

UPDATE: AVOIDING FAIR DEBT COLLECTION PRACTICES ACT CLAIMS



Curt M. Langley
JACKSON WALKER LLP
1401 McKinney, Suite 1900
Houston, Texas 77010
713.752.4343 telephone
713.308.4138 facsimile
clangley@jw.com
www.jw.com

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BENEFITS OF THIS ARTICLE

The collection of debts and judgments is a challenge for most businesses even when the economy is healthy. However, during times of economic slowdown and recession; attorneys, credit and collection managers, presidents, vice presidents, business owners and managers, insurance professionals, lending professionals, bankers and accountants will face a higher volume of slow-pay and no-pay problems with customers.

This article is designed to provide an overview of the FEDERAL FAIR DEBT PRACTICES ACT (the “FDCPA”); an explanation of key terms and definitions under the FDCPA; practical guidance on how the FDCPA applies to collection letters; a discussion of recent cases involving claims arising from the use, or misuse of collection letters; and practical forms and checklists for ensuring compliance with the FDCPA. This article is critical for attorneys and businesses who want to implement successful collection procedures, while avoiding claims under the FDCPA.

ABOUT THE AUTHOR/SPEAKER



[Curt M. Langley](#)
[JACKSON WALKER LLP](#)
[1401 McKinney, Suite 1900](#)
[Houston, Texas 77010](#)
[713.752.4343 telephone](#)
[713.308.4138 facsimile](#)
clangley@jw.com

[Curt M. Langley](#) is a partner with the law firm of [Jackson Walker LLP](#), in Houston, Texas. Since 1990, Mr. Langley has established a prominent national law practice representing companies and individuals in commercial litigation including commercial disputes, lender liability, commercial credit, consumer credit, usury, real estate litigation, healthcare litigation, energy litigation, energy trading disputes, construction litigation, employment law, adversary proceedings in bankruptcy court, securities litigation, arbitrations, prosecution and defense of class action lawsuits, defamation actions, misappropriation of trade secrets, first and third party insurance, insurance agent errors and omissions, director and officer liability, FAIR DEBT COLLECTION PRACTICES ACT, FAIR CREDIT REPORTING ACT, PETROLEUM MARKETING PRACTICES ACT, and appellate practice in state and federal courts.

Mr. Langley is [AV Peer Review Rated by Martindale-Hubbell](#) and he has maintained that preeminent rating for ten (10) straight years. Mr. Langley is also a

Fellow of the American Bar Association and a Member of the College of the State Bar of Texas. He was the Recipient of the award for “Outstanding Article Published in THE HOUSTON LAWYER magazine for 2002” from the Houston Bar Foundation and was named as one of “Houston’s Top Professionals on the Fast Track” by H TEXAS MAGAZINE in 2005.

A frequent author and lecturer, Mr. Langley has served as a Committee Member of the Houston Bar Association Continuing Legal Education Committee, as well as the CLE Seminar Sub-Committee. Mr. Langley has also authored and presented numerous articles and speeches to attorneys and business groups including [Post Judgment Discovery \(Ethics\)](#), [Effective Collections](#), [Litigation With Financial Institutions](#), [Legal Issues Relating To Special Events – and Contract Provisions To Address Those Issues](#), [Lender Liability \(And How to Avoid It\)](#), and [Professionalism In Post Judgment Practice](#).

Mr. Langley received his undergraduate degree in Finance from the University of Texas at Austin in 1987. He received his *juris doctorate* degree from South Texas College of Law in 1990 where he served as Note and Comment Editor on the SOUTH TEXAS LAW REVIEW in 1989–1990 and he received the award for “Best Article on Federal Law” in 1990.



Mr. Langley’s online bio is at <http://www.jw.com/clangley> and at www.curtmlangley.com



See Mr. Langley’s Martindale Hubbell listing at

<http://www.martindale.com/Curt-M-Langley/1671980-lawyer.htm>



Connect with Mr. Langley at www.linkedin.com/in/CurtLangley



Follow Mr. Langley on Twitter at <http://twitter.com/CurtMLangley>

INTERESTING QUOTES

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“In God we trust; all others must pay cash.”

– *American saying.*

*

“Creditors have better memories than debtors.”

– *Benjamin Franklin*

*

“If you think nobody cares if you are alive, try missing a couple of car payments.”

– *Earl Wilson*

*

“Today, there are three kinds of people: the have’s, the have-not’s, and the have-not-paid-for-what-they-have’s.”

– *Earl Wilson*

*

“When a man is in love or in debt, someone else has the advantage.”

– *Bill Balance*

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UPDATE: AVOIDING FAIR DEBT COLLECTION PRACTICES ACT CLAIMS

By [Curt M. Langley](#)

I. OVERVIEW.

A. INTRODUCTION.

The federal [FAIR DEBT COLLECTION PRACTICES ACT, \(“FDCPA”\) 15 U.S.C. § 1692-1692p](#) was drafted and passed in 1977. At that time, most debt collectors were local or regional and their files were primarily paper files – many were kept on index cards. Demand letters were often typed one at a time and then mailed in the regular mail. All telephone calls were made via land-line telephones and the cost of long distance telephone calls was a prohibitive factor for many debt collectors. Additionally, at that time very few households had answering machines.

In 2010, most debt collectors are regional, national, or even international. Collection files and data are stored and transmitted in digital form and on computer media. Demand letters are often issued hundreds or even thousands at one time with automated merging of account data into form demand letters. The cost of long distance telephone calls is now extremely low. Additionally, communications with

the debtor are now undertaken via land-line telephones, mobile telephones, email, text messaging, answering machines, and voice mail. Finally, payments can now be arranged instantaneously with pay-by-phone, wire transfers, ACH, Check 21 (secure digital) payments, and web-based payments.

Based upon the perceived need for changes in the debt collection legal system to keep up with changing technology, the Federal Trade Commission (“FTC”) convened a public workshop in October 2007 to evaluate the need for changes in the debt collection system, including the FDCPA. At least sixty one [\(61\) public comments](#) were received from industry experts and associations. All of those public comments are now posted on the FTC website at <http://www.ftc.gov/os/comments/debtcollectionworkshop> for public view.

Based upon input and public comments at the workshop, on February 26, 2009, the FTC issued an extensive report titled “[COLLECTING CONSUMER DEBTS – THE CHALLENGES OF CHANGE – A WORKSHOP REPORT](#)” which recommends that the debt collection legal system be substantially overhauled and modernized to reflect changes in consumer debt, the debt collection industry, and technology. The full text of the 120 page FTC report is located on the Internet at <http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf>. This report provides valuable guidance to those attempting to apply the statutory language from thirty

(30) years ago to the technology used in debt collection today. Among the issues raised and discussed in the report are the following:

Mobile telephones: [FDCPA Section 805\(a\)\(1\)](#) prohibits calls to a debtor before 8:00 am or after 9:00 pm local time at the debtor's location. (Since the area code of a cellular telephone number does not necessarily identify the consumer's location, how does a debt collector know the correct time zone of the consumer at the time the call is placed?)

Voice mail: [FDCPA Section 805\(b\)](#) prohibits a debt collector from communication with third parties regarding the debt. (How does the debt collector know who may listen to the voice message?)

Caller ID: [FDCPA Section 804\(1\) and 809](#) prohibit a debt collector from blocking its caller identification when calling a debtor. [FDCPA Section 805\(b\)](#) prohibits a debt collector from communication with third parties regarding the debt. (How does the debt collector determine who may see the caller ID when a call is placed to the consumer?).

Email: [FDCPA Section 808\(7\)](#) prohibits communication with a debtor by post card because of the possibility that it will communicate facts to a third party concerning the debt. (See [FDCPA Section 805\(b\)](#)). (How does the debt collector know who may read emails addressed to the consumer?).

In order to bring the FDCPA current with changes in the industry, the FTC made a number of proposals for changes to the law that governs collector behavior:

- Debt collectors should provide better information to consumers in a debt validation notice, including: (1) the name of the original creditor; and (2) itemization of (a) the principal, (b) the total of all interest, and (c) the total of all fees and other charges making up the debt.

- Require that debt collectors inform consumers in validation notices that (1) if they send a timely written dispute or request for verification, the debt collector must suspend collection efforts until it has provided the verification in writing; and (2) if they request in writing that the debt collector cease contacting them, the collector must comply.

- The statutory damages awarded under the FDCPA should be increased to account for inflation.

- The FTC should have regulatory authority under the FDCPA.

- The law should generally prohibit debt collectors from contacting consumers via cell phones. However, the Commission also concludes that debt collectors should be permitted to contact consumers on their cell phones if, among other things, they have obtained prior express consent to such contacts. The report also notes that “The FTC believes that debt collectors generally should be allowed to use all communication technologies, including new and emerging technologies, to contact consumers.”

This paper will discuss the history of the FDCPA, the case precedent which applies and construes the language of the FDCPA, the interaction between the FDCPA and state collection laws, and the need for changes to the debt collection system and the FDCPA.

B. HISTORY OF THE FDCPA.

The FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1692-1692p was

passed in 1977 as an amendment to the CONSUMER CREDIT PROTECTION ACT OF 1968, PUB.L. 90-321, 82 STAT. 146, 15 U.S.C. § 1601 *et seq.* The FDCPA is located in Title V of the CONSUMER CREDIT PROTECTION ACT, which also includes other federal statutes relating to consumer credit, such as the TRUTH IN LENDING ACT (SUBCHAPTER I), the FAIR CREDIT REPORTING ACT (SUBCHAPTER III), and the EQUAL CREDIT OPPORTUNITY ACT (SUBCHAPTER IV).

The FDCPA is designed and intended "to protect consumers from a host of unfair, harassing, and deceptive debt collection practices without imposing unnecessary restrictions on ethical debt collectors.¹ The stated legislative purposes of the FDCPA are: (1) to eliminate abusive debt collection tactics against consumers by debt collectors, (2) to insure that debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and (3) to promote consistent State action to protect consumers against debt collection

¹ [SENATE REPORT NO. 95-382, 95TH CONG., 1ST SESS. 12, reprinted in \(1977\) U.S.NEWS CONG. & ADMIN.NEWS 1695, 1696.](#)

abuses.²

The FDCPA subjects debt collectors to civil liability for engaging in certain proscribed debt collection practices.³ Among other things, the FDCPA prohibits a debt collector from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”⁴ In order to prevail on an FDCPA claim, a plaintiff must prove: (1) the plaintiff has been the object of collection activity arising from consumer “debt”; (2) the defendant is a “debt collector” as defined by the FDCPA; and (3) the defendant has engaged in an act or omission prohibited by the FDCPA.⁵

For debts to which the FDCPA applies, it regulates all communications by **“debt collectors”** with **“consumers”** including both **“communications”** for the purpose of locating the **“consumer”**⁶ and **“communications”** with the

² See 15 U.S.C. § 1692, FDCPA Section 802. Findings and purpose.

³ See *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, LPA*, 130 S.Ct. 1605, 1608 (2010).

⁴ See 15 U.S.C. § 1692e; see also *Jerman*, 130 S.Ct. at 1608-09.

⁵ See §§ 1962a, 1962e, 1962k; see also *Jerman*, 130 S.Ct. at 1629.

⁶ See 15 U.S.C. § 1692b, FDCPA Section 804. Acquisition of location information.

“**consumer**” in connection with the collection of a “**debt.**”⁷ The FDCPA also prohibits actions and communications which constitute harassment or abuse,⁸ false misleading representations,⁹ unfair debt collection practices,¹⁰ and the use of deceptive forms.¹¹ The FDCPA also imposes certain requirements upon debt collectors to validate the debt being collected upon request by the consumer.¹² Additionally, where the consumer is being pursued for multiple debts, the FDCPA specifies that any payment made by the consumer must be applied in accordance with the consumer’s directions and may not be applied to any debt which is disputed by the consumer.¹³ In instances where the debt collector files a lawsuit to collect the debt, the FDCPA also specifies the venue where the lawsuit must be

⁷ See 15 U.S.C. § 1692c, FDCPA Section 805. Communication in connection with debt collection.

⁸ See 15 U.S.C. § 1692d, FDCPA Section 806. Harassment or abuse.

⁹ See 15 U.S.C. § 1692e, FDCPA Section 807. False or misleading representations.

¹⁰ See 15 U.S.C. § 1692f, FDCPA Section 808. Unfair practices.

¹¹ See 15 U.S.C. § 1692j, FDCPA Section 812. Furnishing certain deceptive forms.

¹² See 15 U.S.C. § 1692g, FDCPA Section 809. Validation of debts.

¹³ See 15 U.S.C. § 1692h, FDCPA Section 810. Multiple debts.

filed¹⁴ and sets forth statutory damages and other civil remedies including awarding the consumer his/her attorneys fees and costs of responding to the lawsuit.¹⁵

In addition to civil liability and penalties, the FDCPA also delegates to the Federal Trade Commission (“FTC”) the power to enforce the FDCPA directly against an offending debt collector.¹⁶ The FTC issues annual reports to Congress which summarize the administrative and enforcement actions taken each year under the FDCPA. The 2010 report may be found at “[FTC Annual Report of 2010: Fair Debt Collection Practices Act.](#)”¹⁷ Additionally, the FTC has compiled and published The Federal Reserve Compliance Handbook which is located at “[Federal Reserve Compliance Handbook.](#)”¹⁸

On February 26, 2009, the FTC issued an extensive report titled “[COLLECTING CONSUMER DEBTS – THE CHALLENGES OF CHANGE – A WORKSHOP](#)”

¹⁴ See 15 U.S.C. § 1692i, FDCPA Section 811. Legal actions by debt collectors.

¹⁵ See 15 U.S.C. § 1692k, FDCPA Section 813. Civil liability.

¹⁶ See 15 U.S.C. § 1692l, FDCPA Section 814. Administrative enforcement.

¹⁷ <http://www.ftc.gov/os/2010/04/P104802fdcpa2010annrpt.pdf>

¹⁸ <http://www.federalreserve.gov/boarddocs/supmanual/cch/200601/fairdebt.pdf>

[REPORT](#)” which recommends that the debt collection legal system be substantially overhauled and modernized to reflect changes in consumer debt, the debt collection industry, and technology.¹⁹ Although the proposed changes are not yet in affect, this report provides valuable guidance to those attempting to apply the statutory language from thirty (30) years ago to the technology used in debt collection today.

C. RELATIONSHIP BETWEEN THE FDCPA AND STATE LAWS.

At [15 U.S.C. §1692n](#), the FDCPA provides that it does not preempt State collection laws provided that the State’s laws afford consumers protection that is equal to or greater than, the FDCPA. Additionally, at [15 U.S.C. §1692o](#), the FDCPA allows the FTC to exempt from the requirements of the FDCPA any class of debt collection practices within any State if the FTC determines that under the law of that State that the class of debt collection practices is subject to requirements substantially similar to those imposed by the FDCPA and that there is adequate provision for enforcement of the State laws. At [16 C.F.R. §901.1, page 735](#), the

¹⁹ <http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf>.

FTC has set forth the procedures for State application for exemption from the provisions of the FDCPA.

Although individual States cannot enforce the FDCPA, a majority of States, including Texas, have enacted their own debt collections laws. For a summary of the state debt collection laws, a table is attached hereto at Appendix F.

D. A BRIEF HISTORY OF THE TEXAS DEBT COLLECTION ACT.

The TEXAS DEBT COLLECTION ACT, TEX. FIN. CODE § 392.001 et seq., was passed by the Texas legislature in 1997 and became effective on September 1, 1997.²⁰ As a general statement, the TEXAS DEBT COLLECTION ACT (“TDCA”) is broader in scope than the FDCPA in that the TDCA applies not only to professional debt collectors, but also to any “person who directly or indirectly engages in debt collection and includes a person who sells or offers to sell forms represented to be a collection system, device, or scheme intended to be used to collect consumer debts.” TEX. FIN. CODE § 392.001(6). Accordingly, unlike the FDCPA, the TDCA

²⁰ Formerly located at TEX. REV. CIV. STAT. ANN. ART. 5069-11.01, *et seq.*

does apply to creditors attempting to collect their own debts. [TEX. FIN. CODE § 392.001\(3\)](#). This is a very important distinction.

Another difference between the federal and Texas acts is that the TDCA adds the definition of a “third party debt collector” which means “a debt collector, as defined by [15 U.S.C. § 1692a\(6\)](#), but **does not** include an attorney collecting a debt as an attorney on behalf of, and in the name of, a client unless the attorney has nonattorney employees who are regularly engaged to solicit debts for collection; or regularly make contact with debtors for the purpose of collection or adjustment of debts.” [TEX. FIN. CODE § 392.001\(7\)](#). Additionally, the TDCA contains a “tie in” clause which provides that a violation of the TDCA also constitutes a violation of the [TEXAS DECEPTIVE TRADE PRACTICES AND CONSUMER PROTECTION ACT](#) (“DTPA”), [TEX. BUS. & COM. CODE § 17.41, et seq.](#)

Texas state law also provides that any third party debt collector may not engage in debt collection in the State of Texas unless the third party debt collector has obtained a surety bond in the amount of at least \$10,000.00. [TEX. FIN. CODE § 392.101](#). A person who makes a claim against third party debt collector may recover under the surety bond. [TEX. FIN. CODE § 392.102](#).

