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Violations, Civil Liability & Penalties Under the Fair Debt Collection Practices Act (FDCPA)

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The Fair Debt Collection Practices Act (FDCPA) is one of several federal consumer protection laws targeting abusive and harassing debt collection activities. It applies to third party debt collectors, debt buyers, law firms, and other organizations that conduct or assist with these activities—though, in most circumstances, it does not apply to businesses that seek to collect debts on credit they have extended themselves.

Like other federal consumer protection laws, the FDCPA establishes both requirements and prohibitions, and organizations that are subject to the FDCPA must take a comprehensive and custom-tailored approach to compliance. When accused of noncompliance, organizations can face both private civil litigation and federal enforcement action; and, with liability imposed on a per-violation basis, organizations can face substantial exposure in many cases.

With this in mind, it is important for debt collectors and other organizations that are subject to the Fair Debt Collection Practices Act to ensure that they do what is necessary to comply. This starts with understanding what constitutes a violation of the FDCPA.

10 Common Examples of FCPA Violations

So, when can debt collectors and other organizations face liability under the Fair Debt Collection Practices Act? Here are 10 common examples of FCPA violations:

1. Failing to Provide “Validation Information”

Under the FDCPA, debt collectors and other covered organizations must provide “validation information” to consumers in their initial communication or within five days of making initial contact with a consumer. Failing to provide *any* of the required information can be enough to trigger civil litigation or federal enforcement action. Required validation information required under the FDCPA includes (but is not limited to):

- Notification that the communication is from a debt collector
- The name of the debt collector and the creditor with which the debt was originally incurred
- The current amount of the debt and an itemization of any interest, fees, payments, and

credits
- How the consumer can respond to the debt collector
- The end date for the consumer's 30-day window to dispute the debt

2. Contacting a Consumer at an "Inconvenient" Time

The FDCPA prohibits debt collectors and other covered organizations from contacting consumers "at any unusual time . . . or a time or place known or which should be known to be inconvenient." The statute also provides that, "[i]n the absence of knowledge of circumstances to the contrary," this means that debt collectors and other covered organizations should not contact consumers outside the hours of 8:00 a.m. and 9:00 p.m. local time.

3. Contacting a Consumer at an "Inconvenient" Place

In addition to prohibiting debt collectors and other organizations from contacting consumers at an inconvenient time, the FDCPA also prohibits contacting consumers at an inconvenient place. This includes, but is not limited to, contacting a consumer "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."

4. Misrepresenting Information in Debt Collection Communications

The FDCPA requires that all debt collection communications be accurate in all respects. Misrepresenting information in a debt collection communication, even inadvertently, can expose debt collectors and other organizations to civil liability and administrative penalties. This includes (but is not limited to) misrepresenting information such as:

- The amount a consumer owes
- The options a consumer has available for responding to the debt collection notice
- The deadline for a consumer to dispute the subject debt
- That the debt collector is an lawyer or law firm (if it is not an attorney or law firm)
- That the consumer can be arrested for failing to pay

5. Making Threats in Debt Collection Communications

The FDCPA also prohibits debt collectors and other covered organizations from making threats in any debt collection communications. As the Consumer Financial Protection Bureau (CFPB) explains, this includes (but is not limited to) threatening any actions that are prohibited by law or that the collecting organization has no intention of taking.

6. Engaging in Other Forms of Consumer Harassment

Making threats is considered a form of harassment under the FDCPA, and it is one of the violations that is most likely to trigger scrutiny from the CFPB, Federal Trade Commission (FTC), or other federal authorities. But, the FDCPA prohibits many other forms of harassment as well. Additional prohibitions under the statute include those against:

- Making repeated calls
- Sending repeated messages
- Using obscene or profane language

- Engaging in any form of intimidation
- Publishing a consumer's name or contact information online

7. Publicly Posting About a Consumer Debt on Social Media

As the CFPB also explains, "[a] debt collector may not use social media to publicly post about a debt." Thus, while it is lawful to contact a consumer via social media, it is unlawful to do so in such a way as to publicize the consumer's outstanding liability.

8. Failing to Provide Means of Opting Out

Under the FDCPA, debt collectors and other covered organizations can contact consumers "privately on social media, unless [consumers] request that they not contact [them] that way." Additionally, when communicating with consumers via text message and email, debt collectors must provide consumers with a "reasonable and simple" method for opting out. Similar to federal privacy laws, the FDCPA takes opt-out violations seriously, and these violations (like all of the other violations discussed in this article) can lead to damages and civil monetary penalties (CMP) imposed on a per-violation basis. Failing to comply with a consumer's opt out request can trigger liability under the FDCPA as well.

9. Contacting a Represented Consumer

The FDCPA prohibits debt collectors and other covered organizations from communicating directly with represented consumers—subject to certain specific exceptions. Section 805(a)(2) of the statute provides that a debt collector violates the FDCPA, "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 lawyer 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."

10. Failing to Cease Communications

The FDCPA requires that debt collectors and other covered organizations cease collection-related communications with a consumer once the consumer has notified the organization in writing that it refuses to pay the subject debt or wishes to cease communication. At this stage, it is *only* permissible to send communications for the purposes of advising the consumer that debt collection efforts are being terminated, that the debt collector or creditor may take legal action, or that the debt collector or creditor intends to invoke a specific remedy.

Civil Liability Under the FDCPA

Similar to many (but not all) other federal consumer protection laws, the Fair Debt Collection Practices Act provides a private right of action to affected consumers. This means that consumers who fall victim to harassing, abusive, or deceptive debt collection practices can sue under the statute—in addition to pursuing any other statutory or common law claims they may have available.

The FDCPA's private right of action provisions provide consumers with access to three specific remedies: (i) actual damages; (ii) statutory damages of up to $1,000 per violation; and (iii) attorneys' fees and costs. This latter remedy, combined with the possibility for class action litigation under the FDCPA, is among the greatest risks for debt collectors and other organizations targeted in private

civil litigation under the statute. With that said, since the damages available under the FDCPA apply on a per-violation basis, organizations accused of committing multiple or repeated violations can face substantial liability in many cases.

Federal Penalties Under the FDCPA

Along with providing consumers with a private right of action, the FDCPA also provides for federal enforcement in appropriate cases. While the FDCPA does not establish penalties for noncompliance directly, Section 1962l states:

"For purpose[s] of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this subchapter shall be deemed an unfair or deceptive act or practice in violation of that Act."

Under the Federal Trade Commission Act (FTC Act), unfair and deceptive acts and practices carry civil monetary penalties that are adjusted annually for inflation. As of 2024, these penalties exceed $50,000 per violation. As a result, facing federal enforcement action can expose debt collectors and other covered organizations to substantial liability as well.

In both private civil litigation and federal enforcement actions, avoiding unnecessary liability requires an informed and proactive defense strategy. For organizations that are facing allegations of unfair debt collection practices or scrutiny from the CFPB or FTC, the first step toward executing an effective defense strategy is to engage experienced counsel who can assess their compliance and determine what specific defenses they have available.

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