

Fair Debt Collection Practices Act¹

Introduction

The Fair Debt Collection Practices Act (FDCPA), effective in 1978, was designed to eliminate abusive, deceptive, and unfair debt collection practices. The federal law also protects reputable debt collectors from unfair competition and encourages consistent state action to protect consumers from abuses in debt collection.

The FDCPA applies only to the collection of debt incurred by a consumer primarily for personal, family or household purposes. It does not apply to the collection of corporate debt or to debt for business or agricultural purposes.

Regulation Overview

Debt That Is Covered

The FDCPA applies only to the collection of debt incurred by a consumer primarily for personal, family or household purposes. It does not apply to the collection of corporate debt or to debt owed for business or agricultural purposes.

Debt Collectors That Are Covered

Under FDCPA, a “debt collector” is defined as any person who regularly collects, or attempts to collect, consumer debts for another person or institution or uses some name other than its own when collecting its own consumer debts. That definition would include, for example, an institution that regularly collects debts for an unrelated institution. This includes reciprocal service arrangements where one institution solicits the help of another in collecting a defaulted debt from a customer who has moved.

Debt Collectors That Are Not Covered

An institution is not a debt collector under the FDCPA when it collects:

- Another’s debts in isolated instances.
- Its own debts under its own name.
- Debts it originated and then sold but continues to service (for example, mortgage and student loans).
- Debts that were not in default when they were obtained.
- Debts that were obtained as security for a commercial credit transaction (for example, accounts receivable financing).
- Debts incidental to a bona fide fiduciary relationship or escrow arrangement (for example, a debt held in the institution’s trust department or mortgage loan escrow for taxes and insurance).

- Debts regularly for other institutions to which it is related by common ownership or corporate control.

Debt collectors that are not covered also include:

- Officers or employees of an institution who collect debts owed to the institution in the institution’s name.
- Legal process servers.

Communications Connected with Debt Collection

For communications with a consumer or third party connected with the collection of a debt, the term “consumer” is defined to include the borrower’s spouse, parent (if the borrower is a minor), guardian, executor, or administrator.

When, Where, and With Whom Communication is Permitted

Communicating with the Consumer

A debt collector may not communicate with a consumer at any unusual time (generally before 8 a.m. or after 9 p.m. in the consumer’s time zone) or at any place that is inconvenient to the consumer, unless the consumer or a court of competent jurisdiction has already given permission for such contacts.

A debt collector may not contact the consumer at his or her place of employment if the collector has reason to believe the employer prohibits such communications.

If the debt collector knows the consumer has retained an attorney to handle the debt, and can easily ascertain the attorney’s name and address, all contacts must be with that attorney, unless the attorney is unresponsive or agrees to allow direct communication with the consumer.

Ceasing Communication with the Consumer

When a consumer refuses, in writing, to pay a debt or requests that the debt collector cease further communication, the collector must cease all further communication, except to advise the consumer that:

- The collection effort is being stopped.
- Certain specified remedies ordinarily invoked may be pursued or, if appropriate, that a specific remedy will be pursued.

Mailed notices from the consumer are official when they are received by the debt collector.

Communicating with Third Parties

The only third parties that a debt collector may contact when trying to collect a debt are:

- The consumer.
- The consumer’s attorney.
- A consumer reporting agency (if permitted by local law).

¹ This section fully incorporates the examination procedures issued under DCA RD Memo 97-020: Fair Debt Collection Practices Act.