E. FTC OPINIONS.

From April 1988 to May 2002, the FTC issued FTC Staff Opinion Letters

which, upon request, provided the FTC’s written interpretations of the FDCPA. The FTC Staff Opinion Letters for April 1988 to May 2002 are located at “[FTC Staff Opinion Letters](#).”²¹ However, since May 2002, the FTC no longer issues such opinions except in “unusual circumstances.” For example, the FTC issued a Staff Opinion Letter in July 2006 at the request of ACA International ([Association of Credit and Collection Professionals](#)) relating to instances where a debt collector leaves a telephone voice message for the debtor. *See* [FTC Staff Opinion Letter dated July 28, 2006](#).²² Citing federal court case precedent on the issue, the FTC advised that a debt collector who leaves a voice message should (1) reveal the name of its employer,²³ and (2) provide the FDCPA “Miranda” warnings if the call constitutes the “initial communication.”²⁴

²¹ <http://www.ftc.gov/os/statutes/fdcpa/letters.shtm>

²² http://www.ftc.gov/os/statutes/fdcpa/letters/060728staffresponsesofadvisopinion_public.pdf

²³ Citing *Hosseinzadeh v. M.R.S. Associates, Inc.*, 387 F.Supp.2d 1104 (C.D. Calif. 2005); *Joseph v. J.J. Mac Intyre Cos, L.L.C.*, 281 F.Supp.2d 1156 (N.D. Calif. 2003); *Wright v. Credit Bureau of Georgia, Inc.*, 548 F.Supp.2d 591, *on reconsideration on other grounds*, 555 F.Supp.2d 1005 (N.D. Ga. 1982).

²⁴ Citing *Stinson v. Asset Acceptance, LLC*, 2006 U.S. Dist. Lexis 42266 (E.D. Va. June 12, 2006); *Foti v. NCO Financial Systems, Inc.*, 424 F.Supp.2d 643 (S.D. N.Y. 2006); *Hosseinzadeh*, 387 F.Supp.2d at 1116; and *Chlanda v. Wymard*, 1995 U.S. Dist. Lexis 14394, *32 n.16 (S.D. Ohio 1995).

Although the FTC Staff Opinions are often helpful in construing and applying the FDCPA to certain fact situations, the Third Circuit Court of Appeals has stated that “the FTC’s advisory opinions are not entitled to deference in FDCPA cases except perhaps to the extent their logic is persuasive.”²⁵ [**Attached hereto as [Appendix C](#) is a chart of FTC Staff Opinion Letters listed and cross-referenced by FDCPA Section and with hyperlinks to the actual text of each Opinion Letter**].

F. OVERVIEW OF THIS ARTICLE.

The central focus of this article is FDCPA claims based on communications by debt collectors. Both the substance and the procedures for sending collection letters by “debt collectors” is one of the most easily overlooked areas of the FDCPA. In fact, a review of the [FTC Annual Report 2010](#) demonstrates that, out of the total number of FDCPA consumer complaints for 2009, a large percentage of those complaints most likely involved communications from third party debt

²⁵ *Rosenau v. Unifund*, 539 F.3d 218, 225 (3rd Cir. 2008) citing and quoting *Dutton v. Wolpoff & Abramson*, 5 F.3d 649, 654 (3rd Cir. 1993).

collectors.²⁶

The statutory FDCPA collection letter requirements (the FDCPA “Miranda Warnings”--discussed in more detail below) should never be taken lightly. For example, in a case from the United States District Court for the Western District of Texas, *Smith v. Syndicated Office Systems d/b/a Central Finance Control*, Cause No. 07-CA-0131, a debt collector settled with a nationwide class for \$7,705,000. The primary substance of the class complaint was defendant’s form demand letters which requested that plaintiffs remit payment within 15 days - an alleged violation of the FDCPA’s statutory right to a 30-day period in which to dispute the debt. This potential liability (and \$7,705,000 settlement) may have been avoided if the defendant had simply worded its collection letter differently.

This article will also touch upon general FDCPA issues as a working knowledge of the requirements of the FDCPA is crucial before sending out any collection letters because of several “gray areas” in the scope of coverage of the

²⁶ <http://www.ftc.gov/os/2010/04/P104802fdcpa2010annrpt.pdf>

FDCPA. Additionally, some states still recognize “unfair debt collection” as a common law tort cause of action even where the FDCPA does not apply.

Finally, general compliance with the procedures outlined in the FDCPA, even with respect to commercial debts, will provide added protection to debt collection activities where a goal should always be avoiding counterclaims by the debtor. For example, one FTC Opinion has suggested that when attempting to collect on a credit card account where some charges are “personal” and some charges are for “business purposes,” the FDCPA will apply if any one charge is for personal purposes.²⁷

II. DEFINITIONS AND KEY TERMS UNDER THE FDCPA.

A. 15 U.S.C. § 1692a, FDCPA SECTION 803. DEFINITIONS.

The first step in understanding the coverage and scope of the FDCPA is to understand the definitions set forth therein. There are several defined terms which are key to understanding and applying the FDCPA to any given situation.

²⁷ See Nants 03-01-1989 at <http://www.ftc.gov/os/statutes/fdcpa/letters/nants2.htm>.

1. **"Communication" - The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.²⁸**
2. **"Consumer" - The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.**
3. **"Creditor" - 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.**
4. **"Debt" - 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.**
5. **"Debt collector" - 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**

²⁸ See also 15 U.S.C. § 1692c, FDCPA Section 805. Communication in connection with debt collection.

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 808(6), 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.

6. **"Location information" - The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.**

B. TEX. FIN. CODE § 392.001 DEFINITIONS.

The statutory definitions in the TDCA are more brief in description than its federal counterpart:

"Consumer" means an individual who has a consumer debt.

"Consumer debt" means an obligation, or an alleged obligation, primarily for personal, family, or household purposes and arising from a transaction.

"Creditor" means a party, other than a consumer, to a transaction involving one or more consumers.

"Credit bureau" means a person who, for compensation, gathers, records, and disseminates information relating to the creditworthiness, financial responsibility, and paying habits of, and similar information regarding, a person for the purpose of furnishing that information to another person.

"Debt collection" means an action, conduct, or practice in collecting, or in soliciting for collection, consumer debts that are due or alleged to be due a creditor.

"Debt collector" means a person who directly or indirectly engages in debt collection and includes a person who sells or offers to sell forms represented to be a collection system, device, or scheme intended to be used to collect consumer debts.

"Third-party debt collector" means a debt collector, as defined by 15 U.S.C. Section 1692a(6), but does not include an attorney collecting a debt as an attorney on behalf of and in the name of a client unless the attorney has nonattorney employees who: are regularly engaged to solicit debts for collection; or regularly make contact with debtors for the purpose of collection or adjustment of debts.

III. DOES THE FDCPA APPLY TO YOUR ACTIVITIES?

A. ARE YOU COLLECTING A "DEBT" FROM A "CONSUMER"?

For **"debts"** to which the FDCPA applies, it regulates all communications with consumers including both communications for the purpose of locating the consumer²⁹ and communications with the consumer in connection with the collection of a debt.³⁰

The statutory definition of **"debt"** is intertwined with the definition of a **"consumer."** 15 U.S.C. § 1692a(6), FDCPA Section 803 defines **"debt"** 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

²⁹ See 15 U.S.C. § 1692b, FDCPA Section 804. Acquisition of location information.

³⁰ See 15 U.S.C. § 1692c, FDCPA Section 805. Communication in connection with debt collection.

subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.” (Emphasis added).

Accordingly, as a general statement, the FDCPA covers personal, family, and household debts, including personal credit card accounts, personal loans, auto loans, mortgages, home equity loans, and debts for services such as electricity services. The FDCPA does not cover debts incurred to run a business.

Although not binding authority, there are numerous FTC advisory opinions which address the question as to whether certain obligations constitute “debts” under the FDCPA. For example:

●**Collection of parking fines:** In 1997, the FTC issued a Staff Opinion stating that parking fines imposed by various governmental entities did not constitute “debts” under the FDCPA.³¹

●**Landlord action for rent:** In 1996, the FTC issued a Staff Opinion stating that although a landlord’s actions against a tenant for non-payment of rent may not be covered by the FDCPA (because the landlord is a “creditor”), an attorney issuing demand letters for that same rent may qualify as a “debt collector” under the scope of the FDCPA.³²

³¹ See Chesworth 09-16-1997 at <http://www.ftc.gov/os/statutes/fdcpa/letters/cheswort.htm>.

³² See Dempsey 09-13-1996 at <http://www.ftc.gov/os/statutes/fdcpa/letters/dempsey.htm>.

●**Collections arising from a divorce decree:** In 1995, the FTC issued a Staff Opinion opining that activities relating to the collection of obligations under a divorce decree (money or property rights, child support, and spousal support) would likely not constitute a “debt” because they did not arise from a “transaction” between the parties.³³ Similarly, actions to collect filing fees for cases filed by the state for non-payment of child support would likely not be “debts” because they do not arise from a “transaction.”³⁴

●**Action to collect tort damages:** Actions to collect civil damages arising from tort claims do not fall within the FDCPA definition of a “debt.”³⁵

●**Collection of homeowners’ association fees/dues:** Actions by a community or homeowners’ association to collect assessments are covered by the FDCPA because the “transaction” giving rise to the obligation is the purchase of property burdened by the assessment obligation and the services covered are “primarily for personal, family, or household purposes.”³⁶

●**Collection on credit card accounts:** In instances where a law firm files suit to collect debts from credit cardholders, the question arises as to whether the FDCPA applies where some charges on the credit card are “personal” and some charges are for “business purposes.” The FTC opined that if any one charge is for personal purposes, then any collection actions on the aggregated charges are covered by the provisions of the FDCPA, including the venue provision.³⁷

³³ See Samuels 06-26-1995 at <http://www.ftc.gov/os/statutes/fdcpa/letters/samuels.htm>. See also 53 FED. REG. 50097, 50102 (Dec. 13, 1988).

³⁴ See Evans 08-12-1993 at <http://www.ftc.gov/os/statutes/fdcpa/letters/evans.htm>.

³⁵ See Palmer 08-27-1992 at <http://www.ftc.gov/os/statutes/fdcpa/letters/palmer.htm>. See also Dunn 08-17-1992 <http://www.ftc.gov/os/statutes/fdcpa/letters/dunn.htm>.

³⁶ See Philbin 05-24-1991 at <http://www.ftc.gov/os/statutes/fdcpa/letters/philbin.htm>.

³⁷ See Nants 03-01-1989 at <http://www.ftc.gov/os/statutes/fdcpa/letters/nants2.htm>.

●**Commercial loans secured by personal guarantees:** A bank lent money to a corporate entity for commercial purposes. However, the commercial loan was secured, in part, by personal guarantees of certain executives including mortgages against their personal residences. In response to questions as to whether collection activities and related foreclosures were covered by the FDCPA, the FTC opined that the loan being collected was not a “debt” because the underlying “transaction” was for commercial purposes.³⁸

B. DEBT “DEFAULT” REQUIREMENT.

In order to be a “**debt**” within the Act, the debt must also be “**in default.**” That is because one of the exceptions to the term “**debt collector**” under the FDCPA includes “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 . . . (iii) concerns a debt which was not in default at the time it was obtained by such person.” 15 U.S.C. § 1692a, FDCPA Section 803(6)(F)(iii).

However, the FDCPA does not define the term “in default.” Accordingly, the determination of whether a debt is “in default” is generally a fact-based inquiry which is controlled by the terms of the contract creating the indebtedness and/or by

³⁸ See Hall 04-11-1988 at <http://www.ftc.gov/os/statutes/fdcpa/letters/hall.htm>.

applicable state or federal law.³⁹ Therefore, if a holder of debt is collecting debts that were not “in default” when the holder obtained the debt, it would not be a “debt collector” under the FDCPA.⁴⁰

While this exception appears very straightforward, in practice, it is not always easy to determine whether the debt is “in default.” This is especially true in the mortgage servicing industry. For example, a mortgage servicer who purchases the loans in the secondary market is not a “debt collector” as long as the debt was not in default when the mortgage service obtained it.⁴¹

In today’s world of mortgage servicing, debts are typically “obtained” in bulk as part of pooling and servicing agreements. As such, it is not always possible to easily identify when one particular loan went into default and if this occurred

³⁹ See, e.g., *Skerry v. Mass. Higher Educ. Asst. Corp.*, 73 F.Supp. 2nd 47, 53-54 (D. Mass. 1999) (applying definition of “default” in the FEDERAL FAMILY EDUCATION LOAN PROGRAM regulations to construe FDCPA Section 803(6)(F)(iii); *Jones v. InTuition, Inc.*, 12 F.Supp. 2nd 775, 779 (W.D. Tenn. 1998) (same); De Mayo 05-23-2002 at <http://www.ftc.gov/os/statutes/fdcpa/letters/demayo.htm>.

⁴⁰ See *Perry v. Stewart Title Co.*, 756 F.2d 1197, 1208 (5th Cir. 1985) (stating that the “legislative history of section 1692a(6) indicates conclusively that a debt collector does not include the consumer's creditors, a mortgage servicing company, or an assignee of a debt, as long as the debt was not in default at the time it was assigned”).

⁴¹ See Albon 12-05-1990 at <http://www.ftc.gov/os/statutes/fdcpa/letters/albon.htm>.

prior to the mortgage servicer obtaining it. If the default occurred prior to the assignment of the loan to the servicer, and the servicer attempts to collect on the loan, then the servicer could be a “debt collector” under the FDCPA.⁴²

One again, although not binding authority, there are numerous FTC advisory opinions which address the question as to whether certain debts were “in default.”

For example:

●**Property Managers:** A property manager acting as the agent of the property owner to collect rent from tenants is probably a “creditor” and not a “debt collector.” However, a property manager who is not the agent of the owner is likely a “debt collector” if he regularly collects delinquent rental payments based upon the definition of “in default” in the specific lease agreement.⁴³

●**Loan Servicers:** A Company buys a package of loans, resells the package of loans to a third party, and retains the contractual servicing obligations with respect to the loans. In this example, the FTC opined that the Company is not covered by the FDCPA so long as the loans were not “in default” at the time they were obtained by the Company.⁴⁴

⁴² *But see Brown v. Morris*, Cause No. 04-60526, 2007 WL 1879392 (5th Cir. June 28, 2007) (stating that a debt was not “obtained” by another person if the mortgagee acquired the mortgage through merger, rather than by assignment) (citing 15 U.S.C. § 1692a(6)(F)(iii) (exempting from the definition any person conducting collection activities “concern[ing] a debt which was not in default at the time it was obtained by such person”) (emphasis added)).

⁴³ See Goodacre 11-06-1995 at <http://www.ftc.gov/os/statutes/fdcpa/letters/goodacre95.htm>.

⁴⁴ See Cranmer 04-25-1989 at <http://www.ftc.gov/os/statutes/fdcpa/letters/cranmer.htm>.

As set forth above, the “in default” determination is very often a fact-intensive inquiry. Additionally, in the context of bulk loan purchases, the determination is even more complicated because the “in default” issue may be different based upon the language of each specific loan agreement or promissory note.

C. ARE YOU A “CREDITOR” OR A “DEBT COLLECTOR”?

The first step is to determine if you are a “**creditor**” or a “**debt collector**.”

The FDCPA defines a “**creditor**” as:

“... 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.” 15 U.S.C. § 1692a(4), FDCPA Section 803. (Emphasis added).

On the other hand, the FDCPA defines a “**debt collector**” as:

“... 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.” 15 U.S.C. § 1692a(6), FDCPA Section 803. (Emphasis added).

The inclusion of the word “another” in both definitions makes it clear that, as a general statement, a “**creditor**” attempting to collect its own debt is not subject

to the FDCPA.⁴⁵ The FDCPA applies to “**debt collectors**” and not “**creditors**” because **debt collectors**, unlike **creditors**, are not constrained in their actions by the risk that a negative reputation regarding debt collection practices might threaten their continued access to new borrowers.⁴⁶

The FDCPA also excludes from its definition of “**debt collector**” officers or employees of a creditor working to collect a debt in the creditor's name, 15 U.S.C. § 1692a(6)(A), FDCPA Section 803, and any entity acting as a debt collector for another entity where both entities 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.” *Id.* at § 1692a(6)(B), FDCPA Section 803. Further, the mere fact that a creditor employs a debt collector to recover its debts

⁴⁵ See *Maguire v. Citicorp Retail Servs., Inc.*, **147 F.3d 232, 235** (2d Cir. 1998).

⁴⁶ See *Harrison v. NBD Inc.*, **968 F. Supp. 837, 841** (E.D.N.Y. 1997) (citation omitted) (discussing the legislative intent behind the FDCPA); *Schmitt v. FMA Alliance*, **398 F.3d 995, 998** (8th Cir. 2005) (holding that the FDCPA “does not regulate creditors' activities at all” (quoting *Randolph v. I.M.B.S., Inc.*, **368 F.3d 726, 729** (7th Cir. 2004))).

does not make the creditor vicariously liable for the acts of the debt collector.⁴⁷

Furthermore, law firms which regularly engage in consumer debt collection can qualify as “debt collectors.” In a Fifth Circuit case, the Court analyzed the percentage of a law firm’s debt collection activities over a three year period to determine whether the law firm qualified as a “debt collector” under the FDCPA.⁴⁸

However, under the "false name exception" a creditor may become subject to the FDCPA requirements if, "in the process of collecting his own debts, [the creditor] uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts."⁴⁹ "A creditor uses a name other

⁴⁷ *Kolari v. New York-Presbyterian Hosp.*, 382 F. Supp. 2d 562, 573 (E.D.N.Y. 2005), *rev'd in part on other grounds*, [455 F.3d 118 \(2d Cir. 2006\)](#) (citing *Wadlington v. Credit Acceptance Corp.*, **76 F.3d 103, 107** (6th Cir. 1996)); *Doherty v. Citibank (South Dakota), N.A.*, **375 F. Supp. 2d 158, 162** (E.D.N.Y. 2005) The FTC has stated that no FDCPA violation by the creditor collector undertakes collection activity, if the debt collector does business separately from the creditor (e.g., where the debt collector in fact has other clients that he treats similarly to the creditor, has his own employees, deals at arms length with the creditor, and controls the process himself)." STAFF COMMENTARY ON THE FAIR DEBT COLLECTION PRACTICES ACT, 53 FED. REG. 50,097, 50,107 (Dec. 13, 1988). [HTTP://FTC.GOV/OS/STATUTES/FDCPA/COMMENTARY.HTM](http://ftc.gov/os/statutes/fdcpa/commentary.htm)

⁴⁸ *See Hester v. Graham, Bright, & Smith, P.C. and Spencer Shytles*, Cause No. 07-40176, 2008 WL 2958984 *5-6 (5th Cir. Aug. 4, 2008).

