FAIR DEBT COLLECTION PRACTICES ACT (FDCPA) OVERVIEW

Overview

The purpose of the FDCPA is to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

The FDCPA has no implementing regulations. The FDCPA states: neither the Federal Trade Commission (FTC) or any other agency referred to in subsection B of 15 U.S.C. §1692l, including the NCUA and other agencies, may promulgate trade regulation rules or other regulations with respect to the collection of debt by debt collectors as defined in the FDCPA, 15 U.S.C. §1692l(d). The FTC, however, has promulgated regulations on procedures for states to apply to it for exemption from the FDCPA's provisions, 16 C.F.R. Part 901.

A credit union is considered a "debt collector" and is subject to the FDCPA only if it regularly collects consumer debts on behalf of another party, with some exceptions. If the credit union merely collects its own debts, in its own name, compliance with the FDCPA is not required. However, it is recommended that the credit union avoid those practices prohibited under the FDCPA.

Prohibited Practices

Harassment or Abuse

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. The following conduct is a violation of this section:

- Use or threat of use of violence or other criminal means to harm the physical person, reputation or property of any person;
- Use of obscene or profane language;
- Publication of a list of consumers who allegedly refuse to pay debts;
- Advertisement for sale of any debt to coerce payment of the debt; or,

- Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass any person at the called number.

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. Violations of this section include:

- The false representation of the character, amount, or legal status of any debt;
- The false representation or implication that any individual is an attorney or that any communication is from an attorney;
- The threat to take any action that cannot legally be taken or that is not intended to be taken; or,
- Communicating or threatening to communicate to any person credit information that is known to be false, including failure to communicate that a disputed debt is disputed.

Unfair Practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt such as:

- Collecting interest, fees, charges, or expenses incidental to the principal obligation unless it is expressly authorized by the agreement;
- Depositing or threatening to deposit any postdated check prior to the date on the check; or,
- Causing charges to be made to any person for communications by the concealment of the true purpose of the communication, such as a collect telephone call.

Validation of Debts

A debt collector must send the consumer a written notice within five days after the initial communication unless the following information is contained in the initial communication or the consumer has paid the debt:

- Amount of the debt;
- Name of the creditor to whom the debt is owed;
- A statement that the consumer must dispute the validity of the debt, or any portion thereof, within thirty days of receiving the notice, or the debt will be assumed to be valid by the debt collector;

- A statement that if the consumer disputes the debt in writing, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and mail it to the consumer; and,
- A statement that, upon the consumer's written request within thirty days, the debt collector will provide the name and address of the original creditor, if different from the current creditor.

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the FDCPA, and
- Reputation risk can occur when the credit union incurs fines and penalties or receives poor publicity and reduced member confidence as a result of failure to comply with the FDCPA.

Additional Information

Additional information about the FDCPA is available on the FTC's website at http://www.ftc.gov/os/statutes/fdcpajump.htm . To contact the FTC, call 877-FTC-HELP.

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA) OPERATIONAL REQUIREMENTS

Disclosures / Notices

Validation of Debts [15 U.S.C. 1692g]

A debt collector must send the consumer a written notice within five days after initial communication unless the following information is contained in the initial communication or the consumer has paid the debt:

- Amount of the debt;
- Name of the creditor to whom the debt is owed;
- A statement that the consumer must dispute the validity of the debt, or any portion thereof, within thirty days of receiving the notice, or the debt will be assumed to be valid by the debt collector;
- A statement that if the consumer disputes the debt in writing, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and mail it to the consumer; and,
- A statement that, upon the consumer's written request within thirty days, the debt collector will provide the name and address of the original creditor, if different from the current creditor.

If, within the 30 day period, the consumer disputes in writing any portion of the debt or requests the name and address of the original creditor, the debt collector must 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.

Enforcement / Liability

Administrative Enforcement Authority

The National Credit Union Administration is responsible for enforcement among federal credit unions, while the Federal Trade Commission (FTC) enforces the FDCPA for state-chartered credit unions.

Penalties and Liabilities

Any debt collector who fails to comply with any provision of the FDCPA is liable in an amount equal to the sum of any actual damage sustained by such person. Additional damages may be recovered, not to exceed $1,000 for an individual plaintiff or named plaintiff in a class action suit, or $500,000 or one percent of net worth for all other class

members. Court costs and reasonable attorney fees may also be awarded in the case of a successful action.