).
 - II. Reliance on advice of counsel, is insufficient to raise defense. *Baker v. G.C. Servs. Corp.*, 677 f.2d 775, 779-80 (9th Cir. 1982).

X. Bankruptcy Code Violations: Bankruptcy Court or Civil Court

- A. Bankruptcy Court preemption
 - 1. Whether to bring such a case in Bankr. Ct. or otherwise is a question to be decided on a claim by claim basis. *Wagner v. Ocwen Fed. Bank*, 2000 U.S. Dist. LEXIS 12463 (N.D. Ill. Aug. 28, 2000) *but see Cox v. Zale Delaware, Inc.*, 239 F.3d 910 (7th Cir. 2001).

2. Does the Bankr. Code create a private right of action for enforcement of the bankruptcy discharge. The question focuses on whether the Bankr Code provides for class actions for civil contempt for creditor and collector violation of the bankr. discharge order and the provisions for reaffirming debts.
3. No private right of action other than individual action for contempt in bankruptcy:
 - ▣ *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417 (6th Cir. 2000).
 - ▣ *Cox v. Zale Delaware, Inc.*, 239 F.3d 910 (7th Cir. 2001)
 - ▣ *Walls v. Wells Fargo Bank* 276 F.3d 502 (9th Cir. 2002).

Essentially, these holdings provide that the Bankr. Code occupies the field of bankruptcy relief and preempts state claims for refund of money paid on discharged debts. *But see, Tomas v. Bass & Moglowsky*, 1999 U.S. Dist. LEXIS 21533 (D. Wis. June 29, 1999)(debt collector's allegations regarding a deficiency claim contained in its state law replevin action for repossession of a dirt bike filed after consumer's monetary debt was discharged in bankruptcy violated §1692e(5) because debt collector had no right to pursue deficiency).

B. Advising Clients to Avoid Bankruptcy

1. Request Collector to Stop Contacts
 - A. Cease contacts or state debt is not owed. §1692c©
 - B. Send by certified, return receipt
 - C. Keep copy of correspondence
 - D. Give insight into why payment cannot be made
 - Statute of Limitations on the Debt
 - A. May restart the SoL running
 - B. Be wary of acknowledging the debt
2. Propose a Work Out
3. Contact Collector
 - SLAPP suits
 - A. Strategic Lawsuit Against Public Participation
 - B. Liability for lawyer

EFFECTIVE DATE

Section effective Mar. 23, 1976, see section 708 of Pub. L. 90-321, set out as a note under section 1691 of this title.

SUBCHAPTER V—DEBT COLLECTION PRACTICES

§ 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.

(Pub. L. 90-321, title VIII, § 802, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 874.)

EFFECTIVE DATE

Section 818 of title VIII of Pub. L. 90-321, as added Pub. L. 95-109, provided that: "This title [enacting this subchapter] takes effect upon the expiration of six months after the date of its enactment [Sept. 20, 1977], but section 809 [section 1692g of this title] shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date."

SHORT TITLE

This subchapter known as the "Fair Debt Collection Practices Act", see Short Title note set out under section 1601 of this title.

§ 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.

(Pub. L. 90-321, title VIII, § 803, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 875; amended Pub. L. 99-361, July 9, 1986, 100 Stat. 768.)

AMENDMENTS

1986—Par. (6). Pub. L. 99-361 in provision preceding cl. (A) substituted "clause (F)" for "clause (G)", struck out cl. (F) which excluded any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client from term "debt collector", and redesignated cl. (G) as (F).

§ 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.

(Pub. L. 90-321, title VIII, § 804, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 876.)

§ 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.

(Pub. L. 90-321, title VIII, § 805, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 876.)

§ 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)¹ 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.

(Pub. L. 90-321, title VIII, §806, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 877.)

REFERENCES IN TEXT

Section 1681b(3) of this title, referred to in par. (3), was redesignated section 1681b(a)(3) of this title by Pub. L. 104-208, div. A, title II, §2403(a)(1), Sept. 30, 1996, 110 Stat. 3009-430.

§ 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.

(Pub. L. 90-321, title VIII, §807, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 877; amended Pub. L. 104-208, div. A, title II, §2305(a), Sept. 30, 1996, 110 Stat. 3009-425.)

AMENDMENTS

1996—Par. (11). Pub. L. 104-208 amended par. (11) generally. Prior to amendment, par. (11) read as follows: "Except as otherwise provided for communications to acquire location information under section 1692b of this title, the failure to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose."

EFFECTIVE DATE OF 1996 AMENDMENT

Section 2305(b) of div. A of Pub. L. 104-208 provided that: "The amendment made by subsection (a) [amend-

¹ See References in Text note below.

ing this section] shall take effect 90 days after the date of enactment of this Act [Sept. 30, 1996] and shall apply to all communications made after that date of enactment."

§ 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 non-judicial 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.