⁴⁹ *Mazzei v. Money Store*, 349 F. Supp. 2d 651, 658-60 (S.D.N.Y. 2004) (quoting 15 U.S.C. § 1692a(6), FDCPA Section 803).

than its own when it uses a name that implies that a third party is involved in collecting its debts, 'pretends to be someone else,' or 'uses a pseudonym or alias,'"⁵⁰, or when a creditor "owns and controls the [pseudonymous] debt collector, rendering it the creditor's alter ego."⁵¹ The "false name exception" is triggered if the "least sophisticated consumer would have the false impression that a third party was collecting the debt."⁵²

Courts have generally found that letters on law firm letterhead that were signed by an attorney (whether by facsimile signature or otherwise) violate the FDCPA if the attorney was not in fact involved in the case and the letter did not contain any disclaimer.⁵³ The signature of the attorney is an important fact in deciding whether the letter gives the impression that an individual attorney

⁵⁰ *Maguire*, **147 F.3d at 235** (quoting *Villarreal v. Snow*, No. 1:95-CV-2484(RRP), 1996 WL 473386, at *3 (N.D. Ill. Aug. 19, 1996)).

⁵¹ *Mazzei*, 349 F. Supp. 2d at 659 (citing *Maguire*, **147 F.3d at 234-36**).

⁵² *Maguire*, **147 F.3d at 236** ("This objective standard is designed to protect all consumers, 'the gullible as well as the shrewd,' while at the same time protecting debt collectors from liability for 'bizarre or idiosyncratic interpretations of collection notices.'" (Quoting *Clomon v. Jackson*, **988 F.2d 1314, 1318-20** (2d Cir. 1993))).

⁵³ See *Nielson v. Dickerson*, 307 F.3d 623, 635 (7th Cir. 2002); *Avila v. Rubin*, **84 F.3d 222, 228** (7th Cir. 1996); *Taylor v. Perrin, Landry, deLaunay & Durand*, **103 F.3d 1232, 1237** (5th Cir. 1997).

reviewed the file or prepared the letter.⁵⁴

D. IN TEXAS, “CREDITORS” COLLECTING THEIR OWN DEBTS ARE COVERED BY THE TDCA.

Although important under the FDCPA, the distinction between a “debt collector” and a “creditor” is not relevant under the TDCA. As stated above, the TDCA applies not only to professional debt collectors, but also to any “person who directly or indirectly engages in debt collection and includes a person who sells or offers to sell forms represented to be a collection system, device, or scheme intended to be used to collect consumer debts.” [TEX. FIN. CODE § 392.001\(6\)](#). Accordingly, unlike the FDCPA, the TDCA applies to creditors attempting to collect their own debts. [TEX. FIN. CODE § 392.001\(3\)](#).

Another difference is that the TDCA adds the definition of a “third party debt collector” which means “a debt collector, as defined by [15 U.S.C. § 1692a\(6\)](#),

⁵⁴ See *Taylor*, **103 F.3d at 1238**; *Clomon v. Jackson*, **988 F.2d 1314, 1321** (“[T]he use of the attorney’s signature on a collection letter implies that the . . . attorney directly controlled or supervised the process through which the letter was sent.” (Emphasis added)); *Campuzano-Burgos v. Midland Credit Mgmt.*, 497 F. Supp. 2d 660, 663-4 (E.D. Pa. 2007) (“Although *Clomon* dealt with facts similar to *Avila*, its reasoning focused not on the attorney’s professional obligations but on the additional authority his signature connoted.”).

but does not include an attorney collecting a debt as an attorney on behalf of and in the name of a client unless the attorney has nonattorney employees who are regularly engaged to solicit debts for collection; or regularly make contact with debtors for the purpose of collection or adjustment of debts.” [TEX. FIN. CODE § 392.001\(7\)](#).

E. IS THE DEBTOR A “CONSUMER?”

If you determine that you are a “**debt collector**,” the next inquiry is whether the recipient of your communications qualifies as a “**consumer**” under the FDCPA. 15 U.S.C. § 1692a(3), FDCPA Section 803 defines “**consumer**” as “any natural person obligated or allegedly obligated to pay any debt.” The TDCA defines “**consumer**” as “an individual who has a consumer debt.” [TEX. FIN. CODE § 392.001\(1\)](#).

In an FTC Staff Opinion Letter dated [December 13, 1993](#),⁵⁵ the FTC addressed the following question:

⁵⁵ <http://www.ftc.gov/os/statutes/fdcpa/letters/goff.htm>

Does a collection agency violate the FDCPA when it attempts to collect a debt owed a utility, not from the primary obligor, but from a third party who lived with the obligor during the time the utility services were provided?

The FTC reasoned that since the utility company has alleged the third party living with the primary obligor is obligated to pay, the “third party has the same dispute and cease communication rights under the Act as any other alleged creditor.” Thus, the third party would be a “consumer.”

In *Muir v. Navy Federal Credit Union*, 529 F.3d 1100 (D.C. Cir. 2008), the plaintiff deposited funds into a joint account held with his father. When the credit union used those funds to offset a debt owed by the father, but not the son, the son brought suit under the FDCPA. The focus of the opinion is whether the son qualifies as a FDCPA “consumer” when he, admittedly, was not obligated to pay the debt. The court held the son had standing to bring a FDCPA claim even though he was not the debtor. This case only addressed the issue of standing. The issue of whether the son actually had a cause of action under the FDCPA was not before the

court.

Texas statutes go even further than the FDCPA, allowing any person who has been adversely affected from prohibited conduct to bring suit for unfair debt collection.⁵⁶

F. THE FDCPA “MIRANDA WARNINGS.”

Within five (5) days after the initial communication with a consumer in connection the collection of any debt, the “debt collector” must send the following notice to the consumer, unless information is contained in the initial communication or the consumer has paid the debt:

- (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;

⁵⁶ See *Campbell v. Beneficial Fin. Corp.*, 616 S.W.2d 373, 374 (Tex. App.—Texarkana 1981, no writ) (stating “[t]o hold otherwise would be to find a legislative intent to protect debtors from the abuses the Act is designed to prevent, but to leave their families, friends and employers subject to those same abuses”).

- (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.

FDCPA Section 809(a). This notice is typically referred to at the FDCPA “Miranda Warnings.”⁵⁷ The FDCPA “Miranda Warnings” have nothing to do with criminal law. However, just like the criminal who gets away on a technicality, failure to give the FDCPA “Miranda Warnings” may result in a FDCPA violation even though the debt is otherwise due and debt collector has done nothing else wrong. In fact, consumer protection attorneys will often use failure to give the proper FDCPA “Miranda Warnings” as leverage to get the creditor to agree to “walk the debt” or let the consumer off on this technicality.

Further, in response to the “Miranda Warnings”, a consumer may notify the

⁵⁷ This language is also commonly referred to as the FDCPA “validation notice.”

debt collector in writing within the thirty (30) day period described Section 809(a) “that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor.” FDCPA Section 809(b). If this request is made, “the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any 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 the consumer. FDCPA Section 809(b). In 2009, 25.7% of all FDCPA complaints to the FTC reported that debt collectors did not provide the required notice.⁵⁸

(a) **“Overshadowing” Violations.**

One question which has arisen is whether FDCPA Section 809(b) permits a debt collector to either demand payment or take other legal action during the pendency of the thirty (30) day period for disputing a debt in situations where the debtor has not notified the debt collector that the debt is disputed. In response to

⁵⁸ <http://www.ftc.gov/os/2010/04/P104802fdcpa2010annrpt.pdf>

that inquiry, the FTC issued a [Staff Opinion letter dated March 31, 2000](#)⁵⁹ in which it stated that “Section 809 is a *dispute* period within which the consumer may insist that the collector verify the debt, and not a *grace* period within which collection efforts are prohibited.” Thus, according to the FTC Opinion “Section 809(b) does permit a collection agency to either demand payment or take legal action during the thirty-day period for disputing a debt.”

A second issue addressed in that same [Staff Opinion letter dated March 31, 2000](#)⁶⁰ was whether a debt collector may include the “Miranda Warning” in court documents in instances where suit is instituted prior to any communications with the debtor. The FTC reasoned that a court document is a “communication” for the purposes of the FDCPA. Therefore, if the “initial communication” was the court document itself, the attorney would “have to include written notice mandated by Section 809(a) in the court document” or send it to the consumer within five days

⁵⁹ <http://www.ftc.gov/os/2000/04/fdcpaadvisoryopinion.htm>

⁶⁰ <http://www.ftc.gov/os/2000/04/fdcpaadvisoryopinion.htm>

after the court filing.⁶¹ Given this split in authority among the Circuits, the prudent course of action would appear to be to include the Miranda warnings in the pleading if that is the “initial communication” or, alternatively, send the Miranda warning letter within five days after the court filing.

In *Rosenau v. Unifund*, 539 F.3d 218 (3rd Cir. 2008), the plaintiff alleged that a debt collector’s demand letter constituted an “overshadowing” violation because in the place of a signature at the bottom of the letter it stated “Unifund Legal Department.” Thus, the plaintiff alleged that the demand letter falsely stated or implied that it was from an attorney.⁶² The false impression created by the signature block therefore “overshadowed” the otherwise compliant language of the letter.

Also, in *Ellis v. Solomon and Soloman, P.C.*, 591 F.3d 130 (2nd Cir. 2010), an overshadowing violation was found by the Second Circuit when the debt

⁶¹ See also *Goldman v. Cohen*, 445 F.3d 152 (2d Cir. 2006) (holding that the initiation of a lawsuit qualifies as an “initial communication” under § 1682g(a) of the FDCPA). But see *Vega v. McKay*, 351 F.3d 1334 (11th Cir.2003) (holding that initiation of a lawsuit does not constitute an “initial communication”).

⁶² *Id.* at 221-222.

collector served a complaint on the debtor within the validation period. The Court did not hold that all pre-validation lawsuits were *per se* violations, but instead stated “if the debt collector chooses not to wait until the end of the validation period to commence debt collection litigation, an explanation of the lawsuit’s impact—or more accurately, lack of impact—on the disclosures made in the validation notice must be provided.”⁶³

IV. PROHIBITED “COMMUNICATIONS” WITH THE “CONSUMER.”

A. FDCPA – PROHIBITED ACTION.

The FDCPA also defines actions and communications which constitute harassment or abuse (Section 806),⁶⁴ false or misleading representations (Section 807),⁶⁵ unfair debt collection practices (Section 808),⁶⁶ and the use of deceptive forms (Section 812).⁶⁷

Regarding Section 806, harassment or abuse violations usually take the form

⁶³ *Id.* at 137.

⁶⁴ *See* 15 U.S.C. § 1692d, FDCPA Section 806. Harassment or abuse.

⁶⁵ *See* 15 U.S.C. § 1692e, FDCPA Section 807. False or misleading representations.

⁶⁶ *See* 15 U.S.C. § 1692f, FDCPA Section 808. Unfair practices.

⁶⁷ *See* 15 U.S.C. § 1692j, FDCPA Section 812. Furnishing certain deceptive forms.

of threatening phone calls or the use of obscene language or causing a phone to ring repeatedly.⁶⁸ However, these violations are not limited to calls as the use of threats or the inclusion of obscene language in collection letters can equally result in a violation of this Section. In 2009, 46.5% of FDCPA complaints to the FTC claimed that debt collectors harassed the consumer by calling repeatedly or continuously.⁶⁹

Section 807 provides a laundry list of sixteen (16) potential false or misleading representations.⁷⁰ This list is non-exclusive (“[w]ithout limiting the general application of the foregoing”).⁷¹ Many of these potential false or misleading representations may apply to information contained in a collection letter.

By way of example, in *Gonzalez v. Kay*, 577 F.3d 600 (5th Cir. 2009), the plaintiff brought suit under the FDCPA and argued that the use of law firm

⁶⁸ See 15 U.S.C. § 1692d, FDCPA Section 806. Harassment or abuse.

⁶⁹ <http://www.ftc.gov/os/2010/04/P104802fdcpa2010annrpt.pdf>

⁷⁰ See 15 U.S.C. § 1692e, FDCPA Section 807. False or misleading representations.

⁷¹ See *id.*

letterhead to send a collection letter when the law firm was not yet assigned to handle the account violated the FDCPA. The district court dismissed the complaint for failure to state a claim, but the Fifth Circuit reversed. The Fifth Circuit noted that the evidence showed the law firm was not yet involved in the collection process. The Fifth Circuit reversed despite the fact that the collection letter stated “At this point in time, no attorney with this firm has personally reviewed the particular circumstances of your account.” The Court noted that this language was on the back of the letter and distinguished other cases because “the main difference between the cases is whether the letter included a clear, prominent, and conspicuous disclaimer that no lawyer was involved in the debt collection at that time.”⁷²

Other examples include (a) misrepresenting the character, amount, or legal status of any debt; (b) misrepresenting that the individual is an attorney; and (c)

⁷² *Id.* at 606.

threatening to take legal action when no legal action may legally be taken.⁷³ Likewise, many of “unfair practices” are of importance to those who send collection letters.⁷⁴ These unfair practices may include, but are not limited to: (a) the request to collect an amount not otherwise authorized by agreement or permitted by law; (b) the solicitation of post dated checks; and (c) communications by post card regarding a debt.⁷⁵

Finally, Section 812 provides that: 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. *See* FDCPA Section 812. Any person who violates Section 812 is liable under the FDCPA to the same extent as a debt collector (even if that person is not a debt collector).

⁷³ *See* 15 U.S.C. § 1692e, FDCPA Section 807. False or misleading representations.

⁷⁴ *See* 15 U.S.C. § 1692f, FDCPA Section 808. Unfair practices.

⁷⁵ *See id.*

In sum, it is important to carefully review Sections 806, 807, and 808, prior to sending any collection letter. Failing to do so may result in the inadvertent inclusion of a statement in a collection letter which may be deemed a violation of one or more of these sections. Furthermore, those individuals providing forms or letterhead to others who engage in debt collection should be aware of the restrictions imposed by Section 812.

B. TDCA – PROHIBITED ACTION.

Likewise, the TDCA also defines actions and communications which constitute threats and coercion ([TEX. FIN. CODE § 392.301](#)), harassment or abuse ([TEX. FIN. CODE § 392.302](#)), unfair or unconscionable means ([TEX. FIN. CODE § 392.303](#)), and fraudulent, deceptive, or misleading representations ([TEX. FIN. CODE § 392.304](#)).

1. TDCA – Threats or Coercion.

[TEX. FIN. CODE § 392.301\(a\)](#) lists eight (8) types of conduct which constitute threats or coercion including: (1) using or threatening to use violence or other criminal means to cause harm to a person or property of a person; (2) accusing falsely or threatening to accuse falsely a person of fraud or any other crime; (3) representing or threatening to represent to any person other than the consumer that a consumer is willfully refusing to pay a nondisputed consumer debt when the

debt is in dispute and the consumer has notified in writing the debt collector of the dispute; (4) threatening to sell or assign to another the obligation of the consumer and falsely representing that the result of the sale or assignment would be that the consumer would lose a defense to the consumer debt or would be subject to illegal collection attempts; (5) threatening that the debtor will be arrested for nonpayment of a consumer debt without proper court proceedings; (6) threatening to file a charge, complaint, or criminal action against a debtor when the debtor has not violated a criminal law; (7) threatening that nonpayment of a consumer debt will result in the seizure, repossession, or sale of the person's property without proper court proceedings; or (8) threatening to take an action prohibited by law.

However, [TEX. FIN. CODE § 392.301\(b\)](#) specifically provides that the TDCPA does not prohibit a debt collector from: (1) informing a debtor that the debtor may be arrested after proper court proceedings if the debtor has violated a criminal law of this state; (2) threatening to institute civil lawsuits or other judicial proceedings to collect a consumer debt; or (3) exercising or threatening to exercise a statutory or contractual right of seizure, repossession, or sale that does not require court proceedings.

2. TDCA – Harassment; Abuse.

[TEX. FIN. CODE § 392.302](#) lists four (4) prohibited tactics including:

(1) using profane or obscene language or language intended to abuse unreasonably the hearer or reader; (2) placing telephone calls without disclosing the name of the individual making the call and with the intent to annoy, harass, or threaten a person at the called number; (3) causing a person to incur a long distance telephone toll, telegram fee, or other charge by a medium of communication without first disclosing the name of the person making the communication; or (4) causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number.

3. TDCA – Unfair or Unconscionable Means.

[TEX. FIN. CODE § 392.303](#) lists three (3) prohibited practices including:

(1) seeking or obtaining a written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessities of life if the obligation was not incurred for those necessities; (2) collecting or attempting to collect interest or a charge, fee, or expense incidental to the obligation unless the interest or incidental charge, fee, or expense is expressly authorized by the agreement creating the obligation or legally chargeable to the consumer; or (3) collecting or attempting to collect an obligation under a check, draft, debit payment, or credit card payment, if: (A) the check or draft was dishonored or the debit payment or credit card payment was refused because the check or draft was

not drawn or the payment was not made by a person authorized to use the applicable account; (B) the debt collector has received written notice from a person authorized to use the account that the check, draft, or payment was unauthorized; and (C) the person authorized to use the account has filed a report concerning the unauthorized check, draft, or payment with a law enforcement agency, as defined by ARTICLE 59.01, CODE OF CRIMINAL PROCEDURE, and has provided the debt collector with a copy of the report.

