

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. 8316
April 6, 1978]

FAIR DEBT COLLECTION PRACTICES ACT

*To All State Member Banks, and Others Concerned,
in the Second Federal Reserve District:*

Following is the text of a statement issued by the Board of Governors of the Federal Reserve System:

To assist State member banks in complying with the new Fair Debt Collection Practices Act, the Board of Governors of the Federal Reserve System has issued a fact sheet and a set of questions and answers describing the responsibilities of banks under the Act.

Similar fact sheets and questions and answers are being sent by the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency to banks supervised by those agencies.

The Act became effective March 20. It makes abusive and deceptive debt collection practices illegal for all individuals or businesses defined by the Act as debt collectors. Generally, a debt collector, under the Act, is anyone who regularly collects or tries to collect—directly or indirectly—consumer debt for someone else.

Any consumer who believes a bank has violated the Fair Debt Collection Practices Act in attempting to collect a debt from the consumer can lodge a complaint with the nearest Federal Reserve Bank or with the Federal Reserve Board in Washington, D.C. (20551), in writing or by telephone. The Federal Reserve will follow up on all such complaints (or refer them to the appropriate Federal bank regulatory agency if the complaint is not against a State member bank). Federal Reserve bank examiners are being instructed to watch for any evidence of violations of the Act.

Under the Act, Federal bank regulatory agencies may issue cease and desist orders to halt violations and may require affirmative corrective action.

The Board's fact sheet noted that the Act requires debt collectors to:

- At the outset of the debt collection process, or within five days thereafter, notify the consumer in writing of the amount of the debt, the name of the creditor and how the consumer may dispute the debt.
- Halt communications with a consumer upon written request to do so, except to let the consumer know that there will be no further communications, or to tell the consumer what further efforts will be made to close the case.
- Use payments made by the consumer as the consumer directs.

The fact sheet pointed out that the Act prohibits abuse and harassment, such as threats of violence or use of profane language by the debt collector; false and misleading statements, such as giving a false impression that documents are legal orders; and unfair practices such as misuse of postdated checks, or communicating by postcard.

(Over)

The fact sheet also drew attention to certain specific practices that are prohibited, including contact by the debt collector with third parties, such as employers, except to find out where the consumer lives; communication with the consumer at work, if there is reason to believe the employer does not allow such contact, and telephoning or meeting the consumer at any unusual time or place except with the consumer's agreement.

The fact sheet provided detailed guidance as to when a bank is a debt collector as defined in the Act, and when it is not. Generally, the Act applies to a bank when it collects delinquent debts for others as a regular part of the bank's business, or if it uses a name other than its own in collecting debts on its own behalf. A bank is generally not subject to the Act when it is collecting debts on its own behalf in its own name. Bank trust department activities are generally exempted by the Act.

Generally, the only State member banks to which the Fair Debt Collection Practices Act applies are those State member banks that regularly collect defaulted debts for other institutions, including collections under reciprocal service agreements. The fact sheet, and the set of questions and answers relating to banks' responsibilities under the Act, have been prepared by an interagency staff group of the Board of Governors, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. These materials, together with the text of the Fair Debt Collection Practices Act (Public Law 95-109), are enclosed for State member banks only; a copy of the enclosure will be furnished to others upon request to the Circulars Division of this Bank. No regulations will be issued under the Act.

Questions regarding these matters may be directed to our Consumer Affairs and Bank Regulations Department (Tel. No. 212-791-5919).

PAUL A. VOLCKER,
President.

Fact Sheet
Including
Questions and Answers
and
Statute

Fair Debt Collection Practices Act

Developed by Interagency Staff Group

Board of Governors of the Federal Reserve System
Comptroller of the Currency
Federal Deposit Insurance Corporation

March 20, 1978

FACT SHEET

Banking Institutions and Fair Debt Collection Practices ActBACKGROUND

The Fair Debt Collection Practices Act (the Act), 15 USC § 1692 et seq., was signed into law on September 20, 1977, as Title VIII of the Consumer Credit Protection Act. The effective date of the Act is March 20, 1978. It is designed to eliminate abusive and deceptive debt collection practices and to insure that reputable debt collectors are not competitively disadvantaged.

COVERAGE

Not all persons or businesses who collect debts are covered by the Act. The Act defines "debt collector" as any person who regularly collects or attempts to collect, directly or indirectly, consumer debts asserted to be owed to another person. Consumer debt is debt incurred by an individual primarily for personal, family or household purposes. Debts incurred for business or agricultural purposes are not covered.

The Act is applicable, for example, to banks which regularly collect debts for other unrelated institutions, including collections under reciprocal service agreements. Typically under such an arrangement, a bank solicits the help of another bank in collecting a defaulted debt of a customer who has relocated. A bank would also be subject to the requirements of the Act if it uses a name other than its own in its collection efforts.