(Pub. L. 90-321, title VIII, § 808, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 879.)

§ 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.

(Pub. L. 90-321, title VIII, § 809, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 879.)

EFFECTIVE DATE

Section applicable only with respect to debts for which the initial attempt to collect occurs after the effective date of this subchapter, which takes effect upon the expiration of six months after Sept. 20, 1977, see section 818 of Pub. L. 90-321, set out as a note under section 1692 of this title.

§ 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.

(Pub. L. 90-321, title VIII, § 810, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 880.)

§ 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.

(Pub. L. 90-321, title VIII, §811, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 880.)

§ 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.

(Pub. L. 90-321, title VIII, §812, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 880.)

§ 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.

(Pub. L. 90-321, title VIII, §813, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 881.)

§ 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.

(Pub. L. 90-321, title VIII, §814, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 881; amended Pub. L. 95-630, title V, §501, Nov. 10, 1978, 92 Stat. 3680; Pub. L. 98-443, §9(n), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 101-73, title VII, §744(n), Aug. 9, 1989, 103 Stat. 440; Pub. L. 102-242, title II, §212(e), Dec. 19, 1991, 105 Stat. 2301; Pub. L. 102-550, title XVI, §1604(a)(8), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 104-88, title III, §316, Dec. 29, 1995, 109 Stat. 949.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

Section 25(a) of the Federal Reserve Act, referred to in subsec. (b)(1)(B), which is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking, was renumbered section 25A of that act by Pub. L. 102-242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (b)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§1751 et seq.) of Title 12. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Packers and Stockyards Act, 1921, referred to in subsec. (b)(6), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, as amended, which is classified generally to chapter 9 (§181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

CODIFICATION

In subsec. (b)(4), "subtitle IV of title 49" substituted for "the Acts to regulate commerce" on authority of Pub. L. 95-473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

In subsec. (b)(5), "part A of subtitle VII of title 49" substituted for "the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]" and "that part" substituted for "that Act" on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49.

AMENDMENTS

1995—Subsec. (b)(4). Pub. L. 104-88 substituted "Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board" for "Interstate Commerce Commission with respect to any common carrier subject to those Acts".

1992—Subsec. (b)(1)(C). Pub. L. 102-550 substituted semicolon for period at end.

1991—Subsec. (b). Pub. L. 102-242, §212(e)(2), inserted at end "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)."

Pub. L. 102-242, §212(e)(1), added par. (1) and struck out former par. (1) which read as follows: "section 8 of Federal Deposit Insurance Act, in the case of—

"(A) national banks, by the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

¹ See References in Text note below.

“(C) banks the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;”

1989—Subsec. (b)(2). Pub. L. 101-73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(1) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;”

1984—Subsec. (b)(5). Pub. L. 98-443 substituted “Secretary of Transportation” for “Civil Aeronautics Board”.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

“National Credit Union Administration Board” substituted for “Administrator of the National Credit Union Administration” in subsec. (b)(3) pursuant to section 501 of Pub. L. 95-630 [12 U.S.C. 1752a] which vested authority for management of National Credit Union Administration in National Credit Union Administration Board.

§ 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 1692l 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 1692l of this title.

(Pub. L. 90-321, title VIII, §815, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 882.)

REFERENCES IN TEXT

The effective date of this subchapter, referred to in subsec. (a), is the date occurring on expiration of six months after Sept. 20, 1977. See section 818 of Pub. L. 90-321, set out as an Effective Date note under section 1692 of this title.

§ 1692n. Relation to State laws

This subchapter does not annul, alter, or affect, or exempt any person subject to the provi-

sions 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.

(Pub. L. 90-321, title VIII, §816, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 883.)

§ 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.

(Pub. L. 90-321, title VIII, §817, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 883.)

SUBCHAPTER VI—ELECTRONIC FUND TRANSFERS

§ 1693. Congressional findings and declaration of purpose

(a) Rights and liabilities undefined

The Congress finds that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers. However, due to the unique characteristics of such systems, the application of existing consumer protection legislation is unclear, leaving the rights and liabilities of consumers, financial institutions, and intermediaries in electronic fund transfers undefined.

(b) Purposes

It is the purpose of this subchapter to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of this subchapter, however, is the provision of individual consumer rights.

(Pub. L. 90-321, title IX, §902, as added Pub. L. 95-630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3728.)

EFFECTIVE DATE

Section 921 of title IX of Pub. L. 90-321, as added Pub. L. 95-630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3741, provided that: “This title [enacting this subchapter] takes effect upon the expiration of eighteen months from the date of its enactment [Nov. 10, 1978] except that sections 909 and 911 [sections 1693g, 1693i of this title] take effect upon the expiration of ninety days after the date of enactment.”

SHORT TITLE

This subchapter known as the “Electronic Fund Transfer Act”, see Short Title note set out under section 1601 of this title.

§ 1693a. Definitions

As used in this subchapter—