4. TDCA – Fraudulent, Deceptive, or Misleading Representations.

Finally, [TEX. FIN. CODE § 392.304](#), like [FDCPA Section 1692e](#), provides a laundry list of nineteen (19) potential false or misleading representations which, for the most part, are similar to the federal prohibitions.⁷⁶

V. MULTIPLE DEBTS.

As set forth above, the FDCPA grants certain rights to consumers to dispute debts and imposes certain requirements upon debt collectors to validate the debt

⁷⁶ See [15 U.S.C. § 1692e, FDCPA Section 807. False or misleading representations.](#)

being collected upon request by the consumer.⁷⁷ Additionally, where the consumer debtor is being pursued for multiple debts, the FDCPA specifies that any payment made by the consumer must be applied in accordance with the consumer's directions and may not be applied to any debt which is disputed by the consumer.⁷⁸

VI. PROPER VENUE TO COLLECT THE "DEBT."

In instances where the "debt collector" files a lawsuit to collect the debt, the FDCPA also specifies the venue where the lawsuit must be filed.⁷⁹ Failure to follow this simple venue provision can result in FDCPA liability.⁸⁰

VII. FDCPA CLAIMS AVAILABLE TO THE "CONSUMER."

A. PROHIBITED ACTS UNDER THE FDCPA.

The FDCPA is a strict liability statute and only one violation of the FDCPA

⁷⁷ See 15 U.S.C. § 1692g, FDCPA Section 809. Validation of debts.

⁷⁸ See 15 U.S.C. § 1692h, FDCPA Section 810. Multiple debts.

⁷⁹ See 15 U.S.C. § 1692i, FDCPA Section 811. Legal actions by debt collectors.

⁸⁰ See, e.g., *Hester v. Graham, Bright, & Smith, P.C. and Spencer Shytles*, Cause No. 07-40176, 2008 WL 2958984 (5th Cir. Aug. 4, 2008).

is necessary to establish civil liability.⁸¹ *See*. As such, "the defendant's culpability is a consideration only in computing damages under the FDCPA."⁸²

B. FAILURE TO GIVE THE FDCPA “MIRANDA WARNINGS.”

Failure to give the proper FDCPA “Miranda Warnings” will result in a FDCPA violation. To avoid this violation, a debt collector should develop a form letter which satisfies the FDCPA “Miranda Warning” requirements and should always use that form document for the initial communication with the debtor. Additionally, the “amount of the debt” in the communications should only refer to the past due amount sought by the debt collector and not the consumer’s overall balance on that account.⁸³ Finally, a debt collector must always include the “name of the creditor to whom the debt is owed.” It is not enough that the collection agency or the mortgage servicing industry is identified. Instead, the actual holder

⁸¹ *See, e.g., Taylor v. Perrin Landry, deLaunay & Durand*, [103 F.3d 1232, 1238](#) (5th Cir. 1997); *In re Eastman*, 419 B.R. 711, 728 (Bankr. W.D. Tex. 2009) (stating that a false representation need not be intentional to be actionable under § 1692e (citing *Pittman v. J.J. Mac Intyre Co.*, 969 F.Supp. 609, 613 (D. Nev. 1997))) *Whitaker v. Hudson & Keyse, L.L.C.*, No. 1:05-cv-01597-JDT-WTL, 2007 WL 2265057, at *3 (S.D. Ind. Aug. 6, 2007); *Gibson v. Grupo de Ariel, L.L.C.*, No. Civ.A.4:05-CV-415-BE, 2006 WL 42369, at *1 n. 2 (N.D. Tex. Jan. 9, 2006).

⁸² *Pittman*, 969 F.Supp. at 613 (citing [15 U.S.C. § 1692k\(b\)](#)).

⁸³ *See Barnes v. Advanced Call Center Technologies, LLC*, 493 F.3d 838 (7th Cir. 2007).

of the debt needs to be identified in the communications.

The authors suggest that the amount of the debt and the name of the creditor be identified in the “Re:” line of any collection letter such as:

Re: Amount Past Due \$_____ Owed to _____ (the “Creditor”).

[A form of FDCPA demand letter is attached hereto at [Appendix B](#)].

C. “OVERSHADOWING” THE REQUIRED WARNINGS OR NOTICES.

As stated above, even if the FDCPA statutory notices are given, a violation of the FDCPA may still occur if additionally language in the notice is found to have “overshadowed” or contradicted by other language in the collection letter. The Second Circuit Court of Appeals has stated “[w]hen a notice contains language that ‘overshadows or contradicts’ other language informing the consumer of her rights, it violates the Act.”⁸⁴ In *Russell*,⁸⁵ the court found that despite the proper statutory notices, a violation of the FDCPA occurred when the debt collector added the

⁸⁴ See *Russell v. Equifax*, 74 F.3d 30, 34 (2nd Cir. 1996).

⁸⁵ *Russell* also stands for the proposition that the plaintiff must not show the letter was threatening in order to prove overshadowing. Instead, all the plaintiff must show is a contradiction between the required notices and other language in the letter.

following language to the letter “If you do not dispute this claim (see reverse side) and wish to pay it within the next 10 days we will not post this collection to your file.” The court opined:

The consumer was thus presented with two different and conflicting statements. If she believed the message printed on the back of the notice, she would understand, as the Act intends her to, that she had 30 days to decide whether to contest the claim. But, if she believed what was printed on the front of the notice, she would fear that unless she decided not to dispute the claim and to pay it within 10 days, the debt she owed would be “posted” to her credit file.

The court also found that a second notice sent by the debt collector (which demanded payment before the expiration of the 30 day validation period) constituted overshadowing as well. Accordingly, to prevent overshadowing, a debt collector should not (1) include any language in the original letter which implies a consumer take action prior to the 30 day validation period or (2) contact the consumer in any way prior to the expiration of the original 30 days.

An “overshadowing” violation may also occur when the debt collector

shortens the period when the consumer can seek verification.⁸⁶ The Seventh Circuit has adopted a similar standard with respect to overshadowing.⁸⁷

D. FAILURE TO PROVIDE VALIDATION OF THE DEBT.

In instances where the consumer requests validation of the debt, the debt collector must provide this information. If the debt is disputed, the FDCPA directs that “the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment.”⁸⁸ While this requirement seems simple, it is often overlooked and, in the authors’ opinion, is one way consumers attempt to “trap” debt collectors into FCPDA liability. Namely, the consumer or the consumer’s attorney will immediately request validation of the debt and then will bring a FDCPA claim if the debt collector takes further steps to collection on the debt without providing the

⁸⁶ See *Jacobson v. Healthcare Fin. Servs, Inc.*, 516 F.3d 85 (2nd Cir. 2008).

⁸⁷ See *McMillan v. Collection Prof’ls, Inc.*, 455 F.3d 754, 759 n. 5 (7th Cir. 2006) (stating “a debt collector can violate § 1692g by contradicting the required information or by ‘overshadowing’ it” and “a letter can be confusing when it overshadows the necessary language, when it contradicts the required language or when it fails to explain an apparent contradiction”).

⁸⁸ See 15 U.S.C. § 1692g, FDCPA Section 809. Validation of debts.

necessary documentation first.

Accordingly, verification of the debt should be provided immediately upon notice of the consumer to provide this information. The best way to provide this is by providing the consumer the payment ledger or some other type of business record demonstrating the payment history for the debt.

E. ATTEMPTING TO COLLECT AN AUTHORIZED AMOUNT.

It is a violation of the FDCPA § 1962f(1) if a debt collector attempts to collect “any amount, including interest, fees, charges, or expenses incidental to the obligation, ‘unless such amount is expressly authorized by the agreement creating the debt.’”⁸⁹ In *Eads*, the Court found that the consumer stated a claim under the FDCPA (and a similar state statute—the TEXAS DEBT COLLECTION ACT) when the debt collector added a \$225.00 court filing fee to the demand letter. Since the filing fees were not authorized by statute or by an agreement with the consumer, the consumer stated a claim under the FDCPA due to the debt collector attempting to

⁸⁹ See *Eads v. Wolpoff & Abramson, LLP*, 538 F.Supp.2d 981, 986 (W.D. Tex. 2008).

collect this amount.

Similarly, a recent Illinois opinion demonstrates that a debt collector can be found liable under the FDCPA if it attempts to collect a fee in excess of that allowed by a state statute.⁹⁰

It is also important to note that the unauthorized amount need not actually be collected or received by the debt collector to constitute a violation of the FDCPA, but rather, the mere attempt to collect the unauthorized amount violates the FDCPA.⁹¹

A recent opinion by the Seventh Circuit Court of Appeals demonstrates the importance of making sure one does not attempt to collect a fee which is not authorized by an agreement with the consumer. In *Seeger v. AFNI, Inc.*, AFNI was a debt collection company that purchased accounts from some of its customers,

⁹⁰ See *Day v. Check Brokerage Corp.*, 511 F.Supp.2d 950, 955 (N.D. Ill. 2007) (holding that it was a violation of the FDCPA when the debt collector attempted to add \$45.00 to the debt, when state law only allowed \$25.00 to be added to the value of the collection amount).

⁹¹ See *Sandlin v. Shapiro & Fishman*, 919 F. Supp. 1564 (M.D. Fl. 1996) (holding that law firm's attempt to collect an unauthorized payoff fee stated a claim under § 1692f(1) of the FDCPA).

including Cingular Wireless.⁹² The Cingular contracts (which AFNI purchased and attempted to collect) with the consumers stated:

You agree to pay to CINGULAR the fees of any collection agency, which may be based on a percentage at a maximum of 33% of the debt, and all costs and expenses, including reasonable attorneys' fees and court costs, incurred by CINGULAR in exercising any of its rights and remedies when enforcing any provisions of this Agreement.

OR

You agree to reimburse us the fees of any collection agency, which may be based on a percentage at a maximum of 33% of the debt, and all costs and expenses, including reasonable attorneys' fees, we incur in such collection efforts. (Emphasis added).

When AFNI (the debt collector) attempted to collect a 15% collection fee, the debtor/plaintiffs alleged FDCPA violations based on AFNI's attempts to collect this fee. AFNI believed it was allowed to collect such a fee because plaintiff's authorized "Cingular to charge a collection fee, and thus, [AFNI] as Cingular's assignee, was also authorized to charge such a fee." The Court disagreed. Instead, it reasoned that the contracts contemplated Cingular incurring those fees of third

⁹² See 548 F.3d 1107, 1109-1110 (7th Cir. 2008).

party collection agencies and then the consumer reimbursing Cingular for those fees. The Seventh Circuit Court stated:

The contracts do not authorize Cingular to charge its customers a fee when it handles the collection process on its own; instead, they authorize a fee only when Cingular farms out the process to a third party. The district court concluded that Cingular itself could not charge a collection fee that was neither the result of a referral of an account, nor reimbursement of fees charged to it by a collection agency, nor as part of an incurred cost. The use of the word “referral” implies the existence of a third party; Cingular was not “referring” accounts to itself. Nor does it make sense to think that Cingular was charging itself a collection fee, which plaintiffs then would have to reimburse. Finally, the district court reasoned that the 15% collection fee was not a cost that Cingular would “incur.”

One again, although not binding authority, there are numerous FTC advisory opinions which address the question as to whether certain charges (other than the debt itself) were authorized. For example:

●**Interest and Attorneys Fees under a Note:** The FDCPA permits a debt collector to demand interest and attorneys’ fees provided they are provided for in the promissory note and are not prohibited by state law.⁹³

⁹³ See Gibson 07-13-1994 at <http://www.ftc.gov/os/statutes/fdcpa/letters/gibson.htm>.

●**Contingent Fee of One Third of the Debt:** The FDCPA permits a debt collector to a contingency fee equal to one third of the amount of the debt so long as the fee is specified in the contract and is not prohibited by state law.⁹⁴

●**Debt Collector Fee charged for information concerning the account:** Although neither the FTC nor the courts had previously addressed this issue directly, the FTC opined that the charging of such a fee would violate FDCPA Section 808.⁹⁵

●**Collecting a fee arising from an agreement which is not signed by the consumer:** The FDCPA applies to both written and oral agreements. Accordingly, a service charge on a dishonored check may be demanded based upon a posted sign on the merchant's premises allowing such a charge if it can be demonstrated that the consumer knew of the charge.⁹⁶

F. BRINGING A LAWSUIT IN THE WRONG VENUE.

In instances where the debt collector files a lawsuit to collect the debt, the FDCPA also specifies the venue where the lawsuit must be filed.⁹⁷ Under the FDCPA venue provision, “[a]ny debt collector who brings any legal action on a debt against any consumer shall . . . bring such action only in the judicial district . . .(A)

⁹⁴ See Wilson 05-13-1994 at <http://www.ftc.gov/os/statutes/fdcpa/letters/wilson.htm>.

⁹⁵ See Matthews 05-17-1993 at <http://www.ftc.gov/os/statutes/fdcpa/letters/matthews.htm>.

⁹⁶ See Krisor 08-30-1989 at <http://www.ftc.gov/os/statutes/fdcpa/letters/krisor89.htm>.

⁹⁷ See 15 U.S.C. § 1692i, FDCPA Section 811. Legal actions by debt collectors.

in which such consumer signed the contract sued upon; or (B) in which such consumer resides at the commencement of the action.”

In *Hester v. Graham, Bright, & Smith, P.C. and Spencer Shytles*, Cause No. 07-40176, 2008 WL 2958984 (5th Cir. Aug. 4, 2008), the Fifth Circuit upheld the trial court’s decision to award attorneys fees to the debtor upon a violation of the venue requirements of FDCPA. *See also* [FTC Staff Opinion Letter dated February 10, 1994](#)⁹⁸ (reasoning that in the case of an oral contract (no writing), venue is only appropriate where the consumer resides).

Some state collection laws also incorporate additional consumer protection statutes. For example, the Texas FAIR DEBT COLLECTION PRACTICES ACT, TEX. FINANCE CODE § 392.001, provides that a violation also gives rise to a cause of action under the [TEXAS DECEPTIVE TRADE PRACTICES ACT](#).

G. UNLAWFUL COMMUNICATIONS.

Communications in collection letters to the debtor which constitute

⁹⁸ <http://www.ftc.gov/os/statutes/fdcpa/letters/krisor.htm>.

harassment or abuse (Section 805), false or misleading representations (Section 806), or unfair practices (Section 808) also can give rise to FDCPA liability. Accordingly, the debt collector should familiarize itself with these provisions to ensure that the language contained in its collection letters does not violate one or more of these statutes.

H. OTHER POTENTIAL VIOLATIONS.

Under Section 810, when dealing with a consumer who has multiple debts, a debt collector may not apply monies received to any debt which is disputed by the consumer. Under Section 810, regardless of whether one is a debt collector, it is unlawful to furnish deceptive forms.

It is important that a debt collector familiarize itself with these often overlooked statutes.

VIII. DEFENSES AVAILABLE TO THE “DEBT COLLECTOR”.

A. FDCPA STATUTE OF LIMITATIONS DEFENSE.

[FDCPA Section 813. Civil liability](#) provides a one year statute of limitations.

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. (Emphasis added).

However, it is important to note that there is some question among the federal courts as to whether the “discovery rule” or “equitable tolling” should apply to FDCPA claims. *Compare Mangum v. Action Collection Serv., Inc.* 575 F.3d 935, 939-40 (9th Cir. 2009) (majority opinion) (finding the FDCPA incorporates both doctrines); *with Mangum*, 575 F.3d at 945-49 (J. O’ Scannlain, specially concurring) (disputing with the discovery rule applies to FDCPA claims). *But see Johnson v. Riddle*, 305 F.3d 1107, 1114 n.3 (10th Cir. 2002) (expressing doubt about whether the FDCPA incorporates a discovery rule). *See also Ruth v. Unifund CCR Partners*, 09-3426 (6th Cir. 5-11-2010) where the Sixth Circuit avoided answering the question by stating:

In resolving this appeal, we leave several questions for another day. We need not decide whether the FDCPA incorporates a discovery rule or permits equitable tolling. *Compare Mangum v. Action Collection Servs., Inc.*, 575 F.3d 935, 939-41 (9th Cir. 2009) (finding the FDCPA incorporates both doctrines), *with Johnson v. Riddle*, 305 F.3d 1107, 1114 n. 3 (10th Cir. 2002) (expressing doubt about whether the FDCPA incorporates a discovery rule). And we need not answer whether the FDCPA's one-year clock started when Unifund filed its suit or when it served Ruth. *Compare Johnson*, 305 F.3d at 1113 (claims accrue upon service of process), *with Naas v. Stolman*, 130 F.3d 892, 893 (9th Cir. 1997) (claims accrue upon "filing of the complaint"). No matter the answer to either question, Ruth's lawsuit remains time-barred.

B. FDCPA “BONA FIDE ERROR” DEFENSE.

Under the FDCPA, a debt collector cannot collect "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." 15 U.S.C. § 1692f(1), FDCPA Section 808. Unfair practices. The FDCPA is a strict liability statute which debt collectors liable for violations even when they are not knowing or intentional.⁹⁹ It provides a "narrow exception to strict liability," however, for bona fide errors.¹⁰⁰ The statutory “bona fide error” defense provides:

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.¹⁰¹

The bona fide error defense is an affirmative defense, for which the debt

⁹⁹ See *Clark v. Capital Credit & Collection Services, Inc.*, 460 F.3d 1162, 1176 (9th Cir. 2006).

¹⁰⁰ *Id.* at 1177.

¹⁰¹ 15 U.S.C. § 1692k(c), FDCPA Section 813.

collector has the burden of proof.¹⁰² The defense does not protect a debt collector whose reliance on a creditor's representation is unreasonable.¹⁰³ The defense requires the defendant to show that it maintains procedures to avoid errors.¹⁰⁴

A case from the Seventh Circuit illustrates the type of evidence of procedures that has been held to be sufficient. In *Jenkins v. Heintz*, that court held that evidence of a debt collector's "elaborate procedures" satisfied the debt collector's burden under the defense.¹⁰⁵ The procedures included a requirement that the creditor verify under oath that each charge was accurate, as well as "the publication of an in-house fair debt compliance manual, updated regularly and supplied to each firm employee; training seminars for firm employees collecting consumer debts; and an eight-step, highly detailed pre-litigation review process to ensure accuracy and to review the work of firm employees to avoid violating the

¹⁰² *Fox v. Citicorp Credit Servs., Inc.*, **15 F.3d 1507, 1514** (9th Cir. 1994).