A bank will not be a debt collector subject to the Act when it:

- o Collects debts due another only in isolated instances.
- o Collects, in the bank's own name, debts owed to the bank.
- o Collects a debt which it originated.
- o Collects a debt not in default when obtained.
- o Collects a debt obtained as security for a commercial credit transaction involving the bank.
- o Collects a debt incidental to a bona fide fiduciary relationship or escrow arrangement.
- o Collects a debt for another person to whom it is related by common ownership or corporate control, as long as it does so only for those persons to whom it is so related. However, if the bank regularly collects defaulted debts owed a non-affiliate person, the bank will become a debt collector for those defaulted debts as well as for defaulted debts of affiliated entities, but not for its own debts.

Others who are not covered by the Act are:

- o An officer or employee of the bank when collecting, in the bank's name, debts owed to the bank.
- o Attorneys-at-law collecting debts on behalf of and in the name of the bank.
- o Legal process servers.

REQUIREMENTS

The Act requires debt collectors:

- o To cease further communication with a consumer upon written request, except to advise the consumer that the debt collector's further efforts are being terminated, or to notify the consumer that specified remedies may or will be invoked.
- o To apply payments in accordance with the consumer's instructions.
- o If the following information is not provided at initial contact, to notify the consumer in writing, within five days of initial contact, of the amount of the debt and the name of the creditor, and to advise the consumer of the debt collector's duty to verify the debt if it is disputed. If the consumer disputes the debt within 30 days, the debt collector must stop collection efforts until verification is sent to the consumer.

PROHIBITIONS

The Act prohibits:

- o Abuse and Harassment - e.g., threatening violence or using profane language in the collection of a debt.
- o False and Misleading Representation - e.g., threatening to communicate false credit information, or giving a false impression that collection documents represent legal process.
- o Unfair Practices - e.g., misusing postdated checks, or communicating by postcard.

Among the activities specifically prohibited by the Act are the following:

- o With limited exceptions, contact with third parties, including employers, except to obtain information concerning the consumer's location.
- o Communication with the consumer at place of employment if there is reason to believe that the employer prohibits such communications.

- o Contact with a consumer at any unusual time or place, unless agreed to by the consumer.
- o Bringing a debt collection action in a jurisdiction other than those permitted by the Act.

CIVIL LIABILITY

Private civil action must be brought within one year from the date of the violation. In an individual action, the debt collector is liable for actual damages plus punitive damages of up to \$1,000. In a class action, the debt collector is liable for actual damages, as well as punitive damages up to \$1,000 for each named plaintiff and the lesser of 1% of net worth or \$500,000 for all other class members.

ADMINISTRATIVE ENFORCEMENT

The bank regulatory agencies are responsible for enforcing the Act under §8 of the Federal Deposit Insurance Act. This means that bank regulators may use their authority under §8 to issue cease and desist orders which may include provisions requiring affirmative action to correct conditions resulting from violations. No regulations can be issued by any regulator, although the Federal Trade Commission has the authority to issue advisory opinions.

QUESTIONS AND ANSWERS

Fair Debt Collection Practices ActCOVERAGEREFERENCE

1. Q: When is a bank a debt collector?

A: Generally, a bank that regularly participates in any arrangement, including reciprocal service agreements, with another person to collect defaulted consumer debts for that person, is a debt collector for those debts only.

§ 803(6)

In addition, if a bank uses a name other than its own in collecting its own consumer debts, then it is a debt collector for such debts as well.

2. Q: May a bank ever regularly collect for another person without becoming a debt collector?

A: Yes. If the bank is related to the other institution by common ownership or corporate control, it may collect consumer debts for that institution without becoming a debt collector; provided, it collects debts only for related institutions. However, if it regularly collects defaulted debts for non-affiliates, it becomes a debt collector for regularly collected, defaulted affiliate debts also.

§ 803(6)(B)

3. Q: Is a bank a debt collector if it collects a consumer debt in an isolated instance for a non-related person?

A: No. A bank that collects in an isolated instance for a non-affiliate is not covered. The bank must collect for others in the regular course of business before it becomes a debt collector.

§ 803(6)

4. Q: When is a debt in default?

A: The Act does not define when a debt is in default. In determining whether a debt is in default, the following factors, among others, should be considered: the bank's customary policies and practices, terms of the contract, determination by the originator, and State law.

§ 803(6)(G)(iii)

5. Q: When does a bank regularly collect debts due another?

A: The Act does not define the level of activity which will constitute collecting debts "regularly." For purposes of examination, the following are among the factors that should be considered in determining if the bank regularly collects third party debts:

§ 803(6)

Whether the bank has entered into a formal agreement with another person to collect third party debts, such as any reciprocal service agreement program.

