

VII. Abusive Practices – FDCPA

of the Federal Trade Commission even if the ruling is later amended, rescinded, or determined to be invalid for any reason.

Jurisdiction and Statute of Limitations

Action against debt collectors for violations of the FDCPA may be brought in any appropriate U.S. district court or other court of competent jurisdiction. The consumer has one year from the date on which the violation occurred to start such as action.

Administrative Enforcement

The Federal Trade Commission (FTC) is the primary enforcement agency for the FDCPA. The various financial regulatory agencies enforce the FDCPA for the institutions they supervise. Neither the FTC nor any other agency may issue regulations governing the collection of consumer debts by debt collectors. The FTC may, however, issue advisory opinions under the Federal Trade Commission Act on the meaning and application of the FDCPA.

Relation to State Law

The FDCPA preempts state law only to the extent that a state law is inconsistent with the FDCPA. A state law that is more protective of the consumer is not considered inconsistent with the FDCPA.

Exemption for State Regulation

The FTC may exempt certain classes of debt collection practices from the requirements of the FDCPA if the FTC has determined that state laws impose substantially similar requirements and that there is adequate provision for enforcement.

Examination Objectives

The objectives of the examination are to:

1. Identify financial institutions that are debt collectors;
2. Determine the adequacy of the institution's internal procedures and controls to assure consistent compliance with FDCPA; and
3. Determine if the institution complies with the requirements of the FDCPA in collecting or attempting to collect third-party consumer debts.

Examination Procedures

The following procedures are to be completed through interviews with personnel knowledgeable about and directly engaged in the institution's collection activities and through reviews of any written collection procedures, reciprocal collection agreements, collection letters, dunning notices, envelopes, scripts used by collection personnel, validation notices, individual collection files, complaint files, and other relevant records.

1. Determine if the institution is a debt collector under the FDCPA.
2. Determine if the institution has established internal procedures and controls to assure compliance with the FDCPA.
3. If the institution has acted or is acting as a debt collector under the FDCPA, determine if the institution has:
 - Communicated with the consumer or third parties in any prohibited manner;
 - Furnished the written validation notice within the required time period and otherwise complied with applicable validation requirements;
 - Used any harassing, abusive, unfair or deceptive collection practice prohibited by the FDCPA;
 - Collected any amount not expressly authorized by the agreement creating the debt or by state law;
 - Applied all payments received as instructed and, where no instruction was given, applied payments only to undisputed debts; and
 - Filed suit in an authorized forum if the institution sued to collect the debt.

References

15 USC §1692: Fair Debt Collection Practices Act
<http://www.fdic.gov/regulations/laws/rules/6500-1300.html#6500titleviidcp>

Federal Trade Commission Staff Commentary on the FDCPA
<http://www.ftc.gov/os/statutes/fdcpa/commentary.htm>

FIL 26-97: Amendment to the Fair Debt Collection Practices Act
<http://www.fdic.gov/news/news/financial/1997/fil9726.html>

Job Aids

See Examination Checklist – Fair Debt Collection Practices Act on the following page.