¹⁰³ *Clark*, **460 F.3d at 1177**.

¹⁰⁴ *Id.* at 1176-77.

¹⁰⁵ See [124 F.3d 824, 834-35](#) (7th Cir. 1997).

Act."¹⁰⁶

The Tenth Circuit, in *Johnson v. Riddle*, specifically addressed the requirement that the procedures be adapted to avoid the error: "As the text of § 1692k(c) indicates, the procedures component of the bona fide error defense involves a two-step inquiry: first, whether the debt collector 'maintained' — *i.e.*, actually employed or implemented — procedures to avoid errors; and, second, whether the procedures were 'reasonably adapted' to avoid the specific error at issue."¹⁰⁷ The Eighth Circuit also recently discussed the issue, affirming summary judgment for a debt collection agency based on its showing that its procedures were reasonably adapted to prevent the type of error that occurred there:

That leaves the question whether Credico made a sufficient showing that it employed procedures "reasonably adapted to avoid" the error that occurred. This is a fact-intensive inquiry that few prior cases have addressed. . . . The affidavits and supporting documents establish that Credico's employees received specific instructions to segregate principal and interest in setting

¹⁰⁶ *Id.* at 834.

¹⁰⁷ [443 F.3d 723, 729 \(10th Cir. 2006\)](#).

up the accounts received from Pinnacle so as to avoid charging interest on interest. The procedures were not as elaborate as those in some cases that have upheld a bona fide error defense, but the error to be avoided in this case was not complex.¹⁰⁸

If the bona fide error defense is to have any meaning in the context of a strict liability statute, then a showing of "procedures reasonably adapted to avoid any such error" must require more than a mere assertion to that effect. The procedures themselves must be explained, along with the manner in which they were adapted to avoid the error.¹⁰⁹ Only then is the mistake entitled to be treated as one made in good faith.¹¹⁰

In *Seeger v. AFNI, Inc.*, 07-4083 (7th Cir. 2008), the court noted that there was a split among the circuits regarding whether the bona fide error defense applied

¹⁰⁸ *Wilhelm v. Credico, Inc.*, **519 F.3d 416, 421** (8th Cir. 2008).

¹⁰⁹ *See Wilhelm*, **519 F.3d at 421**.

¹¹⁰ *See also Clark v. Capital Credit & Collection Services, Inc.*, **460 F.3d 1162** (9th Cir. 2006) (discussing the "bona fide" error defense under 15 U.S.C. § 1692k and holding that FDCPA is a strict liability statute in that a plaintiff need not prove an error was intentional); *see also Reichert v. National Credit Systems*, 531 F.3d 1002, (9th Cir. 2008) (discussing the "bona fide error defense" under 15 U.S.C. § 1692k and holding the debt collector failed to establish this defense).

to mistakes of law.¹¹¹ The majority of the circuit courts, including the Second, Eighth, and Ninth, had limited the bona fide error defense to factual and clerical errors; while a “growing minority” applied the defense to mistakes of law.¹¹²

In *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, LPA*, 130 S.Ct. 1605, 1608 (2010), the Supreme Court resolved this issue holding that the bona fide error defense does not apply to negate a violation of the FDCPA resulting from a debt collectors mistaken interpretation of the legal requirements of the FDCPA.¹¹³

IX. FDCPA DAMAGES AND REMEDIES AVAILABLE TO THE “CONSUMER.”

A. “ACTUAL DAMAGES” UNDER THE FDCPA.

The FDCPA sets forth statutory damages and other civil remedies.¹¹⁴ These damages include actual damages and additional damages up to \$1,000.00.¹¹⁵

¹¹¹ Citing *Nielsen v. Dickerson*, 307 F.3d 623, 640-641 (7th Cir. 2002).

¹¹² *Id.* (quoting *Johnson v. Riddle*, 305 F.3d 1107 (10th Cir. 2002)).

¹¹³ Reversing the Sixth Circuit Court of Appeals (*Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 538 F.3d 469 (6th Cir. 2008)) and remanding the case.

¹¹⁴ See 15 U.S.C. § 1692k, FDCPA Section 813. Civil liability.

¹¹⁵ See 15 U.S.C. § 1692k, FDCPA Section 813. Civil liability.

Actual damages can include damages for emotional distress, out-of-pocket expenses, personal humiliation, embarrassment, or mental anguish.¹¹⁶ However, the debtor must prove she suffered some specific loss to recover actual damages.¹¹⁷ These damages, when applied to a class, can result in substantial penalties.

B. RECOVERY OF ATTORNEYS FEES UNDER THE FDCPA.

Additionally, the FDCPA contains a provision awarding the prevailing consumer his/her attorneys' fees and costs of responding to the lawsuit.¹¹⁸ Courts have held that in a successful action under the FDCPA, the award of attorneys' fees to the plaintiff is mandatory.¹¹⁹ Further, attorneys' fees can often be substantial in cases that become drawn out with claims to collect on the debt, on one hand, and FDCPA claims, on the other.

C. "ADDITIONAL DAMAGES" UNDER THE FDCPA.

In determining the amount of "additional" or statutory damages under

¹¹⁶ See *Harrington v. Nat'l Enter. Sys., Inc.*, No. 4:08cv422, 2010 WL 890176, at *4 (E.D. Tex. Mar. 9, 2010).

¹¹⁷ *Id.* at *3.

¹¹⁸ See 15 U.S.C. § 1692k, FDCPA Section 813. Civil liability.

¹¹⁹ *Camacho v. Bridgeport Financial*, 523 F.3d 973, 978 (9th Cir. 2008).

subsection (a)(2)(A) courts must consider: (1) "the frequency and persistence of noncompliance by the debt collector"; (2) "the nature of such noncompliance"; and (3) "the extent to which such noncompliance was intentional. . . ." § 1692k(b). The FDCPA sets a ceiling of \$1,000.00 on "additional" damages, § 1692k(a)(2), and "vests courts with discretion to adjust such damages where a violation is based on a good-faith error."¹²⁰ Notably, a recovery of actual damages is not necessary to the recovery of additional damages. The failure to adequately establish actual damages is not an automatic bar to recovery of "additional" damages.¹²¹ The vast majority of cases interpreting this provision of the FDCPA have reached the same conclusion.¹²²

D. FTC ENFORCEMENT UNDER THE FDCPA.

¹²⁰ *Jerman*, [130 S. Ct. at 1621](#) (citing [15 U.S.C. § 1692k\(b\)](#)).

¹²¹ *Prophet v. Myers*, [645 F. Supp. 2d 614, 617](#) (S.D. Tex. 2008) (stating that to assert a claim under the FDCPA, a plaintiff need not establish actual damages).

¹²² Compare, e.g., *Savino v. Computer Credit, Inc.*, [164 F.3d 81, 86](#) (2d Cir. 1998) ("All that is required for an award of statutory damages is proof that the statute was violated. . . ."); *In re Eastman*, 419 B.R. at 733 ("With regard to the statutory damages, a plaintiff need not establish actual damages to recover under the FDCPA." (citing *Neild v. Wolpoff & Abramson, L.L.P.*, [453 F. Supp. 2d 918, 924](#) (E.D. Va. 2006))) with, e.g., *Emanuel v. Am. Credit Exch.*, [870 F.2d 805, 809](#) (2d Cir. 1989) (holding that a single, trivial, and unintentional violation of the FDCPA is not enough for an award of statutory damages, "particularly since such damages are discretionary" and no actual damages were shown).

Finally, in addition to civil liability and penalties, the FDCPA also delegates to the FTC the power to enforce the FDCPA directly against an offending debt collector.¹²³

X. INTERACTION WITH STATE LAWS.

In addition to compliance with the FDCPA, it is important to understand applicable state law applies to debt collection activities. The FDCPA specifically states that it does not annul, alter, or affect, or exempt any person subject to the provisions of the FDCPA 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 the FDCPA, and then only to the extent of the inconsistency.¹²⁴ However, the FTC may provide an exemption from the requirements of the FDCPA for any class of debt collection practices if the FTC determines that the debt collection laws of that State are substantially similar to the

¹²³ See 15 U.S.C. § 1692l, FDCPA Section 814. Administrative enforcement.

¹²⁴ See 15 U.S.C. § 1692n, FDCPA Section 816. Relation to State laws.

FDCPA and that the State provides for adequate enforcement of such laws.¹²⁵

Some state collection laws also incorporate additional consumer protection statutes. For example, the Texas FAIR DEBT COLLECTION PRACTICES ACT, TEX. FINANCE CODE § 392.001, provides that a violation also gives rise to a cause of action under the [TEXAS DECEPTIVE TRADE PRACTICES ACT](#).

For a summary of the state debt collection laws, the following websites are instructive:

<http://www.privacyrights.org/fs/fs27plus.htm>

http://www.bcsalliance.com/y_debt_statelaws.html

<http://www.debtconsolidationcare.com/collection-agencies/reviewing-list.html>
(last visited September 27, 2008).

XI. RECENT FEDERAL FDCPA CASES.

1. United States Supreme Court.

- (a) *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, LPA*, 130 S.Ct. 1605, 1608 (2010) (holding that the

¹²⁵ See 15 U.S.C. § 1692o, FDCPA Section 817. Exemption for State regulation.

"bona fide error" defense in § 1692k(c) does not apply to a mistake of law - a violation resulting from a debt collector's mistaken interpretation of the legal requirements of the FDCPA).

2. First Circuit Cases.

- (a) *Chiang v. Verizon New England*, 595 F.3d 26 (1st Cir. 2010) (FDCPA does not apply to a “creditor”).
- (b) *French v. Corporate Receivables, Inc.*, 489 F.3d 402 (1st Cir. 2007) (holding that even limited success at trial was grounds for limiting attorneys’ fees for the successful plaintiffs under § 1692k(a)(3)).

3. Second Circuit Cases.

- (a) *Ellis v. Solomon and Soloman, P.C.*, 591 F.3d 130 (2nd Cir. 2010) (holding that an overshadowing violation occurred when the debt collector served a complaint on the debtor within the validation period).
- (b) *Jacobson v. Healthcare Fin. Servs, Inc.*, 516 F.3d 85 (2nd Cir. 2008) (in this FDCPA class action, the Court stated “[i]n this Circuit, the question of whether a communication complies with the FDCPA is determined from the perspective of the “least sophisticated consumer”) *citing Clomon v. Jackson*, **988 F.2d 1314, 1318** (2d Cir.1993). *Jacobson* also holds that “the recipient of a debt collection letter covered by the FDCPA validly invokes the right to have the debt verified whenever she *mails* a notice of dispute *within thirty days of receiving a communications from the debt collector.*” Emphasis in original
- (c) *Goldman v. Cohen*, 445 F.3d 152 (2d Cir. 2006) (holding that the initiation of a lawsuit qualifies as an “initial communication” under § 1682g(a) of the FDCPA).

- (d) *Goldstein v. Hutton, Ingram, Yuzek, Gainen, Carroll & Bertolotti*, 374 F.3d 56 (2d Cir. 2004) (analyzing whether a law firm is a debt collector under the FDCPA)
- (e) *Alibrandri v. Fin. Outsourcing Servs., Inc.*, 333 F.3d 82 (2d Cir. 2003) (holding that a debt was in “default” and a service provider was a “debt collector”, by virtue of the service providers collection letter declaring the debt in default and informing the debtor that the service provide was, in fact, a debt collector).
- (f) *Miller v. Wolpoff & Abramson, L.L.P.*, **321 F.3d 292, 307** (2d Cir. 2003); *see also* [15 U.S.C. § 1692f](#) (providing that “[a] debt collector may not use unfair or unconscionable means to collect or *attempt to collect* any debt”) (emphasis added).

4. Third Circuit Cases.

- (a) *Campuzano –Burgos v. Midland Credit Mangt., Inc.*, 550 F,3d 294 (3rd 2008) (reasoning that settlement opportunity notices sent on the letterhead of the creditor’s senior executive were not deceptive and did not violate the FDCPA).
- (b) *Rosenau v. Unifund*, 539 F.3d 218 (3rd Cir. 2008)
- (c) *Federal Trade Commission v. Check Investors, Inc.*, 502 F.3d 159 (3rd Cir. 2007) (affirming grant of injunctive relief and \$10.2 million in fines in this action that the Federal Trade Commission initiated against defendant).
- (d) *Conklin v. Purcell, Krug & Haller*, Cause No. 07-1646, 2008 WL 2333078 (3rd Cir. June 9, 2008) (holding plaintiff failed to state a claim under the FDCPA); *see also Conklin v. Purcell, Krug & Haller*, 2007 WL 404047 (M.D. Pa. Feb. 1, 2007)

- (e) *Oppong v. First Union Mortg. Corp.*, Cause No. 06-1388, 2007 WL 216061 (2d Cir. Jan. 26, 2007) (holding that Wells Fargo was a “debt collector” under the FDCPA).

5. Fourth Circuit Cases.

- (a) *Khaliz v. Draper & Goldberg*, Cause No. 07-1950, _____ WL _____ (4th Cir. July 16, 2008) (holding debtor’s suit alleging violations of FDCPA § 1692o was time-barred by the one-year statute of limitations under FDCPA § 1692k(d)).
- (b) *Sayyed v. Wolpoff & Abramson*, 485 F.3d 226 (4th Cir. 2007) (holding that (1) FDCPA applies to communications to a debtor’s attorney and (2) attorneys’ reliance on client representations would be a valid FDCPA defense).
- (c) *Mabe v. G.C. Servs., L.P.* 32 F.3d 86 (4th Cir. 1994) (holding that child support payments are not debts covered by the FDCPA).

6. Fifth Circuit Cases.

- (a) *Gonzalez v. Kay*, 577 F.3d 600 (5th Cir. 2009) (reversed and remanded for determination as to whether a collection letter from a law firm was misleading).
- (b) *Hester v. Graham, Bright, & Smith, P.C. and Spencer Shytles*, Cause No. 07-40176, 2008 WL 2958984 (5th Cir. Aug. 4, 2008) (awarding statutory damages and attorneys’ fees for violation of the venue requirements of FDCPA, 15 U.S.C. § 1692i(a)(2), and holding law firm was a “debt collector” for the purpose of the FDCPA due to volume of debt collection over the previous 3 years).
- (c) *Brown v. Morris*, Cause No. 04-60526, 2007 WL 1879392 (5th Cir. June 28, 2007) (stating that a debt was

not obtained by another person if the mortgagee acquired the mortgage through merger, rather than by assignment) (citing 15 U.S.C. § 1692a(6)(F)(iii) (exempting from the definition any person conducting collection activities "concern[ing] a debt which was not in default at the time it was obtained by such person").

- (d) *Wagstaff v. U.S. Dept. of Education*, 509 F.3d 661 (5th Cir. 2007) (holding that Congress did not waive sovereign immunity of the United States by enacting the FDCPA).
- (e) *Lozano v. Ocwen Federal Savings Bank*, 489 F.3d 636 (5th Cir. 2007) (holding it was error for the trial court to dismiss *sua sponte* plaintiffs' FDCPA claim, without notice).
- (f) *Kaltenbach v. Richards*, 464 F.3d 524 (5th Cir. 2006) holding that attorney fell within definition of "debt collector" under the FDCPA, even though he was merely enforcing security interests).
- (g) *Norris v. Fairbanks Capital Corp.*, Cause Nos. 04-30932 & 04-31023, 2006 WL 1169849 (holding that plaintiffs' claims failed because defendants were not "debt collectors" under the FDCPA).
- (h) *Gonzalez v. Kay*, 577 F.3d 600 (5th Cir. 2009) (use of law firm letterhead to send collection letter when no attorneys are yet assigned to the collection violates the FDCPA unless the letter includes a clear, prominent, and conspicuous disclaimer that no lawyer was involved in the debt collection at that time).

7. Sixth Circuit Cases.

- (a) *Hartman v. Great Seneca Financial Corp.*, 569 F.3d 606 (6th Cir. 2009) (discussing but not deciding whether the

FDCPA statute of limitation incorporates a discovery rule or permits equitable tolling).

- (b) *Kistner v. Law Offices Margelefsky*, 518 F.3d 433 (6th Cir. 2008) (holding that attorney was a “debt collector” under the FDCPA).
- (c) *Federal Home Loan Mortgage Corp. v. Lamar*, 503 F.3d 504 (6th Cir. 2007) (holding that a law firm did not violate the FDCPA when it included the notice required under the Act with the summons and complaint that it served on a defendant).

8. Seventh Circuit Cases.

- (a) *Ruth v. Triumph Partnerships*, 577 F.3d 790 (7th Cir. 7-27-2010). (holding that a letter offering possible workout to avoid foreclosure was covered by the FDCPA even though it arguably did not demand payment of a debt).
- (b) *Gburek v. Litton Loan Servicing, LP*, 08-3776 (7th Cir. 7-27-2010) (holding that a letter offering possible workout to avoid foreclosure was covered by the FDCPA even though it arguably did not demand payment of a debt).
- (c) *Muha v. Encore Receivable Mgmt, Inc.*, 2009 WL 593135 (7th Cir. March 10, 2009) (holding that customer survey (regarding whether statements in collection letter were false, misleading, and confusing under the FDCPA) was inadmissible as evidence because it was not sufficiently objective and the questions were leading and suggestive). This case also emphasized that the debt collector must not overshadow or obscure the statutorily required validation notice so as to make the “unsophisticated consumer uncertain as to her rights.”
- (d) *Hahn v. Triumph P'Ships LLC*, 2009 WL 529562 (7th Cir. Mar. 4, 2009) (holding that debt collector did not mischaracterize debt in collection letter by separately

listing as “interest due” interest that had accrued after it purchased debt from creditor, even though letter did not separate principal and interest accrued before debt was sold, where statement was accurate, and would not have misled unsophisticated consumer).