Whether the bank has established procedures for collection of third party debts.

The ratio of third party defaulted debts collected during the past 12 months to all defaulted debts collected.

The amount of time the bank spends in third party debt collection.

6. Q: Are banks that service mortgages or student loans generally debt collectors?

A: No. Banks are not debt collectors if they service debts that they originated or debts that were not in default when obtained by the bank. However, if a bank services a loan portfolio, it is a debt collector for those loans in the portfolio that it did not originate and which were in default when obtained.

§ 803(6)(G)
(ii), (iii)

7. Q: Are bank trust departments debt collectors?

A: No. The activities of trust departments and other bona fide fiduciary or escrow activities are exempt.

§ 803(6)(G)(i)

8. Q: Are banks debt collectors if they collect consumer debts held as security for an extension of commercial credit?

A: No. This activity is specifically exempted.

§ 803(6)(G)(iv)

9. Q: Are employees, officers or attorneys of a bank considered debt collectors?

A: No. They are not debt collectors so long as they collect the bank's debts in the bank's name. § 803(6)(A)

THIRD PARTY COMMUNICATION WHEN THE BANK IS ACTING AS A DEBT COLLECTOR

10. Q: May a bank communicate with persons other than the consumer to determine the location of the consumer?

A: Yes. However, the communication must be limited to location information. Location information means a consumer's place of residence, phone number or place of employment. The bank may not identify itself as a debt collector and nothing may be said concerning debt collection. § 804

11. Q: May a bank discuss the debt with anyone other than the consumer?

A: Yes. However, the bank may contact only (1) its own attorney, (2) the consumer's attorney, (3) the creditor or creditor's attorney, (4) consumer reporting agencies, (5) the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator and (6) any other person obligated to pay the debt. § 805(b)

PROHIBITED ACTIVITIES WHEN THE BANK IS ACTING AS A DEBT COLLECTOR

12. Q: In general, what means of debt collection are banks prohibited from using?

A: The bank cannot threaten violence or harm, swear, publish the consumer's name as an individual who allegedly refuses to pay debts, advertise the sale of the debt to coerce payment, make excessive telephone calls or fail to disclose the bank's identity on the telephone. Any other action which would normally harass, oppress or abuse anyone is prohibited. § 806

The bank also cannot make false representation about itself, the debt, its rights or the consumer's rights.

§ 807

13. Q: May a bank contact a consumer at the consumer's place of employment?

A: The bank may not contact a consumer at the consumer's place of employment if it is against the consumer's wishes or if the bank knows or should know that the employer forbids such contacts.

§ 805(a)(3)

14. Q: May a bank contact a consumer who is represented by an attorney concerning the debt?

A: No. However, the bank may contact the consumer to obtain the name and address of the attorney, or if the attorney permits the contact or fails to respond within a reasonable time.

§ 805(a)(2)

15. Q: May the bank be made to stop communicating with the consumer concerning the debt?

A: Yes. If the consumer notifies the bank in writing that the consumer refuses to pay the debt or simply does not want any further contact with the bank, the bank must cease communication with the consumer. However, at that point the bank may still notify the consumer of its possible further actions.

§ 805(c)

16. Q: May the bank collect an amount in excess of that authorized by the contract or permitted by State law?

A: No.

§ 808(1)

17. Q: May the bank accept postdated instruments?

A: Yes. However, the Act provides very specific rules for accepting these instruments.

§ 808(2)(3)(4)

18. Q: May a postcard be used in collection efforts?

A: No.

§ 804(4)

§ 808(7)

19. Q: May the bank threaten to repossess property?

A: Yes. However, it may do so only when there is a present right and intention to take possession of the property.

§ 808(6)
(see also
§ 803(6))

20. Q: May the bank use an envelope that contains any language or symbol indicating debt collection when communicating with a consumer?

A: No.

§ 804(5)
§ 808(8)

REQUIREMENTS WHEN THE BANK IS ACTING AS A DEBT COLLECTOR

21. Q: What must the bank do when contacting a consumer for the first time?

A: The bank must inform the consumer of the amount of the debt and name of the creditor, and provide a statement that (1) the consumer has 30 days to dispute, in writing, the validity of the debt and (2) the consumer may request the name of the original creditor. The bank must also provide the consumer with a statement of the provisions for disputing the debt. If this information is not given to the consumer at the time of the initial contact, it must be supplied in writing or mailed within five days.

§ 809(a)

22. Q: What provisions are made for disputing a consumer debt?

A: The bank must tell the consumer that if the consumer notifies the bank in writing within 30 days that the debt is partially or wholly disputed, the bank will provide a verification of the debt. The bank must also inform the consumer that, if the consumer makes a written request within 30 days, the bank will supply the name and address of the original creditor if it is different from the current creditor.

