**SUMMARY OF FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**

**NAME (15 USC 1601 note)**

The Consumer Credit Protection Act (15 USC 1601 et seq) amended by Public Law 104-208, 110 Stat.3009 (Sept 30, 1996) by adding at the end, the new title cited as the “Fair Debt Collection Practices Act.” (15 USC 1692)

**PURPOSE (15 USC 1692 Congressional findings and declarations of purpose)**

* To eliminate abusive debt practices by debt collectors
* To insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged
* To promote consistent State action to protect consumers against debt collection abuses

**WHO /WHAT IS INVOLVED? (15 USC 1692a Definitions)**

* "Communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.
* "Consumer" means any natural person obligated or allegedly obligated to pay any debt.
* "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.
* "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.
* “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.
* See 15 USC 1692a (6) (A)-(F) for what is NOT “debt collector” under the Act.

**LOCATING THE CONSUMER (15 USC 1692b Acquisition of location information)**

* Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall –
	+ identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;
	+ not state that such consumer owes any debt;
	+ 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;
	+ not communicate by post card;
	+ 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
	+ 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 the communication from the debt collector.

**COMMUNICATION FOR DEBT COLLECTION (15 USC 1692c Communication in connection with debt collection)**

* 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 –

* + 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;
	+ 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
	+ 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.
* 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

* a 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.
* 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-

* + to advise the consumer that the debt collector's further efforts are being terminated;
	+ 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
	+ 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.

* 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.

**PROHIBITED CONDUCT (15 USC 1692d Harassment of Abuse, 15 USC 1692e False or misleading representations, 15 USC 1692f Unfair Practices)**

* Harassment or abuse, includes the following conduct:
	+ The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.
	+ The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.
	+ 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)[1](http://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/fair-debt-collection-practices-act-text#f1) of this Act.
	+ The advertisement for sale of any debt to coerce payment of the debt.
	+ 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.
	+ Except as provided in section 804, the placement of telephone calls without meaningful disclosure of the caller's identity.
* False, deceptive, or misleading representation includes the following conduct:
	+ 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.
	+ The false representation of --
		- the character, amount, or legal status of any debt; or
		- any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.
	+ The false representation or implication that any individual is an attorney or that any communication is from an attorney.
	+ 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.
	+ The threat to take any action that cannot legally be taken or that is not intended to be taken.
	+ The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to --
		- lose any claim or defense to payment of the debt; or
		- become subject to any practice prohibited by this title.
	+ The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.
	+ 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.
	+ 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.
	+ The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.
	+ 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.
	+ The false representation or implication that accounts have been turned over to innocent purchasers for value.
	+ The false representation or implication that documents are legal process.
	+ The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.
	+ The false representation or implication that documents are not legal process forms or do not require action by the consumer.
	+ 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.
* Unfair or unconscionable practices include the following conduct:
	+ 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.
	+ 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.
	+ The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.
	+ Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.
	+ 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.
	+ Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if --
		- there is no present right to possession of the property claimed as collateral through an enforceable security interest;
		- there is no present intention to take possession of the property; or
		- the property is exempt by law from such dispossession or disablement.
	+ Communicating with a consumer regarding a debt by post card.
	+ 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.

 **VALIDATION OF DEBTS (15 USC 1692g Validation of debts**

* 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* (emphasis added) or the consumer has paid the debt, send the consumer a written notice containing—
	+ the amount of the debt;
	+ the name of the creditor to whom the debt is owed;
	+ 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;
	+ 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
	+ 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.
* 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
* 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 to the consumer by the debt collector.

* 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.

**MULTIPLE DEBTS (15 USC 1692h Multiple Debts)**

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

**LEGAL ACTION (15 USC 1692i Legal actions by debt collectors)**

* Any debt collector who brings any legal action on a debt against any consumer shall –
	+ 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
	+ in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity --
		- in which such consumer signed the contract sued upon; or
		- in which such consumer resides at the commencement of the action.

**DECEPTIVE FORMS (15 USC 1692j Furnishing certain deceptive forms)**

* 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.
* 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.

**CIVIL LIABILITY (15 USC 1692k Civil Liability)**

* 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 –
	+ any actual damage sustained by such person as a result of such failure;
	+ in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or
	+ 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
	+ 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.
* In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors –
	+ 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
	+ 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.
* 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.
* 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.
* 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.

**ADMINISTRATIVE ENFORCEMENT AND REPORTS (15 USC 1692l Administrative Enforcement and 15 USC 1692m Reports to Congress by the Commission)**

These sections specify the entities with authority to enforce compliance and require the Commission make reports to Congress about administration of the Act.

**STATE LAWS (15 USC 1692n Relation to State laws and 15 US 1692o and Exemption for State regulation)**

* The act 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.
* 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.