- (e) *Wahl v. Midland Credit Mgmt., Inc.*, 556 F.3d 643 (7th Cir. 2009) (holding that plaintiff could not recover under the FDCPA by showing that the term “principal balance” was false in a technical sense; instead, plaintiff must show that the language would mislead the unsophisticated consumer).
- (f) *Seeger v. AFNI, Inc.*, 548 F.3d 1107, 1109-1110 (7th Cir. 2008) (holding that charging unauthorized collection fees constituted a violation of the FDCPA)
- (g) *McKinney v. Cadleway Props., Inc.*, 548 F.3d 496, 503-05 (7th Cir. 2008) (holding that a form used by the debt collector to allow the debtor to either confirm or dispute the debt did not contradict any of the statutory notice requirements under the FDCPA, and did not constitute a FDCPA violation).
- (h) In *Evory v. RJM Funding*, 505 F.3d 769 (7th Cir. 2007), the court addressed the following nine questions under the FDCPA:
 - (i) Whether, if the consumer (as the statute refers to the putative debtor) is represented by a lawyer, a debt collector must give the same written notice to the lawyer that section 1692g would require were the consumer unrepresented and the notice sent directly to him.
 - (ii) Whether communications to lawyers are subject to sections 1692d through 1692f, which forbid harassing, deceptive, and unfair practices in debt collection. Compare *Sayed v. Wolpoff &*

Abramson, **485 F.3d 226** (4th Cir.2007), answering yes, with *Guerrero v. RJM Acquisitions LLC*, **499 F.3d 926** (9th Cir.2007) (per curiam), and *Kropelnicki v. Siegel*, **290 F.3d 118, 128** (2d Cir.2002), both answering no.

- (iii) Whether, if the answer to question 2 is yes, the standard applicable to determining whether a representation is false, deceptive, or misleading under section 1692e is the same whether the representation is made to the lawyer or to his client.
- (iv) Whether a settlement offer contained in a letter from the debt collector to a consumer is lawful per se under section 1692f. Compare *Lewis v. ACB Business Services, Inc.*, **135 F.3d 389, 398-400** (6th Cir.1998) (yes), with *Goswami v. American Collections Enterprise, Inc.*, **377 F.3d 488, 495** (5th Cir.2004) (no).
- (v) If it is not per se lawful, whether its lawfulness should be affected by whether it is addressed to a lawyer, rather than to the consumer directly.
- (vi) Whether there should be a safe harbor for a debt collector accused of violating section 1692e by making such an offer.
- (vii) Again, if such a letter is not per se lawful, what type of evidence a plaintiff must present to prove that a settlement offer violates section 1692e.
- (viii) Whether the determination that a representation is or is not false, deceptive, or misleading under section 1692 is always to be treated as a matter of law. Compare *McMillan v. Collection Professionals, Inc.*, **455 F.3d 754, 759** (7th Cir.2006); *Taylor v. Cavalry Investment, LLC*, **365**

F.3d 572, 575 (7th Cir.2004), and *Walker v. National Recovery, Inc.*, **200 F.3d 500, 502, 504** (7th Cir. 1999) (no), with *Wilson v. Quadramed Corp.*, **225 F.3d 350, 353** n. 2 (3d Cir.2000), and *Terran v. Kaplan*, **109 F.3d 1428, 1432-33** (9th Cir.1997) (yes).

- (ix) Whether, if that determination is not *always* a matter of law, nevertheless a charge under section 1692e can sometimes be dismissed on the pleadings on the ground that the challenged representation was, as a matter of law, not false or misleading.
- (i) *Williams v. OSI Educ. Servs.*, 505 F.3d 675 (7th Cir. 2007) (analyzing whether a letter complies with § 1692(g)(a)(1)).
- (j) *Barnes v. Advanced Call Center Technologies, LLC*, 493 F.3d 838 (7th Cir. 2007) (holding that the “amount of debt” required to be disclosed to the debtor under the FDCPA refers to the past due amount, not the overall balance with the creditor).
- (k) *Catencamp v. Cendent Timeshare Resort Group-Consumer Fin., Inc.*, 471 F.3d 780 (7th Cir. 2006) (holding that a creditor can be treated as a “debt collector” under the false name exception to the FDCPA).
- (l) *McMillan v. Collection Prof’ls, Inc.*, 455 F.3d 754 (7th Cir. 2006) (holding that allegations that debtor was a dishonest person stated a claim under the FDCPA § 1692e(7)).

9. Eighth Circuit Cases.

- (a) *Wilhelm v. Credico*, 519 F.3d 416 (8th Cir. 2008) (analyzing whether initial notice was sent to consumer regarding right to dispute debt).
- (b) *Volden v. Innovative Fin. Sys., Inc.*, 440 F.3d 947 (8th Cir. 2006) (holding that the debt collector “substantially complied” with the notice requirements set forth in § 1692g(a)(5)).

10. Ninth Circuit Cases.

- (a) *Rouse v. Law Offices of Rory Clark*, 603 F.3d 699 (9th Cir. 2010) (holding that under FDCPA, 15 U.S.C. § 1692k(a), a prevailing defendant cannot be awarded costs unless the plaintiff brought the action in bad faith and for purposes of harassment).
- (b) *Donohue v. Quick Collect*, 592 F.3d 1027 (9th Cir. 2010) (discussing FDCPA, 15 U.S.C. § 1692e and § 1692f).
- (c) *Fleming v. Pickard*, 581 F.3d 922 (9th Cir. 2010) (holding that a cause of action for tortious conversion constitutes a violation of the FDCPA).
- (d) *See Mangum v. Action Collection Serv., Inc.*, 575 F.3d 935, 939-40 (9th Cir. 2009) (holding that discovery rule applies to FDCPA claims).
- (e) *Rowe v. Educ. Credit Mgmt.*, 559 F.3d 1028 (9th Cir. 2009) (holding that debt collector of a student loan was covered by the FDCPA and did not fall within the exemptions governmental exceptions for "incidental to a bona fide fiduciary obligation" in [15 U.S.C. § 1692a\(6\)\(F\)\(i\)](#)).
- (f) *Doran v. Aus*, 2009 WL 123608 (9th Cir. 2009) (stating that homeowner’s association which was attempting to collect its own debt was not a debt collector under the FDCPA).

- (g) *Van v. Weber*, Case No. 07-56122 (9th Cir. 12-29-2008) (unpublished) (affirming summary judgment for defendant in an “overshadowing” case).
- (h) *Reichert v. National Credit Systems*, 531 F.3d 1002, (9th Cir. 2008) (discussing the “bona fide error defense” under 15 U.S.C. § 1692k and holding the debt collector failed to establish this defense).
- (i) *Clark v. Capital Credit & Collection Services, Inc.*, 460 F.3d 1162 (9th Cir. 2006) (holding that a debtor may waive the rights created under the FDCPA relating to the cease communications directive).
- (j) *Guerrero v. RJM Acquisitions, LLC*, 499 F.3d 926 (9th Cir. 2007) (holding that communications to debtor’s attorney are not actionable under the FDCPA).

11. Tenth Circuit.

- (a) *Solomon v. HSBC Mortgage Corp.*, 09-6293 (10th Cir. 8-6-2010) (complaint was time-barred under the one-year statute of limitation under FDCPA, 15 U.S.C. § 1692k(d)).
- (b) *Johnson v. Riddle*, 443 F.3d 723 (10th Cir. 2006) (discussing the “bona fide error” defense under the FDCPA).
- (c) *Robey v. Shapiro, Marianso & Cejda, L.L.C.*, 434 F.3d 1208 (10th Cir. 2006) (stating that the demand for a reasonable attorneys’ fee in a foreclosure action did not violate the FDCPA)

12. Eleventh Circuit.

- (a) *Leblanc v. Unifund CCR Partners*, 601 F.3d 1185 (11th Cir. 2010) (holding that a debt collector’s failure to register with the State of Florida in violations of the

Florida Consumer Collection Practices Act could give rise to a violation of the FDCPA).

- (b) *Al-Sharif v. U.S.*, 2008 WL 4569883 (11th Cir. October 14, 2008) (holding that IRS agents are not debt collectors under the FDCPA).
- (c) *Thornton v. Wolpoff*, 07-12016, __ WL __ (11th Cir. January 23, 2008) (defining a “successful action” under 15 U.S.C. § 1692k(a)(3)).
- (d) *Rosario v. American Corrective Counseling Services, Inc.*, 506 F.3d 1039 (11th Cir. 2007).
- (e) *Starosta v. MBNA America Bank, N.A.*, 06-16281, 2007 WL 2007944 (11th Cir. July 12, 2007) (holding that law firm which used the abbreviation “P.A.” in the name, instead of “P.C.”, was not a false, deceptive, or misleading representation under 15 U.S.C. § 1692e).
- (f) *Edwards v. Niagara Credit Solutions, Inc.*, 584 F.3d 1350 (11th Cir. 2009) (debt collector was not entitled to bona fide error defense when it intentionally violated one provision of the act in order to avoid risk of violating another provision).

13. D.C. Circuit.

- (a) *Muir v. Navy Federal Credit Union*, 529 F.3d 1100 (D.C. Cir. 2008) (holding that joint account holder had standing to bring FDCPA even though he was not the debtor).

XII. APPENDIX.

A. Text of the FDCPA.

<http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre27.pdf>

- B. Form FDCPA Demand Letter.

- C. FTC Staff Opinions Listed By Section.
<http://www.ftc.gov/os/statutes/fdcpa/letters.shtm>

- D. Table of Applicable Statutes of Limitations Listed by State.

- E. Table of State Law Debt Collection Statutes.

Article Updated: 10/12/2010

APPENDIX A: TEXT OF THE FDCP

<http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre27.pdf>

TITLE 15--COMMERCE AND TRADE
CHAPTER 41--CONSUMER CREDIT PROTECTION

SUBCHAPTER V--DEBT COLLECTION PRACTICES

Sec.

- [801. Short title.](#)
- [802. Findings and purpose.](#)
- [803. Definitions.](#)
- [804. Acquisition of location information.](#)
- [805. Communication in connection with debt collection.](#)
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- [812. Furnishing certain deceptive forms.](#)
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- [815. Reports to Congress by the Commission.](#)
- [816. Relation to State laws.](#)
- [817. Exemption for State regulation.](#)
- [818. Effective date.](#)

§ 801. Short title

This title may be cited as the "Fair Debt Collection Practices Act".

[Codified to 15 U.S.C. 1601 note]

[Source: Section 801 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90--321), as added by the Act of September 20, 1977 (Pub. L. No. 95--109; 91 Stat. 874), effective March 20, 1978]

§ 802. Findings and purpose

- (a) 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) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.
- (c) Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.
- (d) 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) It is the purpose of this title 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.

[Codified to 15 U.S.C. 1692]

[Source: Section 802 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90-321), as added by the Act of September 20, 1977 (Pub. L. No. 95-109; 91 Stat. 874), effective March 20, 1978]

§ 803. Definitions

As used in this title--

- (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 808(6), 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.

[Codified to 15 U.S.C. 1692a]

[Source: Section 803 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90-321), as added by the Act of September 20, 1977 (Pub. L. No. 95-109; 91 Stat. 875), effective March 20, 1978; as amended by the Act of July 9, 1986 (Pub. L. No. 99-361; 100 Stat. 768), effective July 9, 1986]

§ 804. 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.

[Codified to 15 U.S.C. 1692b]

[Source: Section 804 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90-321), as added by the Act of September 20, 1977 (Pub. L. No. 95-109; 91 Stat. 876), effective March 20, 1978]

§ 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 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 antimeridian 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 804, 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) 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.

[Codified to 15 U.S.C. 1692c]

[Source: Section 805 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90-321), as added by the Act of September 20, 1977 (Pub. L. No. 95-109; 91 Stat. 876), effective March 20, 1978]

§ 806. Harrassment 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 603(f) or 604(3) of this Act.
- (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 804, the placement of telephone calls without meaningful disclosure of the caller's identity.

[Codified to 15 U.S.C. 1692d]

[Source: Section 806 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90-321), as added by the Act of September 20, 1977 (Pub. L. No. 95-109; 91 Stat. 877), effective March 20, 1978]

§ 807. 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 title.
- (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 603(f) of this Act.

[Codified to 15 U.S.C. 1692e]

[Source: Section 807 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90-321), as added by the Act of September 20, 1977 (Pub. L. No. 95-109; 91 Stat. 877), effective March 20, 1978; as amended by section 2305 of the Act of September 30, 1996, (Pub. L. No. 104-208; 110 Stat. 3009-425), effective December 29, 1996]

§ 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 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.

[Codified to 15 U.S.C. 1692f]

[Source: Section 808 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90-321), as added by the Act of September 20, 1977 (Pub. L. No. 95-109; 91 Stat. 879), effective March 20, 1978]

§ 809. Validation of debts

(a) 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) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) 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. Collection activities and communications that do not otherwise violate this title may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any

portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(c) 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.

(d) LEGAL PLEADINGS.--A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e) NOTICE PROVISIONS--The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by the Internal Revenue Code of 1986, title V of Gramm-Leach-Bliley Act, or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

[Codified to 15 U.S.C. 1692g]

[Source: Section 809 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90-321), as added by the Act of September 20, 1977 (Pub. L. No. 95-109; 91 Stat. 879), effective with respect to debts for which the initial attempt to collect occurs after March 20, 1978; section 802 of title VII of the Act of October 13, 2006 (Pub. L. No. 109--351; 120 Stat. 2006), effective October 13, 2006]

§ 810. 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.

[Codified to 15 U.S.C. 1692h]

[Source: Section 810 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90-321), as added by the Act of September 20, 1977 (Pub. L. No. 95-109; 91 Stat. 880), effective March 20, 1978]

§ 811. Legal actions by debt collectors

(a) 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) Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.

[Codified to 15 U.S.C. 1692i]

[Source: Section 811 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90-321), as added by the Act of September 20, 1977 (Pub. L. No. 95-109; 91 Stat. 880), effective March 20, 1978]

§ 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 813 for failure to comply with a provision of this title.

[Codified to 15 U.S.C. 1692j]

[Source: Section 812 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90-321), as added by the Act of September 20, 1977 (Pub. L. No. 95-109; 91 Stat. 880), effective March 20, 1978]

§ 813. Civil liability

(a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title 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) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors--

(1) in any individual action under subsection (a)(2)(A), 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), 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) A debt collector may not be held liable in any action brought under this title 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) An action to enforce any liability created by this title 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) 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.

[Codified to 15 U.S.C. 1692k]

[Source: Section 813 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90--321), as added by the Act of September 20, 1977 (Pub. L. No. 95--109; 91 Stat. 881), effective March 20, 1978]

§ 814. Administrative enforcement

(a) Compliance with this title shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another agency under subsection (b). For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this title 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 title, 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 title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Compliance with any requirements imposed under this title 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 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) of the Federal Reserve Act, by the Board; 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 Administrator of the National Credit Union Administration with respect to any Federal credit union;

(4) the Acts to regulate commerce, by the Secretary of the Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

(5) the Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or any foreign air carrier subject to that Act; and

(6) the Packers and Stockyards Act, 1921 (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 title 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) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title 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), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title any other authority conferred on it by law, except as provided in subsection (d).

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

[Codified to 15 U.S.C. 1692I]

[Source: Section 814 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90--321), as added by the Act of September 20, 1977 (Pub. L. No. 95--109; 91 Stat. 881), effective March 20, 1978; as amended by

section 744(n) of title VII of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 440), effective August 9, 1989; section 212(e) of title II of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2301), effective December 19, 1991; section 1604(a)(7) of title XVI of the Act of October 28, 1992 (Pub. L. No. 102--550; 106 Stat. 4082), effective December 19, 1991; section 316 of title III of the Act of December 29, 1995 (Pub. L. No. 104--88; 109 Stat. 949), effective December 29, 1995]

§ 815. Reports to Congress by the Commission

(a) Not later than one year after the effective date of this title and at one-year intervals thereafter, the Commission shall make reports to the Congress concerning the administration of its functions under this title, 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 title is being achieved and a summary of the enforcement actions taken by the Commission under section 814 of this title.

(b) In the exercise of its functions under this title, the Commission may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 814 of this title.

[Codified to 15 U.S.C. 1692m]

[Source: Section 815 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90--321), as added by the Act of September 20, 1977 (Pub. L. No. 95--109; 91 Stat. 882), effective March 20, 1978]

§ 816. Relation to State laws

This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title 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 title, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title.

[Codified to 15 U.S.C. 1692n]

[Source: Section 816 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90--321), as added by the Act of September 20, 1977 (Pub. L. No. 95--109; 91 Stat. 883), effective March 20, 1978] .

§ 817. Exemption for State regulation.

The Commission shall by regulation exempt from the requirements of this title 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 title, and that there is adequate provision for enforcement.

[Codified to 15 U.S.C. 1692o]

[Source: Section 817 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90--321), as added by the Act of September 20, 1977 (Pub. L. No. 95--109; 91 Stat. 883), effective March 20, 1978]

§ 818. Exception for certain bad check enforcement programs operated by private entities

(a) IN GENERAL.—

(1) TREATMENT OF CERTAIN PRIVATE ENTITIES.--Subject to paragraph (2), a private entity shall be excluded from the definition of a debt collector, pursuant to the exception provided in section 803(6), with respect to the operation by the entity of a program described in paragraph (2)(A) under a contract described in paragraph (2)(B).