§ 809(b)

23. Q: If the consumer disputes the debt or requests the name and address of the original creditor, may the bank continue collection efforts?

A: No. However, the bank may continue collection efforts after it provides the consumer a copy of the written verification of the debt or the name and address of the original creditor.

§ 809(b)

CONSEQUENCES OF NONCOMPLIANCE

24. Q: What are the potential consequences of noncompliance with the Act?

A: In civil actions, individual consumers may recover actual damages, court costs, attorney's fees, and punitive awards of up to \$1,000. Class action recoveries include the above for named plaintiffs, and punitive awards of up to the lesser of \$500,000 or 1% of the bank's net worth.

§ 813

Administrative enforcement of the Act for banks may involve actions under §8 of the Federal Deposit Insurance Act, including cease and desist orders requiring that actions be taken to remedy conditions resulting from violations.

§ 814

PUBLIC LAW 95-109—SEPT. 20, 1977

**CONSUMER CREDIT PROTECTION ACT,
AMENDMENTS**

99-139 O - 77 (117)

91 STAT. 874

PUBLIC LAW 95-109—SEPT. 20, 1977

Public Law 95-109
95th Congress

An Act

Sept. 20, 1977
[H.R. 5294]

To amend the Consumer Credit Protection Act to prohibit abusive practices by debt collectors.

Consumer Credit
 Protection Act,
 amendments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end thereof the following new title:

Fair Debt
 Collection
 Practices Act.

"TITLE VIII—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.
- "806. Harassment or abuse.
- "807. False or misleading representations.
- "808. Unfair practices.
- "809. Validation of debts.
- "810. Multiple debts.
- "811. Legal actions by debt collectors.
- "812. Furnishing certain deceptive forms.
- "813. Civil liability.
- "814. Administrative enforcement.
- "815. Reports to Congress by the Commission.
- "816. Relation to State laws.
- "817. Exemption for State regulation.
- "818. Effective date.

15 USC 1601
 note.

"§ 801. Short title

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

15 USC 1692.

"§ 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.

“§ 803. Definitions

15 USC 1692a.

“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 (G) 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;

“(F) any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client; and

“(G) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

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

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

15 USC 1692b.

“§ 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.

15 USC 1692c.

“§ 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.

“§ 806. Harassment or abuse

15 USC 1692d.

“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.

15 USC 1681a,
1681b.

“(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.

“§ 807. False or misleading representations

15 USC 1692e.

“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) Except as otherwise provided for communications to acquire location information under section 804, the failure to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.

"(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.

15 USC 1681.

"§ 808. Unfair practices

15 USC 1692f.

"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.

"§ 809. Validation of debts

15 USC 1692g.

"(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.

"(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.

15 USC 1692h.

"§ 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.

15 USC 1692i.

"§ 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.

15 USC 1692j.

"§ 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.

“§ 813. Civil liability

15 USC 1692k.

“(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.

Jurisdiction.

“(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.

“§ 814. Administrative enforcement

15 USC 1692l.

“(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

15 USC 58.

- 15 USC 58. 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—
- 12 USC 1818. “(1) section 8 of the Federal Deposit Insurance Act, in the case of—
- “(A) national banks, by the Comptroller of the Currency;
- “(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and
- “(C) banks the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;
- 12 USC 1464. “(2) section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17
- 12 USC 1730. of the Federal Home Loan Bank Act, by the Federal Home Loan
- 12 USC 1426, Bank Board (acting directly or through the Federal Savings and
1437. Loan Insurance Corporation), in the case of any institution subject to any of those provisions:
- 12 USC 1751. “(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 Interstate Commerce Commission with respect to any common carrier subject to those Acts;
- 49 USC 1301 “(5) the Federal Aviation Act of 1958, by the Civil Aeronautics
- note. Board with respect to any air carrier or any foreign air carrier subject to that Act; and
- 7 USC 181. “(6) the Packers and Stockyards Act, 1921 (except as provided
- 7 USC 226, 227. in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.
- “(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.
- 15 USC 1692m. **“§ 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

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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.

“§ 816. Relation to State laws

15 USC 1692n.

“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.

“§ 817. Exemption for State regulation

15 USC 1692o.

“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.

“§ 818. Effective date15 USC 1692
note.

“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.”

Approved September 20, 1977.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-131 (Comm. on Banking, Finance, and Urban Affairs).
SENATE REPORT No. 95-382 (Comm. on Banking, Housing, and Urban Affairs).
CONGRESSIONAL RECORD, Vol. 123 (1977):

Apr. 4, considered and passed House.

Aug. 5, considered and passed Senate, amended.

Sept. 8, House agreed to Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 13, No. 39:
Sept. 20, Presidential statement.