(2) CONDITIONS OF APPLICABILITY.--Paragraph (1) shall apply if—

(A) a State or district attorney establishes, within the jurisdiction of such State or district attorney and with respect to alleged bad check violations that do not involve a check described in subsection (b), a pretrial diversion program for alleged bad check offenders who agree to participate voluntarily in such program to avoid criminal prosecution;

(B) a private entity, that is subject to an administrative support services contract with a State or district attorney and operates under the direction, supervision, and control of such State or district attorney, operates the pretrial diversion program described in subparagraph (A); and

(C) in the course of performing duties delegated to it by a State or district attorney under the contract, the private entity referred to in subparagraph (B)—

(i) complies with the penal laws of the State;

(ii) conforms with the terms of the contract and directives of the State or district attorney;

(iii) does not exercise independent prosecutorial discretion;

(iv) contacts any alleged offender referred to in subparagraph (A) for purposes of participating in a program referred to in such paragraph—

(I) only as a result of any determination by the State or district attorney that probable cause of a bad check violation under State penal law exists, and that contact with the alleged offender for purposes of participation in the program is appropriate; and

(II) the alleged offender has failed to pay the bad check after demand for payment, pursuant to State law, is made for payment of the check amount;

(v) includes as part of an initial written communication with an alleged offender a clear and conspicuous statement that—

(I) the alleged offender may dispute the validity of any alleged bad check violation;

(II) where the alleged offender knows, or has reasonable cause to believe, that the alleged bad check violation is the result of theft or forgery of the check, identity theft, or other fraud that is not the result of the conduct of the alleged offender, the alleged offender may file a crime report with the appropriate law enforcement agency; and

(III) if the alleged offender notifies the private entity or the district attorney in writing, not later than 30 days after being contacted for the first time pursuant to clause (iv), that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the district attorney or an employee of the

district attorney authorized to make such a determination makes a determination that there is probable cause to believe that a crime has been committed; and

(vi) charges only fees in connection with services under the contract that have been authorized by the contract with the State or district attorney.

(b) CERTAIN CHECKS EXCLUDED.--A check is described in this subsection if the check involves, or is subsequently found to involve—

(1) a postdated check presented in connection with a payday loan, or other similar transaction, where the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn, or delivered;

(2) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;

(3) a check dishonored because of an adjustment to the issuer's account by the financial institution holding such account without providing notice to the person at the time the check was made, drawn, or delivered;

(4) a check for partial payment of a debt where the payee had previously accepted partial payment for such debt;

(5) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual obligation at the time the check was made, drawn, or delivered; or

(6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney at the time the check was made, drawn, or delivered.

(c) DEFINITIONS.--For purposes of this section, the following definitions shall apply:

(1) STATE OR DISTRICT ATTORNEY.--The term "State or district attorney" means the chief elected or appointed prosecuting attorney in a district, county (as defined in section 2 of title 1, United States Code), municipality, or comparable jurisdiction, including State attorneys general who act as chief elected or appointed prosecuting attorneys in a district, county (as so defined), municipality or comparable jurisdiction, who may be referred to by a variety of titles such as district attorneys, prosecuting attorneys, commonwealth's attorneys, solicitors, county attorneys, and state's attorneys, and who are responsible for the prosecution of State crimes and violations of jurisdiction-specific local ordinances.

(2) CHECK.--The term "check" has the same meaning as in section 3(6) of the Check Clearing for the 21st Century Act.

(3) BAD CHECK VIOLATION.--The term "bad check violation" means a violation of the applicable State criminal law relating to the writing of dishonored checks.

[Codified to 15 U.S.C. § 1692p]

[Source: Section 818 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90--321), as added by section 801(a)(2) of title VII of the Act of October 13, 2006 (Pub. L. No. 109--351; 120 Stat. 2004), effective October 13, 2006]

§ 819. Effective date

This title takes effect upon the expiration of six months after the date of its enactment, but section 809 shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date.

[Codified to 15 U.S.C. 1692 note]

[Source: Section 818 of title VIII of the Act of May 29, 1968 (Pub. L. No. 90-321), as added by the Act of September 20, 1977 (Pub. L. No. 95-109; 91 Stat. 883), effective March 20, 1978; section 818 redesignated as 819 by section 801(a)(1) of title IV of the Act of October 13, 2006 (Pub. L. No. 109--351; 120 Stat. 2004), effective October 13, 2006]

APPENDIX B: FORM FDCPA DEMAND LETTER

[Date]

Via Certified Mail, Return Receipt Requested and Via Regular Mail

[Name of Debtor]

[Address of Debtor]

Re: Account No(s): _____ owed to [Creditor].
Total Past Due Amount Owing: \$ _____

Dear Sir or Madam:

The undersigned law firm represents [Creditor] with respect to collecting the above-referenced debt which is past due and owing to [Creditor]. As you know, [Creditor] provided goods and/or services to you based upon an agreement and/or founded on business dealings between the parties. Payments for such services are due as incurred in the ordinary course of business. However, the balance owed in the amount of at least \$ _____ is past due.

In the event that full payment is not received, we have been authorized to proceed with collection efforts including the filing of a lawsuit against you if necessary. In the event that a lawsuit is required in order to collect the amount owed; [Creditor] intends to seek recovery of all amounts owed, plus pre-judgment and post-judgment interest as allowed by law, plus attorneys' fees and collection costs, plus any other damages to which [Creditor] may be entitled at law or in equity. If you wish to avoid the expense, risk, and embarrassment of a lawsuit arising from these claims, we urge you to act promptly.

UNLESS, WITHIN 30 DAYS AFTER RECEIPT OF THIS LETTER, YOU DISPUTE THE VALIDITY OF THIS DEBT OR ANY PORTION THEREOF, WE WILL ASSUME THE DEBT TO BE VALID AND WILL PROCEED IN ACCORDANCE WITH THAT ASSUMPTION. IF, WITHIN 30 DAYS OF YOUR RECEIPT OF THIS LETTER, YOU NOTIFY US IN WRITING THAT THE DEBT OR ANY PORTION THEREOF IS DISPUTED, WE WILL OBTAIN VERIFICATION OF THE DEBT AND WILL MAIL YOU VERIFICATION OF THE DEBT AT THE ADDRESS ABOVE.

PLEASE BE ADVISED THAT THIS COMMUNICATION IS MADE FOR THE PURPOSE OF COLLECTING A DEBT AND ANY

INFORMATION OBTAINED MAY BE USED FOR THE PURPOSE OF COLLECTING THE DEBT.

If you have any questions regarding this account you may contact (____) ____-____.

Sincerely,

[_____]

**APPENDIX C: FTC STAFF OPINION LETTERS LISTED BY FD CPA
SECTION**

FTC STAFF OPINION LETTERS LISTED BY FDCPA SECTION

FDCPA SECTION	FTC OPINION LETTER	LINK TO TEXT OF FTC OPINION LETTER
§ 1692a(2) Definition of “communication”	Mezines 03-31-2000	http://www.ftc.gov/os/2000/04/fdcpaadvisoryopinion.htm
	LeVine 03-20-1998	http://www.ftc.gov/os/statutes/fdcpa/letters/levine.htm
	Dempsey 09-13-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/dempsev.htm
	Bergstrom 11-17-95	http://www.ftc.gov/os/statutes/fdcpa/letters/bergstrm.htm
	Gibson 07-13-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/gibson.htm
	LaSuola 05-17-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/lascuola.htm
	Jones 12-30-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/jones.htm
	Novak 10-08-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/novak.htm
	LoPresit 05-04-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/lopresti.htm
	§ 1692a(3) Definition of “consumer”	Goff 12-13-1993
§ 1692a(4) Definition of “creditor”	Green 09-17-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/green.htm
	Fedele 08-30-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/fedele.htm
	Goodacre 11-06-1995	http://www.ftc.gov/os/statutes/fdcpa/letters/goodacre.htm
	Arbuckle 12-22-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/arbuckle.htm
	Pratt 09-16-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/pratt.htm
	Goeringer 09-15-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/goeringe.htm
	Zepkin 09-13-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/zepkin.htm
	Torkildson 11-09-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/torkilds.htm
	Palmer 08-27-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/palmer.htm

	Paskowitz 07-18-1990	http://www.ftc.gov/os/statutes/fdcpa/letters/paskowitz.htm
§ 1692a(5) Definition of “debt”	Chesworth 09-16-1997	http://www.ftc.gov/os/statutes/fdcpa/letters/cheswort.htm
	Cutter 12-13-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/cutter.htm
	Green 09-17-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/green.htm
	Dempsey 09-13-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/dempsev.htm
	Samuels 06-26-1995	http://www.ftc.gov/os/statutes/fdcpa/letters/samuels.htm
	Evans 08-12-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/evans.htm
	Palmer 08-27-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/palmer.htm
	Dunn 08-17-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/dunn.htm
	Philbin 05-24-1991	http://www.ftc.gov/os/statutes/fdcpa/letters/philbin.htm
	Nants 03-01-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/nants2.htm
	Miller 12-30-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/miller88.htm
	Hall 04-11-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/hall.htm
§ 1692a(6) Definition of “debt collector”	De Mayo 05-23-2002 revised	http://www.ftc.gov/os/statutes/fdcpa/letters/demayo.htm
	Shapiro 12-20-1999	http://www.ftc.gov/os/statutes/fdcpa/letters/shapiro.htm
	LeVine 03-20-1998	http://www.ftc.gov/os/statutes/fdcpa/letters/levine.htm
	Gamache 07-15-1997	http://www.ftc.gov/os/statutes/fdcpa/letters/gamache.htm
	Stanley 09-13-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/stanley.htm
	Fortney 09-13-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/fortney.htm
	Bergstrom 11-17-1995	http://www.ftc.gov/os/statutes/fdcpa/letters/bergstrm.htm
	Goodacre 11-06-1995	http://www.ftc.gov/os/statutes/fdcpa/letters/goodacre.htm
	Arbuckle 12-22-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/arbuckle.htm

	Halverson 11-15-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/halversn.htm
	Zepkin 09-16-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/zepkin.htm
	Goeringer 09-15-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/goeringe.htm
	Cardonick 05-17-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/cardonic.htm
	Isgrigg 12-22-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/isgrigg2.htm
	Zager 11-10-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/zager.htm
	Isgrigg 11-10-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/isgrigg1.htm
	Torkildson 11-09-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/torkilds.htm
	Novak 10-08-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/novak.htm
	Masters 09-10-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/masters.htm
	LoPresti 05-04-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/lopresti.htm
	Bennett 07-08-1991	http://www.ftc.gov/os/statutes/fdcpa/letters/bennett.htm
	Cline 02-07-1991	http://www.ftc.gov/os/statutes/fdcpa/letters/cline.htm
	Albon 12-05-1990	http://www.ftc.gov/os/statutes/fdcpa/letters/albon.htm
	Gibson 02-21-1990	http://www.ftc.gov/os/statutes/fdcpa/letters/gibson90.htm
	Heninburg 07-13-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/heninburg.htm
	Cranmer 04-25-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/cranmer.htm
	Klayman 11-22-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/klayman.htm
	Trubeck 09-12-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/trubek.htm
	Kaufman 06-13-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/kaufman.htm
	Nants 04-12-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/nants.htm
§ 1692a(6)(A) creditor exemption	De Mayo 05-23-2002 revised	http://www.ftc.gov/os/statutes/fdcpa/letters/demayo.htm
	Zepkin 09-16-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/zepkin.htm

	Cardonick 05-17-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/cardonic.htm
	Klayman 11-22-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/klayman.htm
§ 1692a(6)(B) affiliates exemption	Feldman 03-23-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/feldman.htm
	Halverson 11-15-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/halversn.htm
	Kaufman 06-13-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/kaufman.htm
§ 1692a(6)(C) government agency exemption	Mezines 05-17-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/mezines.htm
	Willison 07-15-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/willison.htm
§ 1692a(6)(F)(ii) originated debt exemption	Farmer 08-30-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/farmer.htm
	Goeringer 09-15-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/goeringer.htm
	Albon 12-05-1990	http://www.ftc.gov/os/statutes/fdcpa/letters/albon.htm
	Cranmer 04-25-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/cranmer.htm
	Kaufman 06-13-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/kaufman.htm
§ 1692a(6)(F)(iii) not in default exemption	De Mayo 05-23-2002 revised	http://www.ftc.gov/os/statutes/fdcpa/letters/demayo.htm
	Shapiro 12-20-1999	http://www.ftc.gov/os/statutes/fdcpa/letters/shapiro.htm
	Shapiro 10-01-1997	http://www.ftc.gov/os/statutes/fdcpa/letters/lefevreshapiroletter.pdf
	Fortney 09-13-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/fortnev.htm
	Goodacre 11-06-1995	http://www.ftc.gov/os/statutes/fdcpa/letters/goodacre95.htm
	Goeringer 09-15-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/goeringer.htm
	Cardonick 05-17-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/cardonic.htm

	Isgrigg 11-10-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/isgrigg1.htm
	Torkildson 11-09-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/torkilds.htm
	Sheehan 08-31-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/sheehan.htm
	Albon 12-05-1990	http://www.ftc.gov/os/statutes/fdcpa/letters/albon.htm
	Gibson 02-21-1990	http://www.ftc.gov/os/statutes/fdcpa/letters/gibson90.htm
	Heninburg 07-13-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/heninburg.htm
	Beekman 06-28-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/beekman88.htm
	Cranmer 04-25-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/cranmer.htm
§ 1692a Definition of “location information”	Atteberry 02-22-1990	http://www.ftc.gov/os/statutes/fdcpa/letters/atteberry.htm
§ 1692b Acquiring location information	Charest 09-13-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/charest.htm
	Atteberry 02-22-1990	http://www.ftc.gov/os/statutes/fdcpa/letters/atteberry.htm
	Kwait 01-24-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/kwait.htm
§ 1692c(a)(2) Representation of consumer by an attorney	Edwards 02-07-1991	http://www.ftc.gov/os/statutes/fdcpa/letters/edwards1.htm
	Hollcraft 05-10-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/hollcraft.htm
§ 1692c(b) communications with third parties	LaSuola 05-17-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/lascuola.htm
	Halverson 11-15-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/halversn.htm
	Jones 12-30-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/jones.htm
	Borowski 11-06-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/borowski.htm
	Zbrzeznj 09-21-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/zbrzeznj.htm

	Fisher 09-19-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/fisher.htm
	Atteberry 02-22-1990	http://www.ftc.gov/os/statutes/fdcpa/letters/atteberry.htm
	Kwait 01-24-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/kwait.htm
§ 1692c(d) Definition of “consumer” under this section	Atteberry 02-22-1990	http://www.ftc.gov/os/statutes/fdcpa/letters/atteberry.htm
§ 1692d(3) Publishing lists of consumers	Mezines 05-17-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/mezines.htm
	Novak 10-08-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/novak.htm
	Whitehead 07-19-1991	http://www.ftc.gov/os/statutes/fdcpa/letters/whitehead.htm
	Ronick 06-05-1991	http://www.ftc.gov/os/statutes/fdcpa/letters/ronick.htm
§ 1692e(1) Misrepresenting affiliation with government	Crouch 09-10-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/crouch.htm
	Burwell 08-11-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/burwell.htm
	Beekman 06-28-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/beekman88.htm
§ 1692e Misrepresenting debt	Knepper 03-31-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/knepper.htm
§ 1692e(3) impersonating an attorney	Challad 05-16-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/challed.htm
	Douglass 11-26-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/douglass.htm
	Beekman 06-28-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/beekman88.htm
	Fagin 04-22-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/fagin.htm
§ 1692e(5) false threats of legal action	Douglass 11-26-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/douglass.htm

	Klayman 11-22-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/klayman.htm
	Fagin 04-22-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/fagin.htm
§ 1692e(8) communicating false credit information	Cass 12-23-1997	http://www.ftc.gov/os/statutes/fdcpa/letters/cass.htm
§ 1692e(9) misrepresenting affiliation information	Chesworth 09-16-1997	http://www.ftc.gov/os/statutes/fdcpa/letters/cheswort.htm
	Douglass 11-26-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/douglass.htm
§ 1692e(10) deception	Mezines 05-17-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/mezines.htm
	Challad 05-16-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/challed.htm
	Douglass 11-26-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/douglass.htm
	Spinella 02-21-1990	http://www.ftc.gov/os/statutes/fdcpa/letters/spinella.htm
	Beekman 06-28-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/beekman88.htm
	Fagin 04-22-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/fagin.htm
§ 1692e(11) disclosing collection purpose	Levine 03-20-1998	http://www.ftc.gov/os/statutes/fdcpa/letters/levine.htm
	Gamache 07-15-1997	http://www.ftc.gov/os/statutes/fdcpa/letters/gamache.htm
	Kramer 11-13-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/kramer-2.htm
	Dempsey 09-13-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/dempsey.htm
	Stanley 09-13-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/stanley.htm
	Stewart 01-05-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/stewart.htm
	Isgrigg 11-10-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/isgrigg1.htm
	Zager 11-10-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/zager.htm
	LoPresit 05-04-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/lopresti.htm

	Henninburg 07-13-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/heninburg.htm
§ 1692e(14) true business name	de Mayo 05-23-2002 revised	http://www.ftc.gov/os/statutes/fdcpa/letters/demayo.htm
	Bergstrom 11-17-1995	http://www.ftc.gov/os/statutes/fdcpa/letters/bergstrm.htm
	Mezines 05-17-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/mezines.htm
	Feldman 03-23-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/feldman.htm
	Zager 11-10-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/zager.htm
§ 1692e(16) impersonating a credit bureau	Dankowski 03-06-2000	http://www.ftc.gov/os/statutes/fdcpa/letters/dankowski.htm
	Isgrigg 11-10-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/isgrigg1.htm
	Spinella 02-21-1990	http://www.ftc.gov/os/statutes/fdcpa/letters/spinella.htm
§ 1692f(1) illegal charges	Gibson 07-13-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/gibson.htm
	Wilson 05-13-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/wilson.htm
	Krisor 08-30-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/krisor.htm
	Matthews 05-17-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/matthews.htm
	Krisor 08-30-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/krisor89.htm
	Miller 12-30-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/miller88.htm
	Fagin 04-22-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/fagin.htm
§ 1692f(6) nonjudicial action	Whitehead 07-19-1991	http://www.ftc.gov/os/statutes/fdcpa/letters/whitehead.htm
§ 1692g debt validation	Mezines 03-31-2000	http://www.ftc.gov/os/2000/04/fdcpaadvisorvopinion.htm
	LeVine 03-20-1998	http://www.ftc.gov/os/statutes/fdcpa/letters/levine.htm
	Cass 12-23-1997	http://www.ftc.gov/os/statutes/fdcpa/letters/cass.htm

	Berger 05-29-1997	http://www.ftc.gov/os/statutes/fdcpa/letters/berger.htm
	Dempsey 09-13-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/dempsey.htm
	Edwards 09-13-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/edwards2.htm
	Pavelka 05-18-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/pavelka.htm
	Castle 06-13-1995	http://www.ftc.gov/os/statutes/fdcpa/letters/castle.htm
	Isgrigg 12-22-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/isgrigg2.htm
	Isgrigg 11-10-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/isgrigg1.htm
	Zager 11-10-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/zager.htm
	Novak 10-08-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/novak.htm
	LoPresti 05-04-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/lopresti.htm
	Henninburg 07-13-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/heninburg.htm
	Cranmer 04-25-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/cranmer.htm
	Hall 04-11-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/hall.htm
§ 1692g(a) notice of validation rights	Mezines 03-31-2000	http://www.ftc.gov/os/2000/04/fdcpaadvisoryopinion.htm
	Berger 05-29-1997	http://www.ftc.gov/os/statutes/fdcpa/letters/berger.htm
	Kroft 03-08-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/kroft.htm
	Bergstrom 11-17-1995	http://www.ftc.gov/os/statutes/fdcpa/letters/bergstrm.htm
	Miller 05-13-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/miller.htm
	Halverson 11-15-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/halversn.htm
	Stewart 01-05-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/stewart.htm
	Zager 11-10-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/zager.htm
	Novak 10-08-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/novak.htm
	Cranmer 04-25-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/cranmer.htm

	Nants 04-12-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/nants.htm
§ 1692g(b) validation of the debt	Mezines 03-31-2000	http://www.ftc.gov/os/2000/04/fdcpaadvisoryopinion.htm
	Cass 12-23-1997	http://www.ftc.gov/os/statutes/fdcpa/letters/cass.htm
	Beato 10-05-2007	http://www.ftc.gov/os/closings/staff/P064803fairdebt.pdf
	Berger 05-29-1997	http://www.ftc.gov/os/statutes/fdcpa/letters/berger.htm
	Bergstrom 11-17-1995	http://www.ftc.gov/os/statutes/fdcpa/letters/bergstrm.htm
	Castle 06-13-1995	http://www.ftc.gov/os/statutes/fdcpa/letters/castle.htm
	Miller 05-13-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/miller.htm
	Wollman 03-10-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/wollman.htm
	Krisor 03-03-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/krisor2.htm
§ 1692i inconvenient forms	Krisor 02-10-1994	http://www.ftc.gov/os/statutes/fdcpa/letters/krisor.htm
	Halverson 11-15-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/halversn.htm
	Zepkin 09-16-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/zepkin.htm
	Masters 09-10-1992	http://www.ftc.gov/os/statutes/fdcpa/letters/masters.htm
	Keever 05-19-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/keever.htm
	Nants 03-01-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/nants2.htm
	Kwait 01-24-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/kwait.htm
§ 1692j furnishing deceptive forms	Beekman 12-13-1996	http://www.ftc.gov/os/statutes/fdcpa/letters/beekman.htm
	Halverson 11-15-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/halversn.htm
	Lipsett 05-22-1990	http://www.ftc.gov/os/statutes/fdcpa/letters/lipsett.htm
	Spinella 02-21-1990	http://www.ftc.gov/os/statutes/fdcpa/letters/spinella.htm
§ 1692k civil liability	Knepper 03-31-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/knepper.htm
	Fagin 04-22-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/fagin.htm

§ 1692(2)(b) Determining amount of liability	Halverson 11-15-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/halversn.htm
§ 1692k(d) jurisdiction and statute of limitations	Halverson 11-15-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/halversn.htm
§ 1692l administrative enforcement	Knepper 03-31-1989	http://www.ftc.gov/os/statutes/fdcpa/letters/knepper.htm
§ 1692l(b) enforcement by other government agencies	Nants 04-12-1988	http://www.ftc.gov/os/statutes/fdcpa/letters/nants.htm
§ 1692n relation to state laws	Mezines 03-31-2000	http://www.ftc.gov/os/2000/04/fdcpaadvisoryopinion.htm
§ 1692o exemptions for state regulations	Stewart 01-05-1993	http://www.ftc.gov/os/statutes/fdcpa/letters/stewart.htm
Other Responses	Anderson and Beato (ACA International) 07- 28-06	http://www.ftc.gov/os/statutes/fdcpa/letters/060728staffresponsesofadvisopinion_public.pdf

**APPENDIX D: TABLE OF STATUTES OF LIMITATIONS BY STATE FOR
VARIOUS TYPES OF DEBT.**

TABLE OF STATUTES OF LIMITATIONS BY STATE¹²⁶

STATE	WRITTEN	ORAL
ALABAMA	6	6
ALASKA	3	3
ARIZONA	6	3
ARKANSAS	5	5
CALIFORNIA	4	2
COLORADO	6	6
CONNECTICUT	6	3
DELAWARE	3	3
DISTRICT OF COLUMBIA	3	3
FLORIDA	5	4
GEORGIA	6	4
HAWAII	6	6
IDAHO	5	4
ILLINOIS	10	5
INDIANA	10	6
IOWA	10	5

¹²⁶ Table is located at <http://www.debtsteps.com/debt-collection-statute-of-limitations.html>.

KANSAS	5	3
KENTUCKY	15	5
LOUISIANA	10	10
MAINE	6	6
MARYLAND	3	3
MASSACHUSETTS	6	6
MICHIGAN	6	6
MINNESOTA	6	6
MISSISSIPPI	3	3
MISSOURI	10	10
MONTANA	8	5
NEBRASKA	5	4
NEVADA	6	4
NEW HAMPSHIRE	3	3
NEW JERSEY	6	6
NEW MEXICO	6	4
NEW YORK	6	6
NORTH CAROLINA	3	3
NORTH DAKOTA	6	6
OHIO	15	6
OKLAHOMA	5	3
OREGON	6	6
PENNSYLVANIA	4	4
RHODE ISLAND	10	10

SOUTH CAROLINA	3	3
SOUTH DAKOTA	6	6
TENNESSEE	6	6
TEXAS	4	4
UTAH	6	4
VERMONT	6	6
VIRGINIA	5	3
WASHINGTON	6	3
WEST VIRGINIA	10	5
WISCONSIN	6	6
WYOMING	10	8

APPENDIX E: Table of State Debt Collection Statutes.

STATE DEBT COLLECTION STATUTES

STATE	COLLECTION STATUTE(S)	HYPERLINK TO STATUTE(S)
Alabama	Ala. Code § 40-12-80	http://alisondb.legislature.state.al.us/acas/codeofalabama/1975/40-12-80.htm
Alaska	Alaska Stat. §§ 08.24.041 through 08.24.380 Alaska Stat. §§ 45.50.471 through 45.50.461	http://www.legis.state.ak.us/cgi-bin/folioisa.dll/stattx08/query=08!2E24!2E041/doc/%7B@1552%7D? http://www.legis.state.ak.us/cgi-bin/folioisa.dll/stattx08/query=[jump!3A!27as4550471!27]/doc/%7B@19992%7D?
Arizona	Ariz. Rev. Stat. Ann. §§ 31-1001 through 32-1057	http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=32
Arkansas	Ark. Stat. Ann. §§ 17-24-101 through 17-24-404	http://www.arkleg.state.ar.us/SearchCenter/Pages/arkansascode.aspx
California	Cal. Civ. Code §§ 1788 through 1788.33	http://info.sen.ca.gov/cgi-bin/displaycode?section=civ&group=01001-02000&file=1788-1788.3
Colorado	Colo. Rev. Stat. §§ 12-14-101 through 12-14-137	http://www.ago.state.co.us/CADC/PDF/cfdcpa2008.pdf
Connecticut	Conn. Gen. Stat. §§ 36a-800 through 36a-810	http://www.cga.ct.gov/2009/pub/chap669.htm
Delaware	No debt collection statute	
District of Columbia	D.C. Code § 28-3814	http://occ.dc.gov/occ/frames.asp?doc=/occ/lib/occ/credit_protections_act.pdf

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Florida	Fla. Stat. §§ 541 through 559.785	http://www.flsenate.gov/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0559/PART05.HTM
Georgia	Ga. Code Ann. § 7-3-25 Ga. Code Ann. § 34-8-280 Ga. Code Ann. § 48-16-11	All statutes: http://www.lexis-nexis.com/hottopics/gacode/default.asp
Hawaii	Haw. Rev. Stat. § 443B-1 to 443B-20 Haw. Rev. Stat. §§480D-1 through 480D-5	http://www.capitol.hawaii.gov/hrscurrent/Vol10_Ch0436-0474/HRS0443B/ http://www.capitol.hawaii.gov/hrscurrent/Vol11_Ch0476-0490/HRS0480D/
Idaho	Idaho Code Ann. §§ 26- 2221 through 26-2251	www3.state.id.us/idstat/TOC/26022KTOC.html
Illinois	225 Ill. Comp. Stat. §§ 425/1 through 425/27	http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1355&ChapAct=225%26nbsp%3BILCS%26nbsp%3B425%2F&ChapterID=24&ChapterName=PROFESSIONS+AND+OCCUPATIONS&ActName=Collection+Agency+Act%2E
Indiana	Ind. Code §§ 25-11-1-1 through 25-11-1-16	http://www.in.gov/legislative/ic/code/title25/ar11/ch1.html
Iowa	Iowa Code §§ 537.7101 through 537.7103	http://search.legis.state.ia.us/NXT/gateway.dll?f=templates&fn=default.htm
Kansas	Kan. Stat. Ann. §§ 75-5140 through 75-5143	http://kansasstatutes.lesterama.org/Chapter_75/Article_51/#75-5140

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Kentucky	No debt collection statute	
Louisiana	<p>La. Rev. Stat. Ann. §§ 47: 1516 through 47:1516.1</p> <p>La. Rev. Stat. Ann. §§ 9:3534 through 9:3536</p>	<p>http://www.legis.state.la.us/lss/lss.asp?doc=101236</p> <p>http://www.legis.state.la.us/lss/lss.asp?doc=107623</p>
Maine	Me. Rev. Stat. Ann. tit. 32 § 109-A	http://www.mainelegislature.org/legis/statutes/32/tit32ch109-Asec0.html
Maryland	<p>Md. Code Ann., Bus. Reg. §§ 7-101 through 7-502</p> <p>Md. Code Ann., Com. Law. §§ 14-201 through 14-204</p> <p>Md. Code Ann., Com. Law. §§ 15-101 through 15-804</p>	<p>Business Regulation: http://www.dsd.state.md.us/comar/Annot_Code_Index/BRIndex.htm</p> <p>Commercial Law: http://www.dsd.state.md.us/comar/Annot_Code_Index/CommercialIndex.htm#Title%2015</p>
Massachusetts	<p>Mass. Gen. Laws. Ann. ch. 93 §§ 24 through 28</p> <p>Mass. Gen. Laws. Ann. ch. 93 §49</p> <p>940 Mass. Code Regs. 7.01 through 7.11</p>	<p>http://www.mass.gov/legis/laws/mgl/93-24.htm</p> <p>http://www.mass.gov/legis/laws/mgl/93-49.htm</p> <p>http://www.mass.gov/?pageID=cagoterminal&L=3&L0=Home&L1=Government&L2=AG%27s+Regulations&sid=Cago&b=terminalcontent&f=government_Regulations_940CMR7&csid=Cago</p>

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Michigan	Mich. Comp. Laws §§ 445.251 through 445.258 Mich. Comp. Laws §§ 339.901 through 339.920	www.michiganlegislature.org/mileg.asp?page=getObject&objName=mcl-Act-70-of-1981 http://www.legislature.mi.gov/(S(3q1nyl5510mbowaeqi12yl55))/mileg.aspx?page=getObject&objectName=mcl-299-1980-9
Minnesota	Minn. Stat. § 16.D Minn. Stat. §§ 332.31 through 332.51	https://www.revisor.leg.state.mn.us/statutes/?id=16D https://www.revisor.leg.state.mn.us/statutes/?id=332
Mississippi	No debt collection statute	
Missouri	Mo. Rev. Stat. § 425.010	http://www.moga.mo.gov/STATUTES/C425.HTM
Montana	Mont. Code Anno. §31-1-115 Mont. Code Anno. §31-2-101 through 31-2-106.	http://data.opi.mt.gov/bills/mca/31/1/31-1-115.htm http://data.opi.state.mt.us/bills/mca_toc/31_2_1.htm
Nebraska	Neb. Rev. Stat. §§ 45-601 through 45-623.	http://uniweb.legislature.ne.gov/laws/browse-chapters.php?chapter=45
Nevada	Nev. Rev. Stat. §§ 649.005 through 649.440	http://www.leg.state.nv.us/NRS/NRS-649.html
New Hampshire	N.H. Rev. Stat. Ann. §§ 358-C:1 through 358-C:5	http://www.gencourt.state.nh.us/RSA/html/XXXI/358-C/358-C-3.htm

STATE	COLLECTION STATUTE(S)	HYPERLINK TO STATUTE(S)
New Jersey	N.J. Stat. Ann. §§ 45:18-1 through 45:18-6.1 Assembly No. 3839 introduced March 9, 2009	http://lis.njleg.state.nj.us/cgi-bin/om_isapi.dll?clientID=33269078&depth=2&expandheadings=off&headingswithhits=on&infobase=statutes.nfo&softpage=TOC_Frame_Pg42 Assemblyman Paul Moriarty introduced A-3839 which proposes to require debt collector to provide debtor certain information.
New Mexico	N.M. Stat. Ann. §§ 61-18A-1 through 61-18A-33	http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&fn=main-h.htm&2.0
New York State	N.Y. Penal Law § 190.50 N.Y. Gen. Bus. Law §§ 600 through 603	Both: http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS
North Carolina	N.C. Gen. Stat. §§ 58-70-90 through 58-70-130 N.C. Gen. Stat. §§ 75-50 through 75-56	http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_58/Article_70.html http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_75/Article_2.html
North Dakota	N.D. Cent. Code §§13-05-01 through 13-05-10	http://www.legis.nd.gov/cencode/t13c05.pdf
Ohio	Ohio Rev. Code Ann. §1319.12	http://codes.ohio.gov/orc/1319.12
Oklahoma	15 Okla. St. § 755.1 59 Okla. St. § 3107	http://webserver1.lsb.state.ok.us/OK_Statutes/CompleteTitles/os15.rtf http://webserver1.lsb.state.ok.us/OK_Statutes/CompleteTitles/os59.rtf

STATE	COLLECTION STATUTE(S)	HYPERLINK TO STATUTE(S)
Oregon	Or. Rev. Stat. §§ 646.639 through 646.656 Or. Rev. Stat. §§ 697.005-through 697.992	http://www.leg.state.or.us/ors/646.html http://www.leg.state.or.us/ors/697.html
Pennsylvania	18 Pa. Cons. Stat. Ann. § 7311 73 Pa. Cons. Stat. § 2270.1	http://www.attorneygeneral.gov/consumers.aspx?id=244
Rhode Island	R.I. Gen. Laws §§ 19-14.9-1 through 19-14.9-14	http://www.rilin.state.ri.us/Statutes/TITLE19/19-14.9/INDEX.HTM
South Carolina	S.C. Code Ann. §§ 37-5-101 through 37-5-303	http://www.scstatehouse.gov/code/t37c005.htm
South Dakota	No debt collection statute	
Tennessee	Tenn. Code Ann. §§ 62-20-101 through 62-20-127	http://www.michie.com/tennessee/lpext.dll?f=templates&fn=main-h.htm&cp=tncode
Texas	Tex. Fin. Code Ann. §§ 392.001 through 392.404	http://tlo2.tlc.state.tx.us/statutes/docs/FI/content/html/fi.005.00.000392.00.htm
Utah	Utah Code Ann. §§ 12-1-1 through 12-1-10	http://www.le.state.ut.us/~code/TITLE12/12_01.htm
Vermont	No debt collection statute	

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Virginia	Va. Code. Ann. §§ 2.2-518 through 2.2-519 Va. Code Ann. §§2-2-4800 through 2-2-4809	http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-518 http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC02020000048000000000000
Washington State	Wash. Rev. Code Ann. §§ 19.16.100 through 19.16.950	http://apps.leg.wa.gov/RCW/default.aspx?cite=19.16
West Virginia	W.Va. Code §§ 47-16-1 through 47-16-5	http://www.legis.state.wv.us/WVCODE/Code.cfm?chap=47&art=16#16
Wisconsin	Wis. Stat. § 218.02 Wis. Stat. §§ 427.101 through 427.105	http://nxt.legis.state.wi.us/nxt/gateway.dll?f=templates&fn=default.htm&d=stats&jd=218.02 http://nxt.legis.state.wi.us/nxt/gateway.dll?f=templates&fn=default.htm&d=stats&jd=427.101
Wyoming	Wyo. Stat. Ann. §§ 33-11-101 through 33-11-116	http://michie.lexisnexis.com/wyoming/lpext.dll?f=templates&fn=main-